

Child-Protection Systems – Slovenian Perspective

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ABSTRACT

This report describes the state of child protection system in Republic of Slovenia after the new Family Code entered into force in 2019. Children's best interests can be protected by the following procedures: measures to protect the best interests of the child (in a strict sense), adoption and annulment of the adoption, granting parental responsibility to a relative, placing a child under guardianship, placing a child in foster care, deciding on the custody of a child, maintenance of a minor child (and of an adult child for as long as there is a maintenance obligation), the child's contact with its parents and issues relating to the exercise of parental responsibility, which have a significant impact on the child's development. The report also discusses the measures for protecting the best interests of children like urgent removal of a child, interim measures and measures of a more permanent nature (there are 6 of them and they are comprehensively regulated) in detail. It then highlights the unique Protocol of recommended practices for the execution of a decision on the removal of a child by direct extradition, which is a working tool prepared by a group of academics and experts from practice. Finally, we point out some interesting procedural aspects and accentuate some problems that arise in practice.

KEYWORDS

best interests of the child, interim injunction, measures of a more permanent nature, adoption, foster care, guardianship, granting parental responsibility to a relative

1. Introduction

In the Republic of Slovenia, family law comprises the legal principles and rules governing: different forms of relationships between partners; relations between parents and children; forms of state assistance for problems in partnership and family life; measures for protecting the best interests of the child, by which the State protects children at risk; maintenance obligations; and adoption, granting parental responsibility to a relative, fostering, guardianship (for children and adults in need of special protection).¹

1 Novak, 2022, pp. 15–17.

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Regarding different forms of relationship between partners, Slovenian legislation regulates the conditions for the creation, legal consequences and the way of termination of marriage and cohabitation. In the context of parent–child relations, family law mainly covers rules on determining parenthood, parental responsibility or care, upbringing and maintenance of the child.² By also regulating adoption, guardianship and foster care, the legislator provides alternative care for children who are not cared for by their parents. For children who no longer have living parents, it also provides additional care through the institution of granting parental responsibility to a relative (e.g. grandparent, aunt or uncle).³ In addition, the legislator addresses the protection of adults who are unable to provide for their own rights and interests, as they can be placed under guardianship, and provides for the possibility of appointing a guardian only in special cases.⁴ With the exception foster care, the subject is fully regulated in the Slovenian Family Code (hereinafter, FC), which came into effect on 15 April 2019.⁵

As in other European legal systems, in the Republic of Slovenia, family law is considered a branch of civil law.⁶ The legal regulation of family relationships is based on constitutional provisions,⁷ several international treaties and, of course, Slovenian legislation. As mentioned above, most family relationships are governed by the Family Code, but in certain cases also by other rules.⁸ The most important procedural questions in the field of Family Law are regulated in the Non-Contentious Civil Procedure Act, which came into force on 15 April 2019.⁹

The concept of family, which gives family law its name, is of constitutional value, being protected by Art. 53 of the Constitution of the Republic of Slovenia. The Family Code, as the legislative provision that concretises the above-mentioned constitutional norm, defines family in Art. 2(1) as the living union of a child with his or her parents, with both of them, with one of them or with another adult, provided that the latter takes care of the child and has certain rights and obligations in relation to the child in line with the provisions of the Family Code.¹⁰ In Art. 3(2), the Family Code clarifies

2 Ibid., p. 16.

3 Art. 231. of the Family Code (Official Gazette No. 15/17 with amendments). Prior to the entry into force of the Family Code, the rules of family law regulated only the relationships between parents and children and not also the ones between children and other relatives. Novak, 2017, p. 20.

4 Arts. 267–296 of the Family Code.

5 Regarding foster care, see the Provision of Foster Care Act (Official Gazette No. 110/02 with amendments). Cohabitation between partners of the same gender has been equated with cohabitation between partners of different genders quite recently, following a decision of the Slovene Constitutional Court U-I-91/21-19, Up-675/19-32, dated 16 June 2022. The Family Code now defines cohabitation as a relationship between two partners and does not mention gender anymore.

6 Novak, 2017, p. 21.

7 Arts. 53–56 of the Constitution of the Republic of Slovenia (Official Gazette No. 33/91-I with amendments).

8 These sources are further divided into fundamental and complementary sources in the narrow and broad sense.

9 Non-Contentious Civil Procedure Act (Official Gazette No. 16/19).

10 Art. 2 para. 1 of the Family Code.

that a family enjoys special protection for the best interests of the children. If there is no child, there is no family and, according to the legislator, there is no need for special protection of the family. The concept of a child is not defined in the Constitution of the Republic of Slovenia, but is defined by the Family Code, which also considers the provisions of international instruments.¹¹ In Art. 5, the Family Code defines a child as a person who has not yet reached the age of 18, unless he or she has previously acquired full legal capacity.¹² The Non-Contentious Civil Procedure Act defines a child similarly.¹³

The rights and interests of children are primarily the responsibility of their parents. The Family Code has enshrined the principle of best interest of the child.¹⁴ It follows from this principle that parents have the main and equal responsibilities for the care, upbringing and development of their child and that the best interests of the child are their main concern. They are assisted by the state in the implementation of this responsibility. In line with Art. 6 of the Family Code, parents are given parental responsibility, which belongs jointly to both parents and represents the totality of the obligations and rights of the parents to create conditions that will ensure the full development of the child in accordance with their capabilities.¹⁵ The best interests of the child are defined by the Family Code as a fundamental principle that obliges parents to take care of the best interests of the child in all activities related to the child and to educate the child with respect for their person, individuality and dignity. Art. 7 para. 3 of the Family Code further provides a positive definition of the principle of best interest of the child by defining that parents

‘shall act in the best interests of a child if, considering the child’s personality, their age, level of development and aspirations, they adequately satisfy their material, emotional and psycho-social needs, through conduct which demonstrates their concern and responsibility for the child, and provide them with adequate guidance and support for their development.’

11 Novak, 2022, p. 79.

12 This would be possible, for example, if the child got married or was granted legal capacity by the court because it became a parent. Namely, it is considered that a minor who is able to take care of himself or herself no longer needs special protection granted to the child (Novak in Korošec et al., 2009, p. 36); therefore, the milestone between a child and an adult is the acquisition of legal capacity, not the age of majority (Zupančič, 1999, p. 17). It is worth noting that, as a rule, parents are obliged to support their children until they reach the age of majority but, exceptionally, the duty to support can also be extinguished earlier or later.

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

14 Arts. 7 and 135 of the Family Code.

15 Parental responsibility also consists of the right to custody of the child. Where parents live together, they exercise custody rights together and, in the event of separation, they may agree on custody or refer the matter to the court of justice. Joint care and upbringing or the assignment of a child to care and upbringing by one of the parents is possible. In this case, it is also essential to ensure adequate contact of the child with the other parent.

Of course, situations can arise (unfortunately, all too often) where parents are unable or unwilling to provide for their children's rights and best interests and ensure the adequate conditions for their development. This has led to the development of regulation on different measures for protecting the child's best interest, adoption, foster care and guardianship, which will be further discussed below. This report thus focuses on the basic elements of the child protection system in Slovenia.

1.1. Protection of the Child's Best Interest

A child's best interests can be protected in the following procedures: measures to protect the best interests of the child (in the strict sense); adoption and annulment of the adoption; granting parental responsibility to a relative; placing a child under guardianship; placing a child in foster care; deciding on the custody of a child;¹⁶ maintenance of a minor child (and of an adult child for as long as there is a maintenance obligation); a child's contact with its parents; and issues relating to the exercise of parental responsibility, which have a significant impact on a child's development.¹⁷

In this report, we mainly focus on the measures to protect the best interests of the child in the narrow sense (and some of the specificities within them, such as The Protocol on the removal of a child from his or her parents), and present the institutions of adoption, guardianship, foster care and granting parental responsibility to a relative.

As parents have the right and the obligation to protect the rights and best interests of their child above all others, it is only when parents do not exercise their rights and obligations or do not exercise them in the best interests of the child that the state will take measures to protect the best interests of the child.¹⁸ The state confers the power to protect the best interests of the child on the court and the social work centres, which must take the necessary actions and measures required for the protection and upbringing of the child as well as for the protection of the child's property and other rights.¹⁹

2. Measures for Protecting the Best Interests of the Child

Art. 180 of the Family Code imposes everyone, but particularly national authorities, bodies of self-governing local communities, public authority holders, public service

16 Cf. VSL IV Cp 430/2024, the legal decision to place a child in care is based solely on the best interests of the child. It is a value-laden synthesis of two principles – the principle of the accelerated development of the child and the principle of continuity of care and education. For instance, the child can be placed into a petitioner's care because who lives in the environment where the family lived before the parents separated.

17 Novak, 2022, p. 303.

18 Measures for protecting the best interest of the child may be implemented until the child becomes fully legally capable.

19 Art. 153 of the Family Code.

providers and non-governmental organisations, but also health care professionals and staff in child-care centres, educational institutions and social institutes, with the obligation to immediately notify either the social work centre or the court if they become aware of circumstances which may lead to the conclusion that a child is at risk.

The condition for interfering with parental responsibility by imposing one of the measures for protecting the child's best interests is therefore the finding that a child is at risk. According to Art. 157(2) of the Family Code, a child is endangered:

‘when they suffer or are very likely to suffer damage, or where the damage or the likelihood of damage is the consequence of action or lack of action of parents or the consequence of the child’s psychosocial problems that manifest themselves as behavioural, learning and other difficulties in growing up.’

Harm may include damage to the child's physical or mental health and development or harm to the child's property. The origin of the risk to the child is most often the conduct of the parents, which may be manifested either actively (e.g. all forms of violence against the child, disposing of the child's property contrary to the child's best interests) or passively, by omission (e.g. failure to take adequate care of the child, neglect of the child, exposing the child to danger). Parents do not have to put their child at risk with their conscious conduct for measures to be taken to protect the best interests of the child; there may be situations in which they are simply unable to provide adequately for their child because of their weak parental capacity, their illness or their dependence. Alternatively, the child's vulnerability may also be due to his or her own psychosocial problems, manifested as behavioural, emotional, learning or other difficulties during growing up, some of which may also be due to inadequate parental care.²⁰

When deciding on a measure to protect the best interests of the child, the court needs the social work centre's assessment of the child's vulnerability whenever the social work centre acts as an applicant, while the court must objectify the assessment by taking appropriate evidence and justify the choice of measure by means of an evidentiary assessment.²¹ In most cases, even if the social work centre is not the applicant for the measure, the court will ask the centre to assess the risk because it acts as a legal party to the proceedings and as an expert assistant to the court in the procedure for deciding on measures to protect the best interests of the child. The court

20 More on this in Čujovič in Novak et al., 2019, p. 486.

21 Cf. VSL IV Cp 559/2017. Also see VSL IV Cp 441/2024, where the court pointed out that the social work centre's assessment of the threat, which is based largely on the petitioner's unilateral information and her experience, cannot constitute evidence of a probable basis for the extension of a court measure. The assessment also cannot be based only on the best interest of the applicant, as it must address the best interests of the children. It also provided that a complete and prolonged interruption of personal contact leads to a weakening or alienation of the relationship between the father and the children, which is clearly not in their best interests.

must always assess in its decision whether the child is at risk, determine the degree of risk and, based on the findings, justify the choice of the measure to be imposed.

The Family Code specifically mentions that the imposition of measures for the protection of the best interests of the child is within the competence of the court and also provides measures for the protection of the best interests of the child, which, in addition to interim orders and measures of a more permanent nature imposed by the courts, also include the urgent removal of the child, which is an action by the social work centre and must then be justified by the issuance of an interim court order for the removal of the child within a short period of time that cannot be extended. The Family Code also provides measures for protecting the best interests of the child, which include the removal of the child in a more permanent way. The provision of measures for protecting the best interests of the child also apply *mutatis mutandis* in cases where the child is placed with another person, in foster care or in an institution (i.e. where the child does not live with his or her parents in the primary family).²²

Among the procedures for the protection of the best interests of the child, Non-Contentious Civil Procedure Act specifically defines the procedure for deciding on measures for protecting the best interests of the child, which the court must consider when conducting such proceedings.²³ It follows from the provision of Art. 107 para. 5 of the Non-Contentious Civil Procedure Act, as well as from Art. 170(1) of the Family Code, that before imposing a measure of a more permanent nature, the court must obtain a plan of assistance for the family and the child from the social work centre.²⁴ This aims to provide support and help in building relationships, solving family problems and personal difficulties, learning and choosing appropriate parenting approaches, and is prepared together with the family and the child whenever possible. It contains a description of the situation, the needs of the children, the possibilities of the family, the method of follow-up, the forms of assistance and a description of the implementation of the measure. The social work centre may include a family therapy programme, psychiatric treatment, treatment for alcohol or illicit drug dependence, as well as other health, educational and psychosocial programmes in the family and child assistance plan, if it appears that the parents will be able to take up the child's upbringing and custody again after the therapy or treatment, or in cases where it is in the best interests of the child to do so.

In choosing the measure to protect the best interests of the child, the court must then consider the principle of the least restrictive measure, which requires the court to impose the measure that will least restrict the parents' exercise of parental

22 Art. 181 of the Family Code.

23 More about this procedure in the chapter "Postopek za varstvo koristi otrok" in Kraljić et al., 2022, pp. 447–477.

24 The content of the plan of assistance is determined in Art. 170 of the Family Code.

responsibility, provided that it can sufficiently protect the best interests of the child.²⁵ The court must thus select the appropriate measure in a graduate manner, on a scale from the mildest to the most severe, with the additional criterion that the chosen measure will sufficiently protect the child at risk.²⁶ The principle of the least restrictive measure also provides that the court should, if possible, impose a measure that does not overly deprive the parents of the child, considering, of course, that the child is sufficiently protected. In addition, the principle of the least restrictive measure is also linked to provisions on the limitation of the duration of measures provided in Art. 160 para. 3 of the Family Code in conjunction with the provisions on individual measures of a more permanent nature, and the possibility of prolonging the measures if the protection of the child's best interests requires. The principle of the least restrictive measure is also put into practice by the strict monitoring of the implementation of the measures provided in Art. 160 of the Family Code. The court sends the final decision to the competent social work centre to monitor the implementation of the measure. While monitoring the measure, the court may decide to terminate the measure if the grounds for it have ceased to exist, impose another measure to protect the best interests of the child, extend the measure imposed or reimpose the measure if, during the implementation of the measure, it appears that it has a negative impact on the child's health, development or property.

In accordance with Art. 108 of the Non-Contentious Civil Procedure Act, the social work centre is considered a legal participant in proceedings for the adoption of measures for the protection of the best interests of the child and is thus involved in the proceedings even when it is not the one who proposed the measure. The opinion of the social work centre has a special weight in proceedings for the protection of the best interests of the child and constitutes an expert basis for the decision of the court.²⁷ The social work centre participates in the proceedings as an expert and in the public interest, and its statements in the proposal, the opinion, other documents and the hearing of the expert from the centre may be equated with the testimony of a person who has special expertise on the facts (an "expert witness").

In deciding on the measures, the court shall consider the child's opinion,²⁸ expressed by the child himself or through a person whom he or she trusts and whom he or she has chosen, provided that the child is capable of understanding its meaning and consequences.²⁹ The child has the right, but not the duty, to express his or her

25 Art. 156 of the Family Code determines that, when deciding on a measure to protect the child's best interests, two restrictions shall be considered:

"1) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should be the least restrictive for the parents in the exercise of their parental responsibility, and 2) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should not seek to take the child away from their parents."

26 More about this in Čujovič in Novak et al., 2019, pp. 476–612.

27 Cf. VSRS II Ips 56/2019; VSC I Cp 149/2021.

28 The fact that the court must obtain and consider the opinion of the child when deciding on its rights and interests follows from Art. 143(1) and 96 of the Non-Contentious Civil Procedure Act.

29 Art. 158 of the Family Code.

opinion, which must be specifically communicated to him or her. The right of the child to express an opinion also means that he or she has the right not to express it.³⁰ If he or she is unwilling or unable to do so, he or she cannot and should not be forced to do so.³¹ The court's decision to obtain the child's opinion is not based on the child's age, but rather on an assessment of the child's maturity and assessment of sufficient understanding and reasoning. The child's will and the best interests of the child are not synonymous, and respect for the child's will does not mean that the court must always decide in accordance with the child's opinion, but it must give it due consideration. The child can express his or her views either at the social work centre, in an interview with a child advocate,³² in an informal discussion with the judge, possibly with the cooperation of a professionally qualified person, but always without the parents being present. However, the court may also take note of the child's opinion by obtaining the opinion of an expert, in which case the child's opinion shall be obtained with the assistance of the expert who is also best placed to shed light on the circumstances relating to the authenticity of the child's opinion.

In practice, the child is most often interviewed by the social work centre with the parents' consent. However, in the procedure for deciding on the measures, the Family Code grants the social work centre the discretion to interview the child without the consent of the parents if it considers it to be in the best interests of the child. To protect the best interests of the child, the social work centre may even refuse to allow the parents to see the record of the interview with the child.³³

The following sections will look at available measures for protecting the best interests of the child in a narrower sense. The Family Code provides for three types of measures to protect the best interests of the child: emergency removal of a child; interim injunctions; and measures of a more permanent nature.

2.1. Emergency Removal of a Child

The Family Code has introduced a uniform system of measures to protect the best interests of the child, including emergency removal of the child,³⁴ although this is an action in fact carried out by experts at the social work centre. This measure is intended to protect the child quickly when there is a serious and acute degree of danger (higher level than the danger that is a precondition for most other measures), which requires

30 In accordance with Art. 158 para. 2 of the Family Code, the court may, however, issue an interim order without the child's previously obtained opinion, which makes sense mainly due to the emphasised speed and in cases where there are reasons on the part of the child for not obtaining an opinion (e.g. lack of judgment on the part of the child, unwillingness of the child to declare his opinion).

31 VSRS II Ips 658/2007.

32 Advocacy for children is regulated in Art. 25a of the Human Rights Ombudsman Act (Official Gazette No. 69/17).

33 Art. 177 of the Family Code.

34 The types of measures are stipulated in Art. 159 of the Family Code, the measure of urgent removal of the child and actions of the social work centre are regulated by Arts. 167-168 of the Family Code.

the immediate physical removal of the child from the (family) environment and placement with another person, in a crisis centre, foster care or an institution even before the court has ruled on the application for an interim injunction. In practice, the cases that require such urgent action to protect the child are most often those of domestic violence and severe neglect of the child. In the act of immediate removal of the child from the parents, the social work centre may also be assisted by the police, in accordance with the Police Tasks and Powers Act.³⁵ When carrying out the emergency removal of a child, the social work centre shall only fill in a special form, which shall either be handed directly to the person from whom the child has been removed and to the parents or guardian of the child or shall be sent to them by post. The form must contain details about the social work centre and the official who carried out the removal, details of the person from whom the child was removed, the date and exact time of the urgent removal of the child and a brief explanation of the further course of the procedure (e.g. indication of the court to which the application for an interim injunction will be submitted).

The measure of the emergency removal of a child following an action by the social work centre can only take effect for 12 hours. In this time, the social work centre must apply to the court for an interim injunction and the court must decide on the application immediately, at the latest within 24 hours of receiving the application. If the social work centre does not file a motion for interim relief within the stated time limit and if the court does not rule on such a motion within the further 24 hours (or if the court rejects the motion for interim relief), the child must be immediately returned to the person from whom he was removed.

An interim injunction, issued by the court pursuant to Art. 168 of the Family Code, is an interim order issued prior to the commencement of proceedings and must thus be justified by the commencement of appropriate proceedings within a period of seven days at the latest.

2.2. Interim Injunction

Interim injunctions are issued by the court if it is likely³⁶ that the child is at risk. They are designed to deal with exceptional situations where the child is at risk and needs to be protected quickly. Therefore, it is necessary to establish the child's endangerment on a balance of probabilities, as it is not sufficient for an interim order to be granted simply because the interim decision is in the child's best interests. The purpose of an interim measure in family law proceedings is solely to protect the child, to alleviate the child's situation where he or she is in such danger that it is not possible to await the final conclusion of the proceedings. The need to carry out the procedure for determining the conditions for the interim order expeditiously does not justify the

35 Police Tasks and Powers Act (Official Gazette No. 15/13 with amendments).

36 To issue an interim order, the degree of probability is sufficient, which means that the reasons that speak in favour of the existence of a certain fact must be stronger than the reasons that speak against its existence.

court for failing to weigh all allegations and the evidence adduced or gathered that are relevant for issuing the interim order. To satisfy the standard of proof that there is a likelihood that the child is at risk, allegations alone are not sufficient; the parties must offer relevant evidence.³⁷

The best interests of the child are also a key criterion when it comes to the interim measures for regulating family relations, which is why, when deciding on such matters, the court is obliged to do everything of its own motion³⁸ to maximise the best interests of the child in the given situation, although a temporary order may also be granted by the application of the rightful applicant.³⁹ The granting of an interim order must be approached restrictively.⁴⁰ Art. 162 para. 1 of the Family Code only mentions interim injunctions by way of example. For example, a court may issue an order removing a child from his parents and placing him or her with another person, a crisis centre, a foster parent or an institution, designating the other person, crisis centre, foster parent or institution, but may not place the child with a person who cannot be the child's guardian.⁴¹ However, an order may also be made for entry into a dwelling or other premises against the parents' wishes, where the child is present; an order can be issued for prohibiting or restricting the contact of a certain person or persons with the child or for regulating the manner in which contact is to be exercised; an order can be issued on the upbringing and care of the child, maintenance of the child, prohibiting the crossing of the State border with the child, the eviction of a violent member from the shared home, for forbidding the child to approach persons who endanger him or her, for security over the property of the parents or the child, for medical examination or treatment etc. The court can also issue any other order which, in a particular case, may be more effective in protecting the child at risk. To ensure the effective interim protection for the child, the court may issue any one or more interim orders but must also consider the principle of the least restrictive measure when choosing which interim measure to grant.

Interim injunctions are issued by the courts on the application of the rightful applicants, but the courts may also issue an interim order of their own motion during the proceedings for protecting the best interests of the child. Such injunctions are issued under the conditions laid down in the Family Code, in accordance with the

37 VSL IV Cp 1625/2021.

38 The court must comply with Arts. 6 and 7 of the Non-Contentious Civil Procedure Act and take all measures to protect the rights and interests of children *ex officio*.

39 Persons eligible to submit proposals for the imposition of certain types of measures are defined in Arts. 106 and 107 of the Non-Contentious Civil Procedure Act.

40 The decision of the Slovenian Constitutional Court No. Up-410/01, dated 14 February 2002. In its decision, the Constitutional Court pointed out that interim orders in family law cases have a significant direct impact on the final decision, which can have significant and lasting impacts on the interests of both parents and, in particular, the child, and that their issuance should be approached restrictively. Cf. also VSM III Cp 270/2024.

41 The guardian may be a person who consents to be a guardian and has the personal qualities and abilities necessary to perform the duties of a guardian.

procedure laid down in the Law on Enforcement and Security.⁴² The need to temporarily regulate interpersonal family relations may arise at any time, and thus interim orders may be issued both before the initiation, during and after the conclusion (until the decision has become final) of proceedings for protecting the best interests of the child.⁴³

It is worth highlighting the interim injunction on supervised contacts,⁴⁴ which is limited in time, that is, for contact to be carried out in the presence of a professional person from the social work centre or the institution where the child is placed, where the court determines both the place and the time of the contact. Supervised contacts are exceptional, must be issued in a restrictive manner, may be carried out for a maximum of two hours per week and may last for a maximum of nine months. This period may not be extended or reissued. The latter means that, after the expiry of the interim injunction, the contacts may either be released and continued unsupervised or, if the child's best interests would still be at risk, the court may decide to restrict or withdraw the right of access by means of a measure of a more permanent nature.⁴⁵ The court can primarily decide to temporarily arrange supervised contact when the child may be at risk from the contact (e.g. suspected sexual abuse), but also often in situations where it is necessary to establish (for the first time or again) contact between the child and parents, when the assistance of a professional is needed to prepare and carry out the contact, in particular to establish contact and to gain the child's sympathy and trust to establish the (broken) bond between them so that contact can be carried out independently in the future.

There is also a specialty interim injunction for medical examination or treatment.⁴⁶ If a child is capable of consenting to a medical procedure under the law governing patients' rights, this interim injunction may only be issued with his or her consent.

42 Enforcement and Security Act (Official Gazette No. 3/07 with amendments).

43 The types of procedures for the protection of the interests of children are defined in Art. 93 of the Non-Contentious Civil Procedure Act. These include, in addition to procedures for deciding on measures for the protection of the interests of child, procedures in marital disputes where spouses have underage children, paternity disputes, procedures in which decisions are made on the care and upbringing of the child, on the maintenance of the child, on the child's contacts, on issues of the implementation of parental responsibility that significantly affect the child's development, as well as on placing the child under guardianship, placing the child in foster care, granting parental responsibility to a relative, adopting a child and annulling the adoption of a child, as well as procedures in which decisions are made on the maintenance of adult children. as long as there is a maintenance duty under the Family Code (when the child is still in school, but no longer than until the age of 26).

44 Art. 163 of the Family Code.

45 Art. 173 of the Family Code determines the conditions for imposing a measure of more permanent nature for the restriction or deprivation of the right to access.

46 Art. 165 of the Family Code.

2.3. Measures of a More Permanent Nature

The Family Code sets out measures of a more permanent nature in exhaustive terms. This means that only the measures predicted by law can be issued. The least restrictive measure is the restriction of parental responsibility, followed by decisions on medical examination and treatment, the restriction or deprivation of the right of contact, removal of the child from the parents, placement of the child in an institution. Finally, the most severe measure is the withdrawal of parental responsibility.⁴⁷ As their name suggests, these measures have a more lasting effect than the previously mentioned interim injunctions, some of them lasting for up to three years, with the possibility of renewal, and some of them having an unlimited duration. A higher standard of proof (at least conviction) is required to decide on these measures. In addition to the measures listed above, the court may also protect a child who is the victim of violence by means of special measures for the protection of the child, which are imposed in proceedings under the Act on the Prevention of Domestic Violence.⁴⁸

Before deciding on a measure of a more permanent nature, the court obtains a family and child assistance plan drawn up by the social work centre and, after the measure has been issued, the court monitors its implementation, in particular through social work centre reports on the implementation of the assistance plan, which it sends to the court at least once per year.

2.3.1. Restriction of Parental Responsibility

The restriction of parental responsibility is the mildest of the more permanent measures, whereby the court prohibits one or both parents from exercising the individual rights of parental responsibility if the child is at risk and the best interests of the child will be sufficiently protected by the measure itself, considering the circumstances of the case.

There are two basic forms of the limitation of individual parental rights, often used in the context of representation, where the court may prohibit parents from representing their child before the court or other authorities, prohibit parents from enrolling their children in school or kindergarten, prohibit parents from overburdening them with additional activities etc. This type of measure can also be used regarding the management of the child's property. The court may prohibit the parents from managing the child's maintenance, other assets or only from disposing of or encumbering the child's property. It is the latter that is crucial under the current family regime, where parents no longer need the consent of the social work centre to dispose of their children's property. However, if the child's best interests require

47 Ibid., Arts. 171-176.

48 Arts. 19-21 of the Domestic Violence Prevention Act (Official Gazette, No. 16/08 with amendments); Novak, 2022, p. 338.

greater protection due to the parents' conduct, the court may decide that the parents have the status of trustees in respect of the management of the child's property.⁴⁹

Usually, the court is informed of the parental mismanagement of the child's property by the social work centre and, after considering evidence, it must determine whether the parents (or one of them) have disposed of the child's property. If the court considers that this disposition endangers the child's best interests, it must impose an appropriate measure in a form that will ensure effective protection.

Art. 171. para. 3 of the Family Code provides for another form of this measure of a more permanent nature – supervision of the exercise of parental responsibility by the social work centre. The choice and content of the supervision is tailored by the court to cater for the needs of the individual family, the parents and the child, with the primary task of the social work centre of assisting the family; the centre already has a duty to help parents to rectify their mistakes and improve the quality of care and upbringing of their children under the provisions of the Social Welfare Act.⁵⁰ The court imposes a parental responsibility supervision measure when it finds that the child is not in such danger that the parents should be deprived of him or her and that the best interests of the child will be sufficiently protected by the supervision.⁵¹ The supervision of parental responsibility is thus decided by the court and exercised by the social work centre in the manner defined by the court, which adapts the choice of measure to the circumstances of the case. The reasons for the need for assistance in exercising parental responsibility may originate both from the child (e.g. special needs, educational complexity) and from the parents themselves (e.g. mental disorders, dependence on psychoactive substances).

The child is then placed under guardianship to the extent that the parental responsibility is limited. The court appoints a guardian.⁵² The duration of the measure limiting parental responsibility is limited to a maximum of one year, but may be longer, up to a maximum of three years, when it is imposed in conjunction with a measure of removing the child from the parents or a measure of placing the child in an institution. If the court, when monitoring the implementation of the measure, finds that it is not effective and that it does not provide sufficient protection for the child, it can impose a more severe measure of a more permanent nature.

2.3.2. *Decision on Medical Examination or Treatment*

The court will decide to impose a medical examination or treatment measure when the child's life is at risk or his or her health is seriously endangered, and the parents do not consent or object to examination or treatment. When a child is able to consent

49 Art. 171 para. 2 of the Family Code. Where parents hold the position of guardians, they must not do anything beyond the ordinary course of business or the management of the child's property and their full and continuous supervision is necessary.

50 Social Assistance Act (Official Gazette, No. 3/07 with amendments).

51 Končina-Peternel in Zupančič et al., 2009, p. 262.

52 The purpose of child custody is defined in Art. 239 of the Family Code. For more details, see also: Kraljić and Križnik, 2021, pp. 95–98.

to a medical procedure or treatment under the law governing patients' rights, this measure can only be carried out with the child's consent. Art. 35 para. 2 of the Patients' Rights Act⁵³ provides that a child under the age of 15 shall not be deemed to have the capacity to consent unless a doctor assesses the child's maturity and considers that the child has the capacity to do so, in which case he or she shall, as a general rule, consult the parents/guardian on the circumstances relating to the capacity of the child to make decisions for himself or herself. A child, who is already 15 years old, shall be presumed to be competent to consent unless the doctor, in the light of the child's maturity, considers that the child is not competent, in which case the doctor shall consult the parents or guardian in respect of the circumstances relating to the child's capacity to make decisions for himself or herself.

This measure is intended to replace parental decision/consent when it comes to more extensive treatment in circumstances where medical treatment or examination of the child needs to be decided immediately and an interim order is more appropriate. However, it is not appropriate where the dispute is between the parents who cannot agree on the examination or treatment, as this constitutes a dispute over the exercise of parental responsibility.⁵⁴ The duration of the measure is not defined in time.

2.3.3. *Restriction or Withdrawal of the Right to Contact*

Using this measure, the court may restrict or withdraw the right to contacts of one or both parents, or of a person who has acquired the right of access by a court decision or a court settlement, if the child is at risk as a result of the access and the child's best interests can only be sufficiently safeguarded by the restriction or withdrawal of the right of access. Contact with parents or other persons⁵⁵ must be in the best interests of the child and cannot be based solely on the wishes and expectations of those who wish to have contact with the child.

The court will impose this measure if the child is endangered by contact with his or her parents or one of them, or if he or she is endangered by contact that has already

53 Patients' Rights Act (Official Gazette No. 15/08 with amendments). Art. 2 para. 19 of the Patients' Rights Act provides: 'The ability to decide on oneself is the ability of the patient to independently exercise the rights under this act, in particular to decide on the implementation of medical intervention or medical treatment. The patient is able to make decisions about himself if, in view of age, maturity, state of health or other personal circumstances, he is able to understand the meaning and consequences of exercising the rights provided for in this act, in particular consent, refusal or revocation of refusal of medical intervention or medical treatment.'

54 Art. 151 of the Family Code determines different ways of exercising parental responsibility.

55 According to Art. 142 of the Family Code, the child has the right to contact, insofar as it is in his or her favour, other persons with whom he or she is family-related and personally attached. These can be, for example, siblings, grandparents, former foster parent, previous or current spouses or partners of his parents.

been established with another person by a previous court order.⁵⁶ The Family Code specifically provides that the practice of supervised contact cannot be imposed as a measure of a more permanent nature.⁵⁷

2.3.4. *Removal of a Child From the Parents*

Under the current legislation in Slovenia, the term “deprivation of a child” is used in family law when referring to a measure of a more permanent nature of the deprivation of a child under Art. 174 of the Family Code, that is, a type of an interim order removing a child from his parents and placing him or her with another person, in a crisis centre, in foster care or in an institution under Art. 162(1)1 of the Family Code and the provision on the enforcement measure of direct delivery under Art. 238e of the Enforcement and Insurance Act.

This measure is one of the more severe among those of a more permanent nature, as it results in the child being physically removed from the family in which he or she is at risk of harm or danger of harm. This is the case where the court finds that the parents do not provide adequate conditions for the child’s normal physical and psychological development, where the parents neglect the child’s care and upbringing, expose the child to danger, fail to protect the child from the other parent or from third parties, are irresponsible and where the family environment may also be a mental burden for the child. Therefore, it is not a condition for the imposition of this measure that the parents are guilty or negligent, but it is sufficient that the child’s development with the parents is in itself endangered.⁵⁸ It is essential that there is a positive prognosis that the parents will be able to resume custody of the child at the end of the measure, that there is a realistic prospect of their parental capacity improving and that the conditions for the child’s reintegration into the family are fulfilled. In cases where positive expectations cannot be realised, the imposition of this measure is not appropriate and a more severe measure of permanent nature should be resorted to.

When imposing this measure, the court also decides whether the child at risk should be placed with another person, in foster care or in an institution. The other persons are most often the child’s relatives or other trustworthy persons to whom the child is attached and who are willing to take care of him or her. The court may also place the child in an institution following the proposal of the social work centre if such placement is the most appropriate in the light of the child’s psychosocial difficulties. The court may not place a child with a person who cannot be a guardian.⁵⁹ The provisions of the Provision of Foster

56 Depending on the degree of threat to the child, it is possible to limit contact both in terms of place, time, duration or method of carrying out contact and to determine it in such a way that it takes place in the best interests of the child. The court may also decide that contact is not carried out by personal meeting and socialising, but in other ways, such as by various means of telecommunications or by written communications and other means appropriate to the child’s needs. See also: Kraljič, 2019, p. 573.

57 This is only admissible by an interim order under Art. 163 of the Family Code with a maximum duration of nine months.

58 Cf. VSRS I Up 1139/2005; VSRS X Ips 477/2004, UPRS I U 1084/2017-9.

59 According to Art. 240 of the Family Code, a person who has the personal qualities and abilities necessary for the performance of the duties of guardian and who agrees to be a guardian may be appointed as a guardian. However, the conditions for a guardian are set out in Art. 241 of the Family Code.

Care Act shall apply *mutatis mutandis* regarding the obligations of the other person with whom the child is placed and the supervision of placement.

Removal of the child does not terminate the parents' other obligations and rights towards the child,⁶⁰ unless the court limits parental responsibility at the time of the measure. If the court does not also impose a measure restricting parental responsibility, other parental rights will remain intact (e.g. representation of the child, disposal of property, decision-making on schooling). If, after the removal of the child, the parents exercise their remaining rights as to endanger the child, consideration should be given to withdrawing parental responsibility.

As removal results in the physical separation of the parents and the child and they no longer live together, it is also necessary to regulate the contact between them in such a way that it is of maximum benefit to the child. If the child's contact with the parents or with one of them would endanger the child, the court may limit or withdraw the parents' right of contact with the child.⁶¹ When withdrawing this right, the court also decides on the parents' maintenance obligation.⁶²

The maximum duration of this measure is limited to three years and, as with other measures of a more permanent nature, the court, with the help of the social work centre, monitors the implementation of the assistance plan and, if necessary, modifies, abolishes, replaces or, exceptionally, decides to extend the measure.⁶³

2.3.4.1. Protocol of Recommended Practices for the Execution of a Decision on the Removal of a Child by Direct Extradition

Art. 238c of the Enforcement and Security Act requires the court, considering all circumstances of the case as to ensure that the best interests of the child are safeguarded, to decide that the enforcement of a decision on the custody of a child shall be effected by imposing a fine on the person to whom the enforcement order relates, or by removing the child and handing him or her over to the person entrusted with the child's custody or guardianship. Therefore, pursuant to Art. 238e, the court will enforce the court decision in cases where indirect enforcement by imposing fines⁶⁴ would not be successful or, in particularly justified cases, immediately. Pursuant to Art. 238e of the Enforcement and Security Act, the court shall decide that enforcement shall be carried out by removing the child from the person with whom the child is kept at the time of enforcement and by handing the child over to the person entrusted with the child's care and custody. The enforcement shall be carried out by

60 Art. 174 para. 2 of the Family Code.

61 Art. 173 of the Family Code.

62 The obligation to support children is defined in Art. 183 of the Family Code. Parents must support their children until they reach the age of majority and, in the case of further education, no longer than until they are 26 years old. Art. 184 of the Family Code determines the duty of the parents to support the child even in the event of an imposed measure.

63 Art. 160 of the Family Code.

64 Art. 238d of the Enforcement and Security Act defines indirect enforcement through the imposition of financial penalties as provided by Art. 226 paras. 1-3 and para. 5.

the enforcement officer in the presence of a professionally qualified worker appointed by the court. The executor may, depending on the circumstances of the case, request the assistance of the police in carrying out the execution. Then, the person to whom the child is entrusted for care and protection shall be informed of the time and place of the enforcement by removal and given the opportunity to be present during the enforcement. The court may, depending on the circumstances of the case, provide in the enforcement order that the child is to be handed over immediately, in which case the enforcement order shall be served to the person from whom the child needs to be removed at the time of the first enforcement action, or subsequently, if he or she is not present at that time. The absence of the person from whom the child is to be removed is not an obstacle to enforcement. If the child is in the custody of a person not named in the enforcement order at the time the enforcement is carried out, the enforcement order and the enforcement record shall be served on that person at the time the enforcement is carried out.

Enforcement by direct extradition will be carried out by the court both based on court decisions on measures (interim injunctions, measures of a more permanent nature) and on other court decisions concerning the custody of children,⁶⁵ even if they do not refer to the extradition of the child. However, only in exceptional and specifically justified cases can the enforcement of a decision on personal contact also be ensured under direct extradition rules.⁶⁶ In criminal law, we also encounter unlawful removals of children (e.g. the offence of deprivation of a minor under Art. 190 of the Criminal Code),⁶⁷ but such removals are not dealt with in this report.⁶⁸ Whatever is the origin of the legal basis of the specific decision to remove a child from his surroundings, it is impossible to ignore that the fundamental problem lies in the very way in which this stressful and painful interference with the child's previous way of life is carried out. The removal of a child is thus undoubtedly emotionally and professionally extremely demanding.

After the new family legislation came into force in 2019, the need for a protocol on child removal was recognised and an inter-institutional work group established. In May 2020, the work group drafted a Protocol of Recommended Practices in the Case of Execution of a Decision on the Removal of a Child by Direct Extradition.⁶⁹ The purpose of the Protocol is to protect the best interests of the child during removal. All participants are obliged, after a preliminary assessment of the factual circumstances and a risk assessment, to draw up a detailed plan for the implementation of the removal of the child and define the role and conduct of all participants from the different

65 For more about the removal and placement of a child, see: Čujovič, 2019, pp. 71–92.

66 Art. 238f para. 2. of the Enforcement and Security Act.

67 Criminal Code (Official Gazette No. 50/12 with amendments).

68 For details about the removal of a child, see: Burkelc and Burkelc Juras, 2018, pp. 75–97.

69 Vrhovnega sodišča Republike Slovenije (2020) Su 1829/2016 z dne 13. maja 2020 pripravila 'Protokol priporočenega ravnanja v primeru izvršitve odločbe o odvzemu otroka z neposredno izročitvijo' [Online]. Available at: https://www.iusinfo.si/download/razno/protokol_odvzem_otroka_z_neposredno_izrocitvijo_nov2020.pdf (Accessed 15 December 2023).

institutions in the different stages to ensure that the individual actions are the least burdensome for the child and that the best interests of the child are best served.

This Protocol is extremely useful as a working tool and provides for a normal course of action and the distribution of roles of all participants in the various stages of the enforcement procedure, and, in the context of planning the enforcement, it also foresees the possibility of certain special circumstances, in particular with regard to the characteristics of the child and parents, and for the recommended course of action to be followed in such cases. The Protocol is also accompanied by a “Risk Assessment” form to facilitate the identification of risk factors relevant to the planning and execution of the removal of the child.⁷⁰ Some of the most important aspects of the Protocol are briefly outlined below.

First, considering the risk factors, a risk assessment is drawn up for assessing whether there is a low, medium or high-risk rating.⁷¹ The protocol then provides for the modalities of action and cooperation in the different phases. Therefore, in Phase 1, the phase prior to the issuance of the enforcement order, an enforcer must be identified. The court may appoint any executor, but when several children are to

70 Therefore, to evaluate the risk, it is necessary to shed light on the circumstances: the parents (defined on a case-by-case basis, considering relationship dynamics); the child (age, developmental characteristics (mental or physical disabilities, other special needs); the child’s personality, emotions, mental development, other personality traits, familiarity with the procedure, previous experience, willingness or reluctance to leave the family; whether the child is familiar with the environment; the child’s health, any chronic illnesses, special needs (physical, mental), any behavioural peculiarities (e.g. the living conditions (environment, spatial layout); and other features relevant for the implementation of the deprivation (possible dangers, e.g. dangerous dog, legal or illegal possession of weapons, presence of other persons in the home; the social environment in which the family lives, the social network of the family, cultural specificities, language barriers, familiarity of other institutions with the family situation, media etc.).

71 A low-risk assessment is when, given the family situation and the experience of cooperation with the family, it can be expected that the parents will voluntarily surrender the child when the enforcement order is served. In such a case, no further action and no assistance from the police are necessary. A medium-risk assessment is when the parents have no insight into their own difficulties and the child’s vulnerability. Based on the known information and experience in cooperation with the family, it is assessed that removing the child from the home would be extremely burdensome for the child. If there are several children in the family, depending on their involvements (e.g. school, kindergarten, activities of interest), it may be possible to carry out the direct removal outside the children’s home. School/kindergarten/extracurricular activities staff should be involved in the preparation for enforcement. Police assistance is not necessary. However, a high-risk assessment will be appropriate where parents lack insight into their own problems and the child’s vulnerability, if they are uncooperative in the proceedings, refuse to help, make threats and can be expected to try to prevent the children from being handed over. On the basis of known risk factors, an increased risk to the safety of the child or of all those present during the enforcement procedure, or even to the general safety, can be expected. In such cases, additional specific planning and the involvement of additional services are needed to help provide additional security. Therefore, to evaluate the risk level, it is necessary to shed light on the circumstances: the parents (defined on a case-by-case basis, considering relationship dynamics), the child, the living conditions and other features relevant for implementation. Due to the paramount importance of coordinated action, a special “action” meeting is organised before the start of the procedure.

be removed at the same time, it may be reasonable to appoint several executors. The court shall, by order, designate a professionally qualified person or a competent professional institution.⁷² Criteria for the selection of the proposed professional person are also provided for. The duty of confidentiality of all those involved should be emphasised at this stage. When it is expected that the removal will have to be carried out in a closed room, in particular where this is the result of the risk assessment, it is prudent for the court, at the same time as appointing the executor, to issue an order for entry into the closed room to allow for forcible entry in the event that the debtor is not present or does not wish to provide access to the room.

Once the enforcement order has been issued and served on the executor and professional person, the second phase takes place, namely the preparation and planning phase for the participation of the parties involved in the final removal of the child. The Protocol focuses on ensuring rapid and secure communication. In principle, this is done in writing, by email or other forms of remote communication if their security can be guaranteed, or by telephone (the judge always makes an official note in the file). The court provides the executor with information from the case file that it considers relevant for the planning and execution of the deprivation, as well as its own risk assessment. The meetings shall, if possible, be held live or by videoconference, or, in urgent cases, by telephone. The executor shall contact the expert immediately upon receipt of the enforcement decision. Where the professional person is a social work centre employee, he or she shall obtain up-to-date data and relevant information that helps facilitate the planning of the enforcement and its implementation in advance. It is recommended that an internal consultative team meeting be convened immediately within the social work centre for this purpose, that a preliminary assessment of the level of risk in the direct execution of the court order be made and that a proposal be formulated as to the place, timing and manner of the direct removal of the child. The risk assessment is then jointly made by the enforcement officer and the expert person and, depending on the level of risk, a plan is drawn up, which will include further enquiries and the involvement of other services, if necessary. The minutes of the meeting, together with the risk assessment, shall be forwarded by the executor to the court without delay. In exceptional situations (i.e. when the removal of the child must be carried out so quickly that the meeting cannot be held in person or there are other circumstances that make it impossible to hold the meeting), this communication shall be carried out by telephone or other reasonably secure means. In this case, the executor shall make an official record of the conversation and draw up a report based on this record, which shall be forwarded to the court. In more complex cases, particularly those of medium and high risk, it is advisable to have the judge who ordered the deprivation present at the meeting. If the bailiff or the court considers that police assistance is necessary and urgent action is required, it shall immediately

72 Art. 238e para. 3 of the Enforcement and Security Act, Art. 128 of the Rules on the performance of bailiff services (Official Gazette No. 18/03 with amendments).

inform the competent police station in writing or by telephone.⁷³ When more resistance is expected, an enforcement plan should be carefully drawn up, specifying the roles of all the people involved. If the judge is not present, the meeting will be chaired by the enforcement officer, who will then forward a copy of the minutes to the court without delay, no later than the day after the meeting. The minutes shall include a joint risk assessment and a final enforcement plan drawn up by the executor with the assistance of the police and a professional.⁷⁴

The removal of the child must be carried out quickly and, to protect the best interests of the child, must not be carried out in public; it can only be carried out in public in exceptional circumstances⁷⁵ and, in any case, must be carried out as discreetly as possible. Whenever possible, the child shall not be removed from his or her home or from a place where the person liable for the surrender of the child is present, unless it is clear from the risk assessment that the unhindered and smooth removal of the child is to be expected. The place where the removal will be least burdensome for the child should be chosen. The Protocol foresees more appropriate places than an apartment or a house, such as a school, kindergarten or other institution or facility (e.g. a hospital) where the child is located.

The plan requires a clear definition of who can/should be present at the place of removal. This includes the executor, a professional person, police officers (how many police officers are needed on site, perhaps also criminal investigators), if necessary; a police negotiator should be involved if a greater risk is expected at the time of the removal of the child (depending on circumstances like previous refusal of the obligor,

73 As a general rule, a reasoned request for police assistance shall be made in writing by the executor at least seven days before the scheduled performance of the tasks and shall state the reasons for which the assistance of police officers is necessary and the legal basis for the performance of the tasks and powers that have been resisted, endangered or are reasonably expected by the executor (Art. 12 para. 2 of the Police Tasks and Powers Act). In principle, the enforcer shall arrange a meeting with the commander of the competent police station or a person authorised by him or her, and a professional person shall be present at the meeting. The Protocol specifically provides that the police will provide assistance if there is resistance or endangerment in the performance of the beneficiary's duties or if this is reasonably expected and that police assistance within the meaning of the provision of Art. 238e para. 3 in conjunction with Art. 51 of the Enforcement and Security Act constitutes police assistance within the meaning of Art. 12 of the Police Tasks and Powers Act.

74 At this meeting, the expert and the executor inform police officers about all the data already collected on the family, the parents (e.g. health condition/mental problems, dependence on alcohol, illegal drugs or other psychoactive substances, physical disability, ability to understand) and the child (e.g. whether he or she attends kindergarten, school, what activities he attends, whether he has a decision for additional professional help, what are his or her relationships and contacts with the rest of his relatives (grandparents, aunts, uncles), whether he or she has some person he or she trusts (e.g. educator, teacher, social worker) that may be important for planning the way the enforcement is carried out). They also acquaint themselves with the risk assessment and the estimated time and place of the child's removal (Arts. 238e para. 3, 129 para. 3 of Enforcement and Security Act and Art. 129 para. 3 of the Rules on the performance of bailiff services).

75 Art. 129 para. 4 of the Rules on the performance of bailiff services.

threats, violence), as well as a locksmith, when it is planned to enter a locked room, the fire brigade, when there is a risk of falling from a great height or fire or an explosion is expected etc. Depending on the health state of the child or the person from whom the child is to be removed, a doctor and medical staff might also be present, as well as a psychologist, a teacher or an educator, perhaps some other person trusted by the child.

The Protocol also provides for the procedure to be followed in cases where the removal of a child has to be carried out in an environment where the person from whom the child is to be removed will be present and it is not expected that he or she will hand over the child voluntarily. In such cases, as far as possible, several possible enforcement scenarios should be foreseen as early as possible in the planning phase of the enforcement.⁷⁶ The plan should also clearly define the role of each participant and the way in which they will cooperate with each other when the direct enforcement is carried out. The enforcement plan shall also provide that, if the enforcement is resisted or threatened and the police are not present, the enforcer may immediately request the intervention of the police.

The Protocol also sets out how the executor and court will cooperate.⁷⁷ The judge who issued the enforcement order must be available to the enforcer by telephone or other means of direct communication, provided that communication security is guaranteed.⁷⁸ The court must ensure that the executor has direct contact with the judge at all times until the execution of the measure is completed, including outside the court's office hours. The executor must inform the person to whom the child is to be handed over of the time and place of the removal of the child at least 24 hours before the removal is to take place or, in exceptional cases, within a shorter period.

In Phase 3, the enforcement phase, the Protocol specifies the expected behaviour of each participant. Before arriving at the removal site, each individual involved must know what his or her role is at the scene, who is in charge of the process, and how the process will tentatively unfold. The Protocol clearly defines that the removal of the child shall be conducted by the executor. The executor must act with discretion and consider the child's age, mental development, sensitivity and personal characteristics.⁷⁹ The child shall be taken from any person with whom the child is staying at the time of enforcement, even if that person is not named in the enforcement order of the court, and notwithstanding the fact that the person from whom the child must be removed is not present at the time of the removal.⁸⁰ The Protocol also provides for

76 In such instances, The Protocol recommends that the area of the house or apartment is checked in advance, if possible, a plan of the apartment with the layout of the premises is obtained (where are, for example, front doors, windows, balconies), if necessary, the help of neighbours is asked for.

77 Art. 129 para. 7 of the Rules on the performance of bailiff services.

78 In the event of a planned stay, the judge must inform the bailiff, the head of the department and the president of the court to ensure the availability of another judge who is ordered to perform urgent acts under the Court Rules (Official Gazette No. 87/16 with amendments).

79 Determined by Art. 129 para. 4 of the Rules on the performance of bailiff services.

80 Art. 130 para. 1 of the Rules on the performance of bailiff services.

the possibility of temporarily suspending the execution of a removal that has already begun if the executor, in cooperation with a professional, determines that the continuation of the removal would endanger the life and health of the child despite police assistance. In this case, the removal shall be resumed as ordered by the judge. The professional person must be always present when the direct enforcement is carried out and the police will use their powers when necessary to take appropriate action in accordance with police duties. If they are unable to carry out the police task successfully by means of a warning, order or other powers, police officers may use coercive means to prevent or deter imminent danger.⁸¹

If individuals do not comply with the warnings, they must be ordered and required to perform or refrain from performing the acts necessary for the enforcement officer to carry out the tasks within his or her competence smoothly (including coercive measures taken by the police within the scope of police powers).⁸² The use of force against a child is not permissible, except if and to the extent necessary to ensure the protection of the child's life and health, or if the special conditions for the use of coercive measures against a child set out in Art. 76 of the Police Tasks And Powers Act are met.⁸³ In the event of the need for forcible entry, the executor shall order the work of his assistants or the locksmith, considering the instructions of the police when entering the premises.

The child is taken directly by the executor.⁸⁴ In doing so, he or she considers the instructions of the professional and, if necessary, other professionals (doctor, paramedics etc.). The professional person must focus his or her care and actions on the child, his or her needs and reactions, with the aim of looking after the child's best interests and reducing traumatisation and victimisation; however, he or she is not responsible for the direct removal of the child.

The Protocol requires the executor, once he or she has started the enforcement action, to complete the action by removing the child, unless he or she is ordered by a judge to stop the action during the removal. The executor shall endeavour to hand over the child to the beneficiary⁸⁵ as soon as possible, preferably immediately at the place of removal or at a previously agreed place. The executor shall draw up a Certificate of Delivery of the child and give it to the person to whom the child has been delivered. The enforcement and any assistance shall be completed by the delivery of the child to the beneficiary, of which the enforcer shall inform the court. The court shall also

81 Cf. the Protocol for more details.

82 Police powers are specified in Art. 33 of the Police Tasks and Powers Act.

83 It provides that police officers may not use coercive means against children, visibly ill, old, disabled persons, visibly severely disabled persons and visibly pregnant women, unless they are temporarily restricted in their movement or need to be brought or detained and the police officers cannot otherwise control their resistance or assault, or if they endanger their lives, the lives of other people, property or if other circumstances put their life or health in direct danger.

84 Also in Art. 128 of the Rules on the performance of bailiff services.

85 Under the Protocol, the beneficiary is the person to whom the child is entrusted in accordance with the Family Code (Art. 238e para. 1 of the Enforcement and Security Act, Art. 128(1) of the Rules on the performance of bailiff services).

obtain a report on the child's condition and well-being from the professional who was present at the time of the enforcement, after being informed that the enforcement has been completed.

2.3.5. *Placing a Child in an Institution*

The court can decide, in agreement with the parents, whether to protect a child at risk by placing him or her in an institution. This is the only measure of a more permanent nature that can be imposed with the consent of the parents. If the parents do not agree to the proposed measure and the court considers that it is necessary to impose a measure to remove the child from the family environment, it will have to impose a measure to remove the child.

The court will order the placement of a child in an institution if it finds that the child has psychosocial difficulties, manifested as behavioural, emotional, learning or other problems, and if it established that these difficulties endanger the child himself or other children in the family, and that only by placing the child in an institution can the child's best interests or the best interests of the other children in the family be sufficiently safeguarded. The child's psychosocial difficulties need not be the result of inadequate parental care. This measure is useful when parents are unable or unwilling to bear the burden of responsibility for the child's day-to-day care and upbringing and to provide a continuum of care in accordance with the child's needs because of their child's intractability, developmental difficulties and special characteristics. The Family Code allows for such a measure to be also imposed for the protection of other children living in a family environment with a child who has psychosocial difficulties.

When imposing this measure, the court appoints the institution where the child will be placed, considering the opinion of the social work centre, as the choice of the most appropriate institution depends on the nature of the child's psychosocial problems and the programme that the institution will implement with the child with the aim of reducing his or her problems. When placing a child in a particular centre, the social work centre must also consider the provisions of the Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education.⁸⁶

Art. 175 para. 2 of the Family Code provides that placing a child in an institution does not terminate the other obligations and rights of the parents towards the child, unless the court limits parental responsibility in accordance with Art. 171 of the Family Code. Parental rights will thus remain unrestricted and the parents will continue to be able to represent their child in legal transactions, decide on the child's schooling and medical treatment, dispose of the child's property and so on. When a measure of placement of the child in an institution is imposed, it is also possible to impose a measure of deprivation or restriction of contact and also decide on the obligation of the parents to support the child.

86 Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (Official Gazette No. 200/20).

The measure of placing a child in an institution lasts for a maximum of three years and, similar to other measures of a more permanent nature, is monitored by the court with the help of the social work centre, which regularly sends reports on the implementation of the family and child support plan and, if necessary, supplements, modifies, abolishes or extends it. As measures to protect the best interests of the child may only be implemented until the child has acquired full legal capacity, the child may remain in the institution after acquiring full legal capacity only if he or she consents in writing.

2.3.6. *Withdrawal of Parental Responsibility*

The withdrawal of parental responsibility is the most serious interference within the right to family life and is imposed to protect the child, which is why it is of unlimited duration. The court deprives one or both parents of their parental responsibility if, having established that the child is at risk, the court also finds that there is no possibility of the parents being able to resume parental responsibility. The Family Code provides that the lack of capacity to exercise parental responsibility shall be found in cases where parents *'have severely violated their obligations or abused their rights related to parental responsibility or if they abandoned the child or their conduct has manifestly shown that they will not assume custody'*.⁸⁷ The court must provide reasons for the choice of measure and explain why a less severe measure cannot be imposed. Deprivation of parental responsibility is not a penalty for the failure to exercise parental responsibility or for the inadequate exercise of it; it is the result of an objective inability to exercise parental responsibility for whatever reason.⁸⁸ The court must determine whether there is indeed no possibility of rehabilitating the family, considering the child's right to a stable family life.

As the state is obliged to provide a child with a substitute and permanent family community, parental responsibility can be returned by a court decision if the reason for which it was taken away ceases, but only if the child has not been adopted in the meantime.

When the court decides on the removal of parental responsibility, it also decides on the placement of the child with another person, into foster care or into an institution and on the appointment of a guardian, if a decision has not yet been made. In such cases, the court also appoints the other person, foster parent or institution and the guardian. In the case of the removal of parental responsibility, placement with the purpose of adoption could also be appropriate.

As the right to contact is an independent right, the court must, despite the removal of parental responsibility, arrange contact between the child and the parents, unless it assesses that such contact endangers the child. Upon the removal of parental responsibility, the court also decides on the alimony obligation of each parent. The alimony

87 Art. 176 of the Family Code.

88 VSRS II Ips 161/2013.

obligation of the biological parents ceases if the child is adopted (at the moment of the legal effectiveness of the adoption decision).⁸⁹

3. Forms of Substitute Care

3.1. Adoption

Adoption is the legal process through which a child is legally transferred from the care of his or her birth parents to the care of adoptive parents. Adoptive parents become the child's legal parents and are responsible for his or her care and upbringing. Slovenian law provides for special protection of the child's interests in adoption, which is why it is only available to children. The adoption of an adult is not recognised by Slovenian law.⁹⁰ Adoption creates the same legal relationships between the adopted child and their descendants, and the adoptive parent and their relatives, as between relatives. At the same time, is defined the rights and obligations of the child to his or her birth parents and relatives to the child cease. This type of adoption is called complete adoption and is irrevocable.⁹¹ If adoptive parents do not act in the best interests of the child or abuse or neglect the child, the state must protect the child's interests in the same way as it would with biological parents.⁹²

The adoption consists of the procedure for determining the conditions for adoption and the procedure for deciding on adoption. The first procedure is carried out at the social work centre and the decision-making process is brought before the court. This procedure is carried out according to the rules of non-contentious procedure and belongs among the procedures for the protection of the best interests of children.⁹³

Only a child whose parents have died or a child who cannot be expected to still live with his parents can be adopted (parents are unknown, have been of unknown residence for a year, their parental responsibility has been restricted or have consented to adoption).⁹⁴ Parents are understood to be both biological and "social" (the children of adoptive parents or parents who acquired a child with the help of a donated gamete).⁹⁵

Consent for adoption can be given at the social work centre or court. As a rule, both parents must consent to adoption. It is thus problematic when a mother who wants to give up a child for adoption has no interest in establishing paternity on behalf of the child. If the father recognises the child during the adoption procedure and the mother does not give him consent to recognition, he may exercise his paternity in court. However, it is possible that the adoption procedure will be completed before

89 Art. 220 para. 1 of the Family Code.

90 Art. 212 of the Family Code; Novak, 2022, p. 343.

91 Arts. 219–221 of the Family Code.

92 Novak, 2022, p. 344.

93 Art. 93 paras. 1–9 of the Non-Contentious Civil Procedure Act.

94 VSRS II Ips 161/2013.

95 Novak, 2022, p. 344.

paternity is established, as the law does not prohibit the adoption of a child at the time when the procedure for establishing paternity is underway.⁹⁶

The law does not prescribe the nature of the declaration of consent to adoption. In principle, consent can be withdrawn as long as the child is not yet adopted, which is generally not earlier than six months from the fulfilment of the conditions for adoption.⁹⁷ Consent cannot be given by a guardian instead of a parent. As only a child can be adopted, consent to “blanco adoption” is not valid (i.e. no consent to adoption is possible before the child is born). Consent is also not allowed immediately after the birth of the child, but rather after reaching the eighth week of the child’s age. If it is given before, it must be confirmed later with a new consent.⁹⁸ Biological parents have the right to give consent for the adoption of a child to adoptive parents who are clearly indicated in the decision by name and surname, as the law does not stipulate that the competent authority leads the adoptive parents only by number (incognito adoption) or that the biological parents give consent without knowing who will adopt the child (blanco adoption).⁹⁹ The latter is the opinion in theory, but in practice most courts (not all) try to ensure the secrecy of the process and anonymity of the data even among adoptive parents and parents to prevent possible future complications. Interestingly, in the event that the child is already able to reasonably assess his or her situation (i.e. he or she understands the meaning and consequences of his consent), he or she must also consent to the adoption. The opinion can be expressed by the child or with the help of a confidant.¹⁰⁰

Regarding adoptive parents, certain conditions must be met. The adoptive parent must be at least 18 years older than the adoptee. With this provision, Slovenian law wants to ensure that the relationship of adoption is as similar as possible to the relationship between parents and children. The court may withdraw from this rule and allow adoption even by an adoptive parent who is not 18 years older than the child, if this is in the child’s favour.¹⁰¹ It is not possible to adopt a relative in a straight line, nor a brother or sister (instead of granting; in certain cases, the Institute of granting parental responsibility is available). The adoptive parent must have the appropriate characteristics to ensure that the best interests of the child will not be jeopardised

96 Novak, 2022, p. 345.

97 Art. 218. para. 3 of the Family Code.

98 Novak, 2022, p. 346.

99 Due to this fact, there is also the risk that the biological parents could later impermissibly invade the privacy of the adoptive family or the child can later find out who his biological parents were. In this regard, some special rules are in force (e.g. after the adoption decision has become final, the biological parents no longer have the right to know the personal data of the child they gave up for adoption – a new personal name or place of residence). Some exceptions are possible. This arrangement does not apply if the child is adopted by the spouse or common-law partner of the biological parent (Novak, 2022, p. 347.).

100 Novak, 2022, p. 348.

101 Art. 215 para. 1 of the Family Code.

and must be a Slovenian citizen.¹⁰² The adoptive parent cannot be a person deprived of parental responsibility, a person who has reason to believe that he or she will use the adoption to the detriment of the adopted child, a person who does not provide a guarantee that he or she will exercise parental responsibility for the benefit of the child, a person who is deprived of legal capacity or who is so mentally disabled or ill, a person that has committed a crime against life or body or against sexual inviolability, for which the offender is prosecuted on motion, as well as a person living with such a person.¹⁰³

A child can only be adopted jointly by spouses or partners in cohabitation.¹⁰⁴ This is also true for same-sex partners¹⁰⁵ and stems from the belief that the child will benefit more if adopted by both partners.¹⁰⁶ When a child is adopted by a partner of a parent, it does not matter in what way parenting has been established between the child and the adoptive parent. A person who is not in a marriage or cohabitation can only adopt a child in exceptional cases.¹⁰⁷

If the conditions for adoption that stem from Arts. 212–218 of the Family Code are not fulfilled, the adoption is not valid. The annulment shall be done in a non-contentious procedure, which should be initiated by either one of the biological parents, an adopted child who has reached the age of 15 if he or she is able to understand the meaning and legal consequences of these actions, the adoptive parent or the social work centre.¹⁰⁸

3.2. Granting Parental Responsibility

In Slovenia, several calls have been made to the legislator in recent years to respond to situations where a child no longer has living parents but has other relatives or members of the extended family who could take care of him or her. The legislator answered these calls by adding the possibility of granting parental responsibility to a relative, which is regulated in Art. 231 of the Family Code.

The court grants parental responsibility to a relative in non-contentious proceedings. These proceedings are initiated either on the proposal of the social work centre, a child who has reached the age of 15 or a relative who is willing to take care of the child.¹⁰⁹ Parental responsibility is granted to the relative by court and only if the child no longer has living parents and this is in his or her favour and best interest. A relative

102 A foreigner may only adopt a child if it is not possible to find an adoptive parent among Slovenian citizens or if he or she obtains the appropriate permission from the minister responsible for family matters. This does not apply to foreign adoptions, where the adoptive parent is the partner of the child's parent or the child's relative as per Art. 217 of the Family Code.

103 Art. 216 of the Family Code.

104 Art. 213 para. 1 of the Family Code.

105 The decision of the Slovenian Constitutional Court U-I-91/21-19; Up-675/19-32, dated 16 June 2022.

106 Zupančič in Zupančič et al., 2009, p. 290.

107 Art. 213 para. 2 of the Family Code.

108 Art. 121 para. 3 of the Non-Contentious Civil Procedure Act.

109 Art. 119 of the Non-Contentious Civil Procedure Act.

who is ready to take on parental responsibility must meet the conditions of age difference and appropriate personality traits for adoptive parents. The Family Code further defines who is the relative to whom parental responsibility can be granted: persons who are related to the child in a direct line up to two times removed included or collaterally up to four times removed (e.g. grandfather, grandmother, brother, sister). This provision also applies in case of half-siblings (between half-brothers and half-sisters).¹¹⁰ In certain cases, similar to adoption, parental responsibility can only be granted to two relatives together (e.g. relatives who are married or cohabitate, even if the partner is not a relative of the child).

In each case, the court must assess whether, in the particular circumstances of the case, it is more advantageous for the child to entrust his or her relative with the task of foster care or to grant him or her parental responsibility, as this may be important to ensure the means to maintain the child.¹¹¹

When parental responsibility is granted, relatives acquire the same obligations and rights that parents have on the basis of parental responsibility – they are obliged to take care of the person and property of the child and also represent the child.¹¹² They, like the parents, are also obliged to maintain the child.¹¹³ The provisions on measures for protecting the best interests of the child shall apply in the event of a threat to the child.¹¹⁴

3.3. Guardianship

The Family Code regulates three types of guardianship: guardianship for children, for adults and for special cases. In this report, we focus solely on child custody, as this replaces parental responsibility for the child if the child does not have parents or if they do not care for him or her.¹¹⁵ Guardianship is thus a substitute, successive and subsidiary measure.¹¹⁶ The placement of the child under guardianship and the appointment of a guardian is decided by the court in non-contentious proceeding.¹¹⁷

110 Novak, 2022, p. 361.

111 Novak, 2022.

112 The Family Code does not regulate the legal consequences that the granted parental responsibility entails in other areas of the law, in particular the field of inheritance. Since the right to inheritance in the relationship between the person with the granted parental responsibility and the child is not provided for so far in Slovenian legislation, it must be considered that the child is currently not considered as a legitimate heir (so far) (Novak, 2022, p. 361). See also Kraljič, 2021, p. 238.

113 Art. 231 para. 3 in relation to Art. 183 of the Family Code.

114 Art. 231 para. 4 of the Family Code.

115 Art. 257 of the Family Code. The purpose of childcare is to ensure that, with care, upbringing and education, the child's personality is fully developed and the child is trained for independent living and work (Art. 239 of the Family Code).

116 Kraljič, 2021, p. 238.

117 Art. 257 of the Family Code and Art. 93 paras. 1–6 of the Non-Contentious Civil Procedure Act.

The procedure for placing a child under guardianship is initiated *ex officio* or following the proposal of an eligible petitioner.¹¹⁸ The social work centre is a participant in the proceedings even when it is not the one who proposed the commencement of the proceedings (legal participant).¹¹⁹

The guardian has most of the rights and duties that the child's parents have, but is not obliged to keep the child with him or her¹²⁰ or is obliged to maintain the child.¹²¹ If the guardian does not have the child with him or her (the child does not live with him or her), the child is placed in foster care, in an institution or with another person. The guardian is not obliged to take care of the child's accommodation, as it is exclusively a measure of the state ordered by a decision of the competent authority.¹²² In his work, he is obliged to act conscientiously and carefully (good master standard), but when he or she is a trustee of the social work centre (the social work centre usually further authorises a professional worker as the person responsible for the implementation of guardianship), the standard of a good specialist will be applied.¹²³ He or she is autonomous with regard to the decisions regarding the child, unless it is a decision that the law provides that he or she can take only with the consent of the social work centre.¹²⁴ A child under guardianship who reaches the age of 15 can get a job and dispose of his or her salary, but he or she is obliged to contribute to his or her maintenance and education.¹²⁵

Guardianship ceases with the acquisition of the full legal capacity of the child, the adoption of a child by a court decision if the grounds for guardianship have ceased (e.g. when parental responsibility is granted to a relative),¹²⁶ as well as if the withdrawn parental responsibility is returned to the parent, its implementation is revived or if the child dies.

It is worth noting that, for children with disabilities in the protection system under the new regime, there is no longer the possibility of extending parental rights as it was under the previous system. Children with disabilities are placed under adult custody in the same way as the rest of the adult population when reaching the age of 18. Art. 6(2) of the Non-Contentious Civil Procedure Act imposes the courts with the obligation to *ex officio*, of its own motion, take all measures necessary to protect the rights and legal interests of children and persons who, due to intellectual disability

118 These are social work centre, a child, who has reached the age of 15, if he or she is able to understand the meaning and legal consequences of his or her actions, or a relative of the child in a direct line or collaterally up to two times removed. In certain cases, also other persons (Art. 113 of the Non-Contentious Civil Procedure Act).

119 Art. 114 of the Non-Contentious Civil Procedure Act.

120 Art. 258 of the Family Code.

121 For more differences between a parent and a guardian, see: Kraljič, 2021, pp. 251–252.

122 Novak, 2022, p. 387.

123 Kraljič, 2021, p. 253.

124 For example, enrolling or dropping a child out of school, changing the type of his education, deciding on the child's profession, etc. (Art. 260 of the Family Code).

125 Art. 150 of the Family Code.

126 *Ibid.*, Art. 261.

or mental health problems or other circumstances, are not capable of taking care of their own rights and interests.

3.4. Foster Care

Foster care is an institution that allows a special form of care and upbringing of a child. It is regulated both in the Family Code, where we can find some general provisions, and in the Provision on Foster Care Act, which offers more detailed provisions. The purpose of foster care is to enable healthy growth, upbringing, education, harmonious personal development and training for independent life and work of the child. It is intended for children who are, for one reason or another, temporarily unable¹²⁷ to reside with their biological families, and the concept of temporality as a legal standard is filled by the court with content in each specific case.¹²⁸

The foster parent must have appropriate characteristics that ensure that the best interests of the child are not compromised.¹²⁹ A person wishing to carry out foster care applies to the competent social work centre. The latter, after examination, forwards the application to the ministry responsible for family, which, if conditions are met, issues a permit for carrying out foster care activities and records that in the Register of issued permits.¹³⁰ The foster parent is allowed to carry out foster activity in addition to his profession or as the only profession.¹³¹ He or she can be a relative of the child if the court finds that it is in the child's favour.¹³² A relative does not need to apply for the permit. Exceptionally, the court may also decide on the placement of a child in foster care with a person who is not authorised to carry out foster care and is not a relative of the child if that person otherwise fulfils the conditions for carrying out foster care and consents to carrying out of foster care and, in view of the child's needs, it is the only possible way to provide the child with care and upbringing in his best interests.¹³³ However, a foster parent may have only up to three foster children placed at the same time, exceptionally more if it concerns the placement of siblings or the pursuit of a child's special interests.¹³⁴

The court decides on placement in foster care in non-contentious proceedings (as does on the termination of foster care).¹³⁵ The court may place the child in foster care

127 For example, if they temporarily do not have their own family, they are temporarily unable to live with their parents for various reasons, if their physical and mental development in the environment in which they live is transiently compromised (Novak, 2022, p. 363).

128 Research have shown that, in practice, despite the temporality of foster care, there is a permanent and unpromising practice of providing foster care for children who are unlikely to ever be able to return to their parents again. For such children, it would be more beneficial to establish a relationship between them permanently through adoption. VSRS II Ips 161/2013.

129 More in Art. 6 of the Provision of Foster Care Act.

130 Ibid., Arts. 9 and 13.

131 Ibid., Art. 18.

132 Ibid., Art. 7.

133 Art. 118 para. 3 of the Non-Contentious Civil Procedure Act.

134 Art. 23 of the Provision of Foster Care Act.

135 Art. 93 para. 7 of the Non-Contentious Civil Procedure Act.

as a result of an action taken to protect the best interests of the child, but it may also be an independent proceeding if the child does not have his or her own family or is unable to live with the parents for various reasons.¹³⁶ In practice, a combination of an institution measure and foster care is also possible. The placement of the child in foster care is not a reason for the termination of the maintenance obligation of the parents. When the court decides on accommodation, it also decides on the maintenance obligation of each parent.

After the decision is final, the social work centre concludes a written foster care contract with the foster parent, which shall specify the duration of the contract, the scope of care of the foster parent, other obligations and the amount of monthly foster care payment to which the foster parent is entitled.¹³⁷ The foster care payment includes payment for care and labour remuneration.¹³⁸ The foster contract is terminated if foster care has ceased, with the expiration of time, with the dismissal of the foster parent or with the death of the foster parent or child.¹³⁹ However, foster care itself also ceases if the reasons for which the placement of the child in foster care was necessary cease, if the child is of legal age, qualified for independent living before the age of majority or if he or she has become a parent and has been granted full legal capacity.¹⁴⁰

During the implementation of foster care, the foster parent is the one who carries out the day-to-day care of the foster child and is also entrusted with certain tasks that go beyond day-to-day care (e.g. representation in the process of issuing an identity card, obtaining information and making decisions regarding the school). All other important issues regarding foster care and upbringing must be regulated by the foster parent or guardian and social work centre in their agreement.¹⁴¹ The foster parent is not obliged to maintain the child; instead, the parents are obliged to maintain him or her (even if they have been deprived of parental responsibility)¹⁴² and funds for the child's maintenance can also be provided by the state. Children still have the right to contact their parents, unless such contact would not benefit them, in which case the parents' right to contact their child may also be revoked.¹⁴³

136 Čujovič in Novak et al., 2019, pp. 763–776.

137 Art. 45 of the Provision of Foster Care Act.

138 Payment to the foster parent is not due if parental allowance is due for the same child (Art. 54 of the Provision of Foster Care Act). In addition to the payment for foster care, in certain cases, the foster parent may also receive a one-time benefit for the equipment of the newborn (Art. 50 para. 2 of the Provision of Foster Care Act). The care allowance is represented by funds for material costs for the foster child and a cash receipt, which is guided by the amount of the child allowance. Novak, 2022, p. 370.

139 Art. 47 of the Provision of Foster Care Act.

140 Art. 237 of the Family Code.

141 Novak, 2022, p. 373.

142 VSC Cp 484/2016.

143 Art. 173 of the Family Code.

4. Select Procedural Aspects

As explained in light of the individual institutions, Slovenian courts mainly decide on family law matters in non-contentious proceedings. Prior to the initiation of legal proceedings in which the court decides on the protection, upbringing, maintenance, contacts of the child and essential issues on the exercise of parental responsibility, to protect the child's best interests, parents must attend a preliminary counselling at the social work centre to determine whether they can agree on any of these issues.¹⁴⁴ The parents must take part in counselling prior to the initiation of proceedings for the protection of the best interests of the child. The social work centre also informs the participants about the possibility of a mediation procedure for a peaceful settlement of the dispute. Mediation can also exceptionally be carried out during legal proceedings.¹⁴⁵

The Family Code determines that a child who has not reached the age of 15 or has not yet been adjudicated should be represented in the proceedings by a legal representative (usually, the parents). If the legal representative has initiated the proceedings, he or she may perform actions in the proceedings only until the child, who has reached the age 15 and is capable to understand his or hers own actions and the consequences of such actions, declares that he or she will independently perform procedural actions.¹⁴⁶ In the civil proceedings, the child is also guaranteed the right to a special representative (conflict-of-law representative) when the parents or a guardian, as legal representatives, cannot adequately protect the best interests of the child.¹⁴⁷ At the same time, the child has the right to express his or her opinion during a certain proceeding with the help of a confidant or defender (attorney).¹⁴⁸ He or she has this right, but not also the duty (if he or she wishes to do so, he or she does not have to express his or her will).¹⁴⁹ A confidant is a person chosen by the child because the child trusts him or her, and a defender is a person assigned to the child under the Human Rights Ombudsman Act with the consent of the parents, unless they are deprived of parental responsibility or if the court, upon application by the Ombudsman, deems the confidant to be in the child's favour.¹⁵⁰

In more complex cases, it may not be sufficient for the court to obtain merely the opinion of the social work centre, so it also obtains the opinion of a relevant court expert. In these cases, Slovenian family judges have great difficulties due to the lack

144 Novak, 2022, p. 340.

145 This procedure is carried out in line with the Act on Alternative Dispute Resolution in Judicial Matters (Official Gazette No. 97/09 with amendments).

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

147 Arts. 269 paras.1-2 of the Family Code, Art. 45 para. 5 of the Non-Contentious Civil Procedure Act.

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

149 For details, see: Končina-Peternel, 2019, p. 93.

150 Novak, 2022, p. 308.

of court experts, especially psychological (clinical psychology and family psychology) and pedopsychiatric experts. Unfortunately, the lack of an expert also leads to procedural setbacks and, consequently, to a longer duration of legal proceedings, which is not in the best interest of the child. The Ministry of Justice is working intensively to find solutions and interinstitutional trainings have also been carried out, but the key is to ensure a greater number of competent court experts in the family field. In addition to the chronic lack of experts, the reason for the extension of court proceedings some district courts in Slovenia is also the too high workload of family judges. In Slovenia, many of providers of various forms of support and professional assistance to the family (both parents and children) have a too high workload, which leads to long queues for their services (especially for psychological treatment, pedopsychiatric treatment within public health care etc.) and makes it very difficult to provide adequate professional assistance, which could significantly help eliminate or at least improve poor family conditions and inter-family relations.

5. Conclusions

In Slovenia, children's best interests can be protected in the following procedures: measures to protect the best interests of the child (in the strict sense), adoption and annulment of adoption, granting parental responsibility to a relative, placing a child under guardianship, placing a child in foster care, deciding on custody of the child, maintenance of a minor child (and of an adult child as long as there is a maintenance obligation), the child's contact with parents, and issues relating to the exercise of parental responsibility, which have a significant impact on the child's development.

After the entry into force of the Family Code (which has been fully applicable since 15 April 2019 and has brought many changes) courts issue measures for protecting the best interests of children such as urgent removal, interim measures and measures of a more permanent nature (there are six of them and they are comprehensively regulated). In light of the measures of a more permanent nature, we particularly highlight the Protocol of recommended practices in the case of execution of a decision on the removal of a child by direct extradition, which is a working tool prepared by a group of academics and experts from practice, and was proven to be extremely important and necessary in practice to ensure the effective cooperation of all stakeholders involved in child removal.

Upon review of the Slovenian regulations, we can conclude that the current substantive legal and procedural regulation in Slovenia for decision-making on the child, in light of the fact that the newer regulations from 2019 are already well used in judicial practice, offers adequate protection of children's rights. In addition to the fact that the legislation offers a comprehensive set of measures for protecting the best interests of a child and on forms of alternative protection, which are also properly regulated and in relation to which the legislator has also provided an appropriate working aid to facilitate practical implementation, it also provides for the possibility

of the child's involvement in the proceedings in a way that burdens the child as little as possible and yet allows his or her opinion to be heard and considered. Therefore, the child is guaranteed the opportunity to participate in the proceedings when deciding on his or her rights and benefits (often at the age of 15 or when he or she is able to understand the meaning of a statement), to give an opinion and express his or her wishes; in short, he or she has the right, but not the duty, to declare his or her vision of the appropriate arrangements for the future, if he or she is able to understand the meaning of the procedure and its consequences. Slovenian law also provides adequate assistance to children in declaring their will in the form of a special representative, confidant, or defender.

In more complex cases, where it is insufficient for the court to obtain merely the opinion of the social work centre, the court also obtains the opinion of a relevant court expert. In these cases, Slovenian family judges face great difficulties due to a lack of court experts. Unfortunately, this lack of experts also leads to setbacks and, consequently, to longer durations of legal proceedings. It is not beneficial for this situation that family judges in Slovenia tend to be overwhelmed by the number of cases in which they decide. In addition to overburdening court experts and judges, families are also faced with long queues at the providers of various forms of support and professional assistance.

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