

Family Law

Author:
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SARA AHLIN DOLJAK

Abstract Family law covers a wide range of regulations which can be used by the country to interfere with individual's privacy and family (and other) relationships. Family law (Family Code and Non-Contentious Civil Procedure Act in particular) is a combination of legal regulations and principles regulating marriages, consensual unions, relationships between parents and children, adoptions, foster care and custody. It deals with varied legal problems that require extensive legal expertise as well as individual approach, empathy and humanistic knowledge from the attorneys working in the field of family law. Family law regulations are predominantly intrusive, whilst parental rights are by their nature obligatory. Property is of secondary importance in family relationships, however, the main institutions of family law are of public interest. All of this supports the view that family law should be considered an independent legal field. As a member of the Council of Europe and as an EU member, Slovenia has signed and is bound to respect numerous international documents protecting the rights of children, especially minors (Convention on the Rights of the Child in particular). Family law also governs the so-called institute of trust or the ability of a minor to manage his/her assets and to protect his/her rights against the guardians, etc.

Keywords: • Family Code • child's best interest • marriage • child support
• parental care

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Introduction

The Family Law course at the undergraduate level covers the following Study Units: fundamental principles of family law, marriage, cohabitation, parent-child relationships, measures to protect the best interests of the child, interim orders, emergency removal of the child, measures of a more permanent nature, the obligation of maintenance between parents and children, prior counselling and mediation, adoption, fostering, guardianship, same-sex partnerships, surrogacy, and the child-parent alienation syndrome.

All these topics are also covered in this script.

The script is intended to provide an introduction to the fundamental concepts of family law, both theoretical and legislative. The lectures will cover the Study Units in more detail and practical examples will also be presented. One of the main objectives of the course is to acquire the basic skills to apply the acquired knowledge in the field of family law in practice and to be able to work independently in the field of family law.

The script is complemented by handouts prepared for each lecture, which contain additional theoretical, legislative and practical information on the topics covered. I also recommend to read the additional resources listed at the end of each unit.

The questions in the last unit – the practical part – will help you to study the individual Study Units. The answers to the questions are based on the content of the script, but sometimes it will be necessary to combine knowledge from several chapters. This will help you build a solid and effective body of knowledge that you can put into practice in your career.

I wish you every success in your studies and thank you in advance for all your constructive comments, discussions and suggestions that will help me to improve the script.

assoc. prof. Sara Ahlin Doljak, Ph.D

Basic Principles of Family Law

1 The principle of the best interests of the child

In all activities relating to the child, the best interests of the child must be the primary consideration. The Convention on the Rights of the Child² and the Family Law³ (herein after referred to as: the DZ) refer to appropriate legislative and administrative solutions that benefit children. Children must be provided with the protection and care necessary for their well-being. In doing so, the rights and duties of parents must also be considered. The principle of the best interests of the child is a legal standard, the content of which must be defined by each area for itself.

2 The principle of formality

In divorce proceedings, the court must decide on the custody, upbringing, maintenance and contact of the children, even if no claim has been made; if a claim has been made, the court is not bound by it.⁴

In the case of a judgement on the establishment of paternity, to decide on the maintenance of the child.⁵ The content of the compulsory ex officio decision on divorce in respect of common children is also set out in Paragraph 2 of Article 98 of the DZ, to the same extent as in the Non-litigious Civil Procedure Act (hereinafter referred to as: ZNP-1).

The court must ex officio do whatever is necessary to protect the rights and interests of the children and of other persons who are incapable of taking care of their own rights and interests. The DZ further substantiates the court's powers and provides that, also in non-litigious proceedings, the court shall rule on all claims relating to the child which constitute the protection of their best interests in ensuring the necessary parental care. The court may also ex officio decide on all measures to protect the best interests of the child, in accordance with the provisions of the DZ.⁶

3 The principle of limited party disposition

2 Convention on the Rights of the Child (Official Gazette RS – Mednarodne pogodbe št. 9/92), 3. article.

3 DZ, 7. article.

4 DZ, 98. article.

5 ZNP-1, 88.-92. article.

6 DZ, 3. odst. 138. article.

In parent-child disputes, the court ex officio establishes facts and takes evidence if this is necessary to protect children and other persons who are not capable of taking care of their own rights and interests.⁷ Otherwise, it is for the parties to provide the procedural material, i.e. to state the legally decisive facts and to provide evidence.

In family disputes, the court is not bound by the claims raised, but is obliged to rule on them. The court is not bound to admit the facts, because the parties could thereby indirectly dispose of the claim. The admission has only the meaning of an indication and is subject to discretion.

4 The investigative principle

The court has investigative powers wherever it is required to act ex officio.⁸

5 The right to use novelties

In matrimonial and parent-child proceedings and in non-litigious proceedings between parents and children, there are no restrictions on the use of novelties.

6 Speed and efficiency⁹

Court cases concerning parent-child relationships, adoption, the award of parental care to relatives, foster care and guardianship are dealt with as a matter of priority.¹⁰

Better planning in the context of the new measure, the programme for the management of the proceedings under the ZNP-1, may also contribute to efficiency.

⁷ Analogy ZNP-1, drugi odst. 6. article.

⁸ ZNP-1, 7. article.

⁹ ZNP-1, 6. article.

¹⁰ DZ, second par. 14. article.

Marriage

The foundations for entering into a marriage are: the free decision of two persons to marry and their mutual emotional attachment. In addition, the spouses must respect, understand, trust and help each other.¹¹ In marriage, spouses are equal.¹²

Decision of the Constitutional Court no. U-I-486/20-14, Up-572/18-36, of 16/06/2022, declaring that the first sentence of Article 3 and Article 16 of the Marriage and Family Relations Act and that the first sentence of Article 3 of the Family Code are incompatible with the Constitution, repealing the first indent of Article 22 of the Family Code and on the annulment of the judgement of the Administrative Court and the annulling the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the decision of the Administrative Unit (Official Gazette of the Republic of Slovenia, no. 94- 2371/2022), published on 13 July 2022, in force as of 14 July 2022, provides:

"...

- 2. Paragraph 1 of Article 3 of the Family Code (Official Gazette of the Republic of Slovenia, no. 15/17 and 22/19), in the part that provides that marriage is the union of husband and wife, is incompatible with the Constitution.
- 3. The National Assembly is obliged to remedy the incompatibility with the Constitution as per item 2 of this disposition within six months of the publication of this decision in the Official Gazette of the Republic of Slovenia.
- 4. Until the unconstitutionality referred to in item 2 of this disposition is remedied, marriage shall be deemed to be a life community between two persons.
- 5. The first indent of Article 22 of the Family Code is annulled.

1 Conditions for the existence and validity of a marriage.

For a marriage to be valid, it is necessary that:¹³

- the persons declare their consent to enter into the marriage; and
- the persons declare their consent before the competent public authority.

¹¹ DZ, 20. article.

¹² DZ, 21. article.

¹³ DZ, 22. article.

However, for a marriage to be valid, the conditions set out in Articles 23 to 28 of the DZ must be fulfilled:

- free declaration of will;
- the age of majority and how to decide in the event of a waiver of the age of majority;
- the discretion of the person entering into marriage;
- the dissolution of a previously concluded marriage;
- the non-existence and disregard of family relationship;
- the absence of guardianship;
- in the case of a waiver, the opinion of the social work centre must be obtained.

2 Procedure prior to concluding a marriage¹⁴

- registration of the marriage
- determination of the conditions for the existence and validity of the marriage

The registrar shall determine whether the conditions for the existence and validity of the marriage are met on the basis of the information contained in the civil registry and on the basis of the information referred to in Paragraph 5 of Article 30 of the Family Code.

3 Conclusion of the marriage¹⁵

- competence to conclude a marriage
- conclusion of the marriage in official premises
- conclusion of the marriage outside official premises
- persons present at the conclusion of the marriage
- the act of concluding the marriage
- concluding the marriage before a registrar only
- the act of concluding the marriage before the registrar

4 Repeat of the ceremony upon the anniversary of the marriage

The spouses may repeat the celebration upon the anniversary of their marriage by registering with the administrative unit in the territory of which they intend to repeat the ceremony. The ceremony shall be repeated before the head of the administrative unit or their delegate or the mayor.¹⁶

¹⁴ DZ, 30. in 31. article.

¹⁵ Glej DZ, 33.-39. article.

¹⁶ DZ, 40. article.

5 Non-existent marriage and invalid marriage

5.1 Determination of the non-existence of a marriage

If, at the time of the conclusion of the marriage, the conditions laid down in the DZ for its existence, i.e. that the persons have declared their consent to the conclusion of the marriage and that they have given their consent before the competent public authority, have not been fulfilled, the marriage is null and void (*ex tunc*). If the marriage is found to be non-existent, it shall have no legal effect. The right to request a declaration of the non-existence of a marriage does not expire. A proposal for a declaration of the non-existence of a marriage may be brought by persons having a legal interest and by the public prosecutor, but may not be brought by heirs. The heirs may only continue the pending proceedings initiated by the deceased.

5.2 Annulment of the marriage

A marriage is void if there were legal reservations at the time of celebration:

- if there was no free will of the spouses;
- if the marriage was concluded by a person who was under the age of majority, a person who was legally incompetent or a person who was already married;
- if the spouses are related or if there is a guardianship;
- if both spouses were not present at the conclusion of the marriage;
- if it was not concluded for the purpose of creating a life community between the spouses;
- the conclusion of a new marriage during the validity of the previous marriage.

If the marriage is annulled, the marriage ceases to have effect from the date on which it was annulled (*ex nunc*). A marriage concluded contrary to the provisions of Article 23, Paragraph 1 of Article 24, Article 25, Article 26 and Paragraphs 1 and 2 of Article 27 of the DZ shall be null and void. An immaterial breach of formalities in the conclusion of a marriage shall not affect the validity of the marriage.¹⁷

6 Rights and obligations of the spouses¹⁸

- the relationship between spouses is based on mutual respect, trust and mutual assistance
- freedom to decide on the birth of children
- free choice of profession and work
- housing security
- decision-making on joint matters
- contribution of the spouses
- maintenance between spouses during the marriage

¹⁷ DZ, 46. article.

¹⁸ Glej DZ, 56. do 62. article.

7 Property relationship between spouses¹⁹

- conclusion of legal transactions
- presumption of a legal property regime
- legal property regime
- joint property
- the spouses' shares in the joint property
- joint management and disposition
- management and disposition agreement
- distribution of the joint property
- debts and claims on the joint property
- the amount of the shares in the joint property
- the spouses' share in the division of the joint property
- the manner in which the property is divided
- objects for the exercise of a profession and personal objects
- special property
- disposition of special property
- investments in immovable property
- investments in a business
- business property of the spouses
- joint liabilities of the spouses
- determination of the debtor's share of the joint property
- specific obligations of the spouse
- agreement on the regularisation of property relations
- content of the register
- establishment of the register
- information in the register
- unrecorded agreement on the regularisation of property relations

8 Definition of the property of the spouses

Pursuant to Article 67 of the DZ²⁰, the joint property of the spouses is all property rights acquired by work or for payment during the marriage and the life community of the spouses. Joint property of the spouses is also property acquired on the basis of and with the help of, or derived from, the joint property.

The joint property of the spouses belongs to the spouses jointly and comprises all the property rights of the spouses. In the joint property of the spouses, the shares of each spouse are not determined and the spouses have joint property (Article 68 of the DZ).

¹⁹ Glej DZ, 63. do 94. article

²⁰ Družinski zakonik (DZ). Official Gazette RS, št. 15/17 in nasl.

Under Paragraph 1 of Article 4 of the DZ, a cohabitation is a long-term life union between a man and a woman who have not concluded a marriage, and there are no grounds for the marriage to be invalid. Such a union has the same legal consequences under the DZ in their relationship as if they had entered into a marriage. Therefore, in the remainder of this article, we will use the term spouse, which also applies to a cohabiting partner.

Spouses are jointly and severally liable for the obligations arising under Article 82 of the DZ. This means that both spouses may be held liable for the obligations incurred by one spouse with all their assets, provided that the obligation arises from the joint property. This means that it does not matter which of the spouses has assumed the obligation in respect of the joint property; if the obligation arises from the joint property, both spouses are jointly and severally liable for it with all their property. The creditor may choose from which of the spouses they will demand the complete fulfilment of the obligation, choosing the one from whom they are more likely to be able to recover Their debt. The spouse who completely fulfils the obligation shall have a recourse claim against their spouse to recover the excess of their share of the obligation.²¹

The problem with joint and several liability is the overlapping of assets, when the joint and special property of the spouses are mixed. When one of the spouses contributes to the settlement of a joint obligation from their special property, their contribution from the special property may result in a higher share of the joint property. In the event that the marriage has been dissolved before the joint obligations have been settled, this does not affect the joint and several liability of the spouses for such an obligation, since it arose during the marriage and arises from the joint property of the spouses. Even in the event of the dissolution of the marriage, the shares in the joint property cannot change and the spouses remain liable for the obligations in accordance with their shares in the joint property.

9 Statutory and contractual property regimes

The legal property regime consists of the joint property of the spouses, the special property of one and the other spouse.

The joint property of the spouses is the property acquired by the spouses from the time of the marriage. To constitute joint property, two conditions must be met: the existence of a marriage and the property being acquired by work (for payment).

The joint property belongs to the spouses jointly. The shares of each spouse in the joint property are not defined, it is a joint property of both spouses, and a spouse cannot dispose of their undetermined share in the joint property by means of inter vivos transactions, in particular they cannot alienate it or encumber it. However, the spouse's special property is the property already held by the spouse at the time of the marriage and property

21 DZ, 82/2. article

acquired by the spouse gratuitously under various legal titles during the marriage (such as gifts or inheritances). Special property also includes rights attached to the person (such as alimony, disability benefits, compensation for physical pain) and personal objects of minor value intended solely for their personal use (clothing, cosmetics, medical devices).

The spouses are subject to a legal property regime, prescribed by law. If the spouses do not agree to a legal property regime, they may settle their property relations in another way, by concluding a contract on the regularisation of property relations in a notarial deed, which is not only concluded before the marriage, but may also be concluded by the spouses as well as by the cohabiting partners at any time during their marriage. The contracts concluded are kept in the Register of Property Regime Contracts of the Chamber of Notaries.

10 Dissolution of the marriage²²

A marriage shall be dissolved by the death of one of the spouses, by the declaration of the death of one of the spouses, by annulment or by divorce.

Divorce may be an amicable divorce, an amicable divorce before a notary, a divorce on the basis of a proposal in a non-litigious procedure.

In the event of an annulment, the provisions applicable to the relationship of the spouses to their common children upon a divorce shall apply *mutatis mutandis* to the relationship of the spouses of an invalid marriage to their common children.

11 Relations between the divorced spouses

The relations between divorced spouses are defined in more detail in Articles 100 to 111 of the DZ. The following are only the relationships that are relevant for the divorce settlement between the divorced spouses.

- right to maintenance
- housing security upon divorce
- return of gifts
- continuation of divorce procedure by legal successors

²² See DZ, 95. do 99. article

Cohabitation

The DZ defines cohabitation in Article 4:

"A cohabitation is a long-term life union between a man and a woman who have not concluded a marriage, and there are no grounds for the marriage to be invalid. Such a union shall have the same legal consequences under this Code in relation to them as if they had concluded a marriage; in other areas of law, such a union shall have legal consequences if the law so provides.

If the decision on a right or obligation depends on the question of the existence of a life community referred to in the preceding paragraph, that question shall be decided in the procedure for the establishment of that right or obligation. The decision on that question shall have legal effect only in the case in which the question was decided."

1 The legal consequences of cohabitation in Slovenian law outside Family law

Inheritance Act

Inheritance of Agricultural Holdings Act

- Code of Obligations
- Law of Property Code
- Contentious Civil Procedure Act
- Criminal Procedure Act
- Pension and Disability Insurance Act
- Social Assistance Act
- Parental Protection and Family Benefits Act
- Kindergarten Act
- Personal Income Tax Act
- Pardon Act
- Private International Law and Procedure Act
- Infertility Treatment and Procedures for Biomedically-Assisted Procreation Act
- Housing Act
- Employment Relationship Act
- General Administrative Procedure Act
- Health Care and Health Insurance Act

Relationships Between Parents and Children

1 Establishing paternity and maternity

The establishment of paternity and maternity is regulated in more detail in Articles 112 to 127 of the DZ and Articles 88 to 92 of the ZNP-1.

The following are only the subchapters that are relevant for the establishment of paternity and maternity:

- the child's mother
- the father of a child born in a marriage
- the father of a child born outside a marriage
- recognition of paternity (conditions for recognition of paternity, consent to recognition of paternity, consent in special cases, recognition in special cases, procedure for recognition of paternity of a child born outside a marriage)
- proposal by the mother for the establishment of paternity
- proposal by the child for the establishment of paternity
- proposal for the establishment of paternity following the death of the alleged father
- proposal for the establishment of paternity in the absence of the mother's consent
- proposal by a man for the establishment of paternity
- the father's contribution to the costs of pregnancy and childbirth
- the establishment of maternity

2 Contesting paternity and maternity

The establishment of paternity and maternity is regulated in more detail in Articles 128 to 134 of the DZ. The following are only the subchapters that are relevant for contesting paternity and maternity:

- proposal by the child's father
- proposal by the child's mother
- child's proposal
- proposal by the alleged father
- contesting maternity

3 Paternity and maternity in the case of children conceived with biomedical assistance

Paternity and maternity of children conceived with biomedical assistance are governed by Articles 133 and 134 of the DZ.

4 Obligations and rights of parents and children

The obligations and rights of parents and children are regulated by Articles 135 to 152 of the DZ and Articles 93 to 104 of the ZNP-1.

Parents have the primary and equal responsibility for the care and upbringing of the child and their development. The best interests of the child are their primary concern. The state shall assist them in the exercise of their responsibility.

4.1 Content of parental care

Parental care consists of the obligations and rights of the parents relating to the care for the child's life and health, their upbringing, protection and care, the supervision of the child and the care for their education, and the obligations and rights of the parents relating to the representation and maintenance of the child and the management of their property.

4.2 Obligations of parents

Parents have a duty of custody, protection, care, education and supervision over the life and health of their children.

4.3 Protection and upbringing of children

If the parents do not or will no longer live together, they must agree on the custody and upbringing of their common children in accordance with their best interests. They may agree on joint custody and upbringing of children, that all children are in custody and upbringing with one of them or that some children are with one of them, others with the other of them.

4.4 Joint custody and upbringing of the child

The court settlement or court decision on joint custody and upbringing of a child must include a decision on the child's residence, on which parent is to be served with mail for the child and on child maintenance.

4.5 Child maintenance

Parents who do not or will no longer live together, as well as parents who live together, shall agree on the maintenance of their common children.

4.6 Contacts with parents

The child has the right to contact with both parents and both parents have the right to contact with the child. Contact shall be for the best interests of the child.

4.7 Contacts with other persons

The child has the right to contact with other persons who are family relations and have a close personal bond with the child unless it would be contrary to the child's interest. Such persons shall be deemed to be, in particular, the child's grandparents, siblings, half-siblings, former foster parent.

4.7 The child's opinion and the opinion of the social work centre

In deciding on the custody, upbringing and maintenance of a child, contacts, exercise of parental responsibility and attribution of parental responsibility to a relative, a court shall also take into account the child's opinion if it has been expressed by the child or by a person who the child trusts and was chosen by the child, provided that the child is capable of understanding the meaning and consequences.

4.8 Parental wishes expressed in advance

In the event of death or permanent incapacity to exercise parental care, parents may make a will in advance concerning: a person to whom a child may be entrusted in custody, i.e. a relative who obtains parental responsibility, an adoptive parent or guardian.

4.9 Representation of children

Children are represented by their parents, unless otherwise provided by law.

4.10 Conclusion of legal transactions

A child who is over 15 years of age may enter into legal transactions on its own behalf unless otherwise stipulated by law.

4.11 Management of the child's property

The child's property shall be managed for the child's benefit by their parents.

4.12 Income from the property of the child

The income from the property of the child may be used by the parents primarily for the child's maintenance, upbringing and education and, if they do not have sufficient resources themselves, also for the urgent needs of the family community.

4.13 Alienation and encumbrance of the property of the child

Parents may alienate or encumber items of their child's property only for the purpose of the child's maintenance, upbringing and education, or if their child's other best interests so require.

4.14 Disposal of salary

A child who has reached the age of 15 and is employed may dispose of their salary. Thereby, they must contribute to their maintenance and education.

Parental care shall be exercised by both parents by mutual agreement in accordance with the best interests of the child. If they fail to agree by themselves on the matter, a social work centre shall assist them in reaching an agreement, or, upon their request, also mediators.

Parental care ends when the child reaches the age of majority, that is, when they reach the age of 18, or if the child acquires full legal capacity before reaching the age of majority. The child acquires full legal capacity upon marriage.

5 Measures to protect the best interests of the child

Measures for the protection of the best interests of the child are regulated by Articles 153 to 182a of the DZ and Articles 105 to 112 of the ZNP-1.

The court and the social work centre must take the necessary actions and measures required for the upbringing and protection of the child or the protection of the child's property and other rights and interests.

5.1 Obligation of the state to protect the best interests of the child

Parents have the right and obligation to protect the rights and best interests of their child before anyone else, and the state shall only take measures to protect the rights and best

interests of the child when the parents fail to exercise their rights and obligations or do not exercise these rights and obligations in the best interests of the child.

Measures to protect the best interests of the child may be taken until the child becomes fully capable of acting in their own right, unless otherwise provided for in this Code.

Measures for the protection of the best interests of the child shall be imposed by the court.

5.2 Principle of the least restrictive measure

Article 156 of the DZ provides that, when choosing a measure to protect the best interests of the child, two limitations must be taken into account: to impose a measure which will restrict the parents as little as possible in the exercise of parental care, provided that the measure is capable of securing the best interests of the child; and to strive to impose such a measure that the child is not taken away from the parents.

5.3 Condition for the imposition of measures to protect the best interests of the child

The court shall impose a measure for the protection of the best interests of the child if it finds that the child is at risk.

5.4 The child's opinion

When deciding on a measure for the protection of the best interests of the child, the court shall take into account the child's opinion, expressed by the child or by a person the child trusts and whom the child has chosen, provided that the child is capable of understanding its meaning and consequences.

5.5 Types of measures

Measures for the protection of the best interests of the child include interim orders, urgent removal of the child and measures of a more permanent nature.

5.6 Deciding on measures and monitoring of the implementation of measures

The court shall, *ex officio* or upon a request, impose measures for the protection of the best interests of the child, decide to terminate the measure if the grounds for it have ceased to exist, impose another measure for the protection of the best interests of the child if, in the course of the implementation of the measure, it appears that it has a detrimental effect on the child's health, development or property, decide to prolong the measure imposed, or reimpose the measure.

6 Interim orders

The interim orders are regulated by Articles 161 to 166 of the DZ and Article 100 of the ZNP-1 and Articles 273 to 279 of the ZIZ-1.

6.1 Condition for issuing an interim order

The court shall issue an interim order if it is likely that the child is in danger.

6.2 Types of interim orders

- an order removing the child from the parents and placing them with another person, in a crisis centre, in foster care or in an institution;
- an order to enter a dwelling or other premises, in which the child is located, against the parents' will;
- an order prohibiting or restricting contact;
- an order on the manner in which contact is to be exercised;
- an order concerning the upbringing and protection of the child;
- an order for the maintenance of the child;
- an order prohibiting the crossing of the state border with the child;
- an order to evict a violent member from the shared home;
- an order prohibiting person who endangers the child from approaching the child;
- an order on insurance on the property of the parents or the child;
- an order for medical examination or treatment.

6.3 Interim order on supervised contact

The court may, by the means of an interim order, decide that the contact shall be carried out in the presence of a professional from the social work centre or the institution in which the child has been placed.

6.4 Role of the professional in supervised contacts

The professional of the social work centre or institution in which the child has been placed shall prepare the participants for the contact.

6.5 Interim order for medical examination or treatment

When a child is able to consent to medical treatment or care in accordance with the law governing patients' rights, an interim order for medical examination or treatment may be issued only with the child's consent.

6.6 Issuance of a judicial decision following an interim order

If the interim order has been issued before the initiation of proceedings for a court decision on the upbringing, custody and maintenance of the child, on contact, on the exercise of parental care or on a measure of a more permanent nature to protect the best interests of the child, those proceedings must be initiated within seven days of the issue of the interim order.

7 Urgent removal of the child

7.1 Execution of an urgent removal of a child

If it is established on the balance of probabilities that the child is in such serious danger that their best interests can only be safeguarded by immediately removing the child from their parents, the social work centre shall remove the child and place them with another person, in a crisis centre, in a foster home or in an institution, before the court decides on the application for an interim order.²³

7.2 Issuance of an interim order

Within 12 hours of the child's removal, the social work centre must apply to the court for an interim order to remove the child. The court must decide on the application for an interim order immediately, and within 24 hours at the latest.²⁴

8 Measures of a more permanent nature

Measures of a more permanent nature are regulated in Articles 169 to 176 of the DZ.

8.1 Opinion of the social work centre on a measure of a more permanent nature

When deciding on a measure of a more permanent nature for the protection of the best interests of the child, the court shall take into account the opinion of the social work centre.

23 DZ, 167/1. article

24 DZ, 168. article

8.2 Family and child support plan

Before the court decides on a measure of a more permanent nature, the social work centre draws up a family and child support plan. A report on the implementation of the assistance plan is sent to the court once a year.

- limitation of parental care
- a decision on medical examination or treatment
- restriction or withdrawal of the right of contact
- removal of the child from the parents
- placing a child in the institution
- withdrawal of parental care

9 Maintenance obligations between parents and children

9.1 Obligation to support children and obligation to support parents²⁵

Parents must support their children until they reach the age of majority by providing, within their means, the living conditions necessary for the child's development, to ensure their successful physical and mental development. A child enrolled in secondary education must be maintained by their parents beyond the age of majority, provided that they are in full-time education and is not in employment or registered as unemployed. The maintenance obligation lasts until the child reaches the age of 26 at the latest.

A child of the age of majority must support their parents to the best of their ability if the parents do not have sufficient resources to live on and are unable to acquire them, but for no longer than the period for which the parents have actually supported the child.

9.2 Obligation to support the child in the event of a measure being imposed

The parent whose parental care is taken away or limited is not released from the obligation to support the child. Nor are parents whose child is placed with another person, in foster care or in an institution, or parents whose child is placed under guardianship, exempt from this obligation.

9.3 Obligation to support the children of a spouse or cohabiting partner

A spouse or cohabiting partner is obliged to support the child of their spouse or cohabiting partner who lives with them, unless one or the other parent is capable of supporting the child.

25 DZ, 183/1,2. article in 185/1. article

9.4 A waiver of the right to maintenance has no legal effect.

Maintenance shall be determined according to the needs of the beneficiary and the material and economic capacity of the debtor.

Maintenance is determined in a monthly amount and for the future, and it can be requested from the date of the filing of the proposal or proposal to determine the maintenance. The court shall, at the request or on the application of the beneficiary or the debtor, increase, reduce or abolish the maintenance ordered by the enforcement order if the needs of the beneficiary or the means of the debtor on the basis of which the maintenance was ordered have changed. The maintenance fixed by the enforcement order shall be adjusted annually in accordance with the consumer price index in the Republic of Slovenia. The adjustment shall be made in January, taking into account the cumulative increase in consumer prices since the month from which maintenance was last determined or adjusted. The maintenance adjustment coefficient shall be published by the Minister responsible for the family in the Official Gazette of the Republic of Slovenia.

Any person who has incurred expenses for the maintenance of a person whom they were not required to maintain may, by application, claim reimbursement of those expenses from the person who was required to maintain them, if those expenses were necessary.²⁶

10 Prior counselling and mediation

10.1 Prior counselling

Before filing a proposal for an amicable divorce, the spouses shall attend a prior counselling at the social work centre, unless:

- they have no children in common over whom they would have parental care;
- one of the spouses is legally incompetent;
- one of the spouses has an unknown place of residence or is missing;
- one or both spouses live abroad.

Professional counselling to a couple

If the spouses, after prior counselling, consider that there is a possibility of preserving the marriage, the social work centre professional informs them about the possibility of voluntarily participating in professional counselling with the goal of preserving the marriage. Cohabiting partners may also participate in the counselling. The counselling is carried out by the social work centres.

26 DZ, 194. do 199. article

Counselling prior to the initiation of proceedings for the protection of the best interests of the child is provided for in Article 203 of the DZ:

Before proposing to the court to decide on the care and upbringing of the child, on the child's maintenance and on the child's contact with them or with other persons, or on issues relating to the exercise of parental care which have a significant impact on the child's development, the parents shall attend a prior counselling at a social work centre, unless:

- one of the parents is legally incompetent;
- one of the parents lives abroad, is missing or their residence is unknown.

The purpose of the prior counselling is to draw the attention of the parent or other person to the protection of the best interests of the child in arranging the relationship with the child, to the good influence of an amicable settlement of the relationship and, in this connection, to inform them of the purpose of the mediation procedure.

The counselling shall also be carried out before the application for a new decision on any of the matters referred to in Paragraph 1 of this Article is made.

10.2 Mediation

The family, as the basic unit of society, is protected by a number of legal instruments. In fact, family law disputes are by their very nature specific, as they arise from people's intimate and emotional needs, and their resolution has long-term consequences for all members of the family.

The aim of mediation in family law disputes is to help the conflicting partners to reach an amicable solution to all the issues in dispute and to conclude a legally binding agreement. Thereby, it is important to improve communication, understanding and the willingness to cooperate within the family.

Article 13 of the Family Code provides that mediation in family matters is a procedure in which the parties involved (hereinafter referred to as: the parties), with the assistance of one or more neutral third parties – mediators (hereinafter referred to as: the mediator) – voluntarily try to reach an amicable settlement of a dispute arising from their family relations.

Article 205 of the DZ provides that mediation is to be carried out primarily prior to the commencement of court proceedings, with the aim of drafting a proposal for an amicable divorce or a proposal for the conclusion of a court settlement concerning the custody and upbringing of the child, the maintenance of the child and the child's contact with the parents or other persons, or issues relating to the exercise of parental care which have a significant impact on the child's development.

For the protection of the child, it is appropriate to involve a co-mediator, who is an expert in the field of social work or psychology, in family mediation proceedings in which issues relating to custody, upbringing, maintenance and contact with the children are resolved.

The specific features of mediation in disputes concerning children are set out in the provision of Article 210 of the DZ, which provides in its first paragraph that the mediator may also involve a child who is capable of understanding the meaning and consequences of the mediation, if they consider that this is the best interest of the child. Paragraph 2 of the above-mentioned article of the DZ provides that the mediator must always take into account the principle of the best interests of the child in the mediation. Furthermore, Paragraph 3 of Article 210 of the DZ provides that in cases of suspected domestic violence, mediation between the parties shall not take place. Paragraph 4 of Article 210 of the DZ provides that a mediator who becomes aware in the course of mediation that a child is at risk is obliged to inform the social work centre. Paragraph 5 of Article 210 of the DZ provides that an expert of the social work centre who has participated in the mediation may not participate in the preparation of an opinion for the court in proceedings for the protection of the best interests of the child.

The task of the mediator in family law disputes is to ensure that the best interests of the children are taken into account throughout the procedure and to guide the parents to put the needs of their children first, to establish appropriate communication between the participants and, where necessary, to set separate meetings.

Family law mediation attached to the court, within a time frame of three months, takes place as long as the participants agree on the reasonableness of the procedure, or it ends if the mediator judges that it no longer makes sense. If the parties to the mediation reach an agreement on an amicable settlement of the dispute, the mediator drafts a court settlement. Once the parties to the mediation have declared their agreement to the text of the draft court settlement, a record of the court settlement shall be drawn up in the presence of the judge. Once signed by the parties to the mediation and the judge, the court settlement shall have the same legal force as a judgement, i.e. it shall be enforceable. Otherwise, i.e. when the mediation is not successfully concluded, the proceedings will be referred back to court.

The advantages of the family law mediation attached to the court are the speed and economy of the procedure and the fact that the mediation participants retain control of the proceedings, resolve outstanding family law issues in a holistic way and improve mutual understanding.

Adoption

The adoption is regulated by Articles 212 to 230 of the DZ and Articles 121 and 122 of the ZNP-1.

Decision of the Constitutional Court No. U-I-91/21-19, Up-675/19-32 of 16/06/2022, declaring that Articles 135 and 138 of the Marriage and Family Relations Act were incompatible with the Constitution, repealing the first sentence of Paragraph 3 of Article 2 of the Civil Union Act and declaring that Paragraph 1 of Article 213 and Article 223 of the Family Code are incompatible with the Constitution, and the decision on the annulment of the judgement of the Administrative Court and on the annulment of the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (Official Gazette of the Republic of Slovenia, no. 94-2372/2022), published on 13 July 2022, in force as of 14 July 2022, provides:

"...

3. Paragraph one of Article 213 and Article 223 of the Family Code (Official Gazette of the Republic of Slovenia, No. 15/17 and 22/19) are incompatible with the Constitution.

4. The National Assembly is obliged to remedy the incompatibility with the Constitution as per previous item of this disposition within six months of the publication of this decision in the Official Gazette of the Republic of Slovenia.

5. Until the unconstitutionality referred to in item 3 of this disposition is remedied, the same rules shall apply to joint adoption by same-sex partners living in a civil partnership as apply to joint adoption by spouses under the current legal regime.

..."

1 The conditions for adoption and the relationships created by adoption

Only a child may be adopted.

The adoptive parents may be spouses or cohabitants and may only adopt a child only jointly, except in cases where one of them adopts the child of their spouse or cohabitant. Exceptionally, one person may also be the adoptive parent if they are not married or in a cohabiting relationship, if this is the best interest of the child.

It is NOT POSSIBLE to adopt a relative in the same line, nor to adopt a brother or sister.

A guardian may not adopt their ward during the guardianship relationship.

Only an adult person who is at least 18 years older than the child may be an adoptive parent. For exception see Paragraph 1 of Article 215.

In the adoption procedure, the court shall also take into account the child's opinion and their consent shall be required if they are capable of understanding its meaning and consequences.

2 Obstacles to adoption

The adoptive parent cannot be a person:

- relieved of parental responsibility;
- living with a person relieved of parental care;
- who has been convicted by a final judgement of an intentional offence, prosecuted ex officio, or of an offence against life and limb or of a sexual offence for which the offender is being prosecuted upon a proposal;
- living with a person who has been convicted by a final judgement of an intentional offence, prosecuted ex officio, or of an offence against life and limb or of a sexual offence for which the offender is being prosecuted upon a proposal;
- who is reasonably believed to exploit the adoption to the detriment of the child;
- who does not give a guarantee that they will exercise parental care for the benefit of the child;
- who does not have legal capacity, or who is so mentally disordered or ill that adoption would not be in the best interests of the child.

Exceptionally, the adoptive parent may be a foreign national if the social work centre has not been able to find a suitable adoptive parent among the citizens of the Republic of Slovenia for the child to be adopted. This does not apply if the child is adopted by the spouse or cohabiting partner of one of the child's parents or by a relative of the child. Consent must be given by the Minister responsible for the family.

3 The relationship between the child and the adoptive parent and the legal consequences of adoption

With adoption:

- the same relationships are created between the child and their descendants and between the adoptive parent and their relatives as between relatives, unless otherwise provided by law,
- the rights and obligations of the child towards their parents and other relatives, and the rights and obligations of the parents and relatives towards them, shall cease,

- if the child is adopted by the spouse or cohabiting partner of one of the child's parents, the rights and obligations of the child towards that parent and their relatives and the rights and obligations of that parent and their relatives towards the child shall not cease,
- the adoptive parents shall be entered in the civil register as the child's parents,
- After the adoption decision has become final, the adopted person has no right to know the personal data of their biological parents, which are kept in the civil registry and in other personal data registers, nor do the biological parents have the right to know the personal data of the child they have given up for adoption. For information on certain data, see Article 222 of the DZ.

4 Procedure for establishing the conditions for adoption

The spouses or cohabiting partners or an individual shall submit a written application to the social work centre expressing their wish for adoption.

Upon the receipt of the written application, the social work centre determines the suitability of the applicant, which may not take more than 1 year, the fulfilment of the conditions for adoption laid down in the DZ and prepares a professional opinion on the applicant, which is verified before the adoption.

If the applicant is suitable for adoption, the social work centre shall grant them the status of a candidate for adoption and enter them in the central database of candidates for adoption.

The social work centre shall select the most suitable candidate from among all possible candidates for adoption, taking into account the child's characteristics and needs, the wishes expressed by the candidate, the professional opinion of the social work centre, the biological parents' wishes regarding prospective adoptive parents and the time of entry in the central database of candidates for adoption, and shall file a petition for adoption with the court.

If the court finds that the conditions for adoption laid down in this Code are fulfilled, and in particular that the adoption is in the best interests of the child, it shall issue an adoption decision. If the court finds that the conditions laid down for adoption are not fulfilled or that the adoption would not be in the best interests of the child, it shall reject the application. Within 15 days of the final court decision on the adoption of the child, the court shall send the final court decision to the competent social work centre for the purpose of entering the information in the register referred to in Article 284 of this Code and to the administrative unit, which shall enter the adoption in the civil registry. See Article 229 of the DZ.

5 Granting parental responsibility (Article 231 of the DZ)

For a child who has no living parents, the court may grant parental care to a relative, if it is in the child's best interests, if the relative is willing to take care of the child and fulfils the conditions for the adoption of a child set out in the DZ.

In accordance with Article 231 of the DZ, a relative is a person who is related to the child by blood in the direct line up to the second knee included or in the collateral line up to the fourth knee included.

A court may only grant parental care to a relative who is married or in a cohabiting partnership, or to a relative and their spouse or cohabiting partner, to both of them jointly. The person who is granted parental care of the child shall have the same obligations and rights as the child's parents and shall become the child's legal representative. The person to whom parental care is granted shall be obliged to support the child in accordance with Article 183 of the DZ.

The conditions for adoption of the child are not fulfilled during the exercise of the granted parental care.

The granting and termination of parental care shall be entered in the civil registry, by entering the personal name of the relative to whom parental care has been granted and their personal identification number.

Foster Care

The foster care is regulated by Articles 232 to 238 of the DZ and Articles 113 and 118 of the ZNP-1.

A form of family law care for children, which is carried out through the provision of care, and upbringing in a foreign family, i.e. with persons who are not the child's parents or adoptive parents, but who may be the child's relatives.

Purpose of foster care: A child who, for various reasons, cannot live with their parents shall be provided with alternative family care which enables the child to grow up in a healthy way, to be brought up, educated, to develop a harmonious personality and to become able to live and work independently.

Providing an experience of a functional family that cannot be obtained in other forms of institutional care.

The parents shall retain those rights and obligations which are compatible with the essence and purpose of foster care.

The parents shall retain the right to give their consent to the most important educational measures.

The foster parent does not manage the child's property or represent the child in property matters; these rights remain with the parents or the guardian.

The obligation of the parents to support the child does not cease when the child is placed in foster care.

The Provision of Foster Care Act (hereinafter referred to as: the ZIRD) regulates the conditions to be met by a person wishing to implement foster care, the procedure for obtaining a licence to implement this activity, the manner in which foster care is implemented, the monitoring of the implementation of this activity and its financing, as well as other issues related to the implementation of foster care.

1 Grounds for placing a child in foster care

- If the child has no family of their own;
- if, for various reasons, the child cannot to live with their parents;
- if the child's physical and mental development is endangered in the environment in which they live;
- if the child is in need of training in accordance with the law regulating the upbringing and education of children with special needs.

2 Competence to decide on the placement of a child

The decision to place a child in foster care is divided between the courts and the social work centres.

The court decides on the placement of a child in foster care by means of an interim order if it is likely that the child is at risk, by deciding on a measure of removal of the child as a measure of a more permanent nature, or when deciding on the issue of child care and upbringing pursuant to Article 138 of the DZ.

The court shall also decide on the maintenance obligation of each parent in accordance with Article 184 of the DZ and the other provisions of this Code on the maintenance obligation between parents and children.

Foster care is intended to be a measure of a temporary nature and not a measure to permanently resolve the issue of child care and upbringing. For this reason, the DZ requires the social work centre to carry out constant professional work on specific cases, all with the purpose of eliminating the causes that led to the placement of the child in foster care. The tasks of the social work centre in the implementation of foster care are laid down in the Provision of Foster Care Act.

3 Termination of foster care

When the child reaches the age of majority, but also earlier if the foster child is sufficiently qualified to live independently or is able to independently take care of their rights and interests.

When it is established that the reasons for which the child was placed in foster care have ceased to exist.

If the social work centre makes a professional judgement that it is in the best interests of the child, who is unable to live and work independently because of a physical or mental disability, to remain in foster care, it does not cease when the child reaches the age of majority.

Foster care shall be extended beyond the age of majority in order to continue the fostered child's education, up to the age of 26, if the fostered child agrees and if the social work centre considers that termination of foster care at the age of majority would mean unfavourable conditions for the child's further education and life.

The social work centre has a duty to ensure that the best interests of the child are protected to the maximum extent possible and is therefore obliged to take immediate action to protect the child in cases where the fostering contract is terminated or dissolved.

Guardianship

The guardianship is regulated by Articles 239 to 279 of the DZ and Articles 57 to 70 and 113 to 115 of the ZNP-1. Through care and the provision of upbringing and education, the child's personality should be developed in every respect and they should be equipped to live and work independently. In the case of adults, the purpose of guardianship is the protection of their personality, which is achieved in particular by arranging matters which they cannot do for themselves and by seeking treatment and training for independent living.

Protection of the property and other rights and benefits of individuals.

A guardian may be a person who has the personal qualities and abilities necessary to perform the duties of a guardian and who agrees to be a guardian.

A guardian cannot be a person:

- relieved of parental responsibility;
- who does not have legal capacity;
- whose interests conflict with those of the ward;
- who has entered into a lifetime maintenance agreement with the ward;
- whose spouse or cohabiting partner has entered into a lifetime maintenance agreement with the ward;
- who, in view of their personal characteristics or their relationship with the ward or the ward's parents, cannot be expected to properly exercise the obligations of guardianship.

The person of the guardian is:

- the ward's spouse, cohabiting partner or relative, provided there is no conflict of interest;
- a legal person who authorises an employee to be the person responsible for the guardianship;
- the guardian represents the ward;
- the guardian must take diligent care of the personality, rights and interests of the ward and manage the ward's property with care;

The wishes of the ward and relatives.

The social work centre or the court shall take into account the wishes of the ward, provided that the latter has expressed them and is capable of understanding their meaning and consequences and that this is in the best interests of the ward. It shall also take into account the wishes of the ward's spouse, cohabiting partner or relatives if this is in the best interests of the protected person.

The social work centre or the court may decide to appoint a social work centre as the person's guardian. The latter shall authorise an employee to be the person responsible for the guardianship.

The regular management and administration of the guardian

The guardian shall independently carry out, in the name and on behalf of the ward and for their account, the tasks which are part of the regular business and administration of the ward's property. They shall be guided in their work by the best interests of the ward. Consult the ward before any major task and take their opinion into account if the ward has expressed it and is able to understand its meaning and consequences.

They must not do anything that goes beyond the ordinary course of business or the management of the ward's property without the permission of the social work centre.

The social work centre's authorisation is required to: alienate or encumber the property of the ward; alienate from the property of the ward movable property of greater value or dispose of property rights of greater value; renounce an inheritance or bequest or refuse a gift; file a petition of a child for the establishment or contestation of paternity; take other measures, if provided for by law.

The guardian may conclude a legal transaction with the ward only with the authorisation of the social work centre, which shall authorise the conclusion of such transaction if it is in the ward's best interests.

Guardian's report, review of the report and reimbursement of costs and damages

The guardian must report to the social work centre on their work and give the social work centre an account of the management of the property once a year or whenever the social work centre so requests (the report shall include what the guardian has done for the protection of the ward, their care for anything else necessary for the ward, information on the management and disposition of the ward's property, the ward's income and expenses and the final state of the ward's property).

The social work centre must scrupulously examine the guardian's report. The review of the report includes a visit to the ward, which the social work centre must carry out at least once a year.

The guardian is entitled to reimbursement of reasonable expenses incurred in the performance of their guardianship duties.

The guardian must compensate the ward for the damage caused to them by negligent performance of their duties or by arbitrary omission of their duties as guardian.

Court decision dismissing and appointing a new guardian, social work centre decision dismissing and appointing a new guardian

If the social work centre finds that the court-appointed guardian has been negligent in the performance of their guardianship duties, has abused their rights, or has endangered the best interests of the ward by their work, or if it finds that the ward would be better served by having another guardian, it shall propose to the court that the guardian be dismissed and a new guardian be appointed.

The court shall dismiss the guardian if the latter so requests within three months of the date on which the guardian requested the dismissal.

If the social work centre finds that the guardian appointed by the social work centre itself has been negligent in the performance of their guardianship duties, has abused their rights, or has endangered the best interests of the ward by their work, or if it finds that the ward would be better served by having another guardian, it shall dismiss the guardian and appoint a new one.

The social work centre shall dismiss the guardian if the latter so requests within three months of the date on which the guardian requested the dismissal.

Objection against the work of the guardian and the social work centre

It may be filed by the ward, provided that they are capable of understanding the meaning and consequences of the objection, their spouse, cohabiting partner, relatives, competent authorities and professional institutions.

Objections are dealt with by the competent social work centre, and objections against the work of the social work centre are dealt with by the Ministry responsible for the family.

1 Guardianship of children

A child who has no parents or whose parents are not caring for them is placed under guardianship by the court and a guardian is appointed. The court sends the final decision to the social work centre placing the child under guardianship and appointing a guardian. The guardian has the same duty of care as the parents and is not obliged to support the ward or let the ward live with them.

The guardian must give permission to enter into legal transactions which are of such importance as to have a significant impact on the child's life before or after the age of majority.

The guardian needs the social work centre's permission to enrol or withdraw the child from school or to change the type of education; to decide on the choice of child's profession or to pursue their profession; to take other significant measures concerning the child if another law so provides.

Guardianship of a child ends when the child acquires full legal capacity, upon adoption or by a court decision if the grounds for guardianship have ceased to exist.

2 Guardianship of adults

The court shall place a person under guardianship and appoint a guardian if, because of a mental disability or a mental health problem or any other cause affecting the person's capacity to judge, they are unable to provide for their own rights and interests without detriment to themselves.

The court shall, by decision, determine the scope of the guardian's obligations and rights and, once final, send the decision to the social work centre.

The court with which the guardianship proceedings have been initiated shall, if necessary, place the person under temporary guardianship and appoint a temporary guardian. The obligation of the temporary guardian shall cease when a permanent guardian is appointed or when the decision of the court declaring that there are no grounds for guardianship becomes final.

Guardianship shall be terminated by a decision of the court if the grounds for guardianship have ceased to exist.

3 Guardianship for special cases

The social work centre shall appoint a guardian for a special case or a guardian for a specific type of tasks to an absent person whose residence is unknown and who has no representative, to an unknown owner of property where it is necessary for someone to

take care of that property, and in other cases where it is necessary to protect the rights and interests of the individual.

Subject to the conditions laid down in the DZ, the authority before which the proceedings are pending may also appoint a guardian and must immediately inform the social work centre.

3.1 Guardian for a special case and protection of a foreign national and termination of guardianship for a special case

The social work centre or the court shall appoint a guardian for a special case for a child over whom parental care is exercised by the parents if their interests are in conflict.

The social work centre or the court shall appoint a guardian for a special case for a ward if the interests of the ward and their guardian are in conflict.

In urgent cases, the social work centre or the court shall do what is necessary to protect the personality, rights and interests of the foreign national, in accordance with the provisions of the DZ, until the authority of their country has done what is necessary.

Guardianship for a special case shall terminate if the grounds for guardianship for a special case have ceased to exist.

4 Procedure in guardianship matters

When the social work centre becomes aware of the need to place someone under guardianship or to appoint a guardian for a specific case, it shall immediately take all necessary steps to protect their personality, rights and best interests.

In proceedings in which the court has jurisdiction under the provisions of the DZ to decide on the placement under guardianship and the appointment of a guardian, it shall immediately take all necessary steps to protect the person's personality, rights and best interests. The court shall determine the scope of the guardian's obligations and rights in the decision to place a person under guardianship.

Capacity to bring proceedings (child over 15 years of age and child under 15 years of age).

Informing the child about the procedure (the social work centre must inform a child who is capable of understanding the meaning of the procedure and the consequences of the decision, in an appropriate manner, of the initiation of proceedings and on their right to express their opinion.

Duty to inform (the social work centre or the court must be informed by administrative and other public authorities, public authority holders, public service providers, local authorities, employers and non-governmental organisations when, in the exercise of their powers or the performance of their work, they become aware of such a case; by the spouse, cohabiting partner, relatives, household members and other persons who become aware of such a case).

Sending the decision and entry in the register of guardians (the social work centre and the court shall send the final decision on the placement under guardianship, the appointment of a new guardian and the termination of guardianship to the administrative unit within 15 days of its finality).

Registration in the Land Register (if the ward has immovable property, the social work centre and the court shall send the final decision on placing under guardianship and on termination of guardianship to the competent court within 15 days of its finality – registration in the Land Register).

Coverage of expenses

The expenses for the implementation of the guardianship measures shall be covered in the following order from:

- the ward's income;
- funds received from persons who are required to support the ward;
- the assets of the ward;
- the budget of the Republic of Slovenia.

Slovenian Legal Regulation of Same-sex Partnerships

1 The constitution of the Republic of Slovenia

The principles of the Constitution of the Republic of Slovenia oblige the legislator to take them into account when drafting and adopting laws. These principles are the principle of equality, the inviolability of human physical and mental integrity and the freedom to decide on the birth of children.

- PRINCIPLE OF EQUALITY – Article 14 of the Constitution of the Republic of Slovenia (everyone in Slovenia is guaranteed the same human rights and fundamental freedoms, regardless of any personal circumstances)
- INVIOABILITY OF HUMAN PHYSICAL AND MENTAL INTEGRITY – Article 35 of the Constitution of the Republic of Slovenia (inviolability of human physical and mental integrity, of their privacy and of their personality rights)
- FREEDOM TO DECIDE ON THE BIRTH OF CHILDREN - Article 55 of the Constitution of the Republic of Slovenia (deciding on the birth of children is free and the state shall provide opportunities for the exercise of this freedom and shall create conditions which enable parents to decide on the birth of their children)

2 Family code

The Constitution of the Republic of Slovenia leaves the regulation of marriage and cohabitation to the law, which is why the Marriage and Family Relations Act (Official Gazette of the Republic of Slovenia, no. 15/76) and the Family Code (Official Gazette of the Republic of Slovenia, no. 15/17 and no. 21/18 – ZNOrg), which are the fundamental source of family law, were adopted.

3 The protection against discrimination act (ZVarD)

The Protection against Discrimination Act (hereinafter referred to as: the ZVarD) (Official Gazette of the Republic of Slovenia, no. 33/16 and 21/18) protects against discrimination on the grounds of sexual orientation, gender identity and gender expression (and a number of other personal circumstances) in the areas of employment, upbringing and education, membership of professional organisations, social and health security, and access to goods, services and housing.

4 Civil Union Act

Decision of the Constitutional Court No. U-I-91/21-19, Up-675/19-32 of 16/06/2022, declaring that Articles 135 and 138 of the Marriage and Family Relations Act were incompatible with the Constitution, repealing the first sentence of Paragraph 3 of Article 2 of the Civil Union Act and declaring that Paragraph 1 of Article 213 and Article 223 of the Family Code are incompatible with the Constitution, and the decision on the annulment of the judgement of the Administrative Court and on the annulment of the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (Official Gazette of the Republic of Slovenia, no. 94-2372/2022), published on 13 July 2022, in force as of 14 July 2022, provides: "The first sentence of Paragraph 3 of Article 2 of the Civil Union Act (Official Gazette of the Republic of Slovenia no. 33/16) is repealed."²⁷

The Civil Union Act (hereinafter referred to as: the ZPZ) (Official Gazette of the Republic of Slovenia, no. 33/16) defines a civil union as a living union between two women or two men, the conclusion, legal consequences and dissolution of which are regulated by this Act. A concluded civil union has the same legal effects as a marriage in all areas of law, not only family law, except in areas where the ZPZ expressly provides otherwise.

With regard to EXCEPTIONS such as adoption of children and biomedically-assisted fertilisation, which are not possible under the express provision of the law, the decisions of the Constitutional Court of the Republic of Slovenia have intervened with regard to the adoption of children. No. U-I-486/20 and U-I-91/21 of 16/06/2022.

On 24 February 2017, the Civil Union Act, which had already been adopted on 21 April 2016 and entered into force on 24 May 2016, entered into force. The Civil Union Act introduces the same legal consequences for same-sex couples as marriage in all legal areas, with the exception of the possibility of joint adoption of a child and biomedically-assisted fertilisation procedures.

The Civil Union Act equates the legal consequences between same-sex partners with the legal consequences provided by law for a union of two persons, i.e. a marriage or a cohabitation.

A civil union may be concluded solemnly and, like a marriage, also outside the official premises. The Civil Union Act refers to the meaningful application of the provisions of the Family Code as regards the foundation of the civil union and the equality of the partners, the conditions for the conclusion and validity of the civil union, the invalidity of the civil union, the rights and obligations of the partners, the property relations between the partners, the dissolution of the civil union and the relations between the divorced partners.

27 Official Gazette of the RS, No. 94/2022 z dne 13.7.2022

As from the date of application of the Civil Union Act, the Same-Sex Civil Partnership Registration Act ceased to apply.

Compared to the Same-Sex Civil Partnership Registration Act, the ZPZ gives a different name to cohabitation between two persons of the same sex. It is the word "union" that reflects the content of this relationship. Furthermore, the ZPZ uses the term "conclusion of a civil union" to formalise the relationship between two persons of the same sex. Conclusion means an expression of consent to do something that binds someone to someone else. This is the essence of both civil union and marriage. The law refers to the application of the DZ on the conditions for entering into a civil union, its validity or invalidity and its dissolution. This transfers the power to decide on the dissolution of a same-sex partnership from an administrative to a judicial jurisdiction, thereby ensuring equal protection of the rights arising from this relationship.

Article 3 of the ZPZ is very important, as it recognises the legal consequences of informal civil union and effectively puts them on an equal footing with cohabitation under the DZ.

4.1 Essential rights acquired by same-sex couples after the application of the ZPZ

The right to health insurance after the partner in case of unemployment.

The right to time off work and compensation for caring for an immediate family member.

The right to decide on the partner's medical treatment and to be informed of the partner's state of health, which will now also apply to unconcluded civil union.

The right to compensation for the death or serious disability of the partner.

Exemption from the duty to give evidence and to testify against close relatives.

In the event of the death of the partner, their partner now has the right to decide on the funeral and the funeral ceremony.

Acquisition of nationality by naturalisation.

The right to paid time off work due to the death of the partner and personal circumstances, which now applies to both unconcluded and concluded civil union.

The right to a widow's pension, which also applies to unregistered civil unions.

The right to rent a dwelling.

If the partner is unemployed, the other partner can claim them as a dependant for income tax purposes.

4.2 Conscientious objection

The issue of conscientious objection often arises in connection with the conclusion of a civil union.

Article 46 of the Constitution of the Republic of Slovenia defines conscientious objection in detail. Conscientious objection is admissible in cases provided for by law, provided that the rights and freedoms of other persons are not thereby restricted. It should also be added that the European Court of Human Rights (ECtHR) in *Bayatyan v. Armenia* wrote that Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not explicitly refer to the right to conscientious objection. However, the ECtHR considers that this right may apply to military service where there is a conflict between the obligation to serve in the armed forces and an individual's conscience, deeply held religious or other beliefs.

Twenty-two countries have enacted various forms of "marriage equality". The Netherlands was the first in 2001, followed by Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, Brazil, France, Uruguay, New Zealand, the UK, Luxembourg, Ireland and Colombia. Marriages are possible in parts of Mexico and some US states. As of 1 March 2017, also in Finland.

4.3 Presumption of paternity and recognition of paternity

Since the entry into force of the ZPZ, it has already become apparent in practice that it has not adequately regulated one of the situations which is admittedly very problematic and about which a number of questions have been raised. The question of a pregnant woman, whether the presumption of parentage applies to her partner with whom she lives in a civil union. The ZPZ does not expressly regulate the situation where one of the partners is expecting a child during the duration of the civil union. Only the unavailability of biomedically-assisted fertilisation procedures is expressly regulated in Paragraph 3 of Article 2, but not other methods of family creation. Since the ZPZ provides that a partnership has the same legal effects in all legal areas as a marriage, unless the law expressly provides otherwise, the presumption of paternity, as provided for in the DZ, that the husband of the child's mother is to be considered the father of a child born during the marriage or within three hundred days of the dissolution of the marriage, should apply.

4.4 Biomedically-assisted fertilisation procedures

The term "biomedically-assisted fertilisation" (hereinafter referred to as: the BMAF) refers to the performance of biomedical procedures that result in pregnancy by means other than sexual intercourse.

In Slovenia, partners in a concluded and unconcluded civil union cannot become parents by means of biomedically-assisted fertilisation, as this option is expressly prohibited by the ZPZ.

In the field of biomedically-assisted fertilisation, the regime in Slovenia remains the same as under the ZRIPS, as these procedures are still unavailable to same-sex partners and also to single women.

4.5 Surrogacy

Surrogacy in its broadest sense covers cases where a woman contractually agrees to carry and give birth to a child, whether for payment or not, and to give the child to the other contracting party permanently after its birth. It is irrelevant how the woman became pregnant. The child's dignity is affected when it becomes the subject of a contract, which is why surrogacy is objectionable.

Legal experts also oppose surrogacy on the grounds that it threatens traditional family values. With surrogacy, a third party is supposed to intervene in the most intimate relationship between husband and wife. A child has the right to one mother and one father, but in the case of surrogacy, the child born may have several mothers and fathers.

Surrogacy as such is not explicitly prohibited in the Republic of Slovenia, but the use of BMAF procedures is prohibited. Article 7 of the ZZNP-1OB stipulates that a woman who intends to give her child to a third party after birth, whether for payment or not, is not eligible for BMAF.

4.6 Example of case law

In Slovenia, there is a case of same-sex partners who became parents with the help of a surrogate mother. The case concerns Slovenian same-sex partners who entered into a marriage in the USA and registered their partnership in Slovenia in accordance with the ZRIPS. A daughter was born to them in California with the help of a surrogate mother. The mother is also her genetic mother and the genetic father is one of the partners. The sperm cells they contributed have been mixed, so it is not known which of them is the genetic father of the child.

4.7 Legal developments in some other areas of law with a significant impact on the family law area

The changes brought about by the ZPZ are not limited to the area of family law. In areas outside family law, partners in a concluded civil union have the same rights as spouses, while partners in an unconcluded civil union have the same rights only if the law in that area also recognises the same legal consequences for a cohabitation.

5 Housing security

The Housing Act (Official Gazette of the Republic of Slovenia, no. 69/03, last amended 27/17 – hereinafter referred to as: the SZ-1), in its definition of immediate family members in Article 11, refers to spouses and cohabiting partners for the purposes of this Act, which now also includes partners in an unconcluded civil union.

The SZ-1 provides that the lessor of non-profit housing shall identify in each call for tenders those beneficiaries who, according to the ratio of the income of the applicant and their close family members to the average net salary in the country, are eligible candidates for the particular call for tenders.

6 Health care and health insurance

Prior to the entry into force of the ZPZ, the Health Care and Health Insurance Act (Official Gazette of the Republic of Slovenia, no. 9/92, last amended 61/17 – hereafter referred to as: the ZZVZZ) regulated the position of same-sex partners in a discriminatory manner, as it classified only the spouse, cohabiting partner and children as immediate family members. Thus, same-sex partners were completely excluded from the health insurance after the partner, as by the definition of the law they could not even be classified as extended family members.¹²³ This means that in the social case of unemployment, a same-sex partner did not have the same possibility of access to health care as a partner in an opposite-sex union.

The ZZVZZ also regulates, inter alia, absence from work and entitlement to income compensation during absence. By being classified as an immediate family member, an employed partner is entitled to time off work and income compensation for the care of their partner.

7 Pension and disability insurance

7.1 Widow's pension

A widow's pension is a pension benefit to which the surviving spouse of a deceased insured person or pension beneficiary and, if certain conditions are met, also a divorced spouse, a cohabiting partner or a partner in a registered same-sex partnership, are entitled

provided that they fulfil the conditions laid down by the Pension and Disability Insurance Act (Official Gazette of the Republic of Slovenia, no 96/12, last amended 23/17 – hereinafter referred to as: the ZPIZ-2). It follows from this statutory provision that the ZPIZ-2 granted the right to a widow's pension to registered same-sex partners, but not to unregistered ones.

7.2 Family pension

A family pension is a pension benefit that belongs to the family members of a deceased pensioner or insured person who has completed a specified period of pensionable service, provided they meet the conditions laid down by law. From the aspect of the rights of children in same-sex families, it is essential that, under the law, children are entitled to a family pension and, if the insured person has maintained them, also stepchildren, grandchildren and other children without parents are entitled to a family pension.

8 Parental insurance and family benefits

8.1 Maternity leave

The right to maternity leave is granted to the mother of the child and, under certain conditions, also to the father of the child or to another person or to one of the grandparents of the child. This leave lasts for 105 days, of which the mother must take 15 days compulsorily.

8.2 Paternity leave

The father is entitled to 90 days of paternity leave, the first 15 days of which must be taken before the child reaches the age of six months or, exceptionally, before the child reaches the age of twelve months. Otherwise, this part of the paternity leave is forfeited and the further 75 days may be taken up to the child's third birthday at the latest.

8.3 Parental leave

Parental leave is intended for further child care after the end of the maternity leave. It is available to one or both of the child's parents or, under certain conditions, to the other person or grandparent. The other person, who may also be a partner in an unconcluded civil union, is entitled to parental leave if they are actually caring for the child. In this case, the partner in an unconcluded civil union shall also be entitled to parental leave to the same extent as the mother or father, less the number of days for which the mother or father has already taken parental leave.

9 Personal income tax relief

The Personal Income Tax Act (Official Gazette of the Republic of Slovenia, no. 51/10 – hereinafter referred to as: the ZDoh-2) defines a dependent as a spouse who is not employed and does not carry out any activity, has no income of their own to support themselves, or has an income of less than EUR 2,066 per year. Under the general rules of the ZDoh-2, the same applies to a cohabiting partner.

10 Exercise of rights from public funds

As Article 10 of the Exercise of Rights from Public Funds Act (Official Gazette of the Republic of Slovenia, no. 62/10, last amended 75/17 – hereafter referred to as: the ZUPJS) provides, in addition to the applicant, the spouse or the person with whom the applicant is living in a cohabitation, which is equal in legal consequences to a marriage under the law governing marriage and family relationships, is to be taken into account in determining the applicant's material situation, the family members also include partners in an unconcluded civil union by analogy with a cohabitation.

11 Legal regulation of the BMAF procedures in Slovenia

11.1 Legal basis

Article 55 of the Constitution of the Republic of Slovenia: (freedom to decide on the birth of children)

Deciding on the birth of children is free.

The state provides opportunities for the realisation of this freedom and creates conditions that allow parents to make decisions about the birth of their children.

The Constitution allows a person, a woman and a man in the generative period, to exercise their will on whether they will have children, how many they will have and when they will have them. This is not a right, but a freedom. The state provides opportunities for the realisation of this freedom, i.e. it creates the conditions that enable us to make free decisions and to eliminate the conditions that limit this freedom.

11.2 Legal arrangement

Two laws regulate the health measures of the BMAF procedures in our country. The first is the Health Measures in Exercising Freedom of Choice in Childbearing Act (hereinafter referred to as: the ZZUUP), which regulates the areas of termination of pregnancy (abortion) and prevention of pregnancy (contraception and sterilisation) from 1977, and the Infertility Treatment and Procedures for Biomedically-Assisted Procreation Act (hereinafter referred to as: the ZZNP-IOB) from 2000.

11.3 Beneficiaries

The ZZNP-IOB also allows BMAF with donated sex cells. This can be donated sperm cells as well as donated egg cells.

Article 5 of the ZZNP-IOB specifies who is eligible for BMAF procedures:

a man and a woman who are living in a marriage or cohabitation and who, according to the experience of medical science, cannot expect to achieve conception by sexual intercourse and cannot be helped by other infertility treatments;

spouses or cohabiting partners are also entitled to BMAF in cases where these procedures can prevent the transmission of a serious hereditary disease to the child.

11.4 Conditions for the beneficiary

Only couples of different sexes are eligible for BMAF, i.e. spouses or cohabiting partners are eligible.

Single women, people from a different-sex couple, same-sex partners are not eligible for BMAF.

Cohabitation is not conceived in the same way in the ZZNP-IOB as it is in the ZZZDR and the DZ. It is intended to assist a man and a woman who claim to be living together. The doctor is not obliged to verify the existence of this cohabitation, as it is presumed because the BMAF procedures are complex.

11.5 The right of a single woman to a BMAF procedure

In our legal system, a single woman is not entitled to BMAF procedures. The main concern of BMAF procedures is the best interests and rights of the child and the protection of the child's health. The Convention on the Rights of the Child stipulates that the best interests of the child must be the primary consideration in all activities concerning children. The Convention does not guarantee the right of a child to have both parents, but it explicitly provides that both parents are responsible for the child's upbringing and development. Thus, if a single woman were impregnated, the child would be fatherless.

11.6 Anonymity of donors

The full BMAF procedure is:

- confidential;
- anonymity of donors in relation to the child is guaranteed.

Our legislation is modelled on French and English legislation, where the principle of anonymity of donors is established. Donors have no legal or other obligations or rights in relation to children conceived through BMAF procedures, which means that mutual

inheritance and the right to nationality are also abolished. The exception is medically relevant (for the health or treatment of the child) information about the donor, which can only be obtained by the child if they are of sound judgement and 15 years old. The child's doctor may obtain this information at any time when it is necessary for the child's medical treatment (diagnosis, facilitating treatment, the child's legal representative only on the basis of a special authorisation granted by a court in non-litigious procedure). Exceptionally, the courts and administrative authorities also have the right to consult the register of donors, insofar as this is strictly necessary.

Conflict of interests

Two constitutionally guaranteed rights come into conflict: on the one hand, the right to privacy of the parents and the donor, and on the other hand, the child's right to personal dignity.

- The donor had no intention at the time of the donation to establish a parental relationship with the potential child because they have their own personal and family life.
- The partners who have been enabled to obtain a child by the donation are entitled to claim that the child is theirs alone, since the disclosure of the identity creates the possibility of undermining the parent-child relationship, which is not in the child's best interests, which is the primary objective.

Today, the interest and desire of children conceived with donated sex cells to know their origins and who their biological parents are is increasingly coming to the fore. The right to know one's origins is also gaining more and more importance in the case law of the Slovenian Constitutional Court, which derives the right of the child to know their origins from Article 35 of the Constitution of the Republic of Slovenia. Thus, everyone has an interest in knowing who their parents are, as this is dictated not only by the individual's psychological need for identity, but also by medical reasons and the individual's property interests.

11.7 Maternity and paternity

In a legal sense, the relationship between parents and children is established by birth or adoption. The establishment of maternity and paternity in BMAF procedures, when a sex cell is donated and when one of the parents is not genetically the parent of the child, is regulated by the ZZNP-1OB.

Maternity

The mother of a child conceived with biomedical assistance is the woman who gave birth to the child. If the child was conceived with the help of a donor egg cell, her maternity may not be established.

The woman who received the cell is the child's gestational mother, the one who carried the child.

Paternity

The father of a child conceived with biomedical assistance shall be the mother's husband or her cohabiting partner, provided that they have given valid consent to the BMAF procedure. His paternity may not be contested unless it is claimed that the child was not conceived by means of a BMAF procedure.

The DZ provides that the father of a child born within the marriage or within three hundred days of the dissolution of the marriage shall be the husband of the child's mother. In the case of cohabitation, the father is the one who acknowledges the child as his own or whose paternity is established by a court decision.

11.8 Posthumous fertilisation

Posthumous fertilisation means using the sperm cells of a deceased spouse or cohabiting partner or using the sperm cells of a deceased donor in a BMAF procedure. The same applies in cases of extra-uterine insemination, where an embryo is introduced that has been conceived with the deceased person's sex cell.

Posthumous BMAF, the use of sex cells or early embryos is prohibited under Slovenian law.

Posthumous fertilisation is prohibited in most European countries, with the exception of Spain, where a husband can give valid consent in an official document or will to the use of his sperm cells within six months before his death.

11.9 Conscientious objection

In the field of medicine, conscientious objection is understood as the rejection of something that is not in accordance with one's conscience, moral, humanitarian, philosophical or ethical principles. Professional persons (doctor, nurses) are not obliged to carry out or participate in the BMAF procedure. The same applies to cases of abortion and sterilisation.

Conscientious objection is already regulated in the Constitution itself, as well as in the Patient Rights Act and other sectoral laws.

11.10 BMAF providers

In accordance with Article 15 of the ZZNP-1OD, BMAF procedures are carried out in the framework of the public health service – in BMAF centres which have a special licence for this activity.

BMAF procedures are performed by a team of biomedical experts, under the direction of a medical doctor who is a specialist in gynaecology and obstetrics. The doctor ensures that all procedures are carried out in accordance with the law.

Each BMAF procedure shall be subject to the consent of an expert advisory body, consisting of a medical panel enlarged to include other experts.

12 Surrogacy

For a woman to bear and give birth to a child for someone else is a practice that is thousands of years old. The story of Abraham's wife Sarah, who was unable to conceive because of her old age, is well known from the Old Testament of the Bible, so Hagar, a servant girl, bore and gave birth to their child, which was conceived with Abraham's seed.

The client concludes a contract with a surrogate mother who undertakes to conceive, carry and give birth to the child for the client and to hand it over to them after birth.

Surrogacy is usually the result of a BMAF procedure that leads to the surrogate mother becoming pregnant by means other than sexual intercourse.

There are two types of surrogacy: traditional and gestational surrogacy.

In traditional surrogacy, the surrogate mother "lends" her uterus and donates an egg cell, while the partner of the woman who is unable to bear a child contributes the sperm. The child is genetically and gestationally the surrogate mother's child.

In traditional surrogacy, the transfer is of a fertilised egg cell, whose genetic parents are donors, into the surrogate mother's body. In the case of infertility of the partner, an egg cell fertilised with the donor's sex cells is introduced into the surrogate mother's body.

12.1 Surrogacy contract

A surrogacy contract is an agreement between the parties in which the surrogate mother agrees to carry the child for another woman – the social mother, to give birth to the child and to give up parental care. Thus, the parties to the contract are the surrogate mother and the partners. In practice, the contract is most often accompanied by a clause that the surrogate mother will hand over the child immediately after birth. In exchange for the so-called service, the surrogate mother does not receive payment, but rather payment for

other medical expenses and loss of income during the maternity period. The contract never mentions the sale of or payment for the child, which would be illegal as the child would be considered as an object of the contract. The surrogate mother may receive additional remuneration for her services. A contract containing a clause preventing the surrogate mother from changing her mind and not relinquishing her parental care and a clause in which the surrogate mother waives a potential action for parental care would be null and void.

12.2 Regulation in Slovenia

European countries strictly reject surrogacy, with the exception of the UK, where surrogacy is not prohibited, but where there is a dispute, the state offers no legal protection and does not recognise the enforceability of the contract.

Slovenian law does not allow surrogacy. Surrogacy in our country is mentioned in Article 7 of the ZZNP-IOB, which stipulates that a woman who intends to give her child to a third party after birth, whether for payment or not (surrogacy), is not eligible for BMAF. The ZZNP-IOB and the Criminal Code prohibit biomedical assistance in its performance.

13 Child-parent alienation syndrome

A family keeps its values and its members their rights even if the family breaks up. The values and rights of the broken family must also be respected and observed. Such rights include the right of a parent to have contact with their children and the child's right to both parents.

The Family Code guarantees that the non-custodial parent has regular contact with their children after the divorce. The result of arbitrary educational influence is that the child eventually develops an attitude towards the absent parent that can only be described as unhealthy and abnormal.

The American psychiatrist Dr Richard Gardner began to see a psychological disorder in such an unhealthy relationship which he called the child-parent alienation syndrome:

- hatred, refusal of contact and, above all, cruelty and callousness towards the parent being rejected;
- the child does not reply to letters; postcards and greeting cards;
- gifts sent to their home are rejected, not opened or even destroyed;
- if the child receives a phone call from a relative of the parent being rejected, the child responds with an outburst of anger or abruptly hangs up the receiver.

The most characteristic feature of the child alienation syndrome is the absence of any sense of guilt due to the efforts of the hurt emotions of the parent who has been rejected.

Dr Gardner* says that the worst thing about child alienation is to leave the matter "temporarily" in the hope that one day it will sort itself out, saying "when the child is big, they will find their way to me". They will not. The saying that time heals wounds does not work in the case of alienation. To let things run their course is to condemn the child to a lifetime of alienation and the loss of an estranged parent.

(*) Dr Gardner A., Richard: Legal and psychotherapeutic approaches to the three types of parental alienation syndrome families, Court review, Volume 28, Number 1, spring 1991, p.14-21.

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Graduate Paper Topics and Projects

1 Graduate Paper Topics

- Family
- Marriage, cohabitation, formal civil union, non-formal civil union, single person, divorced person, widowhood
- Adoptions
- Interim injunctions
- Supervised contacts
- Paternity and maternity

2 Projects

- publications of articles in the journal Legal Practice
- publications of articles in the journal Dignitas



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