Josipa KOKIĆ[*]

Central European Academy
Budapest

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Review paper

CHANGES IN THE DEVELOPMENT OF CHILDREN'S RIGHTS AND PARENTAL CARE IN CROATIAN FAMILY LAW OVER THE LAST TEN YEARS

Abstract

In the past decade, the institutes of parental care and children's rights in Croatian Family law have undergone several changes. These changes began with the adoption of Family Act of 2014 and Family Act of 2015, which introduced the child's right to informed consent, non-contentious proceedings of mandatory counselling and family mediation, and the sole exercise of parental care in cases where parents could not reach an agreement on a joint parental care plan. The changes continued with the Same-Sex Life Partnership Act, which established provisions regarding the parental care of a life partner and the partner's care. Additionally, jurisprudence of the European Court of Human Rights, encouraged the Croatian legislator to change provisions related to child adoption when child's biological parent has been deprived of parental care.

Key words: changes, parental care, children's rights, Family Act, Same-Sex Life Partnership Act, ECtHR.

[*] Ph.D student at the Ferenc Deák Doctoral School of the University of Miskolc and Junior Researcher at the Central European Academy. E-mail: josipa.kokic11@gmail.com.

1. INTRODUCTION

Family law has traditionally been regulating relationships between family members by reflecting the dynamics present in society, thus being shaped by people's tradition, culture, customs and religion. However, modern times have brought a certain shift from long-standing traditions and customs, introducing new legal concepts that have impacted the Family law legislations, more precisely the institutions of parental care and children's rights. In Croatian legislation, this shift occurred over the last decade, firstly with the adoption of the Family Act of 2014, which was later replaced by the Family Act of 2015 and then with the Same-Sex Life Partnership Act. The Family Act of 2014 was in force for only four months, as it was suspended by the Constitutional Court due to its gaps and inconsistencies (Korać Graovac 2021a, 53).[1] Its successor, the Family Act of 2015, adopted on September 18, 2015, and entering into force on November 1, 2015, *"managed to remedy (only) major omissions that led to its suspension"* (ibid.). Nonetheless, it continued along the paved path (see Korać Graovac 2021a, 37-75).

In 2017, an attempt was made to "get back on track", but it failed, because it was only a draft withdrawn from public consultation due to strong public opposition, which deemed it too conservative (Korać Graovac 2021a, 55). A certain change occurred in 2023 when the Constitutional Court annulled 18 out of 148 contested articles of the currently applicable Family Act of 2015, stating that they will cease to be valid by December 31, 2023 (Decision of CCRC, U-I/3941/2015). By that time, the Croatian Parliament (Hrvatski sabor) was required to implement the necessary changes. Thus, the Parliament amended the existing law, and the changes have come into effect as of December 31, 2023.

The Same-Sex Life Partnership Act was adopted on July 15, 2014, a shortly after a referendum on marriage was held (December 1, 2013), which resulted in the change of Croatian Constitution and constitutional protection of marriage as a life union of a man and a woman. As it equated the legal effects of a life partnership with those of marriage, introduced the institute of partner's care, and provided the possibility for a life partner of child's parent to exercise parental care, the Same-Sex Life Partnership Act encountered a strong opposition from certain groups in Croatian society, which argued that it had opened Pandora's box.

[1] In the same ruling, the Constitutional Court took the following steps: it initiated a procedure to review the compliance of the Family Act of 2014 with the Constitution, temporarily suspended the enforcement of all individual acts and actions based on the Family Act of 2014 and decided that the Family Act of 2003 would remain in effect until a final decision was made.

As it sparked significant controversies and marked a turning point in the development of Croatian Family law, alongside with the Family Act, they will be central to this analysis, with particular attention given to the changes they introduced in the regulation of children's rights and parental care. Moreover, the influence of the jurisprudence of the European Court of Human Rights on legislative changes – particularly in the area of parental care - will also be examined. Following the analysis, the further focus will be on examining whether these new solutions were implemented correctly and whether they contain any inconsistencies.

2. FAMILY ACT OF 2015: KEY CHANGES IN PARENT-CHILD RELATIONSHIP

The Family Act of 2015, which replaced Family Act of 2014, brought about numerous significant changes to Croatian legislation, some of which concern parental care and children's rights. In this chapter, we will examine the following ones: the recognition of the right of the child to give informed consent, the introduction of mandatory counselling and family mediation with a focus on the child's right to express his or her opinion, and the establishment of the sole parental care after the dissolution of a marital union when parents didn't reach an agreement.

2.1.. The right of the child to informed consent

Following the opinion of the UN Committee on the Rights of the Child in its General Comment No. 12 (2009) and seeking to resolve contradictions[2] between the relevant legal acts applicable at that time, in 2014, the Croatian legislator introduced a new institute – the right of the child to informed consent (Rešetar 2022, 360). The right to informed consent is a personal, inalienable and non-transferable right, through which, an individual, after being properly informed, freely, consciously, and voluntarily

[2] Those contradictions existed between the Act on the Protection of Patients' Rights and the Act on the Protection of Persons with Mental Disorders. The Act on the Protection of Patients' Rights, applicable at that time stipulated that, in order to accept or refuse medical intervention, a person must be of legal age, legally competent, capable of reasoning, and conscious. This meant that the right to informed consent was reserved only for adults and could not be acquired by minors who attained adulthood through marriage or childbirth. On the other hand, under the then-applicable Act on the Protection of Persons with Mental Disorders, it was stipulated that a minor with mental impairments who could understand the nature, consequences, and risks of the proposed medical procedure, and who could make a decision and express his or her will based on this understanding, was required to give consent (Čulo 2009, 139-160; Rešetar 2009, 301).

consents to an examination, test, or medical procedure (Kokić 2024, 19).[3] Whether that individual can be a child depends on the national legal solution.

While some national legislators guarantee this right to children when they reach a certain age and level of maturity, referring to the *principle of evolving capacities* (see General Comment No. 12, para. 84; Majstorović 2017b, 57; Šimović 2024, 139, 145 and 150; Varadan 2019, 306-338), others leave decision-making to their parents until they reach the age of majority. For example, in Slovenia, Serbia and Denmark, the child acquires this right when reaches the age of 15; in Poland and Croatia at the age of 16; in Austria, Germany, Belgium and Czech Republic, there is no age minimum,[4] and in countries such as Hungary, Romania, Bulgaria and Slovakia, the age of consent is the same as the age of legal majority, that is, child's parents will give their consent instead of the child (European Union Agency for Fundamental Rights 2018; see *Stultiëns* et al. 2007; Bolcato et al. 2024).

The right of the child to informed consent in Croatia is regulated by Art. 88 of the Family Act. Para. 1, which states that the child who has turned the age of 16 and who, according to a medical doctor's assessment, disposes of all the necessary information to form his or her opinion on a particular matter, and in doctor's assessment is mature enough to decide on a preventive, diagnostic or therapeutic procedure related to his or her health or medical treatment, may independently consent to medical check-up, examination or medical procedure.

Para. 2 prescribes that in the case when a doctor ascertains that the medical procedure carries risks of serious consequences for the physical or mental health of the child, parental consent is also required.[5] Para. 3 stipulates that in a case of a dispute between the child and the parent, the court shall issue a decision in the non-contentious proceedings initiated at the proposal of the child or parent, with the aim to protect child' well-being. Finally, para. 4 stipulates that in the case of an urgent medical intervention,

[3] In Croatia, the right to informed consent is not only protected by the law - Act on the Protection of Patients' Rights, but at the constitutional level as well. The Constitution of the Republic of Croatia guarantees every citizen the right to autonomously decide on personal matters – Art. 35 and the right to consent to medical and scientific experiments -Art. 23 (Rešetar 2018, 104).

[4] There has been an ongoing debate whether a fixed age limit should determine a child's capacity to give informed consent or if it should be assessed on a case-by-case basis. While some experts support the idea that age serves as a valid indicator of competence, others argue that this approach disregards individual differences (see Tucak, Nedić & Sabo 2022, 391-392).

[5] If the parents withhold consent, the doctor must notify the social welfare center (APPR 2004, Art. 17, para. 3), which will then appoint a special guardian *ad litem* to replace the parents' informed consent (FA 2015, Art. 240, para. 1, pt. 8) (Rešetar 2018, 106).

the provisions of the specific regulation governing the protection of patients' rights apply.

The question is: how are these provisions implemented in practice? In practice, for any medical check-up, examination or medical procedure that, according to the doctor's assessment doesn't pose a risk to the child's health, child can independently give consent, regardless of whether the issue is minor or serious (Kokić 2024, 21). For example, a child aged 16 or older can independently visit a family doctor while having a flu, consult a dentist to have dental plaque removed, or visit a gynaecologist for a routine medical check-up (ibid.). However, this also means that a child can independently consent to more serious procedures, such as termination of pregnancy, obtaining contraception or to undergoing other treatments that may significantly impact his or her physical or mental health (ibid.).

This suggests that, although the Croatian legislator has restricted the autonomy of the child by requiring a doctor's assessment of the child's maturity and the potential risk of the procedure to the child's health (Rešetar 2018, 105), he has not clearly distinguished between less and more serious medical procedures nor established separate criteria for them. Additionally, he has not made clear what would occur if a child refused medical treatment necessary to save his or her life or prevent serious health consequences (Hrabar 2020, 665-666). According to Pelčić (2012, 16), the solution would lie in the doctor's duty to act in the best interest of the child, meaning that, in such cases, doctors usually obtain parental consent beforehand.

Discrepancy with two other relevant acts – Act on Health Measures in Implementation of the Right to Freely Decide on Childbirth and Act on the Protection of Patient's Rights should not be overlooked. Under Art. 20 of the Act on Health Measures in Implementation of the Right to Freely Decide on Childbirth (*lex specialis*), when a minor girl, who has turned the age of 16, wishes to terminate her pregnancy (and she is unmarried), her parents will only be informed of her referral to the first instance commission.[6] This occurs in cases where the pregnancy exceeds 10 weeks or if her health might be seriously impaired. This means that, under this Act, in cases where child's health might be impaired, that is, where there is a possibility of serious risks for child's mental or physical health, her parents will only

[6] If the minor in question is under the age of 16, Art. 18 of the Act on Health Measures in Implementation of the Right to Freely Decide on Childbirth stipulates that the consent of her parents or guardians, as well as the approval of the social welfare center, is required for submitting a request for the termination of pregnancy.

be informed, and not asked to give their consent, as stipulated in Family Act. Consequently, in all other cases, they might not even know about it.

This solution cannot be considered as wise for several reasons. First, it should be noted that adolescence is *"a period characterized by accelerated physical changes, cognitive and social transformations"* (Rešetar 2009, 361-362) and that adolescents lack the ability to "*restrain impulsivity and…to place a given decision in a larger temporal context"* (Hein et al. 2015, 5) in the same way adults do. Second, the termination of pregnancy can have serious consequences for the minor girl, including potential infertility or psychological effects, and her parents might not be able to intervene or to support her. Lastly, this solution overlooks the fact – what numerous studies have shown – that during the adolescence, parental role is still very important (Pećnik 2021, 177). Adolescents need parental support, comprehension and encouragement and the relationship they have with their parents, should be based on mutual understanding and trust.

Another discrepancy can be found in the Act on the Protection of Patient's Rights, which considers every minor patient incapable of giving informed consent (see Čulo 2009, 145-147). This means that, regardless of whether they are older or younger than 16, their legal representative or guardian must provide informed consent on their behalf (APPR 2004, Art. 17). The legal representative or guardian may withdraw that consent at any time if it is in the interest of the minor patient (ibid.). In a case of a conflict of interests, the medical worker is required to inform the social welfare center (now Croatian Institute for Social Work) (ibid.).[7]

In light of what has been discussed, it can be concluded that the Croatian legislator should make the necessary changes in order to align the relevant provisions. Thus, one of the changes should be to harmonize the relevant provisions of the Act on the Protection of Patient's Rights with Family Act. Just as Family Act distinguishes minor patients older than 16 and minor patients younger than 16, the Act on the Protection of Patient's Rights should adopt similar solutions. Furthermore, changes are needed in the Family Act as well. Croatian legislator should differentiate between more and less serious medical procedures and involve the child's parents in decisions regarding the more serious ones.

[7] According to Rešetar (2018, 105), the discrepancy between the relevant provisions of the Family Act—under which the court resolves disputes between a child and a parent—and the Act on the Protection of Patients' Rights, under which the medical staff should inform the social welfare center in the case of a conflict, should be addressed by requiring a doctor to notify the social welfare center in the case of a child younger than 16. In the event of a dispute between an adolescent and a parent, the court should decide based on the Family Act.

Lastly, the Act on Health Measures in Implementation of the Right to Freely Decide on Childbirth, in force since 1978, requires revision and adaptation to contemporary challenges.[8] Among other things, these changes should ensure that the parents of a minor girl are not only informed when she is referred to the first-instance commission because the procedure could seriously impair her health, but also involved to the extent that their consent is required. After all, they are the ones who have *"primary responsibility for the upbringing and development of the child"* and to whom "*the best interests of the child will be their basic concern"* (UN-CRC 1989, Art. 18, para. 1).

2.2. The right of the child to express his or her opinion in the proceedings of mandatory counselling and family mediation

Mandatory counselling and family mediation are *"two proceedings of family law assistance aimed at the amicable resolution of family disputes"* (Hrabar et al. 2021, 260) introduced into the Croatian family legal system a decade ago.[9] Mandatory counselling is conducted in cases prescribed by law (FA 2015, Art. 320) and, defined as a *"form of assistance provided to family members to help them reach mutual agreements on family relations, with particular attention to protecting family relationships involving a child and addressing the legal consequences of failing to reach an agreement, as well as initiating court proceedings that determine the personal rights of the child"* (FA 2015, Art. 321).

It is carried out by a professional team from the Croatian Institute for Social Work, comprising a lawyer, a social worker, or a psychologist (FA 2015, Art. 321 & Regulation 2015, Art. 4, para. 1). It takes place prior to initiating divorce proceedings involving a minor child and before initiating other judicial proceedings concerning the exercise of parental care and personal relations with the child (FA 2015, Art. 322). The process is conducted over a maximum of three meetings between the parties and members of the professional team at the premises of the Institute for Social Work (Regulation 2015, Art. 3, para. 1). Family members are required to

[8] According to Hrabar (2015, 822), the currently applicable law has the following deficiencies: lack of psychological support for women, insufficient grounds for abortion, lack of mandatory counselling, inadequate regulation of the legal status of minors, unregulated status of the man, etc. (see Rittossa 2005, 971–997; Radačić 2016, 251–270; Kostadinov & Horvat Vuković 2022, 199–229).

[9] For the forms of family law assistance that preceded family mediation and mandatory counselling see Čulo Margaletić 2021, 67-71.

participate personally, which means without any representative (FA 2015, Art. 321, para. 4).

On the other hand, participation in family mediation is voluntarily. It is defined as *"a structured process for resolving conflicts and disputed issues between family members with the assistance of a third party—a family mediator—with the aim of reaching a mutual agreement."*[10] (Breber & Sladović Franz 2014, 122). This process was introduced into the Croatian legal system in 2014 through the Family Act, which was later suspended by the Croatian Constitutional Court (Majstorović 2017a, 133). However, as previously mentioned, a new Family Act that came into force in November 2015, retained largely identical provisions (ibid.). The aim of the family mediation is to create a plan for joint parental custody and to reach other agreements concerning the child. Additionally, the parties may reach agreements on all other contentious issues, whether property-related or non-property-related (FA 2015, Art. 331, para. 3).

Both in mandatory counselling and family mediation *"decisions are made concerning the child's rights and interests, which are important, if not crucial for the child's future"* (Šimović 2023, 233).Therefore, in these proceedings, the child has certain rights, such as the right to be informed about the content of the joint parental care agreement and the right to express his or her opinion (Čulo Margaletić 2017, 155). Para. 3 of the Art. 325 of the Family Act stipulates that a child may be given the opportunity to express his or her opinion, but with the consent of the parents. Art. 329, para. 2 contains the same provision. Furthermore, Art. 339, para. 2, specifies that a family mediator may allow a child to express hir or her opinion, but with a parental consent. As evident from these provisions, in both of these proceedings, child's right to express his or her opinion is *"conditioned upon obtaining parental consent"* (ibid.). This implies that parental will may hinder the child's ability to participate in these proceedings and that it might determine whether child's opinion is heard at all (ibid.).

Some legal experts justify such legal solutions by stating that determining the child's opinion without the consent of the parents—who have the primary right to care for the child and his or her rights—*"would constitute a violation of the right to respect for family life and the best interests of the child"* (Rešetar 2009, 1100). However, this raises the question: are such solutions in accordance with Art. 12, para. 1 of the UNCRC, which

[10] A family mediator is an impartial and specially trained person registered in the register of family mediators (FA 2015, Art. 331, para. 2).

states: *"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."*

A detailed explanation of this provision can be found in the opinion of the UN Committee on the Rights of the Child in the General Comment No. 12 on the right of the child to be heard (2009). While non-binding in nature, like all other general comments, it serves as a guideline for Member States in implementing the UNCRC. In it, the Committee offered a detailed explanation of the term "freely." It emphasized that the child must not be manipulated nor should be exposed to inappropriate influence or pressure (Korać Graovac 2012, 120). It further explained that the term freely *"is intrinsically related to the child's 'own' perspective: the child has the right to express her or his own views and not the views of others"* (General comment 2009, pt. 22).

This raises a significant question: How can a child be truly free to express his or her own opinion if parental consent is required beforehand? (see Šimović 2023, p. 233). In other words, this requirement gives parents the ability to condition their child, allowing him or her to express his or her opinion only if it aligns with what the parents want to hear or avoids saying something that might displease them. In such situation, the child is no longer fully free in expressing himself or herself, but might become a subject of influence, manipulation, or even pressure. That is certainly not in the child's best interest. Although a child may not always know what is best for him or her, and even though there may be situations where parents reach an agreement that the child opposes, the child capable of forming his or her opinion should not be denied the opportunity to express it. After all, child is a legal subject with various rights, one of the most important being the right to express his or her opinion.

Therefore, the Croatian legislator should strive to achieve a balance between the child's right to express his or her opinion and the parents' right to care for their child. The legislator should amend *lege lata* to ensure that a child who is capable to express his or her opinion, can do so freely in both proceedings. Afterwards, due weight should be given to that opinion in accordance with the child's age and maturity, as stipulated in the Art. 12 of the UNCRC.

2.3. Sole exercise of parental care

From 1999 to 2014, in the Republic of Croatia, parental care was exercised jointly by both parents of the child, regardless of whether they lived together or separately, and regardless of whether the child was born in or out of wedlock (Korać Graovac 2022b, 45; 2017, 51). Notably, with the adoption of the Family Act in 1998, which became applicable in 1999, the Republic of Croatia positioned itself among first European countries to incorporate the principle of joint parental responsibility for the upbringing and development of the child, as outlined in Art. 18, para. 1. of the UNCRC (ibid.).

According to Art. 98 para. 1 of the Family Act from 1998, parents equally, jointly and by mutual agreement cared for the child, unless it was otherwise specified by the law. Under the para. 2 of the same Article, it was stipulated that the social welfare center could, *ex officio* or at the request of a parent, decide that only one parent would care for the child, in a case if the other parent was prevented, deprived of legal capacity, or endangering the well-being of the child through his or her actions. If the parents did not live in a family household, the social welfare center decided with which parent the child would live and determined the manner and schedule of the child's meetings and interactions with the other parent, unless it was specified that such decisions were made by the court (FA 1998, Art. 99, para. 1).

Similarly, the Family Act from 2003, in Art. 99, para. 1 stipulated that, parents, regardless of whether they lived together or separately, jointly, equally and by mutual agreement cared for the child. Para. 2 of this Art. stipulated the that sole parental care would occur only in cases where one parent had died, been declared deceased, deprived of parental care, been fully deprived of legal capacity, been partially deprived of legal capacity in relation to parental care, or had been prevented. If the parents did not live in a family household, the court decided with which parent the child would live and determined the manner and schedule of the child's meetings and interactions with the other parent (FA 2003, Art.100, para.1).

A significant change occurred with the adoption of the Family Act of 2014 and later the currently applicable, Family Act of 2015.[11] Since the Family Act of 2015 kept nearly all the provisions from the suspended Family Act of 2014, regarding parental care and its exercise after divorce, the focus will be here on the provisions that are currently applicable. Under the Family Act of 2015, there are three possible scenarios regarding parental

[11] The reason for these changes was the high number of conflict situations among parents who do not live together (Korać Graovac 2022b, 47 and 69).

care: both parents jointly exercise parental care (Art. 104),[12] one parent exercises parental care independently (Art. 105),[13] or one parent exercises parental care independently, except in matters concerning personal rights of the child (Art. 100). Under Art. 104, para. 1, parents have the right and duty to exercise parental care equally, jointly, and by mutual agreement. Para. 2 of the same Article stipulates that when parents permanently do not live together, they need to reach an agreement on the exercise of parental care.

If parents do not live together and fail to reach joint parental care plan or agreement during court proceedings, one parent will independently exercise parental care based on a court decision, whereby the court must specifically consider which parent is willing to cooperate and reach an agreement on joint parental care (FA 2015, Art. 105, para. 3).This solution was justified by the aim to *"prevent situations in which the child is torn between two conflicting parents who are unable to place the child's interests and well-being above their own, where the child becomes a weapon in their ongoing conflicts and manipulations."* (Draft 2014, cited in Korać Graovac 2017, 59). However, it has also been justifiably criticized as a *"kind of punishment for the parent who wishes to live with the child but is not willing to reach an agreement because he or she recognizes the deficiencies in the other parent's parenting abilities"*(Korać Graovac 2017, 68).

Under para. 4 of the same Article, a parent who opposes joint parental care, or a joint parental care plan or agreement, must prove that joint parental care is not for the well-being of the child. Otherwise, the court may entrust the other parent with the sole exercise of parental care. Thus, the court must determine which parent possesses better competencies, while the parent who claims that the other parent is not competent to care for the child, has to prove it. This solution was justified by the fact that it is applied when it is determined that *"the aim of the parent who opposes*

[12] *" According to Art. 104 of the Family Act of 2015, parents jointly exercise parental care ex lege until there is a court decision on the matter (this applies to marital and acknowledged paternity) or when there is a court decision confirming a joint parental care plan (the so-called 'parenting plan') or an agreement between the parents regarding parental care."* (Korać Graovac 2017, 60)

[13] Under the Art. 105 of the Family Act one parent will independently exercise parental care in the following cases:

1) When there is a court decision on the matter: completely, partially, or with respect to the decision on a specific important issue concerning the child, while simultaneously limiting the other parent's exercise of parental care in that regard, in accordance with the child's well-being,

2) Without a court decision: if the other parent has died or been declared deceased, and the parents were exercising joint parental care prior to the other parent's death.

3) Based on a court decision if parents have not reached a joint parental care plan or agreement during the court proceedings.

to the agreement is to exclude the other parent from life and care for the child"(Rešetar 2022, 450).

Nevertheless, the parent who does not exercise parental care will still retain certain rights regarding the child, such as the right to maintain personal relationships, the right to make urgent decisions if the child's safety is at risk, the right to receive information about important circumstances related to the child's personal rights and to request a change of the decision regarding parental care due to changed circumstances (ibid.; Korać Graovac, 2017, 69). Additionally, if the court decides so, the parent who doesn't exercise parental care, will be involved in decision-making on important personal matters of the child (FA 2015, Art. 105, para. 5). These important personal matters include a change of the child's personal name, change of residence or domicile of the child, and the choice or change of religious affiliation (FA 2015, Art. 100, para. 1). Consequently, any representation of the child by the other parent in these matters will not be valid without the consent of the parent who doesn't exercise parental care and doesn't reside with the child.

This solution has been justified on the basis that it provides the parent, who no longer lives with the child and does not exercise the care over the child, the opportunity to at least participate in decision-making on important personal matters, rather than reducing their relationship to mere visitation and maintenance (Rešetar 2022, 451). However, it has also been criticized for being a solution by which *"the legislator 'punishes' the parent who has failed in reaching an agreement by completely neglecting the fact that it takes two to make an agreement"* (Korać Graovac 2022b, 55). Additionally, it raises the question of compliance with Art. 3, para. 1 (the best interests of the child) and Art. 18 (parental responsibilities and state assistance) of the UNCRC.

In General comment No. 14 (2013), which addresses Art. 3, para. 1, the UN Committee on the Rights of the child states that *"shared parental responsibility is in the best interests of the child"* and that *"it is contrary to those interests if the law automatically gives parental responsibility to either or both parents"* (General Comment 2013, pt. 67). The case-law has followed this opinion and has created a modified solution, directly invoking the relevant international human rights treaties (see Korać Graovac 2022b, 55). Therefore, if it is determined to be in the best interests of the child, the court may establish joint parental care, even if the parents do not live together and have not reached an agreement (ibid.).

3. SAME-SEX LIFE PARTNERSHIP ACT: A CHANGE IN THE CONCEPT OF TRADITIONAL FAMILY?

The Same-Sex Life Partnership Act was adopted on July 18, 2014, and came into force ten days later. In Croatian legislation, it introduced new institutes such as life partnership, informal life partnership, partner's care and parental responsibility of the life partner of the child's parent.[14] By introducing the institutes of partner's care and parental responsibility of a life partner – which allow the life partner of the child's parent to become legally involved child's life – significant changes occurred concerning children's rights and parental responsibility, challenging the traditional concept of family (Kutleša & Škvorc 2016, 223).[15]

In this chapter, we will provide an analysis of these two institutes.

3.1. Parental care of a life partner

Parental care, as its very name suggests is a natural, personal and human right of the child's parents, *"which belongs to them by the very fact of the existing parent–child relationship"* (Korać Graovac 2022a, 41). Accordingly, currently applicable Family Act indicates that parental care encompasses the responsibilities, duties, and rights of the child's parents. However, in 2014 there was an attempt to expand this concept and to include other persons. Specifically, the Family Act of 2014, which was later suspended by the Constitutional Court, addressed this in Art. 102, para. 1, by explicitly mentioning other persons in addition to parents. These included other natural or legal persons who could exercise parental care either alongside the parents or instead of them based on a court decision, as well as other persons temporarily entrusted by the parents to exercise the parental care over the child.

However, the Family Act of 2014 was not the only legal act to mention other persons in this context. Specifically, the Same-Sex Life Partnership Act followed the same approach by enabling the life partner of the child's parent to exercise parental care together with parents or instead of them

[14] As a result, the Act faced strong criticism and was perceived as a tool for changing the traditional concept of family, potentially opening the door for same-sex couples to jointly adopt children and undergo artificial reproduction.

[15] In May 2021, the Administrative Court passed a decision allowing same-sex couples to begin the procedure to assess their capability to adopt a child. This decision was confirmed by the High Administrative Court in May 2022. However, three years later, no adoption has taken place. (Korać Graovac, 2021a, 63).

(Korać Graovac 2017, 56). Under the Art. 40, para. 1 it is stipulated that a life partner is entitled to exercise parental care or its elements together or instead of child's parents based on a court decision in accordance with provisions of the act regulating family relations. Art. 40, para. 2 further stipulates that both parents, or a parent who is exercising parental care in its entirety, may temporarily entrust the exercise of parental care, either partially or fully, to the life partner, provided that the life partner meets the conditions prescribed for a guardian by the Family Act.

These provisions have been criticized for several reasons. First, under these provisions, the life partner of the child's parent could exercise parental care alongside the child's parents, when both parents are already exercising it (ibid.). Therefore, the third person becomes involved in daily decision-making processes and has the same role as the parents in decisions regarding child's upbringing, education, health, place of residence, property, etc. This solution might be impractical in reality. Involvement of the third person may lead to conflicts, miscommunication and prolonged decision-making.

Second, as mentioned, the Family Act of 2015, as *lex specialis* and *lex posterior* in relation to this Act, only recognizes parents as holders of the right to parental care (Hrabar et al. 2021, 349). It is unclear how under one legal act – Family Act, a life partner is not a holder of parental care, but under the other act – Same-Sex Life Partnership Act, he or she can exercise it instead or along with child's parents? (Korać Graovac 2017, 56) Third, these provisions don't contain the list of preconditions that need to be met when the court is deciding to entrust the life partner with the exercise of the parental care instead of parents but only refer to the application of the Family Act (Hrabar et al. 2021, 350). Therefore, it may be observed that *"such solutions are not consistent and do not contribute to the harmony of the legal system"* (ibid.).

Aside from criticisms of the existing solutions, it has also been argued that the same opportunity to exercise parental care is not extended for a spouse or cohabiting partner of the parent, as *"no provision of the Family Act… explicitly grants a new spouse or cohabiting partner the right to exercise parental care"* (Winkler 2017, 83). Some authors find this gap *"surprising"*, referring to the principle of equality, and argue that *"it would be expected that the legislator... would have legally regulated the role of the life partner of the child's parent in the same manner as that of the new spouse or cohabiting partner with whom the parent lives"* (ibid.).

3.2. Partner's care

Another form of childcare provided under the Same-Sex Life Partnership Act is partner's care. Introduced into the Croatian legal system in 2014, it is still debated, due to its controversial nature. In terms of content, it is similar to *adoptio minus plena - "terminable adoption with limited effects regarding adopting parents' relatives"*[16] *(Korać Graovac 2021, 63)* which existed in Croatian legal system until 1989 (Korać Graovac 2015, 806). As such, it has been criticized as one of the first steps toward enabling same-sex couples to jointly adopt children, thus challenging traditional concepts of family and adoption (Čizmek 2014). When it comes to its implementation, it can be exercised under specific circumstances: after the death of the child's parent who was his or her life partner, or in exceptional cases, during the parent's lifetime if the other parent is unknown or has been deprived of parental care due to violence against the child (SSLPA 2014, Art. 44).

In cases where partner's care is exercised after the death of the life partner parent following conditions must be met: the child must be a minor, the life partner of the minor child's parent passed away, the child was living with the life partner at the time of the parent's death, and the other parent is either deceased, declared deceased, or deprived of parental rights due to child abuse (SSLPA 2014, Art. 45 para. 1). The justification of this solution lies in the necessity to provide the child with continuous care after the death of his or her parent. However, this solution has been criticized for failing to include cases when other parent is unknown and for only mentioning child abuse as a reason for deprivation of parental care and not indicating other cases such as abandonment of the child (Hrabar et al. 2021, 351).

On the other hand, in cases where partner's care is exercised during the lifetime of the child's parent, the preconditions are as follows: the child must be a minor, the other parent is unknown or has been deprived of parental care due to child abuse, and the appointment of the partner-guardian is in the interest of protecting the child's welfare and well-being (SSLPA

[16] *Adoptio minus plena*, also known as incomplete adoption, has its roots in Roman law. During the time of Emperor Justinian, there were two types of adoption: *adoptio plena* (full adoption) and *adoptio minus plena* (incomplete adoption). *Adoptio plena* occurred when a child was adopted by a biological ascendant, typically a maternal grandfather or great-grandfather. This type of adoption resulted in the full integration of the child, meaning the establishment of *patria potestas* over the child and mutual inheritance rights between the adopter and the adoptee. On the other hand, *adoptio minus plena* occurred when the child was adopted by a stranger, without full integration, thus remaining under the *patria potestas* of his or her biological father. The adopted child acquired the right to inherit from the adopter, but the adopter did not acquire inheritance rights from the adopted child (Kitanović & Ignjatović 2013, 167-168).

2014, Art. 45, para. 2). This solution is justified by the aim to provide the child with necessary care not only from his or her parent, but also from parent's life partner (Hrabar et al. 2021, 351). However, it has been criticized because it doesn't specify the age difference between the partner-guardian and the child, and because unnecessarily reiterates that the appointment must serve the child's welfare and well-being, as this is already addressed in Art. 3 of the UNCRC (ibid.).

Once granted by the court decision, partner's care establishes rights and duties that, by law, exist between parents and children and their descendants, and as such, it is officially registered in the birth registry (SSLPA 2014, Arts. 48 and 47, para. 2). The partner-guardian acquires parental care over the minor child, and the child gains the same rights as partner's biological children, including inheritance rights. However, the establishment of parent's care will not create family law relationships with the partner's biological relatives, nor will it terminate the child's kinship with his or her biological relatives (Hrabar et al. 2021, 353).

Given its terminable nature, partner's care ceases by court decision in the following cases: 1. upon a proposal of the social welfare center, if it determines that justified interests of the minor child require it, 2. at the joint proposal of the partners acting as guardians of the child and the child, if it is in the child's interest, 3. at the request of the partner-guardian or the child, 4. upon the proposal of the parent whose parental rights have been restored by a court decision (SSLPA 2014, Art. 49, para. 1). This solution has been criticized as it contains certain gaps and inconsistencies. First, it fails to indicate that partner's care also ceases in the event of the death of the child or the partner, or when the child attains legal capacity by reaching the age of majority or through marriage. Second, the age at which a child can submit a request, or a joint proposal is not specified, and that the child's best interests are considered in the first two cases, but not in the latter two (ibid.).

4. THE IMPACT OF ECTHR JURISPRUDENCE ON THE REGULATION OF PARENTAL CARE

Through its rich and extensive jurisprudence, the European Court of Human Rights (hereinafter: ECtHR) has played a significant role in shaping the legal frameworks of the CoE Member States, including Croatia. Even though in the last decade, the ECtHR has issued a number of rulings against the Republic of Croatia regarding parental care, only a few of them have led to changes in national legal framework.

One such ruling is *A.K. and L. v. Croatia*, in which the ECtHR addressed, among other things, the alleged violation of Art. 8 of ECHR. The first applicant, A.K., lodged an application on her own behalf and on behalf of her biological son, L., the second applicant, after he was adopted without her consent. Shortly after the birth of A.K.'s son, the social welfare center decided to place him in foster care and later filed a request with the municipal court to divest A.K. of parental care. The center based its actions on the facts that A.K. had mild mental retardation, lived in poor conditions, was unemployed, was uncapable to care for the child and visited the child only twice since he had been placed in foster care.

The municipal court ruled to divest A.K. of her parental care over the child, and subsequently, L. was adopted without her being informed about it and thus, without her consent. During the proceedings concerning her parental rights, A.K. was unrepresented, and in the proceedings of adoption, she did not participate. Namely, under the legislation in force at the time, a parent divested of parental rights didn't participate in the adoption process, as he or she couldn't be a party in the proceedings, nor did he or she need to be informed about it.[17]

In its decision, the ECtHR stated that even though it is understandable that in the proceedings of adoption A.K.'s consent was not needed, given that she had been divested of parental care, in countries such as Croatia, where parental care can be restored, *"it is indispensable that a parent be given an opportunity to exercise that right before the child is put up for adoption"* (ECtHR, 37956/11, para. 78). For the Court, the issue was the inability of the biological mother to participate in the proceedings for the deprivation of parental care, particularly due to her lack of legal representation and her mild intellectual disability (Korać Graovac 2021b, 77). The ECtHR emphasized that *"the national authorities deprived her of the opportunity to seek restoration of her parental rights before the ties between the biological parent and child were finally severed by the child's adoption"* (ECtHR, 37956/11, para. 78). Finally, the Court concluded that A.K. was not sufficiently involved in the decision-making proceedings and that

[17] In its judgment, ECtHR provided a comparative overview of the legal frameworks of 41 CoE's State Parties revealing that the majority of the analysed states exclude the parent from the adoption process, while in 12 of them, the deprivation of parental care has no effect on the requirement for granting consent to adoption (Radina 2017, 110).

national authorities should have informed her of the intention to proceed with the adoption, enabling her to request the return of parental care.[18] [19]

After this ruling, the Croatian legislator made the necessary change with the adoption of the Family Act of 2014, and later, Family Act of 2015. Under the currently applicable act, the biological parent who is divested of parental care, will be asked to give opinion, but that opinion is not binding (Korać Graovac 2021b, 84). Social welfare professionals from the Croatian Institute for Social Welfare will take the content of that opinion into account when making a professional assessment of whether adoption is the best form of permanent care for the child in the specific case (FA 2015, Art. 210, para. 3). This solution has been justifiably criticized for several reasons: adoption proceedings are unnecessarily prolonged,[20] the quality of parental care is questionable when a parent's interest in exercising it is motivated solely by the possibility of adoption, and because it fails to impose an obligation on the Institute for Social Welfare to suspend the adoption, even if the parent has initiated proceedings to restore parental care (Korać Graovac 2021b, 84).

Finally, these changes are mostly criticized for providing advantages exclusively to the parent, rather than placing emphasis on the protection of the best interests of the child (ibid.).

5. CONCLUSION

Croatian Family law has undergone several changes in the past decade, some of which directly concern the interrelationship between parental care and children's rights. These changes began with the adoption of the Family Act of 2014, although it was in force for only four months before being suspended by the Constitutional Court. Its successor, the Family Act of 2015 managed to correct its major flaws, however, it continued on the set path and maintained concepts that were new to Croatian society, such as

[18] This requirement that a parent should always be given an opportunity to initiate proceedings for the return of parental rights has faced criticism in Croatian legal literature (see: Radina, 2017, p. 111).

[19] In this regard Guštin (2023, 545) observes: *"There is no doubt that the entire adoption procedure should be primarily directed towards the child, but the fact that biological parents, regardless of health or social difficulties, have guaranteed rights under international law should not be overlooked either (prescribed by the ECA, ECHR and other international documents)."*

[20] *"We believe it is highly questionable to delay the adoption process by notifying parents that the social welfare center intends to initiate adoption, only to then halt the adoption proceedings until the process for the restoration of parental rights is concluded. This approach keeps the child in institutional or alternative care, sometimes during the most formative early years that are crucial for their further psycho-physical development."* (Korać Graovac 2021b, 82).

the informed consent of the child, mandatory counselling and family mediation, and the sole exercise of parental care when parents did not agree on the joint parental care plan.

The introduction of the child's right to informed consent into Croatian legislation has provoked both positive and negative reactions in Croatian legal literature and beyond. It is a right that the child enjoys under Croatian Family law when reaches the age of 16 and a certain level of maturity. By exercising it, the child independently makes a decision about whether to undergo medical examination, test or procedure. To prevent possible negative outcomes that could arise from the child's immaturity, unawareness of the situation, or lack of knowledge and experience, if the medical examination, test, or procedure could have serious consequences for the child's health, the parents will also need to give their consent.

However, it remains unclear what should be done if the child refused the procedure, or in cases where the procedure is more serious, and its impacts might not be immediately apparent but could affect the child's mental or physical health in the future. The case of a minor girl terminating her pregnancy is one such example, and its regulation under the Act on Health Measures in the Implementation of the Right to Freely Decide on Childbirth needs to be properly revised. It is both unacceptable and inconsistent with the provisions of the Family Act on informed consent that the involvement of her parents in cases where her health may be at risk during the abortion is limited to simply being informed.

Mandatory counselling and family mediation, two non-contentious proceedings of different character, were both introduced with an aim of resolving disputes that have arisen between family members and that involve a minor child. Since in both of them, decisions that impact the child are being made, the child is being guaranteed certain rights, such as right to be informed and a right to express his or her opinion. However, that opinion a child can express only with the parental consent, that is if they allow so. This raises a question whether the Croatian legislator has properly considered the interpretation of the term "freely" provided by the UN Committee on the Rights of the Child in its General Comment No. 12.

The sole exercise of parental care in the Croatian legal system can occur in several situations, but one of them stands out as controversial, as it limits the rights of the parent who is not living with the child. A parent may exercise parental care independently when they failed to come to an agreement on a joint parental care plan or when they failed to come to an agreement during court proceedings. In such cases, that parent has limited

involvement in the child's life and his or her role is reduced to maintaining personal relationships with the child, making urgent decisions when the child's safety is at risk, or being informed about matters concerning the child's personal rights (Rešetar 2022, 450). This approach does not comply with *General Comment No. 14,* which emphasizes that shared parental responsibility is in the child's best interests. Nonetheless, case law has increasingly followed *General Comment No. 14*, prioritizing shared parental responsibility.

The Same-Sex Life Partnership Act furthered the transformation of Croatian Family law. In addition to introducing the concepts of life partnership and informal life partnership, and equating their legal effects to those of marriage, it also established two distinct forms of childcare provided by the parent's life partner. The first is parental care by the life partner, which can be exercised either based on a court decision—alongside or instead of the child's parents—or if the parents decide to temporarily entrust the exercise of it to a life partner. The issue with this solution is that it does not align with the *lex specialis*, the Family Act, which stipulates that only the child's parents can be holders of parental care. Moreover, in the case when life partner exercises parental care alongside child's parents, third person is involved, which might be complicated in practice.

The second form of care is partner's care, which is similar to *adoptio minus plena*. It can be exercised after the death of the child's parent who was the life partner or, in exceptional cases, during their lifetime if the other parent is unknown or has been deprived of parental care due to child abuse. When granted by a court decision, it establishes the same rights and duties that, by law, exist between parents and their descendants. As such, it has been criticized—alongside parental care exercised by a life partner—for *"enabling the establishment of a sui generis family"* (Kutleša & Škvorc 2016, 223).

In addition to the reforms initiated by the legislator based on national priorities and legal needs, the influence of the ECtHR's jurisprudence has also played a significant role in shaping the regulation of parental care and children's rights in Croatia. After the judgment passed in case *A.K. and L. v. Croatia*, the Croatian legislator made certain changes of the relevant provisions. The parent divested of parental care will be required to give opinion during child's adoption, however that opinion is not binding. This solution has been criticized for favouring parental rights over the best interests of the child.

Finally, after analysing all these new legal solutions, it can be concluded that they have collectively paved the way for a new way of development for the institutes of parental care and children's rights. Whether this path leads to the creation of new types of families, full independence for older children in making decisions about their health, or an increase in cases where, after a divorce, exercising of parental care becomes the right of only one parent, the future will reveal.

BIBLIOGRAPHY

Bolcato, Vittorio, Franzetti, Chiara, Fassina, Giovanni, Basile, Giuseppe, Martinez, Rosa Maria & Tronconi, Livio Pietro. 2024. "Comparative study on informed consent regulation in health care among Italy, France, United Kingdom, Nordic Countries, Germany, and Spain", *Journal of Forensic and Legal Medicine*, 103, pp. 1-10. Available at: https://www.sciencedirect.com/science/article/pii/S1752928X24000362.

Breber, Marija & Sladović Franz, Branka. 2014. "Introducing family mediation into the social welfare system – expert perspective", *Annual of social work*, 21(1), pp. 121-152.

Čizmek, Željko. 2014. "Partner's Care – A New Regulation of the Legal Status of Children in Same-Sex Parental Communities", Ius-info (online). Available at: https://www.iusinfo.hr/aktualno/u-sredistu/partnerska-skrb-novo-ure%C4%91enje-pravnog-polozaja-djece-u-istospolnim-zajednicama-roditelja-18298 (Accessed: January 21, 2025).

Čulo, Anica. 2009. "The child patient's right to informed consent", in: Rešetar, Branka (ed.), *Child and Law* (pp. 139-160), University of Osijek: Faculty of Law.

Čulo Margaletić, Anica. 2017. "*Child's Rights in Family Mediation", Yearbook of the Academy of Legal Sciences of Croatia*, 7, Special Issue, pp. 151-170. Available at: https://hrcak.srce.hr/191578,

Čulo Margaletić, Anica. 2021. "Mandatory counselling and family mediation as forms of family law assistance to families in crisis", *Yearbook of the Academy of Legal Sciences of Croatia*, 7(1), pp. 67-82. Available at: https://hrcak.srce.hr/260595.

European Union Agency for Fundamental Rights. 2018. "Consenting to medical treatment without parental consent". Available at: https://fra.europa.

eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/consenting-medical-treatment-without-parental-consent (Accessed: December 7, 2024).

Hrabar, Dubravka, Hlača, Nena, Jakovac-Lozić, Dijana, Korać Graovac, Aleksandra, Majstorović, Irena, Čulo Margaletić, Anica, Šimović, Ivan. 2021. *Family Law*, Zagreb: Official Gazette.

Hrabar, Dubravka. 2015. "The Right to Abortion – Legal and Non-legal Dilemmas", *Collected Papers of the University of Zagreb*, 65(6), pp. 791-831. Available at: https://hrcak.srce.hr/file/225307.

Hrabar, Dubravka. 2020. "The postmodern age as a vestibule of the negation of children's rights", *Collected Papers of the Faculy of Law in Split*, 57(3), pp. 657-688. Available at: https://doi.org/10.31141/zrpfs.2020.57.137.657.

Hein, Irma M., De Vries, Martine C.,Troost, Pieter W., Meynen, Gerben, Van Goudoever, Johannes B., Lindauer, Lindauer, Ramón J. L. 2015. "Informed consent instead of assent is appropriate in children from the age of twelve: Policy implications of new findings on children's competence to consent to clinical research", *BMC Medical Ethics*, 16(76), pp. 1-7, doi:10.1186/s12910-015-0067-z.

Guštin, Matko. 2023. "The Impact of the European Court of Human Rights on the Adoption Procedure in the Republic of Croatia", *Collected Papers of the Faculty of of Law in Rijeka,* 44(2), pp. 531-559.

Kitanović, Tanja, Ignjatović, Marija. 2013. "The Evolution of the Institution of Adoption: From Roman to Contemporary Law", *Collected Papers of the Faculty of Novi Sad*, 47(4) pp. 163–184. Available at: https://zbornik.pf.uns.ac.rs/wp-content/uploads/2018/07/2013-4.pdf.

Kokić, Josipa. 2024. *Parental role in the realization of the right of the child to express his or her opinion in the context of the right to health: Croatian perspective*, LL.M thesis, University of Miskolc: Faculty of Law.

Korać Graovac, A. 2012. "Right of child to be heard - General comment No. 12 of the Committee on the rights of the child (2009)", in: Filipović Gordana, Osmak Franjić, Davorka (eds.), *A child in the judicial process – Application of the European Convention on the Exercise of Children's Rights* (pp. 117-139), Zagreb: Ombudsman for children.

Korać Graovac, Aleksandra. 2015. "Marriage and family as values in the Croatian legal system", *Theological Review*, 85(3), pp. 799-811. Available at: https://hrcak.srce.hr/file/217700.

Korać Graovac, Aleksandra. 2017. "From joint to independent exercise of parental care and back – how to protect the rights of children and parents", *Annual of the Academy of Legal Sciences of Croatia*, 8, Special Issue, pp. 51-73. Available at: https://hrcak.srce.hr/191514.

Korać Graovac, Aleksandra. 2021a. "Family Protection in Croatia", in: Barzó, *Tímea*. and Lenkovics, Barnabás (eds.), *Family Protection from a Legal Perspective* (pp. 37-77), Miskolc- Budapest: Ferenc Mádl Institute of Comparative Law and Central European Academic Publishing. Available at: https://mfi.gov.hu/wp-content/uploads/familyprotectionfromalegalperspective-1.pdf.

Korać Graovac, Aleksandra. 2021b. "Judgment in the case of A.K. and L. v. Croatia", in: Hrabar, Dubravka (ed.) *Judgments on Parental Care by the European Court of Human Rights Against the Republic of Croatia* (pp. 63-84), University of Zagreb: Faculty of Law.

Korać Graovac, Aleksandra. 2022a. "The content of the Right to Parental Care", in: Sobczyk, P. (ed.), *Content of the Right to Parental Responsibility Experiences – Analyses – Postulates* (pp. 37-72), Miskolc-Budapest: Central European Academic Publishing. Available at: https://real.mtak.hu/157090/1/CEA-ProfNet%2008%20Sobczyk%20-%20Parental%20Responsability%2004%20e-konyv.pdf.

Korać Graovac, Aleksandra. 2022b. "Parental care following divorce in the Republic of Croatia", *Law, identity and values*, *2*(2), pp. 45-63. Available at: https://doi.org/10.55073/2022.2.45-63.

Kostadinov, Biljana, Horvat Vuković, Ana. 2022. "*The Decision of the Constitutional Court of the Republic of Croatia on Abortion and the Central Issue of Its Implementation",* in: Horvat Vuković, Ana, Gardašević, Đorđe, Gotovac, Viktor, Zrinščak, Siniša (eds.), *Law and Society: Liber Amicorum Josip Kregar*, pp. 199–229, University of Zagreb: Faculty of Law.

Kutleša, Mislav, Škvorc, Mladen. 2016. "The Evolution of the Moral-Legal Status of Same-Sex Unions in the Republic of Croatia", *Theological Review*, 86(1), pp. 213-235. Available at: https://hrcak.srce.hr/file/233811.

Lucić, Nataša. 2017. "Legal regulation of marriage and other forms of life unions", in: Rešetar, Branka, Aras Kramar, Slađana, Lucić, Nataša, Medić, Ines, Šago, Dinka, Tucak, Ivana, Mioč, Petra (eds.), *Contemporary Family law and procedure* (pp. 61-103), University of Josip Juraj Strossmayer in Osijek: Faculty of Law.

Majstorović, Irena. 2017a. "Mandatory Counselling and Family Mediation de Lege Lata and de Lege Ferenda", *Yearbook of the Academy of Legal Sciences of Croatia***,** 8, Special Issue, pp. 129-150. Available at: https://hrcak.srce.hr/file/282488.

Majstorović, Irena. 2017b. "The Realisation of the right of the child to express his/her views – How »visible« are children in Croatian family judicial proceedings?", *Annual of social work*, 24 (1), pp. 55-71.

Pećnik, N. (2021) "Contemporary parenthood and rights of the child", in: Hrabar, Dubravka (ed.), *Rights of the child. Multidisciplinary approach* (pp. 173-195), Faculty of Law University of Zagreb: Biblioteka Udžbenici.

Pelčić, Gordana. 2012. *Informed consent of children in theory and practice with special reference to Croatia*. Doctoral dissertation. University of Rijeka: Faculty of Medicine.

Radačić, Ivana. 2016. "*Regulation of Abortion – Practice of the European Commission of Human Rights and the European Court of Human Rights in Light of Global Standards", Zagreb Law Review,* 5, 3, pp. 251–270. Available at: https://hrcak.srce.hr/file/289290.

Radina, Ana. 2017. "Removal of a Child from the Family in the Practice of the European Court of Human Rights", *Yearbook of the Academy of Legal Sciences of Croatia*, 8, Special Issue, pp. 93-116.

Rešetar, Branka. 2009. "Child and Law – Interdisciplinary approach", in: Rešetar, Branka (ed.), *Child and Law*, pp. 297-311, University of Osijek: Faculty of Law.

Rešetar, Branka. 2018. "Child patient and informed consent", *Medical Journal - the official publication of the Croatian Medical Chambe*r, 175, pp. 104-107.

Rešetar, Branka (ed.) 2022. *Commentary on the Family Act - Book 1: Fundamental Principles, Marriage, Legal Relations Between Parents and Children, Measures for the Protection of Children's Rights and Well-being, Adoption, Guardianship, Maintenance, Mandatory Counselling, and Family Mediation*, Zagreb: Organizator Impresum.

Rittossa, Dalida. 2005. "*Disputes on the Right to Abortion in the Republic of Croatia", Collected Papers of the Faculty of Law,* 26, 2, pp. 971–997.

Tucak, Ivana, Nedić, Tomislav & Sabo, Dorian. 2022. "Medical decision-making and children"*, Collected Papers of the Faculty of Law*, University of Split, 59(2), pp. 385-405.

Varadan, Sheila. 2019. "The principle of evolving capacities under the UN Convention on the Rights of the Child", *International Journal of Children's Rights*, 27, pp. 306-338. Available at: https://brill.com/view/journals/chil/27/2/article-p306_306.xml?ebody=pdf-130820, pp. 306-338.

Šimović, Ivan. 2023. "The right of the child to be heard in the Croatian Family law", *European Integration studies*, 19(1), pp. 221-243. Available at: https://doi.org/10.46941/2023.e1.10.

Šimović, Ivan. 2024. "UN Convention on the Rights of the Child: Participation", in: Benyuz, M., Raisz, A. (eds.) *International Children's Rights* (pp. 137-159), Miskolc -Budapest: CEA Publishing.

Winkler, Sandra. 2017. "Parental Responsibility and Blended Families", *Yearbook of the Academy of Legal Sciences of Croatia,* 8, Special Issue, pp. 75-92. Available at: https://hrcak.srce.hr/file/282379.

LEGAL SOURCES

Act on Health Measures in Implementation of the Right to Freely Decide on Childbirth, Official Gazette No. 18/1978, 31/1986, 47/1989, 88/2009.

Act on the Protection of Patients' Rights, Official Gazette No. 169/04.

Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

Family Act, Official Gazette No. 162/1998.

Family Act, Official Gazette No. 116/2003.

Family Act, Official Gazette No. 75/14.

Family Act, Official Gazette No. 103/15, 98/19, 47/20, 49/23, 156/23.

UN Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard (2009), CRC/C/GC/12, 1 July 2009, Available at: https://www.refworld.org/legal/general/crc/2009/en/70207.

UN Committee on the Rights of the Child, General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3 para. 1), CRC/C/GC/14, 29 May 2013, Available at: https://www.refworld.org/legal/general/crc/2013/en/95780.

Regulation on Mandatory Counselling, Official Gazette No. 123/2015.

Same-Sex Life Partnership Act, Official Gazette No. 92/14, 98/19.

UN Convention on the Rights of the Child, Official Gazette SFRY, No. 15/1990, Official Gazette- International Treaties, No. 12/93, 20/97.

JUDGEMENTS

A.K. and L. v. Croatia, No. 37956/11, Judgment of 8 January 2013, ECLI:CE:ECHR:2013:0801JUD003795611.

Decision of the Constitutional Court of the Republic of Croatia (CCRC), U-I-3101/2014 of January 12, 2015, *Official Gazette* No. 5/15. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/dodatni/434422.pdf.

Decision of the Constitutional Court of the Republic of Croatia (CCRC), U-I/3941/2015 of Mary 8, 2023, *Official Gazette* No. 49/2023. Available at: https://www.zakon.hr/cms.htm?id=56779.