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Guidelines for determining the (best) interests of the child in civil proceedings in Slovenia

PIC – Legal Centre for the Protection of Human Rights and the Environment

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The Interministerial Working Group to improve the situation of children in civil court proceedings in Slovenia, at its meeting on 2 June 2026 approved the draft Guidelines, labelling it as a “living” document. The content of the documents was not voted on by Dr. Bernarda Dobnik Renko and Assoc. Prof. Dr. Jana Kodrič.

Future updates will be handled by PIC the Legal Centre for the Protection of Human Rights and the Environment, in cooperation with the Ministry of Justice of the Republic of Slovenia.

The Guidelines are a “living” document that should be updated over time, so users are kindly invited to send us suggestions for improvements at pic@pic.si. We welcome any suggestions that could help us improve these materials.

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List of abbreviations, acronyms and symbols

CSD	Social Work Centre
DO	State Attorney's Office
MDT	Multidisciplinary Team
Specialist Centre	Specialist Centre for Children with Emotional and Behavioural Difficulties and Disorders
NGO	Non-governmental organisation
VČP	Ombudsman
VIZ	Educational institution
Entity	We use the term in its broadest sense, to include public institutions, official bodies and services (e.g. courts, CSD, DO) as well as organisations (e.g. NGOs) and individual bodies (e.g. the Children's Ombudsman, guardian ad litem) that are relevant to proceedings determining the best interests of the child.

	The symbol indicates a reference to sectoral legislation and other official documents relevant to the topic under discussion.
	The symbol indicates an important source of information and recommendations for further reading on the topic in question.

In the original and official text in Slovenian, references in the masculine grammatical form apply to women, trans and intersex people, and others.

The text has not been proofread.

Legal basis in the area of the child's best interests

Provisions and procedures in family matters and other proceedings relating to the family sphere are derived from national and international legal frameworks.

National legal acts

Family Code (FC)

Regulations on the implementation of preliminary counselling

Rules on the Implementation of Mediation under the Family Code

Act on the Prevention of Domestic Violence (ZPND)

Regulations on the cooperation of authorities and on the operation of social work centres, multidisciplinary teams and regional services in dealing with domestic violence

Regulations on the rules and procedures for dealing with domestic violence in the provision of healthcare services

Regulations on police cooperation with other authorities and organisations in the detection and prevention of domestic violence

Regulations on the handling of domestic violence in educational institutions

Non-Contentious Proceedings Act (ZNP-1)

Civil Procedure Act (ZPP)

Social Protection Act (ZSV)

Catalogue of public powers, statutory duties and services provided by social work centres (2025).

Act on the Treatment of Children and Young People with Emotional and Behavioural Difficulties and Disorders in Education and Training (ZOOMTVI)

International legal instruments

United Nations Convention on the Rights of the Child (UNCRC)

General Comment No. 14 of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14

European Convention on Human Rights and Fundamental Freedoms (ECHR)

European Convention on the Exercise of Children's Rights (ECECR)

Convention on the Civil Aspects of International Child Abduction (Hague Convention)

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (MKZOSIZ)

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction

Recommendation R(84) to Member States on parental responsibilities.

Recommendation R(91)9 on urgent measures in family matters.

Recommendation R (98)1 on family mediation.

Recommendation Rec (2002) 10 on mediation in civil matters.

Recommendation Rec(2006)19 on policies to support positive parenting.

Recommendation Rec(2011)12 on children's rights and child- and family-friendly social services

Recommendation CM/Rec(2012)2 of the Committee of Ministers to member states on the participation of children and young people under the age of 18

Recommendation CM/Rec(2023)8 of the Committee of Ministers to member states on strengthening systems for reporting violence against children.

Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies)

Recommendation CM/Rec(2025)5 of the Committee of Ministers to member states on the protection of the rights and best interests of the child in child protection proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies)

Charter of Fundamental Rights of the European Union (EU Charter)

Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence PE/33/2024/REV/1

European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI))

Glossary of basic terms in family law

Child. A child is a person who has not yet reached the age of 18, unless they have previously acquired full legal capacity.¹

The developmental needs of the child. The development of the child is a holistic concept encompassing the child's physical, mental, spiritual, moral, psychological and social development.² A child's developmental needs depend on their age and stage of maturity, their situation and any special needs or vulnerabilities; these needs are constantly changing as the child grows, develops skills and abilities, and interacts with their physical and social environment. A child's developmental needs differ between newborns and very young children, adolescents, and children transitioning into adulthood and independent living.³

Parental care. Parental care comprises the totality of parents' obligations and rights to create, in accordance with their capabilities, conditions in which the child's holistic development is ensured. It primarily belongs to both parents jointly,⁴ unless a court deprives one or both parents of it, or restricts it.⁵ It does so if it considers – taking into account the circumstances of the individual case – that the child is at risk and that the restriction or withdrawal of parental care is in the child's best interests, provided that the conditions for the admissibility of such a measure are met, such as legality, the pursuit of a legitimate aim and proportionality.⁶ Supervision of the exercise of parental care by one or both parents is carried out by the CSD. The rights and obligations of parents arising from parental care relate to the care for the child's life and health, their upbringing, protection and care, supervision of the child and care for their education, representation, maintenance and management of their property.⁷

Proceedings in family matters. The proceedings relevant to the scope of these educational materials are those governing personal status and family relations. They are defined in Chapter X of the ZNP-1, under the heading 'Proceedings for the regulation of personal status and family relations'. In these materials, we refer to them more briefly as 'proceedings in family matters' or 'family proceedings'. Subsidiarily, the provisions and principles of the Civil Procedure Act (ZPP) also apply in proceedings in family matters.

¹ Article 5 of the Constitution.

² Paragraph 4 of General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration (Article 3, point 1), 29 May 2013, CRC/C/GC/14

³ Paragraph 107 of the Explanatory Memorandum to Recommendation CM/Rec(2025)5 of the Committee of Ministers to member states on the protection of the rights and best interests of the child in child protection proceedings. (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies); Paragraph 119 of the Explanatory Memorandum to Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

⁴ Article 6 of the Family Code.

⁵ The second paragraph of Article 136, Article 171 and Article 176 of the Family Code.

⁶ Pursuant to the first paragraph of Article 154 of the Family Code, parents have, before all others, the right and duty to protect the rights and interests of their child; therefore, the state may take measures to protect the rights and interests of the child, such as the restriction or withdrawal of parental care, only when parents fail to exercise these rights and obligations or do not exercise them in the child's best interests.

⁷ The first paragraph of Article 136 of the Family Code.

Preliminary counselling. Where parents have children in common over whom they have parental care, they must, prior to commencing divorce proceedings in court (by petition or by mutual consent), attend preliminary counselling, which takes place at the Social Work Centre (CSD). Preliminary counselling is also mandatory for parents who intend to file a petition with the court to initiate proceedings for the protection of the child's best interests (e.g. arrangements for care and upbringing, maintenance, contact, etc.). This is a procedural prerequisite,⁸ the purpose of which is to remind the parents or other person of the principle of protecting the child's best interests when regulating relations with the child, and of the advantages of peaceful and consensual resolution of family relations. In the event that the parents are unable to reach an agreement, the preliminary counselling includes elements of mediation – the CSD attempts to guide the parents towards an agreement regarding care, upbringing, contact and maintenance, and other issues concerning the child.

In cases of suspected domestic violence, preliminary counselling is conducted separately (⁹), and mediation is prohibited in such cases; consequently, encouraging an amicable resolution of disputes is also not permitted.

Mediation. Mediation in family matters is a process in which the parties voluntarily seek, with the assistance of one or more neutral third parties – mediators – to reach an amicable resolution to a dispute arising from their family relationships.¹⁰ Mediation may take place prior to court proceedings (at the CSD, as a follow-up to preliminary counselling, or with one of the external mediation providers) if the parents have not yet filed an application with the court, or in court after they have filed an application. Mediation is prohibited in cases of suspected domestic violence¹¹ and is harmful to victims.

Domestic violence. Domestic violence is any act of physical, sexual, psychological or economic violence by one family member against another, or the neglect or stalking of a victim, regardless of the age, gender or any other personal circumstances of the victim or the perpetrator, and the corporal punishment of children.¹² Furthermore, the Istanbul Convention defines such violence as occurring within the family or household, or between former or current spouses or partners, regardless of whether the perpetrator still lives or has lived with the victim.¹³ Violence refers to behaviour whereby a person abuses their power to control, intimidate, harm, humiliate, devalue, or generally disempower another person.¹⁴ The person who causes the violence is always responsible for it. Domestic violence is not merely

⁸ Article 83 of the ZNP-1

⁹ Association of Social Work Centres, Catalogue of Public Powers, Statutory Duties and Services Provided by Social Work Centres (2025). <<https://www.scsd.si/katalogi/katalog-javnih-pooblastil/>>.

¹⁰ Article 13 of the DZ.

¹¹ Article 22.e of the ZPND.

¹² Second paragraph of Article 3 of the ZPND.

¹³ Article 3.b of the Istanbul Convention.

¹⁴ Association for Non-Violent Communication, What is violence. <<https://www.drustvo-dnk.si/sl/o-nasilju/kaj-je-nasilje.html>>.

manifested in individual acts or one-off incidents, but rather constitutes an entire system of behaviour and communication employed by the perpetrator.¹⁵

Positive parenting. This refers to parenting behaviour based on the child's best interests, providing care and nurturing for the child, developing their personality, respect and guidance, which includes setting boundaries and limits for the child's holistic development.¹⁶ Positive parenting is defined as the exercise of parental care based on the child's best interests – parents must exercise parental care in such a way that they adapt their behaviour to the child's needs, stage of development and best interests, including by limiting their own desires in the process.¹⁷ In light of the principle of the child's best interests, the state is obliged to ensure the conditions for the operation of NGOs and professional institutions for the development of positive parenting.¹⁸

Conflict of interests. In connection with the institution of the guardian ad litem, the term 'conflict of interests' refers to a clash of interests between a parent and a child. A conflict of interests thus does not involve a conflict between the parents, but between one or both parents and the child. The law allows the Social Work Centre (CSD) or the court to appoint a guardian ad litem for the child during proceedings.¹⁹ If there is a conflict of interests with only one parent, this does not necessarily mean that the child needs a guardian ad litem – the other parent can protect the child's interests and welfare. In the event of a conflict of interests, a guardian ad litem must not therefore be appointed automatically.

Basic principles and rights in family law

The principle of the child's best interests. The principle of the child's best interests²⁰ is a fundamental legal and ethical principle defined by legislation at international, European and national levels. The principle of the child's best interests is a legal standard that must be given substance in each individual case. When it comes to caring for and being responsible for the best interests of their child, parents take precedence over all others.²¹ The state takes measures to protect the rights and best interests of the child only when parents fail to exercise their rights and obligations or do not exercise them in the child's best interests.²² The duty to act in the child's best interests therefore lies with parents, the state (state authorities, public service providers, holders of public authority, local authorities) and other natural and legal persons.²³ When assessing the child's best interests, it is also necessary and essential that this is not judged solely in the short term, but also in the medium and long term. When dealing with children, it

¹⁵ Association for Non-Violent Communication, What is violence. <<https://www.drustvo-dnk.si/sl/o-nasilju/kaj-je-nasilje.html>>.

¹⁶ Nana Weber (ed.), Sara Ahlin Doljak et al., Family Code with Commentary (2024), GV Publishing

¹⁷ Čujović M. in: Novak B. (ed.), 2019, p. 65.

¹⁸ The fifth paragraph of Article 7 of the Family Code.

¹⁹ Article 269 of the Family Code and Article 45 of the ZNP-1.

²⁰ 'best interests of the child'.

²¹ Second paragraph of Article 7 of the Family Code.

²² The first paragraph of Article 154 of the Constitution.

²³ The fourth paragraph of Article 7 of the Constitution, the second paragraph of Article 24 of the EU Charter.

is therefore also important to consider how a decision regarding the child's best interests will affect them during the transition to adulthood and independent living.

The principle of *ex officio* action. The state has a positive obligation to protect the child's best interests, which means that both the Social Work Centre (CSD) and the court must, in certain cases, act *ex officio* or in accordance with the principle of *ex officio* action.²⁴ Although civil procedural law under the Civil Procedure Act (ZPP) is based on the principle of disposability, proceedings for the protection of children's interests, which are mostly conducted under the Child Protection Act (ZNP-1), differ in that, in certain cases, they must be initiated or continued *ex officio* by the courts.²⁵

The principle of investigation. The principle of investigation derives from the principle of officiality and, in light of the special care required for children in family matters, dictates that the court is obliged to establish even those facts which the parties have not stated and to examine evidence which the parties themselves have not proposed.²⁶ In accordance with these principles, the court must itself establish all legally relevant facts and supplement the case file *ex officio*.²⁷

The right to respect for private and family life. This right derives both from the constitutional framework of the state and from conventions and other legal instruments at European and international level to which Slovenia is bound.²⁸ The state may not interfere with the exercise of the right to respect for private and family life, except where this is provided for by law and is necessary in a democratic society for the purposes of national security, public safety or the economic well-being of the country, to prevent disorder or crime, to protect health or morals, or to protect the rights and freedoms of others.²⁹

The principle of proportionality. When assessing the permissible interference by public authorities in the private and family life of individuals, the principle or test of proportionality must be applied. This protects individuals from excessive and unjustified interference by the state or public authorities.

²⁴ The court may, on its own initiative, decide on any measures to protect the child's interests, decide to terminate a measure, impose a different measure, decide to extend it, or reimpose the measure. The third paragraph of Article 138 and the first paragraph of Article 160 of the Family Code.

²⁵ Dr Vesna Rijavec, Decisions on the Care and Upbringing of Children (2019), Legal Yearbook (2019) pp. 57–77, 282–283 <<http://www.dlib.si/?URN=URN:NBN:SI:doc-FFDVEOAR>>.

²⁶ Article 7 of the ZNP-1.

²⁷ Dr Vesna Rijavec, Decisions on the Care and Upbringing of Children (2019), Legal Yearbook (2019) pp. 57–77, 282–283. <<http://www.dlib.si/?URN=URN:NBN:SI:doc-FFDVEOAR>>.

²⁸ Articles 35 and 53 of the Constitution; Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR), Official Gazette of the Republic of Slovenia – International Treaties, No. 33/94; Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

²⁹ The second paragraph of Article 8 of the ECHR.

Protection of the child's dignity. Every child must always be treated with sensitivity and respect; particular attention must be paid to the child's level of maturity, their personal circumstances and their specific needs.³⁰

Prohibition of discrimination. Children's rights and needs must be respected and ensured without discrimination against the child or their parents on any grounds (e.g. gender, ethnicity, sexual orientation, gender identity, religion or other beliefs, disability, social status).³¹ For a professional approach, it is essential that individual professionals reflect on their professional role and on how their values may influence their work with children and parents. When assessing the child's best interests, there is no room for prejudices and assumptions arising solely from one's own subjective beliefs.

Equal opportunities for all. At the same time, children must be guaranteed equal opportunities. This means adapting to the child's needs and not comparing children with one another. Treating children who have different needs in the same way can also lead to discrimination.

³⁰ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

³¹ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

1. Introduction

The principle of the best interests of the child is a fundamental legal and ethical principle, or legal standard, and a basic guideline for regulating a child's life. In practice, the best interests of the child are determined by various parties, ranging from parents and professionals at the Social Work Centre (CSD) to judges and court experts who provide expert opinions in non-contentious proceedings concerning the child, parents and family. **In doing so, their central question is: what is in this child's (best) interests?** Furthermore, they may pose the question in both a substantive and a procedural sense: how should the child's life be organised so that it is in their best interests, and how should the proceedings be conducted so that they are also in the child's best interests and do not result in secondary victimisation? This document is intended to gather information on the content of the principle of the child's best interests and the methods for determining it for a specific child. The information is presented, amongst other things, in the form of guidelines and may assist various parties in determining the child's best interests in family proceedings.

Realising the child's best interests means realising the child's rights and needs. It is important to emphasise that the child's best interests do not merely encompass their external living circumstances, but also their inner experience, psychological needs and mental health. Assessing the child's best interests therefore involves understanding their emotional state, sense of security, developmental needs, and any distress or traumatic experiences that may significantly affect their well-being and functioning within the family and community. Such an approach requires a holistic, so-called biopsychosocial assessment, which, in addition to medical and legal aspects, also takes into account the psychological and social circumstances of the individual child, as the child's best interests are always determined on a case-by-case basis in light of their specific life circumstances.³²

When referring to the child's best interests in the original and official version of this document in Slovenian, we predominantly use the term "the child's interests" rather than "the child's *best* interests", as the meaning of the term in the former case is broader and does not cover merely the "best" or "greatest" interests of the child, but rather the child's interests in a general sense. In the Slovenian legal system, too, the DZ establishes the "principle of the child's interests" and not the "principle of the child's *best* interests", as is most commonly defined in the international community. Although the DZ refers to the principle of "the child's interest", the term »the child's *best* interest« is also used by the slovenian judiciary and others, as per the wording used in the international community.³³

³² März, J. W. (2022). *What does the best interests principle of the Convention on the Rights of the Child mean for paediatric healthcare?* European Journal of Pediatrics, 181, 3805–3816. Available at: <<https://pubmed.ncbi.nlm.nih.gov/36083315/>>.

³³ The term 'the best interests of the child' is mostly used when referring to the provisions of international legal instruments.

Guidelines instead of a protocol

The initiative to draw up guidelines stems from **the Strategy and Action Plan**,³⁴ , which were approved in 2025 by the Inter-ministerial Working Group at the Ministry of Justice, as part of the project “Ensuring the best interests of the child in civil court proceedings in Slovenia”. This involves the implementation of measures 7 and 40, which include the preparation of a “protocol for determining the best interests of the child with clear guidelines for all relevant professionals” (measure 7), and a section specifically dedicated to the treatment of particularly vulnerable children (measure 40).³⁵ In preparing the guidelines, we at PIC – the Legal Centre for Human Rights and the Environment worked on an inter-ministerial basis with stakeholders from various fields. We would like to extend our warmest thanks to all those involved who contributed their knowledge and experience to the guidelines, whether in drafting or reviewing the content.³⁶

Although the strategy and action plan refer to the drafting *of a protocol*, in this case it seems more appropriate to draw up *guidelines*. The purpose of the guidelines is to provide stakeholders with a framework for adapting their practices regarding the determination of the child’s best interests, rather than to impose an obligation to act exclusively in accordance with the content set out therein. The purpose of presenting the information and findings in the form of guidelines is to offer stakeholders a tool for **a multifaceted understanding of the principle** in a flexible manner.

The term ‘*protocol*’ is also questionable because it suggests that a child’s best interests can be determined in a standardised manner and that determining a child’s best interests may even involve a set of criteria that are the same for all children. The key rule in determining the child’s best interests, however, is that this is determined and assessed on an individual basis, and these guidelines may assist stakeholders in this process. For the reasons stated above, we present “guidelines” rather than a “protocol” below.

Purpose, objectives and scope of the guidelines

By determining the child’s best interests, we identify the conditions under which the child’s needs will be adequately met, their rights respected and their development promoted – in

³⁴ Dr Susanna Greijer, Strategy and Action Plan (2025), Council of Europe <<https://rm.coe.int/strategija-in-akcijski-nacrt-skupni-projekt-eu-in-sveta-evrope-zagotav/488028e731>>.

³⁵ Dr Susanna Greijer, Strategy and Action Plan (2025), Council of Europe <<https://rm.coe.int/strategija-in-akcijski-nacrt-skupni-projekt-eu-in-sveta-evrope-zagotav/488028e731>>.

³⁶ We would like to extend our warmest thanks to Tatjana Milavec and Špela Zupan from the Association of Social Work Centres, Simona Mikec from the Ljubljana Social Work Centre, Maša Gril, regional advocacy coordinator at VČP, Saša Gorenc Košir, an employee at the specialist centre and children’s advocate at VČP, Tanja Svetičič Hrovat, Tjaša Hrovat and Klavdija Aničič from the Association for Non-Violent Communication, Alenka Sočan Žitnik, lawyer Luka Švab, Ana Tekavčič, President of the Association of Social Workers of Slovenia, Nataša Omladič Ograjenšek from the Social Work Centre in Celje, and Katja Štampfel, a court expert in the sub-field of social work. In addition, we would like to extend our warmest thanks for corrections and suggestions to the final version of the document to Daja Wenke, an independent researcher and consultant in the field, Ani Dežman from the Lunina vila Institute and the members of the Inter-ministerial Working Group at the Ministry of Justice, in particular Senior State Attorney Jani Morela, Senior Judge Vanja Tinta Tavčar and representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. We would like to thank the staff at the Ministry of Justice, the Council of Europe and the European Union for their assistance in implementing the project and for their trust.

the short, medium and long term. The assessment of the child's needs serves as the basis for providing the services and measures necessary to protect the individual child without discrimination.³⁷ When assessing these conditions, it is necessary to take into account various factors that depend on the child themselves, their parents, the wider environment and the context. The purpose of this document, i.e. *the Guidelines for determining the (best) interests of children in civil proceedings in Slovenia*, is to present guidelines for identifying these conditions and factors, and on that basis to determine what is in the child's (best) interests in a specific case, and to decide in accordance with the findings.³⁸ The guidelines may assist those who, through their professional and technical expertise, contribute to **determining the child's best interests**, as well as those—namely the courts—who **make the final decision** on the child's best interests, giving the greatest weight and attention to the child's best interests. In reaching its decision, the court will balance the child's best interests and rights against the legitimate interests of the parents and other parties to the proceedings. At the same time, the court will also take into account the obligation of state authorities and child protection service providers to support and strengthen the family in accordance with the child's best interests. The guidelines are available to stakeholders as guidance for determining the child's best interests and making decisions in **a comprehensive, professional and coordinated manner**.

Since, as mentioned, the principle of the child's best interests can be viewed from both a substantive and a procedural perspective, two key questions addressed by the guidelines are:

- What arrangement of the child's life is in their (best) interests?
- How should the proceedings be conducted to ensure that they serve the child's (best) interests?

With guidelines that address these two questions, we aim to make the principle as tangible as possible and enable professionals to remain **primarily focused on the best interests of the child throughout the entire working process**. In drawing up these guidelines, our primary aim is to foster a better understanding and greater consensus within the profession regarding what the best interests of the child entail – what its components are and how to identify and safeguard them in both procedural and substantive terms. As every individual has their own personal views and beliefs, it is necessary to ensure that **we all proceed from a generally accepted understanding of the principle of the child's best interests** in theory and practice. This would lead to greater consistency in safeguarding the principle and better cooperation between parties involved in family matters. Gathering information in one place and providing additional information is particularly important in cases of staff turnover, which is particularly evident in family courts and social work centres. The purpose of the guidelines is thus, among

³⁷ Paragraph 100 of the Explanatory Memorandum to Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

³⁸ It should be emphasised at the outset that the guidelines are a living document, which should be updated over time in the light of experience, user needs and legislative changes in the field. In this light, we kindly invite users to send us their suggestions for improvements to pic@pic.si. We welcome all suggestions, corrections and practical examples that will help us improve and update these materials.

other things, **the transfer of knowledge and consistency** in safeguarding the best interests of the child.

Whilst **numerous protocols for assessing child risk already exist** within the Slovenian family law framework, a framework for assessing and monitoring the child's best interests in a broader sense has not yet been designed or established. Although the elimination or mitigation of a child's risk is one of the foundations for ensuring the child's best interests, it is not the sole factor in safeguarding this principle.

As regards their scope, the guidelines focus primarily on **civil proceedings**, specifically on **proceedings and matters governing personal status and family relations** as defined in the ZNP-1 and the DZ. The guidelines may be of assistance not only to judges deciding on a case, but also to other parties who are directly or indirectly involved in family proceedings. Whilst **some parties determine the best interests of the child**, others **provide expert opinions** or insights into the child's best interests in a particular case. In doing so, they assist the competent authority, i.e. the court, in reaching decisions.

Target groups

The guidelines are intended for and may be useful to the following target groups:

- A. Parents;
- B. Judges;
- C. Professional staff at the CSD;
- D. Mediators;
- E. Guardians ad litem;
- F. Children's advocates*;
- G. Court experts;
- H. Lawyers representing parties in proceedings;
- I. State lawyers representing the state, state bodies and state-owned entities;
- J. Specialist centres (VIZ);
- K. Other professionals who are in contact with the child;
- L. Other persons involved in proceedings who are obliged to safeguard the child's best interests.

Which entities and in which cases determine the child's best interests?

Parents. The child's best interests are primarily determined by the parents, as they are primarily responsible for ensuring the child's best interests in practice – in caring for and being responsible for the child's best interests, they take precedence over all others.³⁹ It is assumed that parents determine and ensure the child's best interests both during their childhood and in the long term, throughout their entire life. They provide the child with appropriate guidance and direction in exercising their rights in a manner appropriate to their developing capacities, i.e. varying according to age.⁴⁰ Specifically, within the context of family proceedings, the child's best interests are determined in the event of divorce, the dissolution of a non-marital partnership, or in other proceedings for the protection of the child's best interests. If the parents are capable of constructive communication, they determine the child's best interests together, set them out in an agreement and submit the agreement to the court for approval, having first presented it to the competent Social Work Centre during preliminary counselling.

Parents, in cooperation with the Social Work Centre. Before initiating divorce proceedings (whether by petition or by mutual consent) and before filing a petition with the court to initiate proceedings for the protection of the child's interests (e.g. to arrange for care and upbringing, maintenance, and contact), the parents must attend preliminary counselling at the CSD. This is a procedural requirement if both parents have parental care of the children.⁴¹ Preliminary counselling is intended, among other things, to educate parents on the protection of the child's

³⁹ The second paragraph of Article 7 of the DZ.

⁴⁰ Article 5 of the KOP.

⁴¹ Article 83 of the ZNP-I; Articles 200 and 203 of the DZ.

best interests when regulating family relations⁴² and to jointly seek solutions to ensure the child's best interests. At the CSD, it is possible to hold several meetings with the parents with the aim of reconciling their views on family life following the breakdown of their relationship.

When the parents reach an agreement, the social worker assesses the agreement from the perspective of the child's best interests – they may or may not agree with the content of the agreement. The social worker submits a professional opinion on the content of the parents' proposed agreement to the court.⁴³ In the process of forming an opinion on the proposed agreement, the CSD determines the child's best interests.

CSD – submits its opinion to the court. If the parents fail to reach an agreement during preliminary counselling (or during mediation), the decision is referred to the court. Before making a decision, the court requests the CSD to provide a professional, separate opinion on the child's best interests in the specific case. For the purpose of preparing this professional opinion, the CSD determines the child's best interests.

The CSD submits a proposal to the court. Where a child is at risk, the CSD is obliged to submit a proposal to initiate proceedings – the CSD has standing to propose proceedings for the protection of the child's best interests and is a legitimate party to the proceedings even when it is not the applicant.⁴⁴ The CSD may be the applicant for a temporary order and measures of a more permanent nature. In the application, the social worker explains how it was determined that the proposed measures are in the best interests of the child. The professional proposes a measure if they determine that the parents are not exercising their rights and obligations to protect the rights and best interests of their child, or are not exercising them in the child's best interests.⁴⁵ In order for the professional to draft a proposal to the court, they must first establish the child's vulnerability or the child's best interests. The CSD may also propose the termination or modification of individual measures, as it monitors the implementation of measures and cooperates with the family at all times. The process of determining the child's best interests takes place at the CSD throughout the entire family case. The CSD always ensures the protection of the child's best interests.

Mediators in family matters. Mediation is one of the alternative methods of dispute resolution in family proceedings, with the exception of family proceedings where domestic violence is present. In the mediation process, in which the parties participate voluntarily, parents work with mediators to find ways to resolve issues concerning the children, with the child's best interests as their primary guiding principle. During the proceedings, the mediator ensures that the child's best interests are safeguarded in a practical sense (the aim of mediation is to draw up a proposal for a court settlement that is in the child's best interests), and may also involve the child in the process itself if they consider that such involvement would be in the child's

⁴² The third paragraph of Article 203 of the DZ.

⁴³ Article 29 of the DZ.

⁴⁴ Article 108 of the ZNP-1.

⁴⁵ First paragraph of Article 154 of the DZ.

best interests. The child's right to participate and express their opinion applies not only in court proceedings but also in alternative dispute resolution proceedings.

Guardian *ad litem*. A guardian *ad litem* is a guardian who represents the child in cases where the interests of the child and those of their parent or other legal representative are in conflict. They safeguard the child's rights in civil proceedings and family matters, and do everything procedurally possible to ensure that decisions by official bodies in a particular case serve the child's best interests. In order to defend and adequately safeguard the child's best interests, they must first establish them.

Court expert. Court experts are persons appointed for an indefinite period with the right and duty to provide the court, at its request, with a report and opinion on professional matters, for which the law so provides or in respect of which the court considers that the assistance of an expert is necessary for its assessment. In family matters, courts appoint experts from the sub-fields of psychiatry, child psychiatry, clinical psychology, family psychology and social work.⁴⁶ In preparing an expert opinion, the court-appointed expert, amongst other things, determines the child's best interests in accordance with the field and sub-field of the discipline from which they were appointed. The expert opinion contains a report and an opinion based on the findings set out by the expert in the report. For the court, it represents one of the sources of information on the basis of which it decides in a particular case.

The judge. The court determines the child's best interests when the parents are unable to reach a mutual agreement on how to organise family relations and the child's life, or when their mutual decision does not serve the child's best interests. On the basis of expert opinions (from the Centre for Social Work, a court-appointed expert, etc.), the statements of the parties to the proceedings and the child's opinion, the judges decide on the child's best interests in each individual case by means of a final decision. Before making a decision, the court must determine how the child's best interests will be safeguarded and ensured to the greatest extent possible (e.g. in the case of divorce, Article 98 of the Family Code).

Staff at specialist centres (VIZ). The child's best interests are also assessed by the specialist centres where children and young people are placed under the ZOOMTVI. They determine the child's best interests by preparing an individualised programme for each child and monitoring its implementation in practice. They inform the competent court and the CSD of the programme evaluation, which is prepared with the child's best interests in mind. As they work with the child on a daily basis, they are an important source of up-to-date information regarding the child's best interests.

Other professionals in contact with the child. Other professionals who are in contact with the child through other forms of support, such as therapy, accommodation and schooling, can also provide important insights into the process of determining the child's best interests.

⁴⁶ For more information on individual fields and sub-fields, see the section 'Descriptions of professional fields and sub-fields of forensic expert and valuation work', Professional Council for Forensic Expertise, Valuation and Interpretation. < <https://www.gov.si/zbirke/delovna-telesa/strokovni-svet-za-sodno-izvedenstvo-sodno-cenilstvo-in-sodno-tolmacenje/> > .

* **Child advocacy at the VČP.** Child advocates do not judge what is in the child's best interests, but through in-depth conversations with the child, they can gather information that can be of great help to other stakeholders in determining what is in the best interests of that child. Child advocacy coordinators who work with parents can further supplement this important information.

Other persons involved in proceedings who are obliged to safeguard the child's best interests. These include, for example, foster carers and guardians of children, or the lawyers of the parties to the proceedings, i.e. the child's parents, who, in accordance with Article 7 of the Child Protection Act, are, like all others, obliged to safeguard the child's best interests in the course of their work. However, in order to protect the child's best interests effectively, they must first understand them and determine them in practice for each individual case.

Although the guidelines are primarily intended for professionals, they may also be useful for parents and others who wish to know more about the content and methods of determining the child's best interests.

Before proceeding to the substantive part of determining the child's best interests, it is worth emphasising once again that **parents bear primary responsibility for the care of their children and their best interests.** This stems from the principle of the primacy and equal responsibility of parents towards their children, which Article 135 of the Family Code interprets as: "Parents have the primary and equal responsibility for the care, upbringing and development of the child. The child's best interests are their primary concern. The state offers them assistance in fulfilling their responsibilities." In proceedings concerning family life, we therefore proceed from the assumption that, in practice, it is primarily the parents who are responsible for ensuring the child's welfare, and **only when it becomes apparent that the parents no longer have the child's best interests at heart may the state intervene in the regulation of family relations.** The positive obligation of the state, specifically the courts and the CSD, to protect the child's best interests stems from Article 154 of the Family Code.

2. Steps in the process of determining the child's best interests

The central question in determining the child's best interests is:

What are the best interests of this child?

A prerequisite for an entity to determine what is in the best interests of a specific child is that it **first familiarises itself with the principle itself**, i.e. what the best interests of the child mean in theory and in law, **and that it familiarises itself with the child and the context from which they come**. On the basis of this information, the person can determine what is in the best interests of a particular child and actively advocate for it.

When answering the question, the professional may ask themselves the following two sub-questions:

1. What does the best interests of the child mean?
2. Who is the child and what is the context from which they come?

The answers to these two questions are crucial both for laypeople determining the child's best interests in a specific case (e.g. by parents) and for judicial and professional staff (e.g. judges, social services professionals).

The answer to the first question, i.e. what constitutes the best interests of the child, can be found in these guidelines. The information is available in [Chapter 3 → STEP 1 / Familiarisation with the content of the principle of the best interests of the child](#).

The answer to the second question, i.e. who the child is and what context they come from, can be obtained by the professional from various sources, depending on the professional themselves and the purpose of determining the child's best interests. More information on how to gather information about the child, including sample questions, is available in [Chapter 4 → STEP 2 / Getting to know the child and their environment](#).

By answering the first two questions, the professional can begin to assess the child's best interests in the case of a specific child. More information on the process of determining the child's best interests, which results in the assessment itself, is available in [Chapter 5 → STEP 3 / Assessment of the child's best interests](#).

We suggest the following steps for determining the child's best interests:

STEP 1 / Understanding the principle of the best interests of the child ↷

- A. The best interests of the child in legislation and case law ↷
- B. Starting points for determining the best interests of the child ↷
- C. Elements of the best interests of the child ↷
- D. The best interests of the child in procedural terms ↷
- E. The best interests of the child in a substantive sense ↷

STEP 2 / Getting to know the child and their environment ↷

STEP 3 / Assessment of the child's best interests ↷

STEP 4 / Monitoring the pursuit of the child's best interests in practice ↷

The child's best interests may be determined by various parties in accordance with the steps outlined above. Regardless of whether it is a court making a final decision on the child's best interests in civil proceedings, a social worker at the Social Work Centre working with the family or parents as part of preliminary counselling, or a guardian *ad litem* representing the child's best interests, it is assumed that these bodies are already familiar with **the principle of the child's best interests (STEP 1)** and **know the child (STEP 2)**. Only by being familiar with both aspects can the professional **assess the child's best interests in a holistic manner (STEP 3)** and, where possible, in a multidisciplinary way, based on the information gathered and with a focus on the child.

Once the assessment of the child's best interests has been made, it is important to monitor the implementation of the child's best interests. In civil proceedings, this is primarily carried out by the CSD when working with the family, or by the specialist centre and foster carers in the case of placement. Further information on the monitoring process is available in Chapter 6 → STEP 4 Monitoring the pursuit of the child's best interests in practice.

Important! Determining the child's best interests is a process that continues throughout the duration of the proceedings and the family's case. Assessing the child's best interests is not a one-off exercise, but a professional judgement that can and must be adapted to the changing circumstances of the child and the family.

At the same time, it is worth noting that the steps involved are somewhat different for some parties than for others. For example, the determination of the child's best interests by guardians *ad litem* or parents and their representatives differs from that of judges, as the former are not official bodies that issue a decision or a professional opinion (in the case of the CSD) on the child's best interests in a specific proceeding. **Nevertheless, it is true that everyone involved**

in proceedings concerning children must follow the principle of the child's best interests, and must therefore be familiar with it and actively uphold it during the proceedings. As the process of determining the child's best interests, particularly in terms of providing an assessment, varies between these bodies, certain sections of the guidelines focus in greater detail on the determination of the child's best interests by specific bodies (e.g. the judiciary and the CSD).

The following table illustrates the process of determining the child's best interests for three bodies: the court, CSD professionals and court experts.

	The court	CSD	Court expert
1	Familiarisation with the content of the principle of the best interests of the child (in legislation, case law and theory).	Familiarisation with the content of the principle of the best interests of the child (in legislation, case law and theory).	Familiarisation with the content of the principle of the best interests of the child (in legislation, case law and theory).
2	Getting to know the child and their environment. - Opinion of the Social Work Centre. - Opinion of the court-appointed expert. - Informal interview between the judge and the child. - Reports from the VIZ, health services, the guardian <i>ad litem</i>, the advocate, and other persons in contact with the child... - Statements by the parties to the proceedings. Any other evidence deemed necessary in the specific case, particularly that based on a multidisciplinary approach.	Getting to know the child and their environment. - Discussion with the parents (as part of preliminary counselling or other work with the family). - Talking to the child. - Reports from VIZ, healthcare services, the guardian <i>ad litem</i>, advocacy services, other people in contact with the child... Gathering information through an MDT meeting. Other methods of gathering information deemed necessary in the specific case.	Getting to know the child and their environment. The methodology depends on the sub-field of forensic expertise (psychological tests, observation...) and the questions posed to the forensic expert by the court. This familiarisation includes: - An assessment of the family, parents and children (a conversation with each parent, a conversation with both parents, a conversation with the child, conversations with the child and each parent, a conversation with the whole family, a home visit, etc.) - Reports from VIZ, health services, the guardian <i>ad litem</i>, advocacy services, other persons in contact with the child...

3	Determination and assessment of the child's best interests. Presentation of the assessment of the child's best interests in a reasoned court decision. The court's decision may take the form of an interim order or a final decision.	Determination and assessment of the child's best interests. The CSD presents its findings on the child's best interests in various forms, depending on the case and the procedure: - in the minutes of the preliminary consultation, where the parents agree on the arrangements for the child's life, the CSD presents its opinion on whether the agreement is in the child's best interests. - in the CSD's opinion, which the CSD prepares for the court at the court's request.⁴⁷ - in a proposal to the court, which the CSD submits ex officio to protect children at risk and in the interests of the child.	A determination of the child's best interests based on the report and other information from the perspective of the expert's field of expertise. The court expert presents their expert opinion on the family, the child and/or the parents in an expert report. It is intended for the court and addresses the questions posed to the expert by the court upon their appointment. In the report, the expert states, either directly or indirectly, what is in the child's best interests in relation to the questions posed by the court.
4	Where necessary and depending on the proceedings, the court monitors the implementation of the child's best interests in practice in relation to the interim orders and final decisions it has made. Monitoring involves regular and periodic assessment and any necessary adjustments to ensure that the decisions and measures taken continue to meet the child's needs and protect their rights until a	The CSD monitors the pursuit of the child's best interests within the framework of the social welfare services it provides and by monitoring the implementation of measures to protect the child's best interests where such measures have been ordered.	Once an expert opinion has been submitted, court experts do not, in principle, monitor the pursuit of the child's best interests in practice.

⁴⁷ Article 29 of the DZ

permanent solution is established that is in accordance with the child's best interests (). In addition to its own monitoring, the court relies on reports from the Social Work Centre (CSD) on the monitoring of the child and family, as well as reports from specialist centres or foster families in the event of placement.		
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3. STEP 1 / Familiarisation with the content of the principle of the child's best interests

3.1. The best interests of the child in legislation and judicial practice

The pursuit of the child's best interests is a fundamental tenet of family law.⁴⁸ Although family legislation both domestically and internationally constantly refers to it, the concept remains open and legally undefined.⁴⁹ In the Slovenian legal system, the principle is defined to the greatest extent in Article 7 of the Family Code, whilst the ZNP-1 further operationalises the principle in a procedural sense in several provisions. At the international level, the key documents in the field of the best interests of the child are the ECHR and the case law of the ECtHR, which, as regards the substance of the principle, also influence the Slovenian legal system and the case law of Slovenian courts. In the following, we shall describe the concept of the best interests of the child using various legal, academic and other sources; an understanding of this concept is a prerequisite for the proper determination of the child's best interests in individual cases.

What constitutes the best interests of the child and what does not, in the context of Slovenia's legislative and legal framework?

3.1.1. The Convention on the Rights of the Child (CRC)

The key legal instrument for the protection of the best interests of the child at international level is the CRC, which stipulates that **the best interests of the child must be a primary consideration in all actions concerning children.**⁵⁰ Further clarification of the concept of the best interests of the child is provided by the Committee on the Rights of the Child:⁵¹

(1) The best interests of the child are a substantive right. It is the right of the child to have his or her best interests assessed and taken into account as a primary factor when weighing up various interests in order to reach a decision on the matter in question, and a guarantee that this right is respected whenever a decision must be made concerning a child, a group of specific or unspecified children, or children in general. It is a right that is both individual and collective. The provision creates an obligation for the state that is binding, has direct effect and, as such, is enforceable in court.⁵²

⁴⁸ Zoran Dimović, The Abstraction and Legal Ambiguity of the Concept of the Best Interests of the Child (2023), Legal Practice, No. 45/2023.

⁴⁹ Zoran Dimović, The Abstraction and Legal Nature of the Concept of the Child's Best Interests (2023), Legal Practice, No. 45/2023.

⁵⁰ The first paragraph of Article 3 of the KOP.

⁵¹ Adapted from Nana Weber (ed.) et al, Family Code with Commentary (2024), GV Publishing.

⁵² General Comment No. 14 of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14.

(2) The best interests of the child are a fundamental principle for the interpretation of the law. This means that where a legal provision allows for more than one interpretation, the one that most effectively safeguards the best interests of the child must be chosen.

(3) The principle of the best interests of the child forms part of the rules of procedure. Whenever a decision is made concerning a child, the decision-making process must include an assessment of the potential impact of the decision on the child. Furthermore, the decision must be transparent and reasoned, explaining how the child's rights were taken into account, what was considered to be in the child's best interests, the criteria on which this is based, and how the child's best interests were balanced against other considerations and the rights of the parties to the proceedings.

The Committee is also of the view that adults determining the child's best interests must not neglect the obligation to respect all the child's rights arising from the CRC,⁵³ and their assessment of the child's best interests cannot override the obligation to respect all the child's rights under the CRC.⁵⁴ In short, ensuring the principle of the child's best interests means attending to children's needs and respecting their rights.

The Committee further defines the elements that must be ensured for the consistent observance of the principle of the best interests of the child:

- developing a rights-based approach and
- the development of an approach that involves all stakeholders to
- ensure the child's holistic physical, psychological, moral and spiritual integrity and
- promote their human dignity.

3.1.2. Council of Europe Recommendations on the protection of the rights and best interests of children in parental separation proceedings⁵⁵ and in child protection proceedings⁵⁶

The purpose of the recommendations is to establish a common framework for the procedure for determining the best interests of the child in civil court proceedings in Council of Europe member states, whilst recognising the diversity of their legal systems.⁵⁷

⁵³ Adapted from Nana Weber (ed.) et al, Family Code with Commentary (2024), GV Publishing.

⁵⁴ 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)* (2013) <https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf>.

⁵⁵ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

⁵⁶ Recommendation CM/Rec(2025)5 of the Committee of Ministers to member states on the protection of the rights and best interests of the child in child protection proceedings. (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

⁵⁷ Preamble, Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

The recommendations identify **the following circumstances and factors as relevant to determining the best interests of the child:**

- the child's age, level of maturity and developmental capacities;
- the child's views, if the child has chosen to express them, or the child's position, if the child is unable to form or express their views;
- the appropriate preservation of the child's family and social environment;
- the willingness and ability of each parent to care for and meet the child's needs without discrimination on any grounds, including the willingness of one parent to allow the child to have meaningful personal relationships with the other parent or other persons significant to the child;
- the history of the child's upbringing and care;
- the protection of the child from physical or psychological harm or from abuse, neglect or violence;
- any situations of vulnerability or risk, and sources of protection and support;
- the child's developmental, emotional, educational and health needs;
- consideration of the child's right to maintain and develop their identity;
- the child's usual daily activities and hobbies.

At the same time, the recommendations emphasise that:

- **where the assessment of factors leads to conflicting conclusions, the factors must be carefully balanced in light of the circumstances of the specific case**, taking into account the short-, medium- and long-term consequences for the child;
- in proceedings that affect or could affect more than one child, **the best interests of the child must be assessed individually for each child**;
- the competent authorities must be given the opportunity to adopt **a multidisciplinary approach** when assessing the child's needs;
- the competent authority must uphold the child's rights and the principle that **the child should have as much direct contact with each parent as is in the child's best interests**; sufficient time must be allowed for the child to maintain and develop a meaningful relationship with each parent in accordance with the child's best interests;
- **the child's young age must not be a decisive factor** in depriving them of the right to establish and maintain contact with their parents;

- **if unrestricted contact is not in the child's best interests, consideration should be given to the possibility of supervised direct contact** or other forms of contact with the parent concerned; consideration should also be given to the possibility that, **in some cases, the absence of contact or the termination of contact may be in the child's best interests.**



In addition to the recommendations, the Council of Europe has also drawn up **the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice** (2010), which represent an important source of information on ways of ensuring the best interests of the child.

3.1.3. Family Code (FC)

Within the national legal system, the principle is most comprehensively defined in **Article 7 of the DZ**, the purpose of which is to give concrete form to this legal standard.⁵⁸ The provision in paragraph 3 sets out the conditions under which parents act in the child's best interests, namely if:

- they adequately meet **the child's material, emotional and psychosocial needs;**
- they do so through conduct that demonstrates their **care and responsibility towards the child;**
- they provide the child with **appropriate guidance;**
- **they encourage the child in their development.**

Parents do all this whilst taking into account:

- the child's personality;
- the child's age and stage of development;
- the child's wishes.

You can read more about the content of the principle of the child's best interests in procedural and substantive terms in the sections [The child's best interests in procedural terms ↗](#) and [The child's best interests in substantive terms ↗](#).

Based on legislation and case law, we can conclude that the best interests of the child comprise **the needs and rights of the child** and **the parents' capacity** to care for that child. If, in line with established practice abroad⁵⁹ and taking into account a more comprehensive

⁵⁸ Nana Weber (ed.) et al, Family Code with Commentary (2024), GV Publishing.

⁵⁹ A triangular model for determining the best interests of the child, which incorporates all three aspects, is used in, for example, the United Kingdom and Sweden. The Framework for the Assessment of Children in Need and their Families (2000), Department of Health, Department for Education and Employment and Home Office < <https://bettercarenetwork.org/sites/default/files/Framework-for-the-Assessment-of->

understanding of children's needs, we broaden our understanding of this principle somewhat, we can also include **the family and the wider social environment** within this framework as important factors in determining the best interests of the child in individual cases. In addition to the child and the parents themselves, the child's best interests are also influenced by the wider social environment in which the child lives. All three elements relating to the child's best interests are defined in more detail in the following chapter.

At the same time, when considering the individual elements, it is important that all of us who are assessing the child's best interests start from a more or less shared understanding of what the child's best interests are. Therefore, we first set out below some starting points that should be borne in mind when determining the child's best interests.

3.2. Starting points for determining the best interests of the child

What are the essential characteristics or elements of the principle of the child's best interests? What premises should we start from when determining the child's best interests? In this chapter, we aim to bring together the principles that are key to determining the child's best interests. They serve as a common denominator for all of us who, in various proceedings, determine what is in the child's best interests. In this way, we ensure that the various parties involved in determining the child's best interests in a particular case share a similar understanding of the basic assumptions underlying this principle even before the assessment begins.

These are guidelines of a general nature, which form the basis of the process of determining the best interests of the child.

1. **The best interests of the child must be a primary consideration when balancing the rights and needs of the child against the rights, responsibilities and legitimate interests of the parents or any other parties to the proceedings.** The best interests of the child is an independent legal standard by which the rights and interests of children are placed at the forefront of the proceedings and which is determined on a case-by-case basis for each individual family situation. In every case, however, it is necessary to balance the rights of those involved in the proceedings, with the best interests of the child taking precedence as a primary guiding principle. The concept of the 'primary guiding principle' of the child's best interests means that the child's best interests must be treated as a priority, particularly in light of children's lesser bargaining power in proceedings and the often lesser attention paid to them therein. The concept does not mean that the principle should generally be considered more important than the rights of parents. However, in the event of a conflict of rights and interests, the rights of parents must be subordinated to the rights and best interests of the child.⁶⁰ In cases of domestic violence, it is particularly true that the child's best interests and rights take precedence over all else.⁶¹ The child's best interests should therefore be a primary and guiding consideration.
2. **The child has the right to express their opinion during proceedings.** In all proceedings concerning them, the child has the right to freely form and express their opinion. Due consideration must be given to their opinion, taking into account their age and maturity. In civil proceedings, the child may express their views through a children's advocate at the VČP, a guardian *ad litem*, a social worker at the CSD, or in an informal discussion with the judge. This right also gives rise to the child's right to **child-friendly information in a language they understand**, as this is an important factor enabling the child to form their own opinion.

⁶⁰ Petruša Jager, *Trust in Care and Upbringing through the Lens of the Child's Best Interests* (2023), *Odvetnik* 109–110.

⁶¹ Article 5 of the ZPND.

3. **The child must not bear the burden of decision-making.** The child has the right to be heard in the proceedings, but must not bear the burden of deciding what is in their best interests. Adults must not shift the responsibility for decision-making onto the child or create a sense in the child that the outcome of the proceedings depends on their choice. It is the duty of parents and competent authorities to , taking into account all circumstances, including the child's opinion, to assess and decide what is in the child's best interests.
4. **Expressing their own opinion is a child's right, not a duty.** Children have the right, not the duty, to express their opinion during the proceedings. If they do not wish to express their views, or do not wish for them to be shared with others, we respect their decision and abide by it. The child must be given a genuine and real opportunity to express their views. Children must be properly informed that this is their right and not an obligation.
5. **The child's views and wishes should not be equated with the child's best interests.** The child's views and expressed wishes regarding the arrangement of their life do not necessarily indicate what arrangement is actually in their best interests. The child's opinion is an important element in decision-making, but it is not the only one. Case law also establishes that the child's best interests and their wishes are not necessarily synonymous.⁶²

The weight the court attaches to a child's opinion depends on their age and level of maturity. Whilst the opinion of a younger child does not, as a rule, yet reflect independent judgement, but is often primarily an expression of their attachment to a parent, the opinion of an older, mature and discerning child reflects to a greater extent their ability to form an independent view and may be regarded as an expression of the child's self-determination.⁶³

6. **Obtaining the child's opinion must be followed by a professional assessment of that opinion.** When we speak of a child's opinion in court proceedings, there are two aspects: *obtaining* the child's opinion through conversation and *assessing* it.⁶⁴ Both phases must be clearly defined and distinguished, as they are two different yet complementary aspects. The child has the right to be informed that experts and the court will weigh up their opinion and assess their understanding of the situation and the consequences of giving an opinion. In this regard, the child must be both informed and reassured.
7. **Domestic violence must be considered as a special circumstance that significantly affects the child's best interests.** In cases of domestic violence, it is important to recognise that the relationship between the partners is not equal, with one partner

⁶² VSL Decision IV Cp 1213/2021.

⁶³ Ana Šančić. The principle of the child's best interests in divorce proceedings. Master's thesis (2025), Faculty of Law, University of Ljubljana.

⁶⁴ Dr Anja Andrejč Balažic, Obtaining the Child's Opinion (2024), Judicial Bulletin, No. 2/2024, pp. 63–80.

exerting power over the other. To assess what is in the child's best interests in this context, a specific approach must therefore be applied,⁶⁵ which includes the application of the provisions of the Istanbul Convention.⁶⁶ At the same time, it must be borne in mind that the outcomes of proceedings conducted under the ZPND or the KZ due to violence, are directly linked to family proceedings and the assessment of the child's best interests by civil courts.

8. **Violence is not the same as conflict.** Conflict is a natural and expected part of all relationships. It involves differing desires, opinions and perspectives. Conflicts are unpleasant, but they are not dangerous in themselves. On the other hand, violence is dangerous. It involves behaviour in which a person abuses their power and stems from a perceived or actual imbalance of power between two or more people.
9. ***Parental alienation syndrome (PAS)*⁶⁷ is a non-scientific concept that is used as a syndrome without a theoretical basis.**⁶⁸ The term, coined in 1985 by the American child psychiatrist Richard Gardner, refers to an alleged phenomenon in divorce proceedings whereby one parent, usually the mother, is said to use manipulative behaviour to alienate the child from the other parent, usually the father. The concept as a syndrome has been rejected by the scientific community, as there is no reliable definition or tool for its identification, meaning it cannot be diagnosed or precisely defined by the clinical profession.⁶⁹ The use of the concept is extremely harmful, as it shifts the focus away from the actual problem—namely, domestic violence perpetrated by one parent—towards the behaviour of the parent who is not the perpetrator. In other words, alienation is perceived as a form of violence, which shifts the responsibility for the actual domestic violence onto the victims of the violence, who are alleged to be alienating the child.⁷⁰ The work of the institutions is thus not directed towards protecting the child's best interests, but towards adapting the child and the non-abusive parent to the behaviour of the parent who causes the violence, thereby allowing the latter to continue their control over the victim. In the guidelines, we advocate that the concept be abandoned in civil proceedings, as has already been done in some other legal systems, as it is harmful to victims of violence and the child's best interests.⁷¹

⁶⁵ More on assessing the best interests of the child in the context of domestic violence is provided in the guidelines below.

⁶⁶ When assessing a child's vulnerability, the Handbook on Dealing with Cases of Child Victims of Violence, Abuse or Neglect, with a form for determining the level of risk to the child in family court proceedings (2026), which was also produced as part of the project Ensuring the Best Interests of the Child in Civil Proceedings <<https://rm.coe.int/prirocnik-za-ravnanje-v-primerih-otrok-zrtev-nasilja-zlorabe-ali-zanem/48802b9489>>.

⁶⁷ *Parental alienation syndrome* or PAS

⁶⁸ For more details on the genesis of the concept and the criticism, see Vesna Leskošek, Conceptual changes in decision-making on child care and upbringing and contact in cases of violence (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239 <<https://repozitorij.uni-lj.si/Dokument.php?id=225931&lang=slv>>.

⁶⁹ The use of the term is rejected, among others, by the World Health Organisation and the American Psychological Association, two of the most prestigious institutions in the field of mental health.

⁷⁰ Vesna Leskošek, Conceptual changes in decision-making regarding child care and upbringing and contact in cases of violence (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239 <<https://repozitorij.uni-lj.si/Dokument.php?id=225931&lang=slv>>.

⁷¹ The Italian Supreme Court of Civil Justice has prohibited the reference to parental alienation syndrome in judicial decisions, notably in Judgment No. 13217 of 17 May 2021, in which it stated that the concept is not scientifically validated; Civil Cassation Judgment No. 13217 of 17/05/2021.

At the same time, this does not mean that in family proceedings there are no instances of parental influence on the child or cases of unjustified refusal of contact between the child and the other parent. Professionals encounter such cases in practice, and they also arise in proceedings where allegations of domestic violence do not feature at all. At the same time, the court must always pay particular attention to allegations of violence and examine them carefully, **as in cases of violence the child's refusal of contact may be justified** and it is not permissible to automatically attribute this to the conduct of the other parent.

- 10. Eliminating or mitigating the risk to a child is a key prerequisite for safeguarding the child's best interests.** In order to uphold this principle, the relevant authorities must first determine whether the child is at risk, in what ways they are at risk, and what measures can be taken to eliminate or mitigate the risk. Eliminating or mitigating the risk forms the basis for further measures to protect the child's best interests. From the perspective of child protection, this constitutes a single category of safeguarding the child's best interests, rather than two (legally) distinct situations. You either act in the child's best interests or you jeopardise them.⁷²
- 11. Determining the child's best interests is a process; the practical application of the principle may change over time.** Whilst the principle of the child's best interests must be followed throughout the entire procedure, the manner in which the principle is implemented in practice may vary. Depending on the circumstances of the case, changes in the child and the family, and the development of events, the ways of ensuring the child's best interests may change. For example, whilst contact with a parent may be in the child's best interests at a given moment, the situation may be different a few weeks later. Determining the child's best interests is therefore a process, and its content may change over time. Consequently, the identification and assessment of the child's best interests must be regularly reviewed, and the appropriateness of measures must be verified in light of any new findings.
- 12. The child's best interests are also linked to the best interests of other family members.** This understanding underpins systemic social work, where we help the child primarily by helping their family. By supporting the whole family, we also support the child.
- 13. The child's best interests must be assessed on an individual basis.** It is important that the child's best interests are determined for each child separately, taking into account their developmental age and needs. In cases where the best interests of several children who are members of the same family are being assessed, their best interests must also be assessed individually.

⁷² VSM Decision III Cp 111/2025

[https://sodnapraksa.si/?q=predhodno%20svetovanje&database\[SOVS\]=SOVS&database\[IESP\]=IESP&_submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111481263](https://sodnapraksa.si/?q=predhodno%20svetovanje&database[SOVS]=SOVS&database[IESP]=IESP&_submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111481263).

- 14. Determining the child's best interests requires cooperation: both between institutions and within them.** Inter-institutional cooperation is crucial for a comprehensive examination of the case from multiple perspectives. This involves the courts, Social Work Centres (CSDs), court experts from various disciplines, guardians ad litem, children's advocates, educational institutions, healthcare institutions and NGOs,⁷³ and, in cases of domestic violence and other criminal offences, the police and the prosecution service. Furthermore, cooperation within the sector is crucial, for example between different Social Work Centres across Slovenia, between individual departments of the same centre (e.g. the family protection department and the domestic violence prevention department), and within the courts (family proceedings, criminal proceedings)...
- 15. Payment of maintenance during proceedings.** The burden of maintenance during proceedings, which in family matters usually take a long time, must not be placed solely on one of the parents, as this is not in the child's best interests. The payment of maintenance must therefore be regulated by an interim order.
- 16. Timeliness of decision-making and exceptional diligence.** Timeliness of decision-making is crucial for safeguarding the child's best interests. Proceedings involving a child must be initiated and concluded in a timely manner.⁷⁴ Court cases under the Family Code concerning relationships between parents and children, adoption, the granting of parental care to relatives, foster care and guardianship are dealt with as a matter of priority⁷⁵, whilst proceedings to decide on measures to protect the best interests of the child are urgent under the ZNP-1.⁷⁶ Proceedings under the ZPND are also mandatory and given priority.⁷⁷
- 17. Abuse of the procedure is not in the child's best interests.** Overburdening the court with numerous unnecessary applications, the abuse of procedural rights—such as the excessive filing of applications for interim orders and legal remedies—and an improper attitude towards other parties to the proceedings are actions that do not serve the child's best interests and must therefore be discontinued and stopped.

In the context of domestic violence, legal and institutional abuse of the process often acts as a continuation of control over the victim and may be deliberate. Perpetrators of violence often use judicial and administrative proceedings as a strategy to continue controlling, intimidating and pressuring the victim (e.g. malicious lawsuits, repeated

⁷³ More on the work of individual institutions and inter-institutional cooperation in family matters can be found in the PIC educational materials, *Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law* (2026).

⁷⁴ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

⁷⁵ Article 14 of the DZ.

⁷⁶ Article 105 of the ZNP-1.

⁷⁷ Article 22a of the ZPND.

unfounded reports, delaying proceedings). Such conduct forms part of a pattern of coercive control.⁷⁸

In the following chapter, we focus on the factors to be taken into account when determining the child's best interests.

⁷⁸ The Association of Social Work Centres is currently drafting guidelines on the arrangement of contact between parents and children in cases of violence.

3.3. Factors relating to the child's best interests

When assessing the child's best interests, it is important to take into account findings from developmental psychology, which show that a child's well-being depends not only on the formal arrangement of their rights, but also on the quality of relationships, a sense of security and their psychosocial development in practice.

Although decisions regarding child care are a matter for legal proceedings, decision-making in accordance with the principle of the child's best interests often requires the inclusion of psychological aspects.⁷⁹ Research emphasises in particular the importance of the child's relationship with their parents, the level of conflict between them, and the parents' psychological functioning,⁸⁰ whilst taking into account the child's stage of development⁸¹ and the importance of early relationships for their development.⁸²

When determining the child's best interests, it is therefore necessary to take into account **not only the characteristics of the individual child, but also those of their parents, family and wider environment**. The child's emotional and psychosocial needs and difficulties must be considered, alongside the parents' parenting abilities, their parenting style and parental capacities. The relationship with the child encompasses the child's relationship with the parent, the parent's relationship with the child, their bond, the difficulties and functioning of each parent, and their personality traits. At the same time, it also includes the relationship between the parents themselves, their ability and willingness to reach agreements and cooperate with one another, and other circumstances relating to the family situation.⁸³

The elements discussed so far for determining the child's best interests can be divided into three categories:

1. The child and their (developmental) needs.
2. The parents and their parenting capacities.
3. The family and the wider social environment.

Together, these three elements form a triangle on the basis of which we can determine the child's best interests.⁸⁴ Before determining the child's best interests, however, we must first understand these elements. Below, we present each one individually and offer suggested questions that various stakeholders can use to assess the child's situation and their best interests. With a shared understanding of the child's developmental needs, parental capacities

⁷⁹ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

⁸⁰ Kelly, J. B. (2007). Children's living arrangements following separation and divorce: Insights from empirical and clinical research. *Family Process*, 46(1), 35–52.

⁸¹ Piaget, J., Inhelder, B. (2000). *The psychology of the child*. Basic Books. (Original work published 1969)

⁸² Žvelc, G. (2021). *Developmental theories*. Scientific Publishing House of the Faculty of Arts.

⁸³ Dr Anja Andrejč Balažic, Obtaining the child's opinion (2024), Judicial Bulletin, No. 2/2024, pp. 63–80.

⁸⁴ A similar model is used in, for example, the UK and Sweden. The Framework for the Assessment of Children in Need and their Families (2000), Department of Health, Department for Education and Employment and Home Office <<https://bettercarenetwork.org/sites/default/files/Framework-for-the-Assessment-of-Children-in-Need-and-Their-Families---Guidance-Notes-and-Glossary.pdf>>; Socialstyrelsen, BBIC Grundbok - Barns behov i centrum (2023) <<https://www.socialstyrelsen.se/contentassets/06b772880f314d5ab08a6a995448b371/2023-9-8734.pdf>>.

and the influence of the wider family and environment on the child, we can also assess the child's best interests in a professional manner in practice – for each child individually.

3.3.1. Children and their (developmental) needs

What is in the child's best interests in relation to their developmental needs?

Realising the child's best interests means, among other things, meeting the child's developmental needs. **Children's developmental needs** are physiological, sensorimotor, emotional, intellectual and psychosocial in nature and vary according to the child's age or stage of development. Important developmental needs of children also include the need for emotional security, stable relationships and developmentally appropriate support from adults.⁸⁵

Children at different stages of development understand relationships, conflicts, separations, changes and the processes in which they are involved in different ways. A child's stage of development influences their ability to understand a situation, express an opinion, regulate emotions and experience a sense of security and stability. When assessing the child's best interests, it is therefore important to consider not only the child's chronological age, but also their developmental maturity, individual characteristics and how they experience a specific situation.⁸⁶ By understanding the developmental needs a child has at a particular stage of development, we can determine how the child's life deviates from the optimal or from what is in the child's best interests.

When organising a child's life, we must take into account the developmental needs of **the individual child**. Developmental needs change according to the child's age and stage of development; therefore, the child's best interests is not a static concept, but one that is developmentally conditioned. The same arrangement may have different consequences for a child at different stages of development; therefore, when making an assessment, one must always consider how specific circumstances affect the child's emotional development, sense of security and day-to-day functioning.



Users of the materials can find more information on children's developmental needs according to age in the professional article "**Children's Developmental Needs (2010)**", prepared by the Slovenian Psychological Association, Section of Social Welfare Psychologists.



Similarly, the leaflet "**Children's developmental needs and how to respond to them**" (2021), prepared by the Psychologists' Group at the Community of Social Work Centres of Slovenia, is also available. The latter contains similar information and is suitable for the general public (e.g. parents).

⁸⁵ Philip A. Fisher, P. A., Katie Bruce, K., & Seth S. Pears, S. S. (2011). The impact of early life stress on children's emotional development. *Current Directions in Psychological Science*, 20(4), 211–215. Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC3918896/>

⁸⁶ März, J. W. (2022). What does the best interests principle of the Convention on the Rights of the Child mean for paediatric healthcare? *European Journal of Pediatrics*, 181, 3805–3816. Available at: <https://pubmed.ncbi.nlm.nih.gov/36083315/>

It is important to recognise that children's needs and interests are distinct from their parents' rights, even though they are linked to them and do not exist in a vacuum.⁸⁷

3.3.2. Parents and parenting capacities

Parental capacities represent a multidimensional construct that encompasses **behavioural, emotional and cognitive aspects of parental functioning and enables parents to meet their child's developmental needs in a flexible manner**. This does not refer to individual, isolated behaviours, but rather to the holistic fulfilment of the parental role in various situations. It is also important to note that parental capacities encompass the parents' personal resources, the quality of their relationship with the child, and the broader family and social context; therefore, their assessment requires a holistic and individualised approach.⁸⁸ A close relationship with a parent possessing good or adequate parental capacities, however, offers a wide range of benefits for children.⁸⁹

In the context of family proceedings, parental capacities are frequently assessed by court-appointed experts in the field of clinical psychology. *The Guidelines for Forensic Clinical Psychological Work in the Field of Parenting and Guardianship*, issued by the Slovenian Chamber of Clinical Psychologists, set out various parameters relating to parenting, and on the basis of which clinical psychologists assess parents' skills and their ability to meet their children's needs.

According to *the guidelines*, the following aspects of parental functioning are important **when assessing parental capacities**:⁹⁰

- **meeting the child's needs** for safety, care and nurturing, emotional attachment, supervision, learning school and life skills, teaching age-appropriate responsibility, independence and autonomy, providing appropriate role models for the development of gender roles, and avoiding belittling and neglect;
- **the parents' views and beliefs about the child** (their expectations of the child, recognition of the child's needs) and the relationship between parents and child;
- **the parents' parenting style**, methods and appropriateness of setting boundaries, ways of reinforcing desired behaviours, and establishing and enforcing appropriate consequences for undesired behaviours;

⁸⁷ KRUK, Edward. Child Custody, Access and Parental Responsibility: The Search for a Just and Equitable Standard. Vancouver: The University of British Columbia, 2008, pp. i–84, <<http://www.thecustodyminefield.com/research/kruk2008.pdf>>.

⁸⁸ Jiménez, L., Sánchez-Martin, M., Lorence, B., Herrera-Collado, E., & Hidalgo, V. (2025). Validation of the Interview for the Assessment of Parental Competencies (ECP-12). *Journal of Family Issues*. <<https://journals.sagepub.com/doi/10.1177/0192513X251362457>>.

⁸⁹ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), *Judicial Bulletin*, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

⁹⁰ Kodrič, Jana (ed.), *Guidelines for forensic clinical psychology work in the field of parenting and guardianship* (2019). Chamber of Clinical Psychologists of Slovenia. <https://klinikna-psihologija.si/wp-content/uploads/2023/04/zkpsi_smernice_2019_izvedenstvo_skrbnistvo.pdf>.

- **the relationships between parents**, their communication and decision-making, support between parents, and maintaining a relationship with the other parent;
- **the parents' mental and physical health and their psychosocial adjustment**: the parents' personality, behavioural and other characteristics that influence their parenting and their ability to meet the child's needs (e.g. any violent behaviour or abuse of the child or partner, potential immaturity in the parental role, problem-solving skills, planning, stability, flexibility, resilience, risk of violent behaviour, mental and personality disorders in parents...);
- **the family dynamics** (how family members interact, communicate, divide roles, resolve conflicts and influence one another);
- **the support parents receive from their social environment**: grandparents and other relatives, new partners, school and other professional services, parents' working environment, opportunities for change;
- **the parents' work commitments, timetables and other socio-economic factors** and circumstances that may affect the provision of the child's needs;
- **the parents' willingness to reach an agreement**: the ability to prioritise the child's needs over their own, the ability to cooperate with the other parent, the parents' psychological skills to prevent negative emotions towards the other parent from affecting the child, and the effective implementation of joint care for the child; an agreement is possible and desirable provided there is no domestic violence;
- **the cultural and ethnic influences, values and religious beliefs** of each parent, which may affect their parenting abilities.

In practice, parental capacity means, among other things, that both parents are able and willing to⁹¹ :

- occasionally spend time physically together with the other parent in the same room in the presence of the child without conflict;
- attend events that are important to the child together (at school, at sporting events, during family gatherings);
- create a sense of benign intimacy with the other parent when they are together with the child (a genuine intention to greet each other, to share a smile);

⁹¹ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

- allow the child to connect with the ‘absent’ parent without feelings of guilt or fear of upsetting the parent who is present, especially when the child is struggling;
- foster a sense that, as a family, they live in a separate yet connected family (through actions such as meeting at events that are important to the child, open communication about everyday events in the child’s life, and so on);
- put the child’s needs before the parents’ needs.

Case law also provides important insights into parental capacities in relation to the child’s best interests in terms of upbringing and care, such as the observation that ‘[p]erfect balance in parental capacities is an ideal that is often, or even as a rule, not achieved in real life. The question is therefore not whether both parents are equally suitable for upbringing and care, but whether the deviation from the ideal is such that it could jeopardise the child’s best interests.’⁹²

3.3.3. The family and the social environment

In what ways does the wider social environment contribute to ensuring the child’s best interests? What is in the child’s best interests in a broader social sense? Which social circumstances must not influence the assessment of the child’s best interests (e.g. the family’s socio-economic status)?

To understand children in relation to their environment, the so-called **ecological perspective, or ecological model**, is important; it helps us understand the influences of the environment on a child’s development and life. According to this model, an individual’s characteristics and traits can be influenced by their interactions with the environment. When determining the child’s best interests, it is essential to recognise that a child’s healthy development can be ensured in various family structures – therefore, it is crucial to involve all persons who will be actively involved in the child’s care, or all those whom the child perceives as their family, in the determination of the child’s best interests.⁹³

The following factors are important when determining the child’s best interests:

- **Community resources.** It is important to consider what support and service options are available to the child and family in the local environment. These include, in particular, access to nursery, school, health services, counselling and therapy programmes, leisure activities, NGOs and other forms of formal and informal support. It is also important to consider whether the family actually makes use of these resources and whether they contribute to the child’s stability, safety and development.

⁹² VSRS Decision II Ips 11/2025.

⁹³ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

- **Social integration of the family.** It is necessary to assess the extent to which the family is integrated into the social environment in which it lives, and whether it has established stable and supportive links with the local community. The child's involvement in nursery, school, extracurricular activities and peer groups is important, as is the parents' social status and their integration into the local community. A higher level of social integration generally means greater stability and more support mechanisms for the child.
- **Income.** The family's income situation is important in terms of providing the child with basic living conditions, such as food, clothing, school supplies, healthcare and other everyday necessities. In this regard, it is not merely the level of income in itself that is decisive, but above all the question of whether the family can provide the child with appropriate conditions for safe, stable and dignified development.
- **Employment.** It is important whether the parents are employed, how stable their employment is, and how their work commitments affect their ability to care for the child. In this regard, consideration must be given not only to the economic significance of employment, but also to the organisation of time, the parents' availability, the possibility of reconciling work and parental responsibilities, and the potential impact of unemployment or unstable working conditions on the family environment.
- **Housing.** The living conditions in which the child lives or would live are important. Consideration must be given to the suitability, safety, adequacy of space and stability of the home, as well as the question of whether the child can fulfil their basic needs for safety, privacy, rest, learning and daily routine within it. Living conditions are an important element of the assessment, as they directly affect the child's well-being and sense of stability.
- **Family network.** It is necessary to assess the level of support the family receives from the wider family circle and immediate social circle. It is important to consider whether grandparents, siblings, other relatives or other close individuals are involved in the child's life, as they can contribute to the child's safety, continuity of relationships and emotional support. The family network can be an important protective factor, particularly during times of distress, conflict or major life changes.
- **Family history and functioning.** It is important to understand the family's past functioning, patterns of relationships between its members, and how the family has met the child's needs in the past. Consideration must be given to the continuity of care for the child, the quality of relationships, any past conflicts, stressors, experiences of domestic violence, neglect or other hardships, as well as protective factors and the family's ability to respond appropriately to the child's developmental needs. This is a parameter that enables a broader understanding of the child's situation within a specific family environment.
- **Outside the family context.** The child's best interests are not shaped solely within the family, but also within the wider environment in which the child lives. It is therefore

important to take into account the influence of school, nursery, peer groups, the local environment, institutions and other external factors that affect the child's daily life. This context can make a significant contribution to the child's stability and development or represent an additional source of stress, and must therefore be given due consideration in the assessment.

3.3.4. The benefits for children and families in need of additional support

The best interests of a child who requires additional support,⁹⁴, do not differ from those of other children in terms of the fundamental legal principle, but rather in the way in which the child's best interests are determined and realised. In such cases, too, the child's needs for safety, stability, emotional well-being, development and relationships are assessed in accordance with the guidelines in sections 3.1.2. and 3.3.1. – 3.3.3., but it is necessary to additionally verify which adjustments, services and forms of support the child needs in order to be genuinely included, heard and protected in the process. This follows both from the CRC and the Convention on the Rights of Persons with Disabilities, which explicitly requires that the best interests of children with disabilities be a primary consideration in all actions concerning them and that they have the right to express their views with appropriate support.

It is therefore crucial to recognise that, for these children, the assessment of their best interests must not remain at the level of abstract equality, but must take into account their specific needs for adjustments. In practice, this means that particular attention must be paid to what kind of communication support the child needs, whether they require assistive technology, additional professional assistance, more time, a different method of questioning, the presence of a person they trust, or a more gradual and less stressful conduct of the proceedings. International standards also emphasise the right to procedural adjustments and access to legal protection on an equal footing with others.

As stated in the Committee of Ministers' recommendation, in proceedings involving a parent or child with a disability or with special or additional needs or vulnerabilities, **appropriate arrangements must be put in place to enable that parent or child to participate meaningfully in the proceedings.**⁹⁵

3.4. The child's best interests in procedural terms

Firstly, it should be noted that, in procedural terms, it is in the child's best interests for the parents to reach an agreement on matters relating to the child that is in the child's best interests, without the court intervening in the regulation of family relations. The

⁹⁴ Special needs may include, for example, disability, chronic illness, as well as belonging to an ethnic minority, a migrant background, speaking a different language ...

⁹⁵ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

parents may reach a mutual agreement on their own or following preliminary counselling at the Social Work Centre. It is assumed that the agreement they reach must be in the child's best interests, and that **reaching an agreement is detrimental in cases of domestic violence**; therefore, professionals must not encourage consensual decisions in such cases.⁹⁶

We determine the child's best interests in both a substantive and a procedural sense. How should the proceedings be conducted to ensure they are in the child's best interests? In this chapter, we offer guidelines for determining the child's best interests in procedural terms – how to conduct proceedings in a manner that is child-friendly, understandable and accessible, that does not leave the child with negative consequences, and that always pursues the child's best interests.

Conducting proceedings in a manner that is in the child's best interests prevents the child from being subjected to secondary victimisation during the court proceedings. Secondary victimisation means that the child suffers additional psychological distress or new harm as a result of the proceedings themselves and the conduct of the institutions, not just because of the (traumatic) event that is the subject of the proceedings (parental divorce, domestic violence, etc.). It is therefore a “secondary injury” that may be caused by the police, the court, experts, lawyers and other participants if the proceedings are not conducted in a manner that is in the child's best interests. Secondary victimisation can occur particularly in cases of repeated interviews with the child, protracted proceedings, uncoordinated action by various institutions, and the child's exposure to conflict between the parents or the perpetrator. Such experiences can cause the child additional distress, a sense of insecurity and a reliving of traumatic events. Guidelines for dealing with children, particularly in cases of sexual abuse, therefore emphasise the need for proceedings that are as coordinated and child-centred as possible, reducing the number of hearings and ensuring a safe and predictable environment for the child. An example of such an approach is the Barnahus (Children's House) model, which, by integrating various professionals, makes a significant contribution to the prevention of secondary victimisation.⁹⁷ Secondary victimisation occurs primarily in cases where children have **already been exposed to domestic violence**, and are then further victimised by disputes regarding their care, upbringing, contact arrangements and other aspects of their lives.

Family proceedings are proceedings that regulate personal status and family relationships. They are defined in Chapter X of the ZNP-1, under the heading ‘Proceedings for the regulation of personal status and family relationships’. In these materials, we refer to them simply as “family proceedings” or “family cases”.

⁹⁶ Reaching an agreement is not prohibited (the court and the CSD cannot prevent the parents from reaching an agreement), but the parties must not encourage this or demand an agreement. In the event of an agreement, the court must always carefully consider whether it is in the child's best interests and whether it is the result of the free and genuine will of both parents. If not, the agreement shall not be permitted.

⁹⁷ Johansson, S., Stefansen, K., Bakkevig, E., & Kaldal, A. (2017). Collaborating against child abuse: Exploring the Nordic Barnahus model. Palgrave Macmillan.

As the European Parliament emphasises,⁹⁸ courts should act in accordance with the principle of the best interests of the child, and particularly where there are indications of domestic violence, they should conduct proceedings to determine custody and access rights **in a comprehensive manner that includes:**

- hearing the child,
- cooperation with all relevant services (inter-agency cooperation),
- the provision of psychological support, and
- taking into account the professional knowledge and experience of the experts involved.

As regards the procedure, the European Parliament also emphasises as a key point that **indications of domestic violence must be addressed before issues relating to the arrangement of care, upbringing and contact.**⁹⁹

When determining the child's best interests, we must bear in mind all the options offered and prescribed by procedural law in the family sphere. **A child advocate** (an institution within the Family Court) may be appointed to obtain the child's views in a child-friendly manner and to alleviate the burden on the child during the proceedings, whilst **a guardian ad litem** is appointed to protect the child's procedural and substantive rights. Attention must then be paid to who, when and in what manner conducts the interview with the child, and how the length of the proceedings affects them.

Before analysing when individual institutions act in the child's best interests, it is first necessary to analyse the provisions of the Criminal Procedure Act (DZ) and the Civil Procedure Act (ZNP-1), which safeguard the best interests of the child in a procedural sense in several articles.

3.4.1. Procedural protection of the child's best interests

In procedural terms, the following actions may be in the child's best interests in a particular case:¹⁰⁰

- the court, acting ex officio, orders measures to protect the child's best interests, decides to terminate a measure, orders a different measure, decides to extend an ordered measure, or re-orders a measure;¹⁰¹
- the presentation of new facts and the submission of new evidence until the issuance of a decision concluding the proceedings at first instance;¹⁰²

⁹⁸ Paragraph Q, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

⁹⁹ Paragraph Q, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁰⁰ The second paragraph of Article 6 of the ZNP-1.

¹⁰¹ Article 160 of the DZ.

¹⁰² Articles 29 and 34 of the ZNP-1.

- requesting the court to have the CSD represented by a lawyer or another person who has passed the state legal examination (e.g. a request to the Ministry of Justice of the Republic of Slovenia);¹⁰³
- the provision of information necessary for the decision by controllers, organisations and persons in possession of such information, even against the will of the person to whom the information relates;¹⁰⁴
- the use of a transcript or an audio or audio-visual recording of an interview with a child from other legal proceedings as evidence, including a written expert opinion from other legal proceedings;¹⁰⁵
- shortening of time limits in proceedings concerning personal status and family relations;¹⁰⁶
- a prohibition on concluding a court settlement if it is not in the best interests of the child;¹⁰⁷
- a prohibition by the court on the presence of a person if it considers that the person is not someone the child trusts and has chosen themselves, or that their participation in the proceedings would not be in the child's best interests;¹⁰⁸
- a court decision not to allow the parents to inspect the record or to listen to or view a recording in which the child has expressed their opinion;¹⁰⁹
- the appointment of a guardian *ad litem* for the child (by the Family Court);¹¹⁰
- the court issuing a new decision on the care and upbringing of the child and contact arrangements, if this is in the child's best interests and the changed circumstances so require;¹¹¹
- the inclusion of the child in mediation by the mediator (a child who is capable of understanding the meaning and consequences of mediation);¹¹²
- prohibition of mediation if it is not in the child's best interests;¹¹³

¹⁰³ Article 46 of the ZNP-1, Article 12 of the State Legal Service Act.

¹⁰⁴ Article 48 of the ZNP-1.

¹⁰⁵ Article 48 of the ZNP-1.

¹⁰⁶ Article 50 of the ZNP-1.

¹⁰⁷ Article 51 of the ZNP-1 and Articles 138, 141, 191 and 197 of the DZ.

¹⁰⁸ The third paragraph of Article 96 of the ZNP-1.

¹⁰⁹ Article 96 of the ZNP-1.

¹¹⁰ Article 97 of the ZNP-1.

¹¹¹ The fourth paragraph of Article 138 and the eighth paragraph of Article 141 of the DZ.

¹¹² Article 210 of the DZ.

¹¹³ The third paragraph of Article 205 of the DZ.

- appointment of a guardian *ad litem* for the child;¹¹⁴
- an interview between the CSD and the child, taking into account the child's age and other circumstances;¹¹⁵
- the presence of a person whom the child trusts and chooses themselves during the interview between the child and the CSD, and a prohibition on the presence of a specific person if their participation would not be in the child's best interests;¹¹⁶
- prohibiting parents from inspecting the minutes of the interview between the CSD and the child.¹¹⁷

Under the ZPND, children also enjoy special procedural protection and care. In cases of domestic violence, the following actions are in the child's best interests from a procedural perspective:

- the court may issue a reasoned decision determining a measure without sending the application to the perpetrator of the violence for a response, where the application indicates that there is a likelihood that the perpetrator of the violence is endangering the life or seriously endangering the health of the victim or her children, or where this is necessary to protect the child's interests;¹¹⁸
- proceedings under the ZPND are urgent and take precedence;¹¹⁹
- the public is excluded from proceedings under the ZPND.¹²⁰

Under the Act, **a child is also considered a victim of domestic violence if they are present when violence is being perpetrated** against another family member or if they live in an environment where violence is taking place.¹²¹

Below, we outline certain procedural measures that may be in the child's best interests.

3.4.2. The child's advocate

Is it in the child's best interests to have an advocate appointed?

¹¹⁴ Article 273 of the DZ.

¹¹⁵ The first paragraph of Article 274 of the DZ.

¹¹⁶ The first paragraph of Article 274 of the Constitution.

¹¹⁷ The second paragraph of Article 274 of the Constitution.

¹¹⁸ Article 22.d of the ZPND.

¹¹⁹ The fourth paragraph of Article 22a of the ZPND.

¹²⁰ The sixth paragraph of Article 22a of the ZPND.

¹²¹ Article 3.a of the ZPND.

About advocates and advocacy

A child advocate provides professional support to help the child express their views in all proceedings and matters in which they are involved.

Advocacy is organised and managed by an internal unit of the VČP. The network of advocates operates throughout Slovenia, ensuring that all children have equal access to an advocate. At regional level, the work of child advocates is led and guided by regional coordinators.

An advocate enables the child to be an active participant in family proceedings and not merely the subject of a decision. This ensures the child's right to be heard, as set out in Article 12 of the CRC. Advocacy contributes to fairer and more comprehensive decisions, as decision-makers have the opportunity, upon completion of the advocacy process, to familiarise themselves with the child's opinion, obtained in a child-friendly manner and in accordance with the child's age and capacity. Advocacy is voluntary, without coercion, and tailored to the child's age and understanding.



The advocacy process is defined by the **Human Rights Ombudsman Act (ZVarCP)** and the **General Act on the Method of Implementing Child Advocacy**, the **Organisation of Advocacy**, and the **Involvement of the Child in Advocacy**.

Advocacy in the best interests of the child

In proceedings where decisions about their future are being made, children have the right to express their views. It is the duty of adults to enable them to exercise this right should they wish to do so. One of the ways in which this right can be realised is through advocacy. **An advocate is appointed for a child only if the VČP, on the basis of information obtained from the CSD, the court and the parents, determines that such an appointment would be in the child's best interests.**

Under Article 25a of the Child Protection Act, **a request for the appointment of an advocate may be made by anyone** who believes that the child is unable to exercise their right to express their opinion, which would be in the child's best interests. In practice, a child is most often involved in advocacy in the following cases:¹²²

- decisions regarding contact with parents;
- placing a child in care;
- removal of the child from the family;
- arranging contact with other relatives;

¹²² Advocacy for children. Do we listen to children when deciding on their future? (2018) Human Rights Ombudsman. <https://www.varuh-rs.si/fileadmin/user_upload/pdf/zagovornik/Zlozenke_publikacije/VCP_ZOTROK_strokovna2018_web.pdf>.

- the child's schooling or transfer to another school.

An advocate is **not appointed** for the child **if**:

- the child requires therapeutic treatment (psychologist, child psychiatrist);
- the child's opinion does not affect the course of action (e.g. in the case of an emergency removal of the child, where the removal is truly necessary due to violence against the child or severe neglect, the child is not consulted – in this case, the removal must be carried out);
- the child requires legal representation (a representative or guardian for a specific case);
- the child is a victim of a criminal offence (other services and institutions are available in criminal proceedings to protect the child);
- the child, due to their age and maturity, will not be able to form and express their own opinion
- a decision is being made on an interim order (deciding on an interim order is a quick procedure, whereas guardianship is a process that takes longer, i.e. approximately two months);
- the proceedings are protracted; the child has already expressed their opinion several times during the hearing and is not changing it;
- the child has already been involved in numerous hearings;

If the VČP considers that the request for the appointment of a guardian is unfounded and not in the child's best interests, it shall inform the applicant of this.

Before appointing an advocate for the child, it is necessary to ascertain **whether the child consents to the advocacy** or not. Advocacy may only take place with the child's consent, as the child's participation in advocacy is their right and not an obligation.

It is in the child's best interests to be assigned a representative as soon as possible after a problem arises and whilst the proceedings are still at an early stage. If an advocate is appointed for the child early enough in the proceedings, there is a greater likelihood that the child's opinion will be more genuine. In protracted proceedings, the possibility of manipulation by the parents is considerably greater; moreover, the child is often weary of the whole situation, traumatised and/or convinced that their opinion does not matter at all. In practice, it is unfortunately still all too common for an advocate to be proposed only after the court, the Social

Work Centre (CSD) and/or the parents feel they have exhausted all other sources of help.¹²³ Advocacy is not as effective if the child is involved in the proceedings too late.



You can read more about the role, duties, working methods and qualifications of children's advocates in the educational materials *Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026)*.

3.4.3. Guardian *ad litem*

Is it in the child's best interests to have a guardian *ad litem* appointed?

A guardian *ad litem* is a guardian who represents the child in cases where the interests of the child and those of their parent or other legal representative conflict. They protect the child's rights in civil proceedings and family matters, and do everything procedurally possible to ensure that decisions by the authorities in a particular case are in the child's best interests.

The guardian represents the child only in relation to matters being decided in the specific proceedings. The guardian represents the child within the scope of the powers/duties entrusted to them in the specific court decision appointing the guardian *ad litem*.



The institution of the guardian *ad litem* is defined in **Article 269 of the Family Code** as a guardian for a specific case, and in **Article 45 of the Civil Procedure Act (ZNP-1)**.

The appointment of a guardian *ad litem* ensures the effective independent representation of the child in court proceedings and the protection of their best interests.

The appointment of a guardian *ad litem* is in the child's best interests where there is a parent-child conflict and the parents are unable or unwilling to safeguard the child's best interests themselves. If there is no doubt that the parents or legal representatives are capable of protecting the child's best interests, the child does not require a guardian *ad litem*, as they can safeguard the child's best interests in the proceedings themselves. In such cases, the appointment of a guardian *ad litem* is not in the child's best interests.

It is important not to assume that at least one of the parents is incapable of safeguarding the child's interests. In cases of, for example, domestic violence, the child's interests may be safeguarded by the parent who is not perpetrating the violence, even if the violent parent does not have the child's best interests at heart and is endangering them.

¹²³ PIC, *Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026)*.

As with children's advocates, it is important that the court **appoints a guardian *ad litem* immediately** if it assesses that the child's best interests will not be adequately protected by at least one of the parents. The court may realise early on in the proceedings that there is a conflict of interests between the parent(s) and the child. In practice, the guardian *ad litem* is often involved in the proceedings at a very late stage, which is not in the child's best interests.¹²⁴



You can read more about the role, duties, working methods and qualifications of guardians ad litem in the educational materials *Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026)*.

3.4.4. Informal interview between the judge and the child

Is it in the child's best interests for the judge to conduct an informal interview with them?

Generally speaking, it is in the child's best interests to express their views in civil proceedings concerning them, which is also their right. One way in which they can express their views is – depending on their age and other circumstances – **through an informal interview between the judge and the child**.¹²⁵ Such an interview always takes place without the parents being present.¹²⁶ Should the judge decide to conduct the interview, it is important that the judge is qualified to do so and is adequately prepared. The **judge's interview with the child must always be a positive experience for the child**.

Where a judge lacks the specific professional knowledge and skills required to conduct an interview, it is generally not in the child's best interests for the judge to conduct the interview. If the child's opinion is relevant to the proceedings, it may be more appropriate, from the perspective of safeguarding the child's best interests, for this opinion to be obtained by professionally qualified staff at the Social Work Centre (CSD) or by children's advocates at the Children's Protection Centre (VČP). Practice shows that informal interviews between children and judges are often stressful for the child and may cause additional distress; therefore, it is always necessary to assess which method of obtaining the child's views is the least stressful for them and most consistent with the principle of the child's best interests. In the case of professionals at the CSD, it is important that they take a proactive role in relation to the court, guide the choice of an appropriate method for obtaining the child's opinion and, where necessary, take the initiative to conduct a professionally appropriate interview.

Prior training of judges is important to ensure that the interview is adapted to the child's age, needs and development, and is safe and non-burdensome for them. When conducting an interview with a child, the judge must also be trained to recognise and prevent pressure being exerted on the child by parents and the wider social environment before and after the interview.

¹²⁴ PIC, Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026).

¹²⁵ The second paragraph of Article 96 of the ZNP-1.

¹²⁶ The second paragraph of Article 96 of the ZNP-1.

Furthermore, it is important that the interview takes place in a child-friendly space, that child-friendly information is made available to the child, that the child is prepared for the interview, and that a discussion is held with them regarding how they wish to be interviewed, whether they would like a support person present, and so on. If the judge is to conduct an informal interview with the child, the family must also be prepared for this, as it is a sensitive procedural step.

When deciding on an informal interview between a judge and a child, it must be borne in mind that **expressing their opinion is the child's right, not a duty**, and that the competent authority must provide the child with a genuine and effective opportunity to express their opinion, which includes ensuring appropriate conditions for carrying out this procedure.



As part of the same project, **the Protocol for Informal Interviews with Children in Civil Court Proceedings in Slovenia, with annexes (2026)**,¹²⁷ was prepared, which we recommend for further reading on the subject.

3.4.5. Duration of proceedings

In what ways does **the length of proceedings** affect the child's best interests?

Firstly, it should be emphasised that, under the Family Code, cases concerning parent-child relationships, adoption, the conferral of parental care on relatives, foster care and guardianship, as well as administrative matters under this Code, must be dealt with **as a matter of priority**.¹²⁸

The length of family proceedings can have a negative impact on the child's best interests, as it prolongs the period of uncertainty, conflict and emotional distress for the child. Delays in proceedings are never in the child's best interests,¹²⁹ and may constitute a violation of the right to a trial within a reasonable time; therefore, the judicial system must do everything in its power to prevent them.¹³⁰ In the case of protracted proceedings, the child lives in a state of instability, without clear arrangements regarding care, upbringing, contact, maintenance and other living conditions. International and European standards emphasise that the child's best interests relate not only to the final decision but also to the proceedings themselves; therefore, these must be conducted without undue delay and in a manner that causes the child the least possible distress. The speed of proceedings in family matters must therefore be understood as an independent element of safeguarding the child's best interests, not merely as a matter of procedural efficiency.

The protracted nature of proceedings is particularly problematic, as **the child's developmental needs**, perception of the world and best interests **change radically** over time. A decision taken

¹²⁷ Frida Burkelc and Metoda Maj, Protocol for informal interviews with children in civil proceedings in Slovenia with annexes (2026). Ensuring the best interests of the child in civil proceedings in Slovenia.

¹²⁸ The second paragraph of Article 14 and the third paragraph of Article 15 of the DZ.

¹²⁹ Council of Europe, **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice** (2010).

¹³⁰ Ana Šančić. The principle of the best interests of the child in divorce proceedings. Master's thesis (2025), Faculty of Law, University of Ljubljana.

too late may therefore no longer meet the child’s actual needs, whilst unmet needs in a specific situation may harm the child and have medium- and long-term detrimental consequences for the child, the family, society and the state.

3.4.6. Mediation

Is mediation in the child’s best interests?

Mediation in family matters is a process in which the parties voluntarily seek, with the assistance of one or more neutral third parties – mediators – to reach an amicable resolution to a dispute arising from family relationships.¹³¹ Through mediation, parents can resolve issues concerning the child’s life (care and upbringing, maintenance, contact with parents or other persons) by mutual agreement and set out their agreement in a proposal for a court settlement. The judge then objectively assesses whether the agreement reached by the parents is truly in the child’s best interests. The court will reject the proposal if it is not in the child’s best interests.¹³²

Mediation may take place before, during or after court proceedings,¹³³ but is primarily conducted before proceedings begin.¹³⁴ It may be conducted by CSD professionals, external providers from a list maintained by the MDDSZ,¹³⁵ or take place in court. During the mediation process, the child has the right to participate and express their own opinion, as well as the right to be informed.¹³⁶

As an alternative form of dispute resolution, mediation can be positive in many cases. Conflictual parental relationships and protracted court proceedings pose a risk to the child’s healthy psychosocial development and to their successful adaptation to the changes caused by the breakdown of the family unit and established way of life.¹³⁷ However, **mediation is not always in the child’s best interests; in cases of domestic violence, it is even prohibited.**

Mediation is in the child’s best interests when:

Mediation is not in the child’s best interests when:

¹³¹ Article 13 of the Family Code.

¹³² Second paragraph of Article 138, fourth paragraph of Article 141, third paragraph of Article 142 of the Family Code.

¹³³ The first paragraph of Article 205 of the Family Code.

¹³⁴ The second paragraph of Article 205 of the Family Code.

¹³⁵ The second paragraph of Article 206 of the Constitution.

¹³⁶ Article 12 of the KOP, Article 3 of the European Convention on the Exercise of Children’s Rights.

¹³⁷ Eva Jambrek, Children’s Participation in Divorce Mediation under the Family Code: From Concept to Implementation. Social Work Journal, Vol. 60, No. 1, pp. 37–54.

both parents voluntarily participate in it (which is also a prerequisite for mediation to take place) ¹³⁸	one parent agrees to participate due to pressure from the other parent or the belief that they “must participate”
the parents can participate on an equal footing	there is an imbalance of power in the relationship between the parents which cannot be adequately neutralised through mediation
both parents can participate safely in the process	there is a suspicion of domestic violence (in such cases, mediation and alternative dispute resolution are explicitly prohibited ¹³⁹)
the desire to cooperate is genuine	one of the parents is using mediation primarily as a means of delaying the process , exercising control over the other parent or evading legal obligations
both parents are capable and willing to communicate constructively and cooperate in resolving issues relating to the child	the conflict between the parents is so acute that an amicable resolution of the situation is objectively impossible
there is time available to seek solutions	the child’s best interests require immediate action (e.g. the issuance of a temporary order), which can be secured through court or other proceedings
it can reasonably be expected that the parents will act in the child’s best interests when seeking solutions	one or both parents are unable to steer the discussion towards solutions that are in the child’s best interests
there is a realistic possibility that mediation will help to reduce the conflict between the parents , thereby also reducing the child’s distress	there is no realistic prospect that the parents will reduce their conflict or shift their focus to alleviating the child’s distress
the parents are prepared to take responsibility for the agreements reached and to implement them consistently;	one or both parents are not prepared to take responsibility and consistently fulfil the agreements

¹³⁸ Article 13 of the Family Code.

¹³⁹ Article 210 of the Family Code, Article 22.e of the Child Protection Act.



When considering whether mediation is appropriate and suitable for the parties in a particular case, the CSD Ljubljana uses the questionnaire “**Would mediation be the right way to resolve your dispute?**”.¹⁴⁰

Is it in the child’s best interests to be involved in the mediation process?

A mediator may involve a child in mediation who is capable of understanding the meaning and consequences of mediation, if they consider this to be in the child’s best interests.¹⁴¹ At the same time, they must be able to recognise the fine line between respecting the child’s right to participate and the misuse of the child’s views for the parents’ personal interests.¹⁴² Mediators must be specially trained to work with children and use appropriate methods to facilitate their participation in accordance with the principle of the child’s best interests. It is advisable for the mediator to be skilled in communicating with children and to undertake training on working with children.

Where a child is involved, it is all the more important that the mediation process is conducted appropriately: keeping parents and children informed about the purpose of involving children in mediation, providing feedback to children on how their participation will or has contributed to the final decisions, and the mediator’s support for parents and children throughout the mediation process.¹⁴³

The benefits of involving children in mediation¹⁴⁴ :

- children are recognised, taken into account and heard,
- through their participation, they contribute to better final agreements,
- participation provides an opportunity for them to discuss the various options available to them regarding the arrangement of their relationship with their parents,
- participating in mediation teaches them how to make good decisions,
- helping parents to better understand their children,
- involvement can help improve communication between children and parents,
- a more active role in shaping their shared life and relationships,

¹⁴⁰ CSD Ljubljana, Would mediation be the right way to resolve your dispute? [Internal document].

¹⁴¹ First paragraph of Article 210 of the Family Code.

¹⁴² Guggenheim, M. (2005). What’s wrong with children’s rights. United States of America: Harvard University Press.; Ewing, J., Hunter, R., Barlow, A., & Smithson, J. (2015). Children’s voices: centre-stage or sidelined in out-of-court dispute resolution in England and Wales? Child and Family Law Quarterly, 27(1), 43–61.

¹⁴³ Graham, A., & Fitzgerald, R. (2010). Exploring the promises and possibilities for children’s participation in family relationship centres. Family Matters, 84, 53–60.

¹⁴⁴ The information cited is drawn from various international studies compiled in the following academic source: Eva Jambreč, Children’s participation in divorce mediation under the Family Code: From concept to implementation. Social Work Journal, vol. 60, no. 1, pp. 37–54.

- children's participation has a significant impact on parents, as it can increase their awareness of the impact of conflict on children,
- an opportunity for children to express themselves freely and talk about their experiences with a neutral third party who understands them and helps to reduce their fear and anxiety.

Risks of involving children in mediation¹⁴⁵ :

- children may feel a sense of responsibility for decision-making, which can be a burden;
- participation may increase a conflict of loyalty or the child's ambivalence regarding loyalty to their parents;
- there is a risk that the child's authentic and genuine voice will be overshadowed by their parents' words and actions, as children want to please their parents;
- when involving children in mediation, there is a risk that parents may not be able to constructively accept the information they receive from the mediator regarding their children's actual feelings and wishes, which could negatively impact their future relationship with the child,
- secondary victimisation of the child through the mediation process, if it is not conducted appropriately.

Given these risks, it is all the more important that **the mediator is trained in involving children** in mediation proceedings, as, with the right approach, they can inform parents of the purpose and methods of children's participation and, through appropriate methods and approaches, reduce the potential risks of secondary traumatisation for all involved.



More on involving children in mediation: Eva Jambrek, **Children's participation in divorce mediation under the Family Code: From concept to implementation**. Social Work Journal, vol. 60, no. 1, pp. 37–54.

3.5. The child's best interests in a material sense

From a psychological perspective, it is important that all decisions regarding the arrangement of a child's life are also assessed in terms of the child's experience, sense of security and the quality of relationships, as a formal arrangement in itself does not guarantee the child's best interests. What kind of arrangement for a child's life is in their best interests? In this chapter, we examine three key institutions for organising a child's life from the perspective of the

¹⁴⁵ The information cited is drawn from various international studies compiled in the following academic source: Eva Jambrek, *Children's Participation in Divorce Mediation under the Family Code: From Concept to Implementation*. Social Work Journal, vol. 60, no. 1, pp. 37–54.

child's best interests: contact between the child and a parent, joint care and upbringing, and maintenance.

Domestic violence must be taken into account as a key factor in decision-making, particularly when determining access arrangements and matters of care and upbringing.

As the European Parliament emphasises, 'failure to take such violence into account has serious consequences for women and children, which can escalate into femicide and/or infanticide',¹⁴⁶ which is certainly not in the child's best interests, and even constitutes a violation through the neglect of human rights to life, to a life free from violence and to the healthy development of women and children.¹⁴⁷ As criminal proceedings arising from reports of domestic violence are often dealt with entirely separately from family proceedings, this leads to joint custody and care of the children being ordered and contact rights being established, even though such arrangements jeopardise the rights and safety of the victim and the children. In the context of violence, such an arrangement regarding the child's life can have **irreparable consequences for the child's mental and emotional development** and negatively affect their best interests.

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3.5.1. The child's contact with the parent

How should a **child's contact with a parent** be arranged to be in the child's best interests? In which cases is contact beneficial and when is it not?

Contact ensures the child's best interests, unless such contact is not in the child's best interests.¹⁴⁹ A child has the right to contact with both parents, and both parents have the right to contact with the child¹⁵⁰, but their right must not become an obligation for the child.¹⁵¹ A child has the right to maintain regular personal contact and a direct relationship with both parents, even if separated from them, unless this is contrary to their best interests.¹⁵² In this case, the child's right must be restricted.¹⁵³ It is not merely contact with a parent that is beneficial to the child, but **the quality of that contact**.¹⁵⁴ Contact must be in the child's best interests in terms of both **the extent and the manner in which it is exercised**.¹⁵⁵

¹⁴⁶ Paragraph Q, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁴⁷ Paragraph 10, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁴⁸ Paragraph W, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁴⁹ The first paragraph of Article 141 of the Constitution.

¹⁵⁰ The first paragraph of Article 141 of the Family Code.

¹⁵¹ Vesna Leskošek, Conceptual changes in decision-making regarding the care and upbringing of children and contact in cases of violence (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239 <<https://repozitorij.uni-lj.si/Dokument.php?id=225931&lang=slv>>.

¹⁵² The third paragraph of Article 9 of the KOP.

¹⁵³ Paragraph S, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁵⁴ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

¹⁵⁵ Weber, N. (2019). Contact with parents.

A child's **capacity for contact** depends on their age, developmental characteristics, their response to the separation, and other factors specific to each individual child. For guidance on recommended contact arrangements, professionals may refer to the following table¹⁵⁶ :

Age	Developmental characteristics	Response to separation	Recommendations for contact
Infant, 0–11 months	Multiple attachment relationships. Development of basic trust.	Anxiety. Sleep and feeding disturbances. Regressive behaviour.	Frequent contact with both parents (at least 3–4 times a week), including care, feeding, putting to sleep, play and soothing. Predictable routines. Daily communication between parents to coordinate routines and exchange information.
Toddler, 12–18 months	Motor development (crawling, walking). Communication development. Expressing basic emotions (hugs, kisses, anger, fear, anxiety).	Anxiety. Sleep and feeding disturbances.	Frequent contact with both parents (at least 3–4 times a week), including care, feeding, putting to sleep, playing and soothing. Predictable routines. Daily communication between parents to coordinate routines and exchange information.
Toddler, 18–36 months	Attachment to multiple carers. Responsiveness to different parenting styles. Development of autonomy (stubbornness). Ability to self-soothe (blanket, toy...). Speaking in sentences.	Fear of separation. Sensitivity to tension, anger or violence between parents. Resistance to transitions.	Frequent contact with parents (may be separated from a parent for a total of 2 to 3 days). Predictable routines. Daily telephone contact can have a calming effect. The child should have a photograph of the absent parent in their room. Overnight stays depending on the relationship with the parent.

¹⁵⁶ Dobnik Renko, B. Stages of Child Development (2023). Used with the author's permission, adapted from Bunker Rohrbaugh, J. (2008). A comprehensive guide to child custody evaluations: Mental health and legal perspectives. New York: Springer.

Preschool child aged 3 to 5	Egocentricity. Impulsiveness. Concrete thinking. Nightmares. Changing sleep patterns.	Feelings of responsibility for the separation. Susceptibility to parental influence. Feelings of abandonment. Anxiety when not with the expected carer. Agitation during transitions from one parent to the other. Regressive behaviour.	Consistency and predictability. Scheduled time for socialising with peers (without the immediate presence of parents). Communication between parents regarding current events and changes (sleep, diet, etc.).
Early school years, 6 to 9 years	More stable peer relationships. Social skills as a source for the development of self-image. Understanding truth and lies. Capacity for empathy. Understanding concepts of time and routines.	Adapting to various separations, different parenting styles and two homes. Conflict of loyalty. Intense longing and sadness regarding the absent parent.	Frequent contact with both parents. Reducing the frequency of transitions. Overnight stays during the week or at weekends. Independent phone calls. Encouraging socialisation with peers outside the family. Contact with each parent on a specific day each week.
Middle school years, 10 to 12 years	Better understanding of time. Ability to plan. Understanding of rules and the value of each parent. Black-and-white judgement of people.	Black-and-white evaluation of parents. Ability to adapt well.	Frequent contact with both parents (various scenarios). Support for growing autonomy. Taking the child's preferences into account, whilst the parents make the final decision.
Early adolescence, 13 to 15 years	Increasing autonomy. Development of identity. Development of the ability to make independent decisions. A more complex understanding of people.	Conflict of loyalties. Ambivalence regarding parental control.	Regular contact with both parents according to the basic scenario. Supporting increasing independence (activities outside the family, even if they coincide with contact).

	Understanding the causes of emotional reactions.		Start adjusting contact times – discuss directly with the child. Consider the option of a primary residence based on the child's need for independent activities.
Late adolescence, 16 to 18 years	Increasing autonomy. Development of identity. Self-regulation in the face of external stressors. Understanding of complex relationships and sexuality.	Fear of the responsibility of 'looking after' parents. Anxiety regarding romantic relationships.	Parents' flexibility regarding control. Agreeing on contact between parents and adolescents. Agreements between parents regarding overnight stays away from both homes, going out in the evenings, driving a car...

Refusal of contact between a child and a parent is primarily justified in cases of domestic violence, as well as in certain other circumstances. At the same time, preventing contact may be unjustified, particularly where there are no indications of domestic violence. Regarding the latter, we recommend the following reading:



Assoc. Prof. Dr Jana Kodrič: **Unjustified refusal of contact between a child and one of their parents**, Judicial Bulletin 1/2022.

3.5.2. Joint custody and upbringing

Is it in the child's best interests to entrust¹⁵⁷ **their care and upbringing to both parents?**
When is it in the child's best interests for the parents to have joint care and upbringing?

It follows from the case law of Slovenian courts that joint custody and upbringing are the basic form of parental care through which the child's best interests are ensured. Although the Family Code does not stipulate joint custody and upbringing as the primary form, the commentaries on this Code do presuppose joint custody and upbringing.¹⁵⁸ Regardless of case

¹⁵⁷ In connection with the institute, the term 'assignment' of a child to care and upbringing is also frequently used in practice; however, this has negative connotations and implications, as a child should not be regarded as the object of a decision. For the same reason, the law uses the term 'entrustment' to care and upbringing. Dr Vesna Rijavec, Decision-making on the care and upbringing of children (2019), Legal Yearbook (2019) pp. 57–77, 282–283. <<http://www.dlib.si/?URN=URN:NBN:SI:doc-FFDVEOAR>>.

¹⁵⁸ Čujovič, M. (2019). The care and upbringing of children. In B. Novak (ed.), Commentary on the Family Code (pp. 417–426). Ljubljana: Official Gazette of the Republic of Slovenia.

law, however, when deciding on joint care and upbringing, **each case must be assessed individually** to determine what is in the best interests of the specific child concerned. As the European Parliament points out, it would be contrary to the child's best interests if parental responsibility were automatically assigned by law to one or both parents. The trend of entrusting children to joint care and upbringing has been observable in Slovenia since 2005, and the latest statistics show that 51.5 per cent of children in divorce cases where the parents had children were entrusted exclusively to mothers, 2.4 per cent to fathers exclusively, and 45.5 per cent to both parents.¹⁵⁹ Below, we first outline the options for joint custody and upbringing, followed by examples of when this is not appropriate, with an explanation.

The argument in favour of joint custody and upbringing, as derived from case law, is that the child's best interests are best safeguarded when both parents are on an equal footing in relation to the child, provided that both are fit to be entrusted with the child's care and upbringing.¹⁶⁰ The child's trust in joint care and upbringing is intended to contribute to **a more even distribution of parental responsibility between both parents**,¹⁶¹ **to encourage both parents' responsibility towards the child**, and **to relieve one of the parents** – traditionally women – of their responsibility for the children and the family. As is evident from case law, with joint care and upbringing, both parents also have, in practice, approximately equal opportunities to influence the child's upbringing and development.¹⁶²

Children's trust in joint care and upbringing should also be facilitated **by the parents complementing each other's parenting capacities**. With a broader range of available resources or parental capacities from both parents, children have a greater chance of benefiting from good parenting, which helps to better ensure the child's best interests in practice on the part of the parents.¹⁶³

By placing trust in joint care and upbringing, parents should be made aware that¹⁶⁴ :

1. both are important;
2. it is important that both retain their parental role and responsibility towards the child;
3. both are necessary to ensure the child's well-being;
4. neither of them will be a secondary parent or merely a financial provider.

At the same time, the concept is important from the perspective **of the child's right to a qualitatively equal relationship with both parents** even after the breakdown of the joint household,¹⁶⁵ which, according to case law, is in the child's best interests. This does not

¹⁵⁹ SURS, Divorces by custody arrangement, Slovenia, annual (2024) <<https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/05M3012S.px/table/tableViewLayout2/>>.

¹⁶⁰ Decision VSL IV Cp 742/2022.

¹⁶¹ Nana Weber (ed.), Sara Ahlin Doljak et al., Family Code with Commentary (2024), GV Publishing

¹⁶² VSRS Decision II Ips 8/2023.

¹⁶³ Summarised from Dr. Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

¹⁶⁴ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

¹⁶⁵ Nana Weber (ed.), Sara Ahlin Doljak et al., Family Code with Commentary (2024), GV Publishing.

necessarily mean that the child must spend exactly the same amount of time with each parent.¹⁶⁶ As is evident from case law, the decision on how joint custody and upbringing are to be exercised depends on psychological, financial and logistical factors, which are linked to the daily schedules of the parents and children, the possibility of support from other persons, the distance between the parents' places of residence and other factual circumstances, with the child's best interests being paramount.¹⁶⁷

In cases where joint care and upbringing of infants and toddlers is entrusted, the criteria for entrusting the child to joint care and upbringing must be examined with particular care due to the sensitivity of children during these developmental stages. These are¹⁶⁸ :

- good parenting skills on the part of both parents,
- the child's secure attachment to both parents,
- the prior involvement of both parents in the child's care and upbringing,
- the child's ability to adapt and the absence of other specific issues relating to physical or mental health,
- both homes being equipped with everything the child needs,
- the physical proximity of both homes,
- flexible working hours for the parents,
- daily communication between the parents.

At the same time, there are conditions applicable to other children as well, under which joint upbringing and care are the appropriate form of joint care for the child¹⁶⁹ :

- geographical proximity of the parents' homes, which allows for time-efficient transitions of children from one parent to the other;
- the parents' ability to cooperate without (major) conflict, or at least to maintain a 'professional' relationship;
- a high level of responsiveness from parents to the child's needs, including a willingness to adapt arrangements to meet the child's changing needs as they grow up and to respect their wishes;
- appropriate parenting skills or an appropriate parenting style on the part of both parents, and the ability of both to protect the child from disputes and other harmful influences (in this regard, consideration must also be given to any behavioural and/or emotional and/or other mental health issues the parents may have that could affect their parenting);

¹⁶⁶ VSRS Decision II Ips 8/2023.

¹⁶⁷ VSRS Decision II Ips 8/2023.

¹⁶⁸ Summarised from Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

¹⁶⁹ Excerpt from Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

- the parents' flexibility, or the extent to which one parent is prepared to adapt in order to facilitate the child's relationship with the other parent;
- a certain degree of financial independence of the parents;
- the parents' 'family-friendly working hours'.

More on the advantages, conditions and challenges of joint care and upbringing in:



Dr Dobnik Renko, Barbara, Navotnik, Vesna, **Joint Parental Care** (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123.¹⁷⁰

At the same time, joint custody and upbringing are not always in the child's best interests. This is true in most cases where there is¹⁷¹ :

- domestic violence and neglect (physical, psychological, sexual),
- abuse,
- alcohol abuse,
- substance abuse and addiction,
- the presence of serious physical or mental illness in one of the parents, due to which they are unable to exercise parental care in the child's best interests,
- if there is a very high level of conflict between the parents that endangers the child,
- in the event of other similar reasons due to which one of the parents is unable or unwilling to provide adequate care, upbringing and support for the child.

As with decisions on contact, **domestic violence must be treated as a special circumstance when deciding on joint care and upbringing.** In cases of domestic violence (against a partner and/or a child), encouraging an amicable resolution of family matters, such as entrusting joint care and upbringing, **may even be dangerous for the victim.**¹⁷² The European Parliament makes an important point here, noting that in cases of domestic violence, the right of women and children to protection and a life free from physical and psychological violence should take **precedence over joint custody and upbringing.**¹⁷³ It also emphasises that an abusive father often manipulates the child and demands joint custody and upbringing in order to continue to exert influence over the mother after the end of the relationship,¹⁷⁴ which constitutes a form of coercive control over the victim.

¹⁷⁰ Dr Dobnik Renko, Barbara, Navotnik, Vesna, Joint Parental Care (2022), Judicial Bulletin, 2022, vol. 43, no. 1, pp. 101–123 <https://cip.gov.si/media/3188/notranjost-3_korektrura.pdf>.

¹⁷¹ Decision VSL IV Cp 98/2011.

¹⁷² Vesna Leskošek, Conceptual Changes in Decisions on Child Care and Upbringing and Contact in Cases of Violence (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239 <<https://repozitorij.uni-lj.si/Dokument.php?id=225931&lang=slv>>.

¹⁷³ Paragraph AA, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

¹⁷⁴ Paragraph 3, General remarks, European Parliament resolution of 6 October 2021 on the impact of domestic violence and the rights to care and upbringing on women and children (2019/2166(INI)) <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_SL.pdf>.

For a critical review of current case law on joint custody and upbringing and contact arrangements, see:



Vesna Leskošek, **Conceptual changes in decision-making on child custody and contact in cases of violence** (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239.¹⁷⁵

3.5.3. Amount of maintenance

What level of **maintenance** is in the child's best interests? How should it be determined?

Maintenance that ensures the child's best interests is that which ensures their successful physical and mental development.¹⁷⁶ Maintenance must cover the costs of the child's living expenses, in particular the costs of accommodation, food, clothing, footwear, care, education, upbringing, leisure, recreation and other special needs.¹⁷⁷

Parents may agree on the child's maintenance and propose a court settlement, but the court will reject the proposal if it finds that the agreement is not in the child's best interests.¹⁷⁸

Maintenance is always determined according to the needs of the recipient and the means of the person liable. At the same time, it is important that the child's standard of living does not fall after the divorce. For this purpose, and in general, it is necessary to examine how the parents met their financial obligations towards the child prior to the commencement of proceedings. It is essential that, in the event a parent fails to contribute to the child's maintenance following the separation, the court **establishes a provisional maintenance obligation in a provisional order.**

In addition to determining the amount of maintenance, it is also necessary to establish which **method of paying maintenance to the child** is in the child's best interests.

3.5.4. Protection of the child's best interests under the ZPND

In cases of domestic violence, the following measures may be in the child's best interests:¹⁷⁹

- a ban on the child crossing the state border, except with a specifically designated person, authority or organisation;
- the withdrawal of the child's identity document in accordance with the law;

¹⁷⁵ Vesna Leskošek, Conceptual changes in decision-making regarding the care and upbringing of children and contact in cases of violence (2025). Social Work. 2025. Vol. 64, no. 3, pp. 219–239 <<https://repozitorij.uni-lj.si/Dokument.php?id=225931&lang=slv>>.

¹⁷⁶ The first paragraph of Article 190 of the Family Code.

¹⁷⁷ The second paragraph of Article 190 of the Family Code.

¹⁷⁸ Article 191 of the DZ.

¹⁷⁹ Article 20 of the ZPND.

- a prohibition on the issue of the child's identity document upon application by one or both parents or a third party;
- a prohibition on the handover of the child's identity document to one or both parents or a third party;
- deciding on an urgent medical examination of the child or the child's treatment and on other medical interventions.

4. STEP 2 / Getting to know the child and their environment

4.1. Ways of obtaining information about the child, the parents and the environment

Who is the child and which factors in their life are important for assessing their best interests?
Who has information about the elements of the child's best interests and how will we obtain it?

Important sources of information for the various stakeholders are:

- the child,
- the parents,
- grandparents, siblings and other significant figures in the child's life,
- the CSD,
- VIZ (schools, nurseries, specialist centres),
- healthcare institutions,
- the child's advocate and the advocacy coordinator at the VČP,
- guardian ad litem,
- professionals working with the child in the context of other activities.

Depending on the decision-making body, the following entities are important sources of information:

The court	CSD	Court-appointed expert
Opinion of the CSD. Opinion of the court expert. Informal interview between the judge and the child. Reports from VIZ, health services, the guardian ad litem, advocacy services, other persons in contact with the child... Parties to the proceedings.	Work with parents (e.g. preliminary counselling, work with the family). Interview with the child. Reports from VIZ, health services, the guardian ad litem, advocacy services, other persons in contact with the child...	Family assessment (parents, children). Reports from VIZ, health services, the guardian ad litem, advocacy services, other persons in contact with the child...

4.2. Suggested questions for gathering information about the child, parents and environment

By using the following questions, which are designed with the child's best interests in mind, we can get to know the child, the parents and the environment in which they live. The questions are largely derived from the *BBIC Grundbok* tool – *Barns behov i centrum*, which is used in Sweden for working with families and determining the child's best interests within the context of family proceedings, and for which additional training is required (training is a prerequisite for using the tool).¹⁸⁰

By using the tool, professionals can gain a comprehensive understanding of the child, their parents, family and environment.

Current family situation
<u>Family composition</u> - Who lives in the family and what is the child's relationship with these people? - Who is primarily responsible for the child? - Have there been any changes in the family composition over time? - Has the child or family recently arrived, or are they asylum seekers or undocumented migrants? - Does the child have contact with both parents? - Does the family have access to social support?
<u>Parents' health and behaviour</u> - Does either parent have mental health issues? - Does either parent have a physical disability or physical health problems, such as a chronic illness? - Does either parent have difficulties managing their emotions or behaviour? - Does either parent display violent, antisocial or criminal behaviour? - Does either parent have problems with risky behaviour, substance abuse or addiction (e.g. gambling, alcohol, medication, drugs)?
<u>Health and behaviour of siblings</u> - Does the child have any brothers or sisters with a mental health condition? - Does the child have any brothers or sisters with a chronic illness or physical disability? - Does the child have brothers or sisters who have difficulty regulating their emotions or behaviour? - Does the child have brothers or sisters who display violent, antisocial or criminal

¹⁸⁰ Socialstyrelsen, BBIC Grundbok – Barns behov i centrum (2023) <<https://www.socialstyrelsen.se/publikationer/bbic-grundbok--barns-behov-i-centrum-2023-9-8734/>>.

behaviour? - Does the child have brothers or sisters who abuse or are dependent on, for example, alcohol, medication, drugs or gambling?
The child and their development
<u>The child's well-being</u> - Given their age, what are the child's physiological, sensorimotor, emotional, intellectual and psychosocial developmental needs? - How does the child feel at nursery or school? - Does the child have repeated or prolonged absences? - Does the child have a high number of absences at specific times? - Has the child changed nursery or school several times? - Has the child had breaks in their schooling? - What are the expectations regarding the child's academic performance, both from the child themselves and from parents and teachers? - What is the environment like in the child's nursery or school, for example, the size of the group or class, staff-to-child ratio, working atmosphere within the group, premises, and the external environment?
<u>Play and leisure</u> - Does the child play in a way that is typical for their age? - Does the child have any interests that are particularly important to them? - Does the child regularly take part in leisure activities? - Are there any barriers preventing the child from taking part in leisure activities?
<u>Attachment to parents</u> - What is the relationship like between the child and their parents? - Is there anything to suggest that the child lacks a secure attachment? - Does the child show fear of one or both parents or other carers?
- Is the child at risk?
Parents and parenting skills
- Are the parents in conflict? What kind of conflict are they in?
- Does each parent adequately meet the child's material, emotional and psychosocial needs? - Does the individual parent meet the child's needs through behaviour that demonstrates care and responsibility towards the child? - Does the individual parent provide the child with appropriate guidance? - Does the individual parent encourage the child in their development? - Does the individual parent respect the child's personality? - Does the parent respect the child's age and stage of development?

- Does the individual parent respect the child's wishes?
- Does the individual parent have good parenting skills? - Does the individual parent provide basic care for the child? - Does the individual parent provide the child with a sense of security? - Does the individual parent provide the child with emotional warmth? - Does the individual parent encourage the child's development? - Does the individual parent guide the child and set boundaries for them? - Does the single parent offer the child stability?

4.3. Classification of information obtained

When gathering information about the child, attention should be paid to the following factors:

Protective factors and risk factors. Which characteristics and circumstances of the child, parents, family and wider environment are protective for the child, and which create or increase risk for them? Whilst risk factors are various circumstances that create or increase the likelihood or risk of a child developing emotional and behavioural problems, protective factors are circumstances that increase the child's resilience to a particular problem. Protective factors work to ensure the child's well-being, as they provide the child with security and protection, whereas risk factors threaten the child's safety and, in this respect, are not in the child's best interests.

Risk factors can relate to all of a child's rights and all aspects of the child's life. Risks are not necessarily linked solely to violence (from a child protection perspective), but may also relate to health, educational, social and economic needs, or to the availability of family and child support services.¹⁸¹ Risk factors can cumulatively affect a child's vulnerability.

Dynamic factors and static factors. When determining the child's best interests, attention must be paid to which characteristics or factors (regarding children, parents, the family and the wider environment) are dynamic and which are static. Whilst the former can be influenced, the latter cannot. The former may include the child's ability to learn, through upbringing, to control their impulsivity; the latter, for example, a situation where the child has been exposed to domestic violence in the past – something that has already happened and cannot be changed, though the consequences may be mitigated.

When gathering information, practitioners can organise information about the child, parents, family and environment according to the four parameters above.

¹⁸¹ For example, a child may be at risk because there is no suitable schooling for the child in the local community, there is a lack of services and staff to support their family, or because one of the parents is addicted to shopping and spends all the family's money on other needs.

Classification of the information gathered
What protective factors safeguard the child and their best interests?
Which risk factors threaten the child's safety and welfare?
Which of the factors are static?
Which factors are dynamic?

4.4. Guidelines on the participation of children and obtaining their views

A child's views can be an important source of information about the child and family circumstances. Enabling a child to express their views in civil proceedings means realising their right to be heard.

Involving children and gathering information directly from them has its advantages, as it enables us to better assess a child's well-being, emotional experience, views, wishes and needs, and to make more reliable professional judgements and decisions. Indeed, the child is the essential and key source of information for identifying the needs of each individual child and, consequently, for assessing their best interests, as they express their needs both verbally and non-verbally, through the expression of emotions, behaviour and words.¹⁸²

A child can express their opinion through the following individuals:

- the children's advocate at the VČP,
- the guardian ad litem,
- a social worker at the CSD,
- in an informal discussion between the child and the judge,
- during mediation proceedings.

When obtaining the child's opinion, care must also be taken to ensure that the opinion is interpreted professionally. The second part of obtaining the child's opinion thus involves assessing the opinion from the perspective of the child's abilities and characteristics, as well as from the perspective of their best interests.¹⁸³ From a child psychology perspective, the child is not merely a direct source of information; rather, their expression requires professional assessment, preferably within the framework of a multidisciplinary team (MDT). The opinion expressed may, in fact, be influenced by the child's stage of development, relational dynamics and conflicts of loyalty. Children often express their experiences non-verbally, through behaviour, emotional responses and relationships; therefore, **a comprehensive professional assessment** is required to understand their situation. When determining the child's best

¹⁸² Dr Anja Andrejč Balažic, Obtaining the Child's Opinion (2024), Judicial Bulletin, No. 2/2024, pp. 63–80.

¹⁸³ Dr Anja Andrejč Balažic, Obtaining the Child's Opinion (2024), Judicial Bulletin, No. 2/2024, pp. 63–80.

interests, it is therefore advisable to combine various sources of information, not just the child's opinion and its professional interpretation, and to assess them in their mutual context.



Further information on the participation of children and obtaining their views in civil proceedings is available in **the Protocol for Informal Interviews with Children in Civil Court Proceedings in Slovenia with Annexes (2026)**.¹⁸⁴

In this document, we set out guidelines on the participation of children and the gathering of their views, which are based on the Council of Europe's Recommendation on the protection of the rights and best interests of children in parental separation proceedings¹⁸⁵ :

- The child must be given a genuine and effective opportunity to express their views, either directly or through other means.
- When expressing their views, they must be supported by a range of child-friendly mechanisms and procedures.
- The child's level of understanding and ability to communicate, as well as the circumstances of the case, must be taken into account. The competent authorities must assess the child's level of understanding on a case-by-case basis. Regardless of age, particularly where the child requests to be heard, it must be presumed that they possess a sufficient level of understanding.
- If the child needs assistance in expressing their views, this must be provided.
- If, due to their age or incapacity, a child is unable to express their views, the child's views on the matter in question must, where necessary, be ascertained and conveyed by a specially appointed and qualified representative or expert.
- The child's opinion or views must be given due weight in accordance with their age and level of maturity.
- The child must be explained that their opinion is an important factor in the decision-making process, but is not necessarily decisive for the decision of the competent authority.
- The competent authority must take the child's views into account, together with other relevant factors, in order to determine the child's best interests.
- If the proceedings concern more than one child, each of them must be given the opportunity to express their views separately.

¹⁸⁴ Frida Burkelc and Metoda Maj, Protocol for Informal Interviews with Children in Civil Proceedings in Slovenia with Annexes (2026). Ensuring the Best Interests of the Child in Civil Proceedings in Slovenia.

¹⁸⁵ Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

- Where appropriate, the child should be consulted on how they wish to be heard. Where appropriate, a direct interview with the child should be conducted.
- To avoid unnecessary stress and distress, the hearing of the child must take place in a child-friendly environment.
- Appropriate safeguards must be put in place to ensure, as far as possible, that the child is able to express themselves freely and that the views they express are not the result of undue influence or coercion.
- The child must never be subjected to cross-examination regarding the content of their views.
- Repeated interviews with the child should be avoided where possible, unless they would be in the child's best interests.
- In the interests of procedural fairness, a report on the views expressed by the child must be provided to the parties, in accordance with the best interests of the child and with all appropriate measures to ensure the child's protection. To this end, a summary of the report should be given preference over the full report. Where appropriate, the child should be consulted on how their views are presented in the report.



Anja Andrejč Balažic, **Obtaining the Child's Opinion** (2024), Judicial Bulletin, No. 2/2024, pp. 63–80.¹⁸⁶

When involving a child in proceedings, it must be ensured that **the child is properly informed about the proceedings and supported throughout the process**, from both a legal and a psychological perspective.¹⁸⁷

4.5. In which cases is the opinion of a court-appointed expert required to determine the child's best interests, and when is the opinion of the Social Work Centre sufficient?

The appointment of a court-appointed expert in family proceedings is the exception rather than the rule. As a rule, the opinion of court-appointed experts disproportionately prolongs the duration of the proceedings and entails a significant financial burden; therefore, courts opt for this only in a small proportion of cases.

¹⁸⁶ Anja Andrejč Balažic, *Obtaining the child's views* (2024), Judicial Bulletin, No. 2/2024, pp. 63–80 <<https://sodnapraksa.si/?q=odvzem%20otroka&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=43&id=52539>>.

¹⁸⁷ Guidelines on ensuring the right to information, assistance, legal advice and representation are also available in Recommendation CM/Rec(2025)4 of the Committee of Ministers to member states on the protection of the rights and best interests of children in parental separation proceedings (Adopted by the Committee of Ministers on 28 May 2025 at the 1529th meeting of the Ministers' Deputies).

In principle, the CSD's opinion is the first expert opinion to provide the court with a basis for its decision. In judicial practice, the view has emerged that the CSD's opinion has significant evidential value when deciding on the protection of children's rights and interests, with individual case law also explicitly recognising the comparability of the CSD's opinion with that of a court-appointed expert (e.g. VSL IV Cp 1521/2019, VSL IV Cp 2005/2017).

As a rule, the CSD's opinion is sufficient to establish the legally relevant facts necessary for a judicial decision where there is no serious dispute between the parents, where the factual circumstances are relatively clear, and where the CSD's opinion is of sufficient quality. This means, in particular, that the necessary professional procedures have been carried out, that interviews have been conducted with the parties involved, that an interview has been conducted with the child, preferably by a psychologist, that the findings recorded in the CSD's opinion are also corroborated by other available data, such as reports from the school, nursery, clubs and the like, and that there are no serious indications of domestic violence, mental health issues or manipulation by the parents.

Courts decide to obtain an expert opinion in particular in the following cases:

- **where the applications or the hearings of the parties reveal circumstances, characteristics or conduct regarding which the court lacks the necessary expertise,** and which require further expert clarification of the mental state and functioning of the individual party or parties in relation to their ability to exercise parental care, for example, a quarrelsome manner of writing and behaviour, information regarding mental health issues, alcohol or drug abuse, or domestic violence;
- **where one or both parties request such evidence, and where specific and reasoned objections to the CSD's opinion are raised,** as a result of which the court does not have sufficient reliable information to reach a decision;
- **where the CSD also submits a reasoned proposal for the appointment of an expert** and explains that it cannot itself provide a comprehensive opinion, and where, at the same time, it is not possible to obtain a sufficient basis for a decision from other evidence;
- **where the statements of the parents or other parties involved differ diametrically,** and there is no other sufficiently convincing evidence, so that it is not possible to reliably assess the child's best interests and decide on the child's placement in care and upbringing without an expert opinion, particularly where domestic violence is also highlighted; issues of addiction or other pathology, and the key question is with whom the child is safer;
- **where the child refuses contact and a professional must determine the reason for such refusal,** i.e. whether it is a justified and reasonable refusal or the result of manipulation or attempts at alienation;

- **where the most severe interventions in parental rights are involved,** most commonly prior to the imposition of a measure of a more permanent nature or prior to the removal of parental care.

5. STEP 3 / Assessment of the child's best interests

Based on **an understanding of the principle of the child's best interests** and **information about the child themselves**, the parties can determine the child's best interests, make a decision and assessment based on this, and provide a professional justification for the decision.

When assessing the child's best interests, attention must be paid to how the decision will affect the child in the long and short term. Particular attention must be paid to the temporal dimension of the decision taken, i.e. how the decision will affect the child's situation immediately after it is taken, as well as in the future. The assessment of the child's best interests must not be limited to the immediate effects of the decision, but must also encompass its short-term, medium-term and long-term consequences for the child's development, sense of security, emotional stability, health, relationships and general well-being. In each individual case, it is therefore necessary to assess whether the decision brings immediate relief or protection to the child, and at the same time, whether it will contribute to their stable and secure development in the long term.¹⁸⁸

Professionals can assess the child's best interests using **the questions below**. The questions guide professionals to approach the assessment of the child's best interests with precision and comprehensively, ensuring that no aspect of the assessment is overlooked during the process.

5.1.1. Proposed questions for determining the child's best interests

When using the form, the user should draw on the information received in the first two steps of the proposed procedure for determining the child's best interests, namely:

- familiarisation with the principle of the child's best interests,
- familiarisation with the child, parents and environment that are the subject of the case in question.

By using the questions provided, the professional can, in a systematic and comprehensive manner and in collaboration with other professionals, determine the child's best interests in a specific case – both in procedural and substantive terms.

¹⁸⁸ In this regard, it should be borne in mind that what may constitute a burden or inconvenience for a child in the short term is not necessarily contrary to their best interests if, in the long term, it ensures greater security, stability, protection or better prospects for healthy development. It is precisely for this reason that the assessment of the child's best interests must always be comprehensive, focused on the specific child and sensitive to the circumstances of the individual case.

How should the child's life be organised so that it is in the child's best interests?
How should the child's contact with the parent be arranged so that it is in the child's best interests?
How should the child's care and upbringing be organised?
Is it in the child's best interests to be removed from their family of origin?
Is it in the child's best interests to be placed in a specialist care centre?
What level of maintenance is in the child's best interests?
How should the proceedings be conducted to ensure they are in the child's best interests?
Is it in the child's best interests to appoint a guardian?
Is it in the child's best interests to appoint a guardian ad litem?
Is it in the child's best interests for the judge to hold an informal discussion with them?
Is it in the child's best interests to be involved in mediation proceedings?
Is the opinion of a court-appointed expert required in addition to that of the Social Work Centre?
Additionally
What arrangement for the child's life is in their best interests in the short term?
What arrangement for the child's life is in their best interests in the long term?

5.1.2. Explanation of the assessment of the child's best interests

Both the court's decision regarding the child's best interests and the opinions and other findings presented to the court must be substantiated. In particular, the court's decision must include an explanation of how the child's best interests were safeguarded to the greatest extent possible, both substantively and procedurally, during the proceedings. These guidelines may assist judges and other parties in formulating a decision or opinion.

With regard to the best interests of the child, the ECtHR, in its judgment *in Blaga v. Romania*¹⁸⁹, expressed the view that 'a mere reference to the concept of the best interests of the child is not sufficient to demonstrate the balancing exercise carried out by the court. An analysis of the

¹⁸⁹ ECHR judgment *in Blaga v. Romania* of 1 July 2024, paragraph 70.

specific interests of the child in need of protection and the efforts made to address them must be reflected in the court's decision.”¹⁹⁰

5.1.3. Guidelines for the implementation of preliminary counselling

During pre-court counselling, parents, together with a CSD professional, determine the child's best interests in each individual case. It is important that the preliminary consultation process is conducted in a professional manner and, where appropriate and provided there are no indications of domestic violence, enables the parents to reach an amicable solution regarding the arrangement of their life with the child, which is in the child's best interests.



The standards for the provision of preliminary counselling are set out in **the Catalogue of Public Powers, Statutory Duties and Services Provided by Social Work Centres** (1.1.5. Preliminary Counselling)¹⁹¹ and **the Rules on the Provision of Preliminary Counselling**.¹⁹²

¹⁹⁰ Nana Weber (ed.), Sara Ahlin Doljak et al., *The Family Code with Commentary* (2024), GV Publishing.

¹⁹¹ Association of Social Work Centres, *Catalogue of Public Powers, Statutory Duties and Services Provided by Social Work Centres* (2025). <<https://www.scsd.si/katalogi/katalog-javnih-pooblastil/>>.

¹⁹² Rules on the Provision of Preliminary Advice, Official Gazette of the Republic of Slovenia, No. 21/19.

6. STEP 4 / Monitoring the child's best interests

The Social Work Centre monitors the child's best interests when working with the family. It can monitor the child's best interests by providing social care services such as **personal assistance** and **home-based family support**. In this way, it indirectly obtains information about the child's best interests in a specific case.

Personal assistance is a more comprehensive service that takes place over several agreed meetings. It is a form of support for an individual facing situational difficulties and problems that they do not know how to resolve or are unable to resolve on their own, but are willing to work with a CSD professional to develop appropriate solutions. Through the personal assistance service, the individual gains an understanding of social relationships, their own reactions and ways of resolving conflicts, and is trained in social learning and changing relationships within their environment. Participation in the service is voluntary and takes place in accordance with the individual's wishes, abilities and life situation.¹⁹³

The **home-based family support service** comprises a series of meetings held monthly or weekly, and the whole family can be involved. Families may join voluntarily when they are facing difficulties due to strained family relationships, when they need help with childcare and their behaviour patterns and knowledge are insufficient to resolve problems, and when the difficulties faced by several family members require more long-term support and guidance.¹⁹⁴

In connection with court proceedings, the CSD monitors the child's best interests in various ways:

When measures are ordered to protect the child's best interests. Monitoring of the child's best interests primarily occurs when the court orders measures to protect the child's best interests. The competent CSD is responsible for monitoring the implementation of the measure.¹⁹⁵ The CSD reports to the court on the implementation of the measure.

In the exercise of supervision over the exercise of parental care. Where the court decides to impose a measure of a more permanent nature involving supervision of parental care on one or both parents, supervision of one or both parents is carried out by the CSD. The court determines the manner of supervising one or both parents (whose parental care has been restricted). It reports to the court on the supervision.

As part of the family and child support plan. In all proceedings concerning measures of a more permanent nature for the protection of the child's best interests, the CSD draws up a family and child support plan that is in the child's best interests. The support plan includes a

¹⁹³ PIC, Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026).

¹⁹⁴ PIC, Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026).

¹⁹⁵ Article 160 of the Constitution.

description of the situation, the children's needs, the family's capabilities, the method of monitoring, the forms of support and a description of how the measure will be implemented in practice. The plan contains the type of assistance, the anticipated scope and duration, milestone objectives, deadlines and service providers. The CSD provides the family with assistance and support, monitors the implementation of the support plan and plans further work with the family and the child. It reports to the court on the implementation of the plan at least once a year.¹⁹⁶

When placing a child in a specialist centre. The CSD submits a proposal or opinion regarding placement in a specialist centre, arranges a visit to the centre with the specialist centre, parents and child, agrees on the admission procedure, and is present during the placement. During the placement, it cooperates with the specialist centre, monitors the implementation of the measure and the child's development, and offers the child and parents help and support. It prepares the child and parents for the child's return to their family of origin and plans life after the return together with them.

Placement in a foster family.¹⁹⁷ For every child requiring placement with a person other than their parent, the CSD seeks a foster family that meets the child's needs and proposes this to the court or provides an opinion on the matter. It prepares the parents, the child and the foster family for the placement and facilitates the foster family's getting to know the child's biological family. A CSD professional plans the child's placement and is present during it to ensure it proceeds in a way that minimises the child's distress as much as possible. An individual project team is formed at the CSD to draw up an individual foster care plan and meets regularly. Throughout the duration of the placement in the foster family, the CSD must cooperate with the parents, offer them help and support, and motivate them to make changes, all with the aim of addressing the reasons that led to the placement. It also provides assistance and support to the foster family, regulates their status, ensures their participation in training, etc. It prepares the child, the foster family and the parents for the child's return to their biological family and plans the steps together with them. If the foster care centre determines that a foster carer is providing care contrary to the child's best interests, it must submit a written proposal to the Ministry to revoke the licence, providing appropriate justification.¹⁹⁸

In the case of adoption.¹⁹⁹ Once the decision has been made that adoption is the best solution for the child, the CSD seeks the most suitable adoptive family for them. It conducts several discussions with the biological parents (e.g. regarding their motives, the consequences, the existing support network), discussions with the child (regarding their views, wishes and feelings, and informing them about the adoption) and with the adoptive family (e.g. planning the child's gradual transition into the new family, assistance and support). The CSD arranges

¹⁹⁶ PIC, Inter-institutional cooperation in civil proceedings: Services and institutions in the field of family law (2026).

¹⁹⁷ The provision of foster care and the monitoring of its provision are regulated by the Foster Care Act (ZIRD), specifically in Articles 32–41.

¹⁹⁸ Article 43 of the ZIRD.

¹⁹⁹ The tasks performed by the CSD are listed in: Association of Social Work Centres, Catalogue of Public Powers, Statutory Tasks and Services Performed by Social Work Centres (2025). <<https://www.scsd.si/katalogi/katalog-javnih-pooblastil/>> (1.3.5. Adoptions).

for the child's placement in the new family and monitors and provides support during the placement period.

Furthermore, it is considered that measures in the child's best interests should, where appropriate, also be monitored by the court, **which should review the appropriateness of the measure it has ordered and amend it if necessary.**

7. CONCLUSION

Family proceedings are among the most sensitive areas of law, as they directly interfere with the lives of children and families and have a long-term impact on their relationships, sense of security and further development. For this very reason, the conduct of proceedings, the taking of decisions and the conduct of all participating authorities and professionals must always be guided by the protection of the child's best interests as the fundamental principle of each individual case. This requires a careful, responsible and comprehensive assessment of all the circumstances of the specific case, taking into account both the legal and the factual and practical circumstances of the child's life.

In family proceedings, a child must not be treated merely as the subject of a decision, but as a holder of rights whose voice must be heard and given due consideration. At the same time, it is essential that the burden of deciding on matters that must be resolved by adults – namely parents, the court and other competent authorities – is not shifted onto the child. The child's right to express their views therefore does not imply responsibility for the outcome of the proceedings, but rather a requirement that their experiences, needs and perspective on their own situation be incorporated into the decision-making process in a manner that is safe, respectful and developmentally appropriate for them.

Particular sensitivity is also required when assessing the evidence and selecting the expert basis for decision-making. As a rule, the opinion of the CSD constitutes the first and often sufficient expert basis for a decision where the factual circumstances are sufficiently clear, the dispute between the parents is not particularly acute, and there are no circumstances that would require an in-depth specialist assessment. The appointment of a court-appointed expert must therefore be limited to cases in which, without additional expert knowledge, it is not possible to reliably establish legally relevant facts or to make a decision that would sufficiently safeguard the child's best interests. From this perspective too, it is important that proceedings remain efficient, timely and as least burdensome as possible for the child.

The assessment of the child's best interests must always be individualised and time-sensitive. A decision that is less pleasant or more stressful for the child at a given moment may nevertheless be in their best interests in the long term if it contributes to greater stability, safety, protection or healthy development. Therefore, the assessment must focus not only on the immediate effects of the decision, but also on its short-term, medium-term and long-term consequences. This is precisely where the complexity of decision-making in family matters lies: it is not merely a matter of resolving a legal dispute between adults, but of seeking a solution that will provide the child with the safest, most stable and most supportive environment possible for their future life.

Another important aspect of the modern approach in family proceedings is the endeavour to maintain and strengthen the child's relationship with both parents, where this is in the child's best interests. The institution of joint custody and upbringing is of particular significance in this context, as, in addition to contributing to a more equitable distribution of parental

responsibility, it also emphasises the child's right to a relationship of equal quality with both parents following the breakdown of the joint household. Here, too, one cannot rely on pre-determined solutions; rather, it is necessary to assess on a case-by-case basis whether a specific arrangement actually meets the needs and best interests of the child in question.

In these guidelines, we have endeavoured to present the concept of the child's best interests in a multifaceted manner, covering theory, legislation and practice. We have presented various aspects of the principle and the ways in which it is assessed by different professional groups – from judges to social workers at the Centre for Social Work, court experts, guardians ad litem and others. The guidelines therefore stem from the need for a professional, consistent and genuinely child-centred approach in family proceedings. Their aim is to contribute to a more uniform, considered and sensitive practice among all those involved in deciding on a child's situation. Only with such an approach can it be ensured that family proceedings are not only legally sound, but also substantively fair and genuinely geared towards protecting the child's rights and best interests.