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Building a Europe for and with children

Joint EU-Council of Europe project

RECOMMENDATIONS TO ENSURE THE BEST INTERESTS OF THE CHILD IN CIVIL COURT PROCEEDINGS IN SLOVENIA

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LIST OF ACRONYMS

DZ	Family Code
ECtHR	European Court of Human Rights
EU	European Union
LAS	Legal aid service
MDDSZ	Ministry of Social Affairs and Labour and Social Development
NGO	Non-Governmental Organisations
SWC	Social Work Centre
UNCRC	United Nations Convention on the Rights of the Child
ZIZ	Enforcement and Security Act
ZNP-1	Non-Litigious Civil Procedure Act
ZOOMTVI	Act on the Intervention for Children and Youth with Emotional and Behavioural Disorders in Education
ZOPOPP	Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs
ZPND	Prevention of Domestic Violence Act
ZPP	Civil Procedure Act
ZSDP-1	Parental Protection and Family Benefits Act
ZUOPP-1	Placement of Children with Special Needs Act
ZVarCO	Human Rights Ombudsperson Act

1. INTRODUCTION

This study was prepared by the authors within the framework of the joint EU-Council of Europe project entitled “Ensuring the Best Interests of the Child in Civil Judicial Proceedings in Slovenia”, which runs from 1 September 2023 to 28 February 2026. The purpose of the project is to strengthen the protection of child's rights in civil court proceedings in Slovenia, with a particular focus on implementing the principle of the best interests of the child. In line with the ongoing reforms in Slovenia aimed at strengthening the protection of the child's rights, the project's objective is to position Slovenia as a country of excellence in the promotion of child-friendly justice standards among EU Member States.

The main objective of the project is to achieve two specific results: the development of a comprehensive action plan setting out substantive reforms to the legal framework governing civil court proceedings involving children, and the launch of initiatives to implement the proposed reforms. Through these concerted efforts, the project aims to make significant improvements in terms of the protection of the child's rights in the Slovenian civil justice system, confirming Slovenia's commitment to the best interests of children in its legal system.

Within this context, the research team prepared a report on the identified shortcomings and gaps in the Slovenian legal system regarding the implementation of the best interests of the child in specific areas as well as recommendations on what short- and long-term measures could be taken by the competent entities in order to ensure that the best interests of the child are further taken into account in civil court proceedings.

1.2 SCOPE OF THE PROJECT AND CONTEXT OF THE STUDY

The project "Ensuring the Best Interests of the Child in Civil Court Proceedings in Slovenia" aims to address systemic challenges in the Slovenian civil justice system. The aim of the project is to reform the Slovenian civil justice system to ensure more effective protection of the rights of children involved in legal proceedings, with an emphasis on ensuring their best interests. Through collaboration, research and targeted interventions, the project calls for the implementation of meaningful reforms that prioritise the best interests of the child and ensure that their rights are respected and protected in civil court proceedings.

This gap analysis report with recommendations for improvement of legislation follows the inception report and the needs assessment, which was used as a starting point for the study by the research team drafting this report. The inception report (https://rm.coe.int/inception-report-child-in-civil-proceedings-slovenia/1680ae6eaf) provides a detailed overview of the current state of civil court proceedings involving children in Slovenia, including an analysis of challenges, gaps and areas for improvement. A needs assessment was carried out to identify priority areas for reform, focusing on eliminating delays in family proceedings, the shortage of expert witnesses and shortcomings in the legal framework.

The research team also started with the review of legislation and proceedings, as foreseen in the project "Ensuring the Best Interests of the Child in Civil Court Proceedings in Slovenia" and which involved a in-depth review of Slovenian legislation on civil procedure and related legal frameworks regarding civil court proceedings involving children.

Based on the findings of the inception report and the needs assessment, this study aims to analyse the gaps in the Slovenian legal system in specific areas of civil proceedings, which will be identified by the research team on the basis of an analysis of the legal system, existing case law, academic literature and the practice of relevant international bodies or courts.

The developed analysis will help formulate targeted recommendations for legislative, procedural and systemic reforms aimed at ensuring that the best interests of the child are better protected in civil court proceedings in Slovenia.

1.3 PURPOSE OF THE STUDY

The primary objective of the study is to carry out an analysis the legislation from the point of view of professionals who are actively involved in the proceedings to ensure the most optimal application of the principle of the best interests of the child. It should be noted that the challenges and shortcomings in arrangement described here, and the potential areas for improvement outlined are reflected in expertise and experience. The assessment of the current situation in Slovenia is aimed at identifying shortcomings, while the proposed short- and long-term changes in civil court proceedings would lead to an improvement in the protection of the best interests of the child in civil court proceedings. This would provide a higher level of harmonisation with the EU legislative framework and the guidelines recommended by the Committee of Ministers of the Council of Europe on child-friendly justice.[1]

Furthermore, it is important to address the study as one of the steps towards fostering dialogue between state authorities and the entities responsible for establishing the legal framework for the protection of the best interests of the child in civil court proceedings. This encourages the identification of important challenges and needs for improvement and increase in inter-agency and multi-disciplinary cooperation, facilitating the dissemination of information and the adoption of systemically coherent solutions.

The results of this report will be included in the next phase of the project "Ensuring the Best Interests of the Child in Civil court Proceedings in Slovenia", which includes a comprehensive analysis of the existing framework governing civil judicial proceedings involving minors, together with a detailed examination of the gaps and proposals for improving the legislative framework of Slovenian civil procedural law. The report will thus be part of the final efforts to develop a comprehensive strategy and action plan to make the necessary changes to the legal framework for the protection of the best interests of the child in civil judicial proceedings.

1 A detailed review of international standards and best practices on the child's best interests in civil judicial proceedings can be found in the comparative case studies, also prepared under the EU/Council of Europe project.

1.4 PROBLEMS IDENTIFIED AS HYPOTHESIS FOR THE STUDY

The scientific findings presented in the continuation of the report will be used as the hypothesis of the study. This report will provide an assessment whether the identified problems in Slovenian family law are relevant, i.e. whether they constitute obstacles to ensuring the best interests of the child in civil court proceedings. The report was limited on the following problem areas: duration and awareness of judicial proceedings, measures to protect the best interests of the child, shortcomings in child cooperation and consultation mechanisms and in representation and advocacy structures, the issue of ensuring that the child's voice is heard, risk assessment in cases where the child is a victim of violence, and the problem of systemic delays in civil court proceedings, as explained in the text below.

As stated in the Inception Report of the project, the Ministry of Labour, Family, Social Affairs and Equal Opportunities has expressed concerns about the adequacy of the provision of the best interests of the child in the Family Code (hereinafter referred to as the DZ). This lack of legislative clarity poses a significant challenge to case-law and to the application of the aforementioned Code by other stakeholders involved in proceedings aimed at ensuring the best interests of the child under the DZ. To remedy shortcomings identified, the improvement of legal framework governing the principle of the best interests in the Slovenian legal order is needed. Such a reform requires a precise definition of the principle of the best interests, both in statutory provisions and in practical application within the context of civil court proceedings. Achievement of coherence and precision in the definition of the best interests of the child is essential to ensure fair protection of the rights of the child in civil court proceedings.

Given the legal framework governing children's rights in civil court proceedings, including international conventions such as the United Nations Convention on the Rights of the Child, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Preventing and Combating Violence against Women and Domestic Violence, the question arises whether certain benefits for children should be more clearly defined in the legislation and particularly highlighted. Case-law can be consulted in this respect. This approach can be used to identify potential gaps or inconsistencies in the legal protection of children in civil proceedings.

1.4.1. Duration and awareness of judicial proceedings

Proceedings for the protection of the best interests of the child are conducted before the courts in non-litigious proceedings. One of the main problems in court proceedings, which can lead to a situation where the protection of the best interests of the child is not optimally ensured, is the length of the proceedings before the courts. There are several reasons for the length of proceedings. In the Republic of Slovenia, the DZ established the rule of shared parenting. Agreements between parents are still hampered by the mindset that deciding which parent is to be entrusted with custody of the children is of paramount importance, which often prevents agreement between parents and unnecessarily terminates in court proceedings where the issue is settled by decision of the Court.

In addition, the concern of which issues have a significant impact on a child's development remains unresolved (at least on an informative level for parents). When parents do not live together and the child is not entrusted to the custody of both parents, issues that have a significant impact on the child's development are decided by mutual agreement and in the best interests of the child. Given that too much time is wasted on such issues in judicial proceedings, a question also arises of how to improve the preliminary discussions before the Social Work Centres (hereinafter referred to as SWCs) or how to better inform parents not only about shared parenting but also about judicial proceedings.

This part will analyse the legal provisions and case-law concerning shared parenting and prior consultation. The conclusions of this part of the analysis could either lead to an improvement of the prior consultation before the SWC or to the introduction of a new institute with a view to improving the provision of information to parents before or immediately after the start of the judicial proceedings. This could increase the likelihood of parents reaching agreements on custody and rights of access, which would certainly lead to shorter judicial proceedings. On the basis of these findings, brochures could be created and websites could be improved.

1.4.2 Analysis of measures to protect the best interests of the child

This part of the report includes an analysis of the measures taken to protect the best interests of the child in accordance with the provisions of the DZ and the Non-Litigious Civil Procedure Act (hereinafter referred to as the ZNP-1) and other relevant regulations, from the perspective of ensuring the best interests of the child. In particular. the analysis focuses on the issue of the decision-making on the temporary measure of supervised access by a professional from the SWC or the institution where the child is placed. The main drawback of this system is that the measure is limited to only nine months and cannot be reissued or extended by the Court. In addition, the possibility of carrying out contacts and the form of supervision outside the SWC or institution should be regulated. With regard to the measure of restriction of access under Article 173 of the DZ, it should also be possible to carry out these contacts elsewhere, for example in an authorised and qualified NGO, and the costs of this form of access should be determined. The state should regulate and fund such types of access in a more child-friendly environment. In some cases, it is not in the best interests of the child to grant access if it is not supervised in a certain way, and the Court cannot settle this in a final decision.

In addition to the above, the analysis will focus on the role of the SWC as a guardianship authority, which may include family therapy, psychiatric treatment, alcohol or drug addiction treatment and other health, educational and psychosocial programmes in the family and child support plan. In principle, the Centre can suggest these programmes and therapies, but in practice there are very few and they are not tailored to the needs and best interests of the child. Programmes run by NGOs and recommended by the SWC are services provided for a fee, which makes them less accessible for this reason. Their availability is also not uniform. Depending on the circumstances of the case, the Court may decide that the SWC should monitor the exercise of parental responsibility and determine the manner in which this supervision should be carried out. The curtailment of parental responsibility (Article 17(3) of the DZ) should be regulated in such a way as to allow parents to be referred to therapies and programmes that would lead to more appropriate parental responsibility to provide for the best interests of the child. The jurisdiction of the Court and the SWC with regard to the monitoring of parental responsibility should be more clearly defined, including the possibility of imposing fines if the obligations to engage in therapies and treatment are not met.

The analysis also covers the issue of removing children from parental care and placing them in institutions from the perspective of ensuring the best interests of the child, including consideration of possible improvements to the Act on the Intervention for Children and Youth with Emotional and Behavioural Disorders in Education (hereinafter referred to as the ZOOMTVI).

The need to adapt the provisions of the DZ to the rights of special needs' children in relation to the Placement of Children with Special Needs Act (hereinafter referred to as the ZUOPP-1) is also part of the consideration.

1.4.3 Deficiencies in cooperation mechanisms and consultation mechanisms, representation and advocacy structures

The fundamental principles enshrined in Article 12 of the United Nations Convention on the Rights of the Child, which advocate meaningful participation and counselling for children, face significant operational challenges within the context of Slovenian civil adjudication. An obvious deficiency in the provision of the required information to children, namely on their rights and procedural rights, prevails in the current framework, hindering essential ways of participation that are crucial for informed decision-making, in particular in guardianship and social protection decisions. Remedying this inadequacy requires procedural reforms aimed at promoting the authentic and meaningful participation of children, ensuring the priority of the child's social protection considerations in civil judicial proceedings. Efforts to adjust existing mechanisms to international standards, including the possibility of using specialised facilities such as the Children's House (Barnahus) for conducting comprehensive interviews and counselling, are proving crucial in strengthening a participatory ethos that supports decision-making in the best interests of the child.

The child can express his/her opinion in an interview at the Social Work Centre, in an informal interview with a judge, through the child's advocate (Ombudsman), in a forensic interview carried out at the Children's House, when a child who is a victim or witness of a crime is interviewed. Each approach raises different issues which should be addressed by legislative reform or by consistent implementation of the legislation in practice.

Slovenia has a well-developed childcare system that is in line with international standards and ensures a high level of exercise of rights and well-being for all children. However, the area needs continuous improvement in order to lead to shorter family proceedings. Children involved in the proceedings should be provided with all the necessary information and explanations in accordance with their age and understanding. This is why it is also a very important question whether children who are already able to take part in proceedings should be represented by a lawyer on a right to legal aid service basis (hereinafter referred to as the LAS), or whether this can only be provided by lawyers specialised in this field.

Both the DZ and the Prevention of Domestic Violence Act (hereinafter referred to as the ZPND) stipulate measures to be imposed by the Court against the perpetrator of violence to protect the child when the child is a victim of domestic violence. The Court has no protocol on how to proceed at the commencement of proceedings to determine the level of risk of harm to the child. A review of the regulation and the perception of the problem will be carried out with a view to identifying the need to regulate this issue and proposal for the involvement of professionals who would participate in the development of a recommended protocol for action that would enable the Court to assess the level of risk of the child when they are a victim of domestic violence. A final analysis, involving professionals from different fields, could lead to the preparation of a recommended protocol for action and a form for assessing the level of risk of a child when they are a victim of domestic violence.

The appointment and implementation of the roles of guardians *ad litem* and child advocates in the Slovenian civil justice system highlight important shortcomings that require remedial measures. The lack of clarity regarding their profiles, roles and appointment procedures leads to marked inconsistencies that undermine the effectiveness of representation in the best interests of the child. Remedying this inadequacy requires a precise definition of the qualifications, responsibilities and appointment methods that are key to ensuring sound and robust advocacy frameworks tailored to the complex requirements of children facing civil court proceedings. Adjusting existing structures have the potential to strengthen the effectiveness and integrity of the representation mechanisms indispensable for the protection of children's rights in the judicial proceedings.

Appointment of guardians *ad litem* and special-case guardians: to protect the best interests of the child in family proceedings, there should be a special list of lawyers for all courts in Slovenia who are specially trained for this purpose. Only lawyers who have completed the required training and education should be appointed. Every year, lawyers included on this list should undergo regular annual training to keep up-to-date with all the latest developments in the field and thus maintain their specialisation. Simply attending training and education should not suffice; the expertise of these lawyers should be evaluated, and in case of their failure to act in the best interests of the child during the proceedings, there should be certain measures available.

As regards the role and function of lawyers in proceedings, the question is whether lawyers appointed as legal representatives of parties in proceedings and lawyers representing a party on the basis of a decision of the LAS should be specialised in this area.

1.4.4 Domestic violence against a child, risk assessment and recommended management protocol

The ZPND envisages measures to be taken by the Court against the perpetrator of violence to protect the victim. Pursuant to Article 4(1) of the ZPND, a minor family member, a child, enjoys special protection against violence. Pursuant to Article 5 of the ZPND, authorities and organisations are obliged to carry out all the procedures and measures necessary to protect the victim, taking into account the level of their risk and the protection of their best interests, whereby ensuring the integrity of the victim is respected in doing so. If the victim of the violence is a child, the child's best interests and rights take precedence over the best interests and rights of the other parties to the proceedings. The Family Code also provides for measures to protect children who are victims of domestic violence.

In cases where the victim of violence is a child, the Court faces a number of challenges. Addressing these issues requires a coordinated approach involving legislative reforms, improvements in proceedings, capacity building and inter-agency cooperation. By systematically addressing these challenges, the legal framework of family law can be strengthened and provide better protection for the rights and best interests of children involved in civil court proceedings.

2. PROBLEM AREAS WITH REGARDS TO ENSURING THE BEST INTERESTS OF THE CHILD IN CIVIL COURT PROCEEDINGS

The study further elaborates on duration and awareness of judicial proceedings, analyses measures to protect the best interests of the child, addresses shortcomings in child participation and consultation mechanisms, representation and advocacy structure, and addresses domestic violence against the child, with a focus on child's risk assessment and recommended treatment protocols.

2.1 DURATION AND AWARENESS OF JUDICIAL PROCEEDINGS

2.1.1 Duration of proceedings before the Court

Proceedings to protect the best interests of the child are brought before the Court in non-litigious proceedings. One of the main issues in judicial proceedings, which makes it possible to speak of a situation in which the best interests of the child are not optimally protected, is the duration of the proceedings before the Court. There are several reasons for the lengthy proceedings. One of them is certainly the lack of expert witnesses in the field of clinical psychology.[2] The Ministry of Justice has been working intensively on the problem of the lack of experts over the past year, and has taken a number of measures, the effectiveness of which will become apparent in the coming years. Therefore, this problem will not be the subject of this paper.

One of the issues that arises in judicial proceedings and prolongs their duration is the lack of appropriate programmes for parents and children when one or the other, or both, are shown to have mental health problems.[3] Issues can vary in intensity and can simply occur because the parents are separating. Programmes to help parents through this difficult period should be available before the proceedings to protect the best interests of the child, as well as during the proceedings. In both cases, appropriate psychological or other support could help to speed up the course of proceedings. In fact, during the proceedings, it happens that, either by the Court or by an expert, it is found that the parents would urgently need certain psychological help to exercise parenting in the child's best interest, and the Court may refer them to a particular programme or therapy, but it turns out that there is either no programme at all or that they have to wait several months. Some of the programmes that do exist are offered for a fee and unaffordable for many parents, and for the latter, the lack of transparency of these programmes represents an additional obstacle, making it unclear which is appropriate and which not.

Another obstacle, which also leads to delays in court proceedings, and which will be discussed in more detail below, is the lack of information provided to parents about parenting after the separation of parents.

2.1.2 Agreement on custody

The DZ established the rule of shared parenting in the Republic of Slovenia. Agreements between parents are still hampered by the mindset that the decision on which parent is to be entrusted with custody of children is of paramount importance, which often makes an agreement

2 When we talk about the lack of experts in the field of clinical psychology, we are referring in particular to the lack of experts in this field who have the professional competences to deal with younger children.

3 It should be added that the expansion of parenting skills programmes is under way through a project under the Ministry of Health's Recovery and Resilience Plan, with the aim of further increasing access to these programmes within the network of child and adolescent mental health care centres in health centres across Slovenia.

between parents impossible, which unnecessarily terminates in proceedings where the issue is settled by decision of the Court.

In addition, the concern of which issues have a significant impact on the child's development remains unresolved (at least on an informative level for parents). Where the parents do not live together and the child is not entrusted to custody of both parents, the parents decide by mutual agreement and in accordance with the best interests of the child on issues that have a significant impact on his or her development. Given that too much time is wasted in judicial proceedings on these issues, the question arises as to how to improve the preliminary interview before the SWC[4] or how to better inform parents not only about shared parenting but also about judicial proceedings.

In Article 138(1) (custody of the children), the DZ stipulates: "If parents are living apart or about to separate, they must agree on the custody and maintenance of their joint children in accordance with the interests of the children. They can agree on joint custody of the children, to grant custody of all the children to one of them or to grant custody of certain of the children to one parent and of the other children to the other parent. If the parents fail to reach agreement on the matter themselves, a Social Work Centre shall assist them in reaching an agreement and, at their request, mediators." The starting point of the statutory rule, which follows the right to family life, is therefore that, when parents separate, they themselves agree with whom of them the child will live with.

Article 51 of the ZNP-1, which applies to the regulation of family relationships, provides: "Court settlement is allowed in proceedings for deciding on the custody of the child, child's maintenance and contact concerning children, and in proceedings for deciding on issues relating to the exercise of parental responsibility which have a significant impact on the child's development, but the provisions on court settlement do not apply in other proceedings for civil status and family relationships arrangements. The Court will not allow a court settlement to be concluded if it is not in the best interests of the child."

If the parents have reached an agreement on custody, and even in case they have not, prior consultation is mandatory under Article 203 of the DZ: "Before asking the Court to decide on the child's custody, maintenance and contact with them or other persons, or on issues relating to the exercise of parental responsibility which have a significant impact on the child's development, the parents shall attend a prior consultation with the SWC, unless: one of the parents is injudicious; one of the parents lives abroad, is missing or of whose place of residence is not known."

In accordance with the case-law, prior consultation is a procedural requirement for lodging a custody application:

In its decision of 23 October 2019, Case No. VSL Decision IV CP 1912/2019, the Ljubljana High Court upheld the order of the Court of First Instance, which dismissed the applicants' proposal as they had failed to submit to the Court, despite being summoned to do so, the record of the prior consultation.

In its decision of 7 January 2020, Case No. VSM Decision III Cp 1115/2019, the Maribor Higher Court upheld the order of the Court of First Instance, which dismissed the applicant's proposal because they had failed to submit to the Court the record of the prior consultation, despite being requested to do so by the Court. As is apparent from the statement of reasons in the decision, the submission of the record of the prior consultation is a procedural requirement for the Court to give a ruling.

4 As reported by experts employed at the SWC at various joint events, the problem that arises in their work is the fact that they are overwhelmed with work assignments and that there is a high turnover in the recruitment of practitioners.

The SWC carries out prior counselling for parents in accordance with the provisions of the Rules on the implementation of prior consultation[5]. In accordance with Article 7 of the Rules, in the prior consultation for parents who intend to file a proposal for the initiation of proceedings concerning the custody of a child, maintenance, access or the exercise of parental responsibility, which have a significant impact on the child's development, the expert shall draw the parents' attention to the protection of the best interests of the child in the arrangement of their relationship with the child, to their duties and to the good influence on the child of the consensual arrangement of these relationships. The expert informs the parent about possible solutions and forms of support. The expert and the parents find out whether an agreement was reached between the parents. If they failed to reach an agreement on their own, they are assisted by a professional. If the professional assesses that the agreement is not in the best interests of the child, they inform the parent of their assessment.

If the parents reach an agreement on custody, they can propose a court settlement (Article 138 of the DZ). The Court decides in non-litigious proceedings in accordance with Article 8 of the ZNP-1 at a hearing. In such proceedings, the Court merely fictitiously decides on the basis of a proposal for an amicable arrangement of custody, since the parents have already agreed on this issue in prior agreements. However, the Court will only allow a court settlement if it is for the benefit of the child. The Court decides whether the proposed arrangement is in the best interests of the child, usually at a hearing.

Statistically speaking, more than 40% of all family law proceedings before courts are concerned with the amicable settlement of child custody issues between the parents. The cases must be heard and the parties must reach a court settlement. Dealing with these cases at a hearing, as is the norm, is time-consuming because of the large number of cases.

Some courts or judges will decide such cases on the basis of written procedures, but as such an option is not expressly provided for these proceedings, the Court will follow the general procedural rules applicable to proceedings. Article 42 of the ZNP-1 envisages the supplementary application of the Civil Procedure Act (ZPP) *mutatis mutandis*: In non-litigious proceedings, the provisions of the ZPP apply *mutatis mutandis*, unless otherwise provided by law. However, Article 279a of the ZPP provides that, with the consent of the parties, the Court may decide the dispute on the basis of their written applications and written evidence without a main hearing if the parties waive the hearing in writing. In such cases, the Court (and, as noted, this does not apply to all courts or all judges), applying the ZPP *mutatis mutandis*, will therefore ask the parties whether, in accordance with the general rule, they waive the hearing of their case at the hearing. If the parents waive the hearing, the Court first sends them a summons to provide all the necessary information (including on fixing the maintenance allowance) and then sends them a written proposal for a court settlement to sign. In this case, the Court is also guided by the general rules of the ZPP, which, in Article 307(4), prescribes the manner in which the court settlement is to be concluded: ”A court settlement can also be concluded[6] by the parties signing a written proposal for settlement, which is drawn up and sent to the parties by the judge.” Assessment of merits is also necessary in this case, as the best interests of the child must be pursued in every case. For example, the Court will not allow a court settlement in which the parents agree on a solution that is (clearly) not in the best interests of the child. An obvious example of that kind is when parents agree on very low maintenance allowance. In such a case, the Court will increase the agreed maintenance allowance in its proposal for a court settlement between the parents.

5 Official Gazette of the Republic of Slovenia, No 21/2019.

6 Article 307(1) to (3) of the ZPP provides for the conclusion of a court settlement at a hearing: “The parties' settlement agreement shall be entered in the minutes. A court settlement is concluded when the parties, having read the settlement minutes, sign them. A certified transcription of the minutes recording the settlement shall be issued to the parties on request.

If the Court finds that the agreement is not in the best interests of the children, it rejects the proposal (Article138 of the DZ). In practice, it is less common for a Court to find that a proposal for a court settlement is not in the best interests of the children and, as a result, to reject a proposal for an amicable custody arrangement. More common are situations where the Court finds that the proposed agreement is not in the best interests of the children and helps the parents reach an agreement that is more beneficial to the children. Such situations are not so rare and are the reason why some courts (or judges) do not opt for the court settlement to be concluded in writing. In these cases, it often occurs that the parents (one, the other or both) were not sufficiently notified and informed about the content of the agreement they had reached with the SWC or about other options before visiting the Court.

In cases where parents reach an agreement before the SWC, there is therefore no automatic system whereby agreements are simply confirmed, but the best interests of the child nevertheless require at least a minimum level of assessment through the prism of what benefits the child.

2.1.3 If no agreement has been reached before the SWC

In Article 138(3) and (4), the DZ provides: "If the parents do not agree on custody of the children, the Court takes a decision. The Court may also, of its own motion, decide on any measures to protect the best interests of the child in accordance with the provisions of this Code. In custody proceedings, the Court always decides on the maintenance of children of both parties and on the right of access to parents in accordance with this Code. The Court issues a new judgment on custody if the changed circumstances and the best interests of the child so require."

Cases in which parents cannot agree on the custody of their children are cases in which the duration of the proceedings is usually extended for a very long period. Sometimes it is necessary to appoint an expert in clinical psychology (approximately 5% of such cases appear before the courts), and in some cases it is necessary to direct parents to attend certain programmes due to the need for specific expertise that the Court does not have. Often, however, when there is no need for one or the other, it turns out that although the parents want to reach an agreement, they need the Court's help to do so, because the situation is not yet ripe for a final regulation of the relationship. In such cases, the Court usually helps to calm the conflict situation between the parents by making interim measures or by allowing the parents to enter into temporary arrangements, either by a court settlement or by a decision of the Court, to bring about a situation that allows the relationship to be settled permanently.

It often turns out that the inability to reach an agreement between parents is due to a lack of understanding and knowledge of the legalities that apply after the dissolution of the parental relationship. Instead of parents working together for the benefit of the child, there is often a competition to see who will be a "winner in the battle for the child", with both parents forgetting the best interests of the child and unaware of the harm they are causing the child by doing so.

2.1.4 Shared parenting through the case-law of the Slovenian courts

In recent decades, the social situation has led most parents to want to participate as equally as possible not only in raising their children, but also in their care. This has been followed by legislative changes, as the DZ provides for shared parenting as the basic form in which parents should exercise care and raising of their children (Articles 138 and 139 of the DZ). However, too often in judicial proceedings, there is disagreement between parents on which parent is to be granted custody of the child. The concept of shared parenting as a basic rule remains unrecognised among these parents, and voluminous applications and unreasonable actions are often used to try to prove that the other parent is unfit for care and child-raising.

Case-law pursues the concept of shared parenting. For example, the Court has ruled in the following cases:

– in the case of the Ljubljana High Court, Case No. IV Cp 1618/2023 of 8 November 2023 upheld the decision of the Court of First Instance, which gave custody of 12-year-old AA to both parents, with the mother living in Slovenia (where the child will also have permanent residence) and the father living in Australia for most of the year. It is clear from the statement of reasons in the decision of the High Court that the provisions of Articles 138 and 139 of the DZ establish shared parenting as the primary form of custody, which is why the Court must always first examine whether the conditions for such a form of custody exist. This position is based on the constitutional arrangement (Article 54 of the Constitution of the Republic of Slovenia) and the provisions of the United Nations Convention on the Rights of the Child, which give both parents equal responsibility for the child's upbringing and development, even in the case where the parents no longer live together. The best interests of the child are best protected when, even after the dissolution of conjugal life, the parents are in the same legal position in relation to the child, provided that they are both fit to be entrusted with its custody. Long distances cannot be a decisive factor preventing the establishment of joint custody. Nowadays, it is also possible to arrange formalities remotely. The boy is attached to both parents and both parents have adequate/comparable parenting capacities. Despite the conflict, they manage to get along, as they have proved in the past. The decision on shared parenting does not mean that the child has to spend equal time with both parents. Shared parenting strengthens the child's awareness that he or she is supporting both parents and strengthens the parents' sense of parenthood and awareness of responsibility.

– in the case of the Ljubljana High Court, Case No. IV Cp 1793/2023 of 6 December 2023, the Court upheld the decision of the Court of First Instance, which ruled that the minor girl should be entrusted to the shared custody of both parents. It is apparent from the statement of reasons in the decision of the High Court that both parents are suitable for the care and upbringing of the minor and are able to provide her with the conditions for a healthy, balanced and integral development, and that the communication between the parents has improved and no longer endangers the minor child. Both parents are able to recognise and respond to the needs of the minor child, empathise with her feelings and provide emotional support. While the facts of the case show that it is the father who understands the child's needs somewhat better than the mother, and that the parents live at a quite considerable distance, these facts did not influence the Court's decision on granting custody. However, the Court has designated the father as the resident parent, the parent with whom the child is domiciled and who also attends kindergarten in that place.

– in the case of the Ljubljana High Court, Case No. IV Cp 285/2024 of 8 May 2024, the Court upheld the decision of the Court of First Instance, which ruled that the minor girl should be entrusted to the shared custody of both parents. It is clear from the statement of reasons in the decision of the High Court that there is a common position in legal literature and practice, namely that it is in the best interests of the child if the upbringing and child-raising are carried out as if the matrimonial cohabitation between the parents had still been established, which is why the basic solution is joint custody. It refers to the constitutional right to parenthood under Article 54 of the Constitution of the Republic of Slovenia and to the principle of equal responsibility towards children under Article 135 of the Constitution of the Republic of Slovenia. Parents should, if possible, maintain joint custody even after the dissolution of conjugal life. If the Court decides on joint custody against the wishes of one of the parents, it must determine whether they will be able to agree on the arrangements for joint custody. If they are unable to do so, it is in the best interests of the child for the Court to determine the custody arrangements more precisely. In the light of the confrontational relationship between the parents and the appellant's concerns as to how they would decide on day-to-day custody issues, the Court added

that day-to-day issues that do not significantly affect the child's development would be decided by the party with whom the child was staying at the time, while other issues that significantly affect the child's life and development would have to be decided jointly, i.e. in the same way as if the child had been assigned to the custody of only one parent.

– in the case of the Ljubljana High Court, Case No. IV Cp 1682/2023 of 24 October 2023, the Court upheld the decision of the Court of First Instance, which ruled that both minor children should be entrusted to the shared custody of both parents. The statement of reasons in the decision of the High Court shows that it is in the best interests of the child if both parents take care of him or her. It refers to Article 135 of the DZ, according to which parents have the primary and equal responsibility for their children's development, and the State provides them with assistance in the exercise of their responsibility. Even after a family break-up, efforts should be made to ensure that parents maintain joint custody of their children. Only if the Court finds that joint custody would not be in the best interests of the child, can the child be entrusted to the custody of only one parent. Since the applicant opposed joint custody, the Court specified the manner in which custody was to be exercised.

– in the case of the Maribor High Court, Case No. III Cp III Cp 262/2023 of 11 April 2023, the Court upheld the decision of the Court of First Instance, which ruled that both minor children should be entrusted to the shared custody of both parents. It arises from the statement of reasons in the decision of the High Court that it refers to Article 135 of the DZ, according to which parents have the main and equal responsibility for the care and upbringing of the child and for their development even after the dissolution of the marriage. The best interests of the child are their primary concern, and the State helps them to exercise their responsibility. The principle has a basis in the constitutional arrangement (Article 55 of the Constitution of the Republic of Slovenia) and international conventions (Article 18 of the Convention on the Rights of the Child), and the institution of joint custody is the most appropriate for its implementation in real life. This form of custody may be ordered by the Court in accordance with the provisions of the DZ, without a proposal from the parties and despite the possible disagreement of either or both parents. The best interests of the child are best protected when, even after the dissolution of conjugal life, the parents are in the same legal position in relation to the child, provided that they are both fit to be entrusted with its custody. The parents have perfectly matching personality traits and parenting capacities, each of them is able to offer the children different but complementary experiences, both are supportive in meeting the children's developmental needs, and both have a positive attitude towards the children spending time with the other parent. Only when there is a very high level of conflict between the parents that endangers the child can the Court refuse to allow joint custody, and in the specific case the Court found that the level of conflict between the parents was not such as to endanger the best interests of the children.

These decisions show that many of the circumstances that parents attach great importance to are not considered by the Court to be decisive when taking a decision whether a child is to be entrusted into custody. The parents must be fit to exercise care and upbringing, and neither parent must have circumstances that would make it impossible to trust that parent with the child's care and upbringing. Due to a lack of understanding and information about the legal framework, as well as case-law, one or the other parent is portrayed as unfit in the proceedings, even in cases where the facts established at the end of the proceedings do not show this to be the case. Given the often unnecessary prolongation of proceedings due to these circumstances on the part of the parties involved, there is a need to raise awareness of the importance of shared parenting, of the rules that apply in this area, and of the methods of implementing custody that, where necessary, are determined by the Court. As this is also in some ways a general social issue, it makes sense to address these topics as widely as possible and to make citizens aware of them earlier, before they find themselves in a difficult period of their lives, i.e. at the time of separation, in judicial proceedings.

At the same time, the need to raise the profile of the concept of shared parenting also raises the question of whether the Social Work Centre's prior consultation is fully achieving its purpose. A judge decides on custody in judicial proceedings when the parents cannot agree on the issue. In court-annexed mediation, the mediator uses mediation techniques to help the parties reach an agreement. But it is not for the former or the latter to educate the parties in the proceedings on these issues, which is what is happening now, all with the aim of getting the parents to reach an agreement that is in the best interests of their children. The fact that in family court trials a great deal of the time and written pleadings of the parties involved is often devoted to the subject of custody often reflects a lack of understanding of the concept of shared parenting, mostly among non-legal laymen, but occasionally also among lawyers. The numerous applications proving that the parents are in conflict, etc., as well as appeals after the proceedings has been completed, unnecessarily prolong the process of finding a solution that will be in the best interests of the child.

Improving the provision of information to parents at the stage before or immediately after the start of judicial proceedings could lead to greater and quicker parental agreement on custody, as well as on the enforcement of custody itself. Based on these findings, brochures could be produced, websites improved, short lectures for parents, etc.

2.2 ANALYSIS OF MEASURES TO PROTECT THE BEST INTERESTS OF THE CHILD

2.2.1. Interim measures

2.2.1.1. Contacts under the supervision of a professional

An interim measure is an emergency measure to protect the best interests of the child. The Family Code specifically regulates the interim measure, restricting the right of access of one of the parents (Article 163 of the DZ). This is the opportunity to the right of access under the supervision of a professional from the Social Work Centre or the institution where the child is placed. The Family Code stipulates that such contacts can be established for a maximum period of nine months and cannot be extended. This is the only arrangement for the exercise of the right of access, for which the law explicitly stipulates that it cannot be extended. Supervised contact is also limited to a maximum of two hours of supervised contact per week. Therefore, the Court may not lay down more such contacts within one week by way of an interim measure. Supervised contacts are only established within the context of an interim measure. In practice, a major problem arises in situations where, after nine months, the child is still at such risk that contact with the parent can only be safely exercised under the supervision of a professional from the SWC, but the Court is not allowed to extend the measure, according to the express provision of Article 163(2) of the DZ. In this case, if the child's safety cannot be ensured in any other way, the contact is not exercised, which constitutes a violation of the child's right of access with their parent.

It is very difficult to argue that an absolute restriction of supervised contact to only nine months and only by interim measure is in the best interests of the child. The foregoing has been demonstrated in practice on several occasions when the Court, although the child's vulnerability makes contact with the parent under the supervision of the SWC the only possible form of contact, has not had the possibility to extend the duration of the interim measure. In light of the difficulties with such a limitation, the DZ should at least provide for the possibility to extend the duration of the interim measure, at least in exceptional circumstances, if this is in the best interests of the child. In some cases, the judicial proceedings for such interim orders last more than nine months, and the reasons for such contact cannot always be resolved within that time (e.g. the likelihood that the parent may be violent or under the influence of illegal substances).

As contact is primarily for the best interests of the child, it would be reasonable to provide in the DZ for the possibility of contact to be established by interim measure, under supervision or in the presence of other persons, e.g. relatives, if this is in the best interests of the child. Furthermore, it should also be possible to have contact with the parent in another way, e.g. with an NGO that is qualified, staffed and meets the conditions that should be laid down in the relevant regulation. The latter would be adopted by the competent Ministry.

2.2.1.2 Implementation of contact restrictions as a measure of a lasting nature

Even more important than in the case of contact on the basis of an interim measure is the need to ensure that contact restricted by the Court on the grounds of the child's endangerment by means of a measure of a more permanent nature under Article 173 of the DZ can be exercised in such a way as to avoid endangering the child.

According to Article 173 of the DZ, the Court may restrict or withdraw the right of access if the child is at risk as a result of the access and the best interests of the child can only be sufficiently safeguarded by restricting or depriving the right of access, which is one of the measures of a more lasting nature. In deciding whether to restrict or withdraw contact on the basis of Article 173 of the DZ, it is necessary to take into account Article 9 of the Convention on the Rights of the Child, according to which Contracting States guarantee that a child shall not be separated from their parents against their will, unless, in accordance with the applicable law and procedures, the competent authorities decide in judicial proceedings that such separation is necessary for the best interests of the child. The United Nations has developed guidelines for alternative care for children in these circumstances, which further clarify how to respect children's rights under the Convention on the Rights of the Child and the corresponding obligations of States[7] and which can also be used to interpret specific children's rights in practice. EU law also applies to children's rights to see their parents. The EU Charter of Fundamental Rights (Article 24(3)) explicitly recognises the right of every child to have contact with both parents. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction applies to civil matters relating, *inter alia*, to the right of access.

When deciding whether to restrict or terminate rights of access, the principle of the least restrictive measure must be taken into account, which means that contact should only be terminated completely in exceptional cases where the child is at such a risk of harm from contact with the parent, and that this risk cannot be excluded even in the case of non-personal contact, such as sending letters, gifts, text messages or communicating by modern means of communication. The parent can have contact with the child remotely, via a video link, which would not put the child at risk. Present-day lifestyles, where it is easy, perfectly normal and commonplace to use a remote video link, there seems to be no obstacle to contact between the appellant and his son in this way, namely every three months, as proposed by the father. It is also perfectly reasonable and understandable that the foster parents may wish to send a photograph of the child to the father at such an interval, which cannot be a particular burden for the latter. The best interests of the child will thus remain protected.[8]

It is settled by the European Court of Human Rights (hereinafter referred to as the ECtHR) practice that the mutual socialising of parents and children constitutes a fundamental element of

7 Resolution adopted by the General Assembly on 18 December 2009: Guidelines for the Alternative Care of Children, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/470/35/PDF/N0947035.pdf?OpenElement (13 February 2024).

8 Decision VSL IV CP 1462/2022 of 28 September 2022.

family life. Domestic measures that impede such socialising constitute an interference with the right to respect for private and family life.[9] It follows that under Article 8(1) of the European Convention on Human Rights the termination of contact between the appellant and the children constitutes an interference with their rights. Such interference constitutes a violation of the right to family life, unless the termination of contact is "in accordance with the law". This means that the termination of contact pursues legitimate aims that can be considered "necessary in a democratic society". It is necessary to examine whether the reasons justifying imposition of the measure were relevant and sufficient, i.e. to prevent disorder or criminal act, or to protect health or morals, or to protect the rights and freedoms of others (Article 8(2) of the European Convention on Human Rights). The ECtHR has repeatedly held that, in cases concerning a parent's rights of access, the State has, in principle, an obligation to take measures to reunite parents with their children and an obligation to facilitate such reunification, in so far as the best interests of the child dictate that every effort should be made to preserve personal relations and, if and when appropriate, to restore the family.[10] In line with ECtHR case-law, parents have the right to request measures to reunite them with their child. National authorities must take such measure. The lack of cooperation between the separated parents is not a circumstance which exempts the authorities from their positive obligations; on the contrary, it imposes an obligation on the authorities to take measures to reconcile the conflicting interests of the parties, taking into account the best interests of the child.[11]

Contact under the supervision of a SWC or an institution cannot be terminated by a measure of a more permanent nature. The DZ does not provide for any measure of a more permanent nature that would allow contacts to be carried out in a surveillance environment. If the child is at risk because of the parent, e.g. because the parent is not able to care for the child at all and can only have contact with the child in a supervised and safe environment, but would not be violent towards the child (e.g. the mother is a drug addict, is not able to care for the child, but wants to have occasional contact with the child, and her condition would make the child unsafe if the contacts were not supervised by a third party, but otherwise the mother is not a danger to the child), it would be in the best interests of the child if the contact under the measure of a more permanent nature could be carried out at the SWC, at the institution where the child is placed or with the person with whom the child is placed. However, Article 174 of the DZ could be interpreted as allowing supervised contact to be established when a measure is imposed to remove the child from the parents and place them in an institution or foster care or with another person. This means that the contact would take place in the presence of an institution worker or foster parent. However, the purpose of imposing contact under Article 174 of the DZ is that it should be carried out independently with the parents, without being supervised by the institution or the foster parent or the person with whom the child is placed. This may be contrary to the purpose of the placement in an institution or foster care.

It would be in the best interests of the child if, in the context of a measure of a more permanent nature, the DZ provided for the possibility that contacts restricted by a Court decision could be carried out elsewhere, e.g. with an authorised and qualified NGO, whereby it should be specified who bears the costs of such contacts. In this case, the costs of the contacts should be borne by the State.

It would also be in the best interests of the child if, when imposing a measure of a more permanent nature, the Court had the possibility to impose a financial penalty on the parent who fails to comply with the measure. It should also be provided that the provision of Article 103 of the ZNP-1, which allows the Court to impose a fine in the decision in which it decides on the

9 Judgment of the ECtHR *Johansen v Norway* of 7 August 1996, para. 52.
10 Judgment of the ECtHR *Ribić v Croatia* of 2 April 2015, para. 94.
11 Judgment of the ECtHR *Zawadka v Poland* of 23 June 2005, para. 67.

child's contact in decision-making procedures concerning the best interests of the child, should also apply in this case, in case the parents do not comply with the decision.

2.2.1.3 Interim arrangements between the parties during the proceedings

Case-law has developed the practice of concluding interim arrangements at the first instance. This is particularly the case where an application for a interim measure is made, often to regulate contact between a parent and a child, or where the conditions for a interim measure are not met but both parents agree to a provisional arrangement of their relationship with their children for the duration of the proceedings, in order to establish over a period of time whether the arrangement is in fact in the best interests of the child and to gradually regulate the parents' relationship. Such an interim measure can be the basis for a court settlement, which finally ends the proceedings or settles the parents' relationships with regard to the children of both parties. In particular, the advantage in the interim court settlement procedure is that by concluding an arrangement, the parents overcome their lack of communication or begin to build the communication necessary to implement both the Court decision, which will in particular regulate contact between the child and the parent or both parents, and the court settlement, which will finally settle the parents' relationship with regard to the children of both parties.

The Court must keep an eye on the possibility of a court settlement throughout the proceedings, remind the parties of this possibility and help them to settle (Article 306 of the ZPP). According to Article 4 of the ZNP-1, in non-litigious proceedings, the parties may settle unless the law provides otherwise or unless they are unable to dispose of their rights or the nature of the relationship in question precludes settlement. Under Article 51 of the ZNP-1, a court settlement that applies in proceedings for the settlement of civil status and family relationships is allowed in proceedings for deciding on the custody of a child, child maintenance and contact, and proceedings for deciding on issues relating to the exercise of parental responsibility which have a significant impact on the child's development. However, in other proceedings to settle civil status and family relationships, the provisions on judicial settlement do not apply. The Court must not allow a court settlement to be concluded if it is not in the best interests of the child.

On the basis of these provisions, it could be concluded that a court settlement is not allowed in proceedings in which measures for the protection of the best interests of the child are at issue, and therefore that a provisional court settlement is not allowed. In particular, when regulating contacts, where the Court decides to restrict contact, such arrangement may, if strictly followed, be contrary to the best interests of the child. By means of a temporary arrangement, the parents can determine the right way to exercise right of access when it is necessary to restrict it for one of the parents because of the child's risk or to check whether a particular manner of exercising right of access is in fact in the best interests of the child.

The possibility of amending ZNP-1 to explicitly allow for court settlement or provisional court settlement also in proceedings concerning measures for the protection of the best interests of the child, where this is in fact in the best interests of the child, should be explored. In particular, this would be the case where it is necessary to ensure the exercise of contact between the child and the parents.

The possibility of DZ to explicitly regulate the possibility of concluding provisional court settlements during proceedings, which have proven in practice to be a solution that contributes to ensuring the long-term protection of the best interests of the child, should be examined.

2.2.2 Monitoring the exercise of parental responsibility

In Article 171, the DZ provides for the least restrictive measure to protect the best interests of the child, which is the least restrictive measure to restrict parental responsibility. It is the first of the measures covered by Chapter 7 of the DZ. This also emphasises the progressiveness of measures to protect the best interests of the child. The measure itself can be combined with other measures to restrict parental responsibility. If it is imposed as an independent measure, it may be imposed on one or both parents, and the Court may restrict the individual rights of parental responsibility by imposing the measure on the latter. The measure of curtailment of parental responsibility (Article 171(1), (3), and (4) of the DZ) has two (alternative) forms, which can be imposed independently. With the first, the Court restricts (prohibits or imposes a specific service) individual rights under parental responsibility (preventive supervision). With the second, it sets out the supervision of the exercise of parental responsibility in terms of assistance (corrective supervision). The Court can decide to restrict individual parental entitlements if two conditions are met at the same time. The first is that the child is at risk, and the second is that the best interests of the child will be sufficiently protected by the measure, taking into account the circumstances of the case.

Depending on the circumstances of the case, the Court may decide that the SWC supervises the exercise of parental responsibility and also determine the manner in which this supervision should be carried out. The curtailment of parental responsibility in the form of supervision of the exercise of parental responsibility should be regulated in such a way as to allow for the referral of parents to appropriate treatment, therapies or programmes. The result of being involved in these programmes and therapies would be a higher level of parental competence to exercise parental responsibility in the best interest of the child.

The jurisdiction of the Court and the SWC concerning the measure of supervision of parental responsibility, including the possibility of imposing a financial penalty if the ordered inclusion in therapies and treatments is not complied with, should be regulated more precisely. Article 103 of the ZNP-1 already provides for the possibility for the Court to impose a financial penalty in the decision in which it decides on the child's contact, in case the parents do not comply with the decision, namely in accordance with the provisions of the Enforcement and Security Act (ZIZ) with regard to obligations, how to proceed, what to permit and what to refrain from doing. Such a regulation would also make sense in the present case, as it would provide the possibility of some form of supervision or sanctioning of parents subject to a parental responsibility supervision measure by the Court in order to achieve the purpose for which the Court imposed the parental responsibility supervision measure.

A prerequisite for such an arrangement is that the State provides programmes and treatments for parents and families that are substantively relevant and that ensure that they are evenly available throughout the country. Closely linked to this is the role of the SWC in family proceedings, and in particular in the decision-making procedure on measures of a more permanent nature.

2.2.3 The role of the Social Work Centre

This is the role that SWC holds as a guardianship authority under the DZ, in particular Article 170 of this Code. The Centre may include family therapy, psychiatric treatment, alcohol or drug treatment, and other health, education and psychosocial programmes in the family and child support plan.

Professionally trained staff of the SWC encourages users to learn about their respective situation and seek appropriate solutions, on their own and with the help of other institutions and people. However, according to the Code of Ethical Principles in Social Care, the choices of individuals must be respected. They need to be educated about the forms of assistance and made aware of

the different options, which is the task of the SWC. It is up to the user to decide whether to accept assistance from the SWC. However, according to case-law, the Court cannot impose the SWC to provide psychosocial assistance to a parent against his or her will. There is no basis in the law for that.[12]

In principle, the Centre can suggest inclusion in the above programmes and therapies, but in practice these are very few and not tailored to the needs and best interests of the child. Programmes run by NGOs and recommended by the SWC are provided for a fee and therefore less accessible. Their accessibility is also provided in equal manner.

Social protection programmes are designed to prevent and address the social hardship of specific vulnerable groups and, in some cases, to maintain an acceptable social situation for individuals. They are mainly provided by NGOs, exceptionally also by public social welfare institutions, as a complement or alternative to social welfare services and are co-financed through public tenders. Social protection programmes are implemented on the basis of verification or guidelines or under conditions published in calls for tenders for co-funding, so there are no prescribed technical, human resources or substantive standards for implementation. They are designed to take into consideration the characteristics and needs of each target group of users and are based on the specifics of the environment in which they are implemented. Services and programmes from different providers should be integrated into a single system. Each year, around 170 different social protection programmes are co-funded through regular annual calls for proposals, promoting the development of different networks to help individuals and families. The indicative size of the networks by area or target group is based on trends and an assessment of the development of each issue up to 2020, a baseline situation and an assessment of available resources. Some programmes focusing on local issues are also funded by municipalities. Social welfare programmes can be implemented as: publicly verified programmes (these are programmes that have been professionally verified according to a procedure laid down in a specific regulation adopted by the Social Chamber of Slovenia; funded by the State, municipalities and private sources; all publicly verified programmes must be evaluated on an ongoing basis), development and experimental programmes (programmes that develop various new methods and approaches to prevent and address the hardships and problems of specific vulnerable groups; they are funded by the State, municipalities and private sources and are expected to last for a maximum of three years) and complementary programmes (programmes that complement or provide an alternative to the public service, but are run according to the principles and methods of social welfare services; they are usually funded by municipalities, through grants and private sources).[13]

The publication of the Ministry of Social Affairs and Labour and Social Development (hereinafter referred to as the MDDSZ), the Network of Social Assistance Programmes, Programmes for Disabled Persons and Programmes to Support Families shows that *family centres* are a place for bringing together different generations, for strengthening the social roles of individuals, for supporting the reconciliation of family and professional life, for improving relationships and parenting competences, and a place for exchanging good practices and positive experiences. The aim of the content is, among other things, to empower parents to become positive parents, through which they will have a significant impact on the quality of family life and the constructive resolution of interpersonal conflicts.[14] However, content providers are unevenly distributed regionally. There is no guarantee that family centres will be available throughout Slovenia. Equal accessibility must be ensured throughout the country. This would help parents to seek help themselves or be referred by the SWC. As the programmes are not accessible throughout Slovenia, parents are not able to attend them. As a result, a higher number

12 VSL Decision IV Cp 750/2021 of 26 May 2021.
13 Republic of Slovenia, gov.si: https://www.gov.si/teme/socialnovarstveni-programi/.
14 https://www.gov.si/assets/ministrstva/MDDSZ/Direktorat-za-socialne-zadeve-/SVP/Brosura-SLO-splet.pdf.

of disputes between parents are resolved by the Court, which puts more stress on the child than if the parents could have resolved their child-related disputes before the judicial proceedings, thus ensuring the best interests of the child, which is the parents' duty. Other programmes – information and counselling offices (where individuals with mental health problems and their relatives can get individual help and counselling), day centres for people with mental health problems and counselling centres for victims of violence – are also not evenly distributed.

In addition to the above programmes run by NGOs, there are also important programmes provided by the State through advice clinics for children and parents. The Resolution on a National Mental Health Programme 2018–2028[15] set as one of its objectives the provision of uniformly spread and easily accessible free information, counselling and personal support services to people in need in the local environment and, as part of this, the establishment of a network of Child and Adolescent Mental Health Centres and Adult Mental Health Centres at the primary level of health care. At the end of 2023, there were 20 Child and Adolescent Mental Health Centres and 17 Adult Mental Health Centres in Slovenia.

In Slovenia, there is an established network of Child and Adolescent Mental Health Centres in health centres. These centres play a key role in providing help and support to young people in need, as close to their home environment as possible, and offer multidisciplinary treatment for mental health problems. Such centre also works with other services and organisations in the local community that can also provide help and support. At the end of 2023, there were 20 Child and Adolescent Mental Health Centres in Slovenia.

There are currently:

- 20 children and adolescent mental health centres (Brezovica, Celje, Domžale, Idrija, Jesenice, Kranj, Ljubljana - Center and Vič-Rudnik, Maribor, Murska Sobota, Nova Gorica, Ormož, Piran, Posavje, Postojna, Ptuj, Ravne na Koroškem, Škofja Loka, Trbovlje, Velenje)[16]; and
- 17 adult mental health centres (Celje, Domžale, Kočevje, Koper, Logatec, Maribor, Murska Sobota, Nova Gorica, Ormož, Posavje, Ptuj, Ravne na Koroškem, Šentjur, Škofja Loka, Tolmin, Trbovlje, Velenje) operating in health centres across Slovenia.[17]

In Slovenia, there are also Counselling Centres for children, adolescents and parents. These are institutions that combine interdisciplinary treatment, health care, and mainly educational services to help children with specific learning difficulties and other mental health problems. In the tiered approach to providing assistance, they represent an intermediate stage between assistance provided in kindergartens and schools and assistance provided within the context of specialist health care services.

As these counselling centres are only available in a few places, there is a need to increase their number or to create a wider network of centres to make them more accessible.

There is also a need to ensure that the general public is better informed about these programmes and the opportunities to get involved in counselling, so that parents can become aware of them and get involved. Information on programmes and options for families, parents and children could also be made available in courts through brochures or leaflets.

15 Official Gazette of the Republic of Slovenia, No 24/18.
16 See: https://www.zadusevnozdravje.si/kam-po-pomoc/centri-za-dusevno-zdravje/otroci-in-mladostniki/.
17 See: https://www.zadusevnozdravje.si/kam-po-pomoc/centri-za-dusevno-zdravje/odrasli/.

2.2.4 Taking away children from parental care

2.2.4.1 Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (ZOOMTVI)

A measure of a more permanent nature, whereby the Court removes the child from the parents, is one of the most serious measures for the protection of the best interests of the child, as it removes the child from the family. At the same time, the Court decides whether to place the child with another person, in foster care or in a specialist centre, having particular regard to the circumstances of the case. The condition for such a measure is that the child in the family is at such risk that they must be removed from the family environment. This measure may be imposed only when none of the other measures that less intensively interfere with the parent–child relationship is appropriate. The State's duty to protect the best interests of the child where the child is at risk and where the parents cannot provide for the best interests of the child is reflected in Article 106 of the ZNP-1. The latter stipulates that the procedure for placement in a specialised centre can only be initiated on a proposal from the SWC, but the Court can also initiate the procedure *ex officio*.

In addition to the relevant provisions of the DZ and the ZNP-1, the Court or the SWC must also take into account the provisions of the ZOOMTVI when placing children with emotional-behavioural disorders or problems in an institution, pursuant to Article 182a of the DZ. The above-mentioned authority will not necessarily specify the name of the centre where the child will actually be placed in the decision. Article 8 of the ZOOMTVI provides that after an urgent deprivation of liberty or after a decision on the imposition of a preventive measure of placement in an educational institution in criminal proceedings against a minor has been taken, the SWC or the Court, based on a placement order, must designate an expertise centre which coordinates the cooperation of such centres in a given area. The Court (based on the placement order) or the SWC (after the preventive measure to place the child to an educational institution) must designate a competence centre to coordinate the cooperation of competence centres in the area.[18]

Pursuant to Article 182a of the DZ, when the Court places a child in a competence centre by means of an interim measure or a measure of a more permanent nature pursuant to Articles 174 to 176 of the DZ, the Court shall designate the competence centre in the decision in accordance with the ZOOMTVI. The competence centre itself allocates the child to a competence centre within its area, depending on the type of help the child needs. If the child is placed in another competence centre within the same area, the competent court or SWC must be informed. Pursuant to Article 8 of the ZOOMTVI, only the Court can place a child outside the area in which they reside.[19] As a general rule, the placement of the child must be determined by a competence centre in the area where the child or young person lives. The exception is if there are compelling reasons for placement in a competence centre in another area (Article 8(2) of the ZOOMTVI). In accordance with the DZ, the decision on the choice of the institution must be based on the best interests of the child, whereby, on the basis of Article 108 of the ZNP-1, the SWC is deemed to have special expertise in the facts to be considered in the decision-making procedure on a measure of a more permanent nature. It is therefore up to the SWC to provide expert evidence on the existence of compelling reasons why the placement of a child in a competence centre outside the area in which the child resides is in the best interests of the child concerned.

18 For example, there are two expertise centres in Maribor and Murska Sobota – the Maribor Youth Centre and the Veržej Primary School. Following a decision by the relevant minister, the Maribor Youth Centre is responsible for coordination between the Maribor Youth Centre and the Veržej Primary School. In the placement order, the Court places the children only in the Professional Centre of the Youth Home Maribor, but on the basis of this order, the Professional Centre can assign the child to the Veržej Primary School.

19 Murgel, Jasna (2021): New Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (ZOOMTVI), Pravna praksa, No. 5, p. 16.

The competence centre to which the Court places the child must not refuse the placement. No such option is available to it pursuant to ZOOMTVI. However, under the provisions of the ZNP-1, the competence centre or institution is a material party to the proceedings in which the Court decides on the placement of the child in that institution, to the extent the placement is concerned. Therefore, if they disagree with the placement (if they consider that the placement is not in accordance with Article 8 of the ZOOMTVI), they can also appeal against the Court's decision to place the child in an institution. The Court has already dealt with such a case, upholding the decision of the Court of First Instance to place the child in a competence centre outside the area where the child lives.[20]

The problems with placing children in competence centres are in particular that they do not have sufficient space to accommodate children and that not all competence centres have the staff and conditions to receive and treat children with various emotional-behavioural disorders. Therefore, an expert analysis of the adequacy of the space and staffing capacities of the competence centres in terms of the needs of children with emotional and behavioural disorders should be carried out and, in accordance with the findings, the latter should be upgraded or developed, particularly as regards the placement of children in these institutions in the form of a measure of a more permanent nature imposed by a court.

2.2.4.2 Children with special needs

Children with special needs are a category of children[21] who, in addition to the general rules, are subject to specific regulations in the fields of education (the Placement of Children with Special Needs Act – ZUOPP-1 and the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs – ZOPOPP), healthcare and social security (the Parental Protection and Family Benefits Act – ZSDP-1). The provisions of the DZ and ZNP-1 should be better adapted to the rights of children with special needs, or it should be stipulated that children with special needs are subject to the provisions of the relevant regulations on issues affecting them.

Where the issue is the enrolment of a child in an educational institution and the parents cannot agree on the issue, the Court decides on the issue as one that has a significant impact on the child's development (Article 151 of the DZ). In such a case, the expert opinion of the placement committee and the guidance based on it could be equated with an expert opinion on the best interests of the child with regard to enrolment in a particular institution. Pursuant to Article 30 of the ZUOPP-1, the National Education Institute Slovenia issues a decision on guidance in an education and training programme on the basis of an expert opinion prepared by the first-level placement committee. The first-level guidance decision decides whether to place a child with special needs in an education programme. If a child with special needs is placed, the decision decides on the educational institution to which the child will be integrated. The opinion of the committee appointed in the guidance procedure for a child with special needs, if such a procedure is under way, could be used to determine the best interests of the child with special needs. The expert panel consists of professionals who have the expertise to give an opinion on which school is in the best interest of the child to enrol in. The ZUOPP-1 or the DZ could contain a provision in relation to children with special needs that the committee must determine the specific institution, if the parents cannot agree or at least provide an opinion to the Court, in

20 Decision VSM, III Cp 431/2023 of 6 June 2023.

21 In accordance with Article 2 of the ZUOPP-1, children with special needs are children with mental disabilities, blind and partially sighted children or children with visual impairment, deaf and hard of hearing children, children with speech impairment, physically handicapped children, children with long-term illnesses, and children with deficiencies in individual areas of learning, children with autistic disorders and children with emotional and behavioural disorders who require adapted delivery of education and training programmes with additional professional support or adapted education and training programmes or special education and training programmes.

which specific institution it is in the best interest of the child to be enrolled, or in cases where the decision is made on issues that have a significant impact on the child's development and concern the education of a child with special needs.

In the case of a pre-school child with special needs, the provisions of the ZOPOPP on the multidisciplinary team (Article 10) or the specialist paediatrician treating the child with special needs should be applied when it is necessary to decide on an issue that has a significant impact on the development of the pre-school child and the decision requires special expertise. A multidisciplinary team treating the child or a specialist paediatrician could give an expert opinion on the best interests of the child.

It should be added that the Court has no jurisdiction to decide on the placement of children with special needs in institutions, except where the special conditions set out in Article 175 of the DZ are met, i.e. that the child is a danger or a danger to others. Children with special needs can be placed in special education programmes in accordance with the ZUOPP-1 by a placement decision issued by the National Education Institute Slovenia, which determines the educational institution in which the child will be enrolled. The provision of Article 175 of the DZ is also not intended to accommodate children suffering from an acute mental disorder who require treatment in a special ward of a psychiatric hospital or children who, due to mental illness, require long-term care in a secure ward of a social welfare centre. In these cases, the restriction on the child's liberty is so severe that, under Article 31(2) of the Mental Health Act, a lawyer should always be appointed for the child.[22]

2.3 GAPS IN COOPERATION MECHANISMS AND CONSULTATION MECHANISMS, REPRESENTATION AND ADVOCACY STRUCTURES

The child must be granted the right to be heard, which is his or her a right, not an obligation. His or her opinion must accordingly be taken into account in accordance with his or her age and maturity. It should always be made clear to the person concerned that his or her statement will not necessarily influence the final decision of the Court.

Slovenia has a well-developed child care and protection system that is in line with international standards and ensures a high level of exercise of rights and well-being for all children. However, this is an area that needs continuous improvement in order to lead to shorter family procedures. The children concerned, to whom the proceedings pertain, should be provided with all the necessary information and explanations in accordance with their age and ability to understand.

2.3.1 Expression of child's views

Having regard to the legal framework governing children's rights in civil court proceedings, which includes international conventions such as the United Nations Convention on the Rights of the Child, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Convention on the Prevention and Combating of Violence against Women and Domestic Violence, it is possible to see through the provisions of national legislation that certain specific rights of children should be more clearly enshrined in the law, and that they should be specifically referred to.

22 Končina Peternel, Mateja (2021): Otrok kot udeleženec postopka, Pravosodni bilten No. 1, p. 119.

The child may express his or her views:

- In an interview at the SWC. The question is whether he or she is interviewed according to a certain protocol, whether it is necessary for them to be interviewed by a psychologist employed by the SWC, or whether every SWC should necessarily have a psychologist among its staff. Given the role of the SWC in the proceedings, there is also the question of whether the SWC should necessarily have a lawyer among its staff. In practice, a very good interview with a child is carried out by a psychologist employed by the SWC.
- During an informal interview with the judge. The question is whether judges are qualified to interview a child properly, or do they need special training to do so.
- The voice of the child should be heard through an advocate. In fact, it is a psychosocial relief for the child, which has no impact on the Court's decision-making, unless the child consents to his or her statement being communicated to the Court and the parties to the proceedings.
- By himself after the age of 15 (Article 45 of the ZNP-1). Is it sufficient for the SWC to consider that the child is capable of understanding the meaning and consequences of his or her statement and that he or she understands the procedure, or is an expert's opinion required?
- Through a guardian *ad litem* or a special-case guardian. The DZ itself sets the conditions for when it can be appointed, and stipulates that it can be a lawyer. It does not specify exactly what their tasks are, whether they can give an opinion, how they should do their job, etc.
- In a forensic interview, which takes place at the Children's House when a child who is a victim or witness of a crime is subjected to a forensic interview. There are problems with the link between criminal and family proceedings. How to ensure that the family judge is immediately informed if a parent is the subject of criminal proceedings, if an expert opinion has already been drawn up, etc.

Children who may already be parties to the proceedings should be provided with representation by a lawyer on the basis of the LAS, provided that a special list of lawyers specially qualified to represent minors is established.

All ways of expressing a child's will are for his or her benefit, as the most important thing is to be heard. It would be good to have a psychologist interview the child at the SWC, and it would be essential for every SWC to have at least one psychologist among its staff. As regards the declaration of will in an informal interview with the judge or the guardian *ad litem*, who is usually a lawyer, it would be essential that judges and guardians *ad litem* are trained to interview the child. It could also be enacted by law that judges and guardians *ad litem* are obliged to be specially trained to interview the child. In the same way, it could be prescribed that every SWC must employ a psychologist.

2.3.1.1 Guardian ad litem

2.3.1.1.1 Appointment of a guardian *ad litem* by the Court

There are only two provisions in the DZ concerning the guardian *ad litem*. Article 268 provides that, subject to the conditions laid down by the DZ, in the cases referred to in Article 267 of the Code, the authority before which the proceedings are pending may also appoint a guardian. This authority must immediately inform the SWC. The SWC has the same rights in relation to this guardian as it would have in relation to a guardian appointed by them. Article 269 of the DZ provides that the SWC or the Court shall appoint a guardian *ad litem* for a child over whom the

parents have parental responsibility, if their interests are in conflict. If the interests of the children over whom the same person has parental responsibility or the interests of the persons who have the same guardian are in conflict, the SWC or the Court appoints a guardian *ad litem* for each of them. Article 45(5) of the ZNP-1 provides that if the interests of the child and his/her legal representative are in conflict, the Court shall appoint a guardian *ad litem* for the child.

A guardian *ad litem* is a guardian who represents a child in cases where the interests of the child are in conflict with those of his or her legal representative. He or she represents the child only on the issues to be decided in the specific case. In fact, the Court will appoint a guardian *ad litem* in the following cases:

- if the Court finds in proceedings for the custody of a minor child that the parents are not acting in the best interests of the child, that their conflict is so great that it endangers the child, and the Court itself, despite the cooperation of the SWC and an expert, cannot protect the child's interests, it may appoint a guardian *ad litem* for the child.
- In disputes of paternity, where the child is also a party to the proceedings. There is no question of a conflict of interests, which is why a guardian *ad litem* is always appointed if the child has not yet reached the age of 15.
- In cases where the parents agree to the placement of the child in an institution but the child does not, a guardian *ad litem* is appointed because of a conflict of interests.

There is little case-law on the appointment of a guardian *ad litem*, because the participants rarely appeal against the Court's decision.

2.3.1.1.2 Case-law on the appointment of a guardian ad litem

IV Cp 1716/2023

In accordance to Article 269 of the DZ, a guardian *ad litem* is appointed for a child over whom parental responsibility is exercised by the parents if their interests are in conflict. It is not a conflict of interest between parents, but a conflict of interests between parents and child. A guardian *ad litem* is appointed when there is doubt as to whether the parents are able to protect not only their own interests but first and foremost the best interests of the child in the proceedings.

IV Cp 1420/2023

Since it has been established that the parents are unable to adequately provide for the best interests of the child, the child's rights and best interests are now protected by a guardian *ad litem*, who makes arguments on the child's behalf, proposes evidence and takes views on the procedural material.

IV Cp 474/2023

The existence of a conflict of interests between parents and child is the basis for the appointment of a guardian *ad litem* under Article 269(1) of the DZ, and not an advocate under Article 192 of the DZ. The functions of the guardian *ad litem* and the child's advocate in the proceedings are different. In accordance with Article 25a(2) of the Human Rights Ombudsperson Act (ZVarCO), the advocate provides professional assistance to the child to express his or her opinion in all proceedings and matters in which he or she is involved, and passes the child's opinion to the competent authorities and institutions that decide on his or her rights and best interests, but is not

his or her legal representative. The purpose of the advocate is to provide psychosocial support to the child, to talk to the child about his or her wishes, well-being and opinions, to inform the child about the proceedings and activities in a way that is understandable to his or her age and development, to look for the most appropriate solutions together with the child, and to help him or her at the end of the proceedings.

The advocate helps the child to express his or her views in the proceedings, but cannot represent the child in the proceedings. The latter is the task of the guardian *ad litem*, who informs the children in an appropriate manner about the proceedings and the meaning of the individual procedural steps and, on the child's behalf, makes claims, proposes evidence and takes views on the procedural material. The appointment of a guardian *ad litem* enables the child to be professionally represented in the proceedings.

IV Cp 1811/2022

The choice of a lawyer as a guardian *ad litem* is appropriate. They have the substantive and procedural knowledge needed to represent children in proceedings. Additional knowledge and skills in the field of child psychology and communication with children are useful in order to carry out the tasks as adequately as possible, but the points of complaint do not justify the conclusion that the assigned lawyer will not be able to carry out the given task.

II Cp 30/2022

A guardian *ad litem* is appointed for a child over whom the parents have parental responsibility if their interests conflict. The appointment of a guardian *ad litem* does not justify a finding that the outcome of the litigation is likely to adversely affect the assets of the other plaintiff. In cases where parents' behaviour causes damage to the child's property, the DZ provides for other measures and a specific procedure.

IV Cp 2099/2022

Given the intensity of the conflict between the parents, the Court had doubts about their ability to adequately look after the best interests of the child and appointed a guardian *ad litem* to objectively protect the child's rights and best interests during the proceedings.

IV Cp 1789/2017

However, the position of the applicant, as well as that of the counterparty as the legal representatives of the child, will conflict with the position of the child when (if) the applicant brings an action on behalf of the child to contest paternity.

IV Cp 651/2022

The Court appoints a guardian *ad litem* for the child if the adequate protection of the best interests of the child and the full exercise of the child's right to be heard is questionable in the circumstances of the particular case, given the conduct of the parents (the child's legal representatives), which conflicts with the best interests of the child. If both parents have adequate parental capacity, it is in the best interest of the child that both parents care for and raise the child, as this is good for the child's healthy development. The interest of a child that should have been heard in this proceedings is therefore to establish an appropriate relationship

with both parents. However, the actions of the defendant, who should be representing the child's interests as the legal representative in these proceedings, show that she is not making any effort to do so. She does not encourage her daughter to re-establish the contact she had with her father and does not prepare her adequately for court-ordered contact. In the proceedings, it does not primarily represent the child's interests, but her own. Since the plaintiff cannot represent his daughter, given that he has no contact with her, it is therefore necessary to appoint a guardian *ad litem* to ensure her right to be heard in the proceedings.

IV Cp 1647/2021

The Court of Appeal notes that the present case involves an extremely complex family situation where the interests of the parents are in conflict and the interests of both children and their parents are also in conflict. The appointment of guardians *ad litem* is therefore justified in order to protect the best interests of the children in the process of regulating contact between them. According to Article 45(5) of the ZNP-1, if the interests of the child and his or her legal representative are in conflict, the Court shall appoint a guardian *ad litem* for the child.

I Cp 1198/1995

If the custody of the child has been awarded to the grandmother and the mother is the person liable for maintenance, the mother cannot act as the child's legal representative in proceedings for a reduction of maintenance.

Case-law shows that the Court appoints a guardian *ad litem*:

- a guardian *ad litem* is appointed for a child over whom the parents have parental responsibility if their interests conflict, i.e. there is a conflict of interests between the parents and the child;
- a guardian *ad litem* is appointed when there is doubt as to whether the parents are able to protect not only their own interests but first and foremost the best interests of the children in the proceedings;
- since the parents are unable to adequately provide for the best interests of the child, the child's rights and best interests are protected by a guardian *ad litem*, who makes arguments on the child's behalf, proposes evidence and takes views on the procedural material;
- under the Human Rights Ombudsman Act (ZVarCo), the advocate helps the child to express his or her views in the proceedings, but cannot represent the child in the proceedings. This is the task of the guardian *ad litem*, who informs the child in an appropriate manner about the proceedings and the meaning of the individual procedural steps, and who, on the child's behalf, makes arguments, proposes evidence and takes views on the procedural material, and is thereby enabled to represent himself professionally in the proceedings;
- the lawyer has the substantive and procedural knowledge necessary to represent children in proceedings, but additional knowledge and skills in child psychology and communication with children are useful for the best possible performance of the tasks, but are not strictly necessary;
- due to the intensity of the conflict between the parents, the Court had doubts about their ability to adequately look after the best interests of the child and appointed a guardian *ad litem* to objectively protect the child's rights and best interests during the proceedings;
- the Court appoints a guardian *ad litem* for the child if the adequate protection of the best interests of the child and the full exercise of the child's right to be heard is questionable in the circumstances of the particular case, given the conduct of the parents (the child's legal representatives), which conflicts with the best interests of the child; and
- this is an extremely complex family situation where the interests of the parents are in conflict, as are the interests of the child and his or her parents, and the appointment of guardians *ad litem* is therefore justified in order to protect the best interests of the children in the process of regulating contact between them.

2.3.1.1.3 Grounds for the appointment of a guardian ad litem in cases following decisions of the courts of first instance

22 cases were reviewed, of which three decisions appointing a guardian *ad litem* were issued by the Koper District Court, one decision was issued by the Nova Gorica District Court and the remaining 18 by the Ljubljana District Court. Reasons for that question had been provided:

- The proceedings for a measure of a more permanent nature – removal of the child from the parents and placement in an institution and foster care and curtailment of parental responsibility – show that the counterparties minimise the importance of the reasons for the urgent removal of the children, do not comply with the instructions of the applicant, i.e. the SWC, and promise the children during contacts that they will soon live together again and make unrealistic promises. Therefore, the Court considered that, in order to protect the rules of the minor children, it was necessary to appoint a guardian *ad litem* since the failure to comply with the applicant's instructions on the course of the children's contact with the counterparties had a negative impact on the children's psycho-physical well-being for their development. The Court questions the ability of the parents to rely for benefit of their minor

children in these proceedings. Special skills are needed to ensure effective independent representation of minor children, which is why the Court appointed the guardian *ad litem* from among lawyers. The task of the guardian *ad litem* is to protect the rights and best interests of the minor children involved in these proceedings and to ascertain their true wishes.

- In the proceedings concerning the application for a measure of a more permanent nature – the removal of the minor child and placement in a competence centre, contact and maintenance – the Court found that the conditions for the appointment of a guardian *ad litem* were met in these proceedings, with the child being able to fully understand the meaning of the proceedings and to express his or her views. The child's parents have different views on what would be best for the minor child, or whether the proposed placement in a competence centre is in the best interests of the child. There is a highly confrontational relationship between the parents, as the Court was able to see first-hand at the hearing. In such cases, it is therefore the special-case (*ad litem*) guardian who formulates the will for the child, which cannot be interfered with by the legal representatives. To protect the best interests of the child in these proceedings, the Court has appointed a guardian *ad litem* for the minor child, who is a lawyer and will be able to provide professional and independent representation and protection of the rights and best interests of the minor child in these proceedings. The appointment of a guardian *ad litem* is necessary to ensure adequate and independent representation in these proceedings, in which the Court has a primary duty to protect the best interests of the minor children. The task of the guardian *ad litem* is to familiarise himself with the current family situation of the minor child by examining the documentation in the proceedings, contacting the minor child, obtaining his or her opinion and evaluating it from the point of view of his or her best interests, and then, on his or her behalf, within 30 days, taking a position on the applicant's proposal.
- As in the emergency removal proceedings the minor child is temporarily removed from the counterparties by a court order and placed in a Youth Crisis Centre, the Court considers that the interests of the minor child and his or her parents are in conflict in these proceedings, and therefore a special-case (*ad litem*) guardian is required. The guardian *ad litem* has all the rights and duties of a legal representative in the proceedings and is obliged to protect the rights and best interests of the minor child.
- On the basis of the documents in the file, the roles of the parties to the proceedings, the reports and opinions of the SWC, and the opinions already obtained in the proceedings for the application for a measure of a more permanent nature, the Court finds that the present case involves a very complex family situation. The parents are in high conflict relationship, their communication is unconstructive or practically non-existent. The parents have completely opposing views on the question of which of them is the appropriate parent, how to follow the best interests of the children, how to raise and care for them, and what kind of contact the children should have with their parents. Parents who are in a high conflict relationship and have conflicting views on the substance of their children's best interests are also unable to effectively represent the best interests of the children in relation to the SWC's proposal to remove their children and place them in foster care. All children are so young that they are unable to express their opinions, and they do not understand and cannot participate in the process. Therefore, the Court concludes that the interests of the minor children are in conflict with those of their parents, and thus considers it necessary to appoint a guardian *ad litem* to represent their rights and interests in the proceedings.
- In the proceedings concerning granting of custody, fixing maintenance allowance and access, the Court found that there was a high conflict relationship between the parties, that the parents were making conflicting statements, and that they were consequently unable to

agree on when the minor child would spend time with each parent. According to one parent, the other parent alienates the minor child by not allowing the minor child to have the contact he or she would like, or by wanting to exclude his parental role altogether, while the other parent states that the other parent would like more contact and then does not have it as agreed or does not pay attention to the child when visiting. They also accuse each other of inadequate childcare. The Court considered it necessary to appoint a guardian *ad litem* to protect the best interests of the minor child. It is their confrontational relationship and the fact that they both put their own interests before the interests of the minor child that is the biggest risk factor negatively affecting the child's psycho-physical well-being and development. Parents also fail to ensure that the child attends scheduled medical appointments. The Court questions the ability of the parents to rely for benefit of their minor child in these proceedings. To ensure effective independent representation of a minor child, legal knowledge is necessary, which is why the Court appointed a lawyer as guardian *ad litem*.

- In the proceedings for the SWC's proposal to place a child in an institution, the Court takes a decision on the placement of the minor child with the consent of the parents, whereby the minor child does not consent, has a confrontational relationship with the parents, does not respect their authority and is completely emotionally detached from them. It is therefore clear that there is a conflict of interests between the parents and the minor child, which requires the appointment of a guardian *ad litem* in order to protect the best interests of the minor child. The guardian *ad litem* will inform the child in an appropriate manner about the proceedings, the meaning of the individual procedural steps, make arguments on his or her behalf, propose evidence, comment on the procedural material and fully exercise the child's right to be heard.
- In the proceedings for change of custody, fixing of maintenance allowance and contact, the Court had an informal interview with both children and during the interview one of the children kept changing his views about his father, first rejecting him, then saying that they could go somewhere together or even call him. The absence of contact between the children and their father for a long time and the ambivalent attitude towards contact, which the mother also shares to a certain extent, led the Court to conclude that it was necessary to appoint a special representative for the children to enable them to be fully heard during the proceedings. The special representative is there to protect their best interests and enable their true voice to be heard. The Court appointed a guardian *ad litem* for each child. The task of guardians *ad litem* is to protect the rights and interests of minor children.
- If the Court considers that the conflict of interests between the parents and the child is so serious that it cannot sufficiently protect the best interests of the child with the cooperation and assistance of an expert and the SWC alone, they will appoint a guardian *ad litem*. Since the proceedings concerned the removal of children from their parents, and since this intensively interfered with the parent–child relationship, the Court took into consideration that the documents in the file showed with a sufficient degree of probability that the parents continued to display unpredictable and aggressive behaviour and that there was a risk of danger, that they may interfered with the foster mother's care of the child, contrary to the best interests of the two children, it is necessary to appoint a guardian *ad litem* who, in place of the minor children, will develop a will which cannot be interfered with by the legal representatives (the parents). The guardian represents the full realisation of the child's right to be heard.
- In the proceedings, the Court found that because of the change of the minor children's custody, fixing maintenance and contact arrangements, there was a conflict of interests in that the parents were unable to overcome their partnership conflict and cooperate for the

benefit of the minor children, and that the protection of the minor children's best interests in the present proceedings required the appointment of a guardian *ad litem* who would be able to obtain the minor children's independent opinion and, in their place, to develop a will in the proceedings which the parents would not be able to interfere with. The guardian *ad litem* is obliged to familiarise themselves with the current family situation of the two minor children, to contact them and obtain their opinion, and to represent them in the proceedings.

- In the proceedings on the SWC's application for a more permanent measure to remove the child from the parents and place him or her in foster care, the Court found that the conditions for the appointment of a guardian for a minor child in the present proceedings were fulfilled. When a decision is taken to remove a child and place him or her in foster care, the interests of the minor child and his or her parents are in conflict. Measures to protect the best interests of the child are measures taken by the State when parents fail to exercise their right and duty to protect the best interests of the child and the child is consequently at risk. If the proposed measure of removing a child from the parents is imposed, the relationship between the parents and the child will be intensely interfered with, and, in particular, since the applicant is at the same time requesting of the Court not to inform the parents where the child will be placed, it is obvious that the situation of the minor child is in conflict with that of his or her parents. This requires the appointment of a special (*ad litem*) guardian who will develop a will for the minor child, which the legal representatives (parents) will not be able to interfere with. Therefore, in order to protect the best interests of the child, the Court appointed a guardian *ad litem* for the child in the proceedings in question. For this purpose, the guardian *ad litem* is obliged to acquaint themselves with the current family situation of the minor child, *inter alia*, by examining the documents in the file and, if necessary, by conducting an interview with the minor child, and, within 15 days, by taking a position on the proposal to impose a measure of a more permanent nature, the removing of the minor child and his or her placement in foster care.

- In the proceedings concerning granting custody, fixing a maintenance allowance and contact, the Court found that there was a high conflict relationship between the parties. Despite various attempts to regularise the situation, their relationship remains uncooperative and unconstructive. They are making serious accusations against each other, and the unfavourable family situation is already having an impact on the children, with the older two refusing to have contact with their father. The impression is that the parties' actions are driven more by unprocessed emotional resentments from the partner relationship than by the best interests of the children of both parties and the concern to provide them with a stable and emotionally secure and peaceful environment, which is a prerequisite for their healthy development. The Court has strong doubts as in the ability of the parties in such a situation to distinguish their own interests from those of the children and to see and take into consideration the best interests of the child objectively and beyond their own wishes. It is therefore necessary to ensure that children have a representative who can identify and represent their interests in the proceedings independently and autonomously of all the parties involved. All of the above dictates the appointment of a guardian *ad litem*. The task of the guardian *ad litem* is to protect the rights and interests of minor children and to present their views to the Court in accordance with their developmental capacities. To this end, they will have to take an active part in the proceedings and make representations on the protection of the best interests of the children, interview them, inform them in an appropriate manner and convey their views and opinions to the Court.

- In the proceedings for curtailment of parental responsibility, the Court had doubts as to whether the parents were representing the children in a manner consistent with their best interests and their right to education, and whether there might be reasons in the counterparties (the parents) which affected their ability to care for their own rights and

interests and for the rights and interests of the children. The task of the guardian *ad litem* is to represent all three children in the proceedings.

- In the proceedings, the Court found that because of the change of the child's custody, fixing maintenance and contact arrangements, the Court found that the counterparty, as the legal representative of the minor child cannot objectively express the will of the minor child in the proceedings in question, as it might conflict with the interests and benefits of the minor child, who currently has no contact with the applicant. It is essential that the Court appoints a guardian *ad litem* in these proceedings, who will be able to obtain an independent opinion from the minor child and, in his or her place, to formulate a will in the proceedings, which the mother, as the child's legal representative, will not be able to interfere with. The guardian *ad litem* is obliged to familiarise themselves with the current family situation of the minor child, to contact him or her and obtain his or her opinion, and to represent him or her in the proceedings.
- In the proceedings for granting custody, contact and maintenance arrangements, the Court found that in the proceedings in question the best interests of the two minor children were in conflict with the interests of their parents, since, as the SWC notes, the parents did not see the children's real needs, did not recognise their difficulties and did not interpret them correctly. They are more focused on their own needs and convictions, ignoring the wishes, benefits and real needs of the children. Therefore, it is necessary to appoint a guardian *ad litem* for the children, who will help them to express their views in these proceedings, represent their rights and interests in the proceedings and also take care of their procedural rights.
- In divorce proceedings, custody of minor children, maintenance and contact arrangements, the Court considers it necessary to appoint a special-case guardian for the minor child in order to protect his or her rights and best interests. Parents blame each other for inadequate parenting capacities. In order to assess which parent's claims are true or who can best care for the minor child and what the contact arrangements should be, it will be necessary to obtain the minor child's opinion, which he or she can express through the special-case guardian. The appointment of a guardian is also justified on the basis of the fact that the minor child has received paedopsychiatric treatment for his distress. After the interview with the minor child, the special-case guardian will be able to provide additional information and evidence, if any, on the basis of which further decisions can be taken in these proceedings, including the final decision. The guardian will represent the minor child independently of the parents and will have the task of safeguarding the rights and interests of the minor child, in particular his or her right to be heard in these proceedings.
- In proceedings for the removing of a child, the Court has appointed a guardian *ad litem* for a minor child who lives with one parent, attends school away from home and has no contact with the other parent. It found that there was some evidence that the parent with whom the child is staying has a less than appropriate parental attitude towards the child, which was also recognised by the other parent, who is himself a psychiatric patient. Taking account of the age of the minor child and the fact that it is a question of fact to what extent the child's parents are able to defend the best interests of the child in these proceedings, the Court decided to appoint a guardian *ad litem* for the child. The guardian *ad litem* has all the rights and duties of a legal representative in the proceedings and is obliged to protect the rights and best interests of the minor child.
- It is evident from the taking of evidence so far in the case of issuing the interim measure and the contact arrangements that the obstacles from the original parents, in particular the foster mother, are hindering the care of the minor child and increasing the risk they are exposed to. The counterparties have a negative attitude towards the applicant (Social Work Centre),

particularly one of the parents, who is uncooperative and responds with anger, scolding and accusations, which makes it impossible for the applicant to reach an agreement with the parents in order to regulate the minor child's necessary rights and to adequately protect his or her best interests. Since the conflict of interests in the proceedings in question is based on the fact that the parents are obstructing the foster mother's care for the minor child and, according to the SWC's expert opinion, are endangering the minor child by doing so, the Court appointed a guardian *ad litem* for the minor child, whose task is to objectively protect the child's rights and best interests in the proceedings in question.

- In the present case, the applicant brought an action to contest paternity against his minor child and their mother, which means that the interests of the minor child and his legal representative are in conflict. The child's situation is in conflict with that of his or her parents, and in such cases it is the special-case (*ad litem*) guardian who formulates a will for the child, which cannot be interfered with by the legal representatives. In order to protect the best interests of the child, of which the right to know his or her own origin, which is being invoked in these proceedings, is certainly an integral part, the Court, in the light of the above-quoted statutory provisions, appointed a special-case guardian for the minor child.
- In the specific proceedings for the removing of a minor child and his or her placement in a foster family, the Court considers that the interests of the minor child and his or her legal representatives are in conflict and that the child's position is in conflict with that of his or her parents, and in such cases, it is the special-case (*ad litem*) guardian who formulates the will for the child, which cannot be interfered with by the legal representatives. The task of the guardian *ad litem* is to protect the rights and best interests of the minor child in the present proceedings. To do this, he or she will need to obtain the necessary information, take an active part in the proceedings and make observations on how to safeguard the best interests of the child.
- On the basis of the documents in the file, the role of the parties to the proceedings, the reports and opinions of the SWC, as well as the report of the paedopsychiatrist, the Court finds that the case involves a very complex family situation due to the change of contact and the granting custody of the child. The parents are in high conflict relationship, their communication is unconstructive or practically non-existent. The parents have completely opposing views on the question of which of them is better able to pursue the best interests of the child, to raise and care for the child, and on the extent of contact that should be in the best interests of the child. The child is in severe emotional distress because of the high conflict relationship, senses the conflict between the parents and is consequently torn, trying to please both. The Court finds that, in the present proceedings, the best interests of the child are in conflict with those of his parents. So far, the parents have failed to adequately recognise the needs and distress of the child by putting their own aspirations and convictions in relation to the child at the forefront, while neglecting the real needs of the child, failing to adequately recognise the child's distress and, as a consequence, exacerbating it instead of solving it.
- The Court considers that, in order to protect the child's rights and best interests, it is necessary to appoint a special-case guardian for the minor child. The case concerns a proposal for a measure of a more permanent nature, which proposes to restrict parental responsibility, which interferes with the relationship between the child and the mother, making it necessary for the child's voice to be heard in the proceedings. At the same time, the mother's mental state is a reason for appointing a special-case guardian, as this will also help to assess whether the mother is adequately taking care of her minor child at home. The special-case guardian will provide the Court with further information and possibly evidence to inform further decisions in these proceedings, including the final decision. The appointed

guardian will represent the minor child independently of the parents and will have the task of safeguarding the rights and interests of the minor child, in particular his or her right to be heard in these proceedings.

- The Court finds that the applicant, as the legal representative of the minor child in the present proceedings, cannot objectively express the will of the child with regard to the establishment of paternity, since there may be a conflict with the interests and best interests of the minor child whose paternity is being established in the present proceedings, taking into account, in particular, the fact that the mother of the minor child is already acting in her capacity as the applicant in the proceedings, and therefore cannot represent the interests of the minor child, who is acting as the legal representative of the minor child, who is also a party in the proceedings, at the same time as she is acting as the legal representative of the minor child, who is acting as a second party in the proceedings. It is therefore the guardian *ad litem* who makes a will for the child that the legal representatives cannot interfere with.

2.3.1.2 Information about the right of appeal of decisions

Most courts decide that an appeal against an order appointing a guardian *ad litem* for a minor child does not suspend the execution of the order. It does so on the basis of an assessment when the interests and best interests of the children involved are seriously jeopardised because they are unable to act independently in the proceedings. This is also done if the child is in danger and if a hearing has already been called. Thus, the consequences of the appointment of a guardian *ad litem* already arise before the order appointing the trustee becomes final.

2.3.1.3 Should each child be granted their own guardian or the same guardian for all?

Most often, the Court decides to appoint the same guardian *ad litem* for all minor children. If the children are of different ages and in different situations in relation to their parents, the Court decides to appoint a separate guardian *ad litem* for each of the children. It may also decide to do so in the light of other circumstances of the case. The legal basis is Article 269(3) of the DZ.

2.3.1.4 Appointment of guardians ad litem

According to the data of individual SWCs, the practice of District Courts in Slovenia regarding the appointment of a guardian *ad litem* varies. Most often, a guardian *ad litem* is appointed at the Ljubljana District Court. Other courts could therefore review the practice of this Court, in particular on the question of when the Court decides to appoint a guardian *ad litem*. Very little is known about the work of the guardian *ad litem*, not least because the provisions in the DZ and the ZNP-1 are very scarce, as they do not specify the precise task of the guardian *ad litem*. Professionals of the SWC should also know more about the role of the guardian *ad litem*, as they are the ones who most often make the proposal for the appointment of a guardian *ad litem*, except in paternity disputes.

The above-mentioned legal provisions do not specify what the work of the guardian *ad litem* is, what tasks he or she is obliged to carry out, when he or she can talk to the child, how to report to the Court, whether he or she can apply for interim orders, and many other issues. The tasks of the guardian *ad litem* are not defined anywhere. Some judges define the tasks of the guardian *ad litem* in the order appointing the guardian *ad litem*. Some write down the tasks in more general terms, some in more specific terms, but in most cases too sparsely. There are also decisions which do not specify the tasks of the guardian *ad litem*. In practice, therefore, each guardian *ad litem* acts according to his or her own convictions and in the best interests of the child, even though guardians *ad litem* are not specially qualified to do so and are appointed on the basis of a

list of lawyers on which any lawyer, including those who do not practise family law, can be included. Sometimes a decision implies a task that cannot be carried out. For example, the Court may order the guardian *ad litem* to talk to the child and convey his or her views. Often this is not possible, because the child is too young, because he or she has special needs, because the child has already been interviewed too many times by adults, for example at the SWC, at school, in kindergarten, by an expert, etc. Sometimes the guardian *ad litem* cannot talk to the child because the parent does not allow it, but there are no special measures to make it possible.

In order to protect the best interests of the child in family proceedings, all courts in Slovenia should have a special list of lawyers specially trained for this purpose. Only lawyers who have completed the training and education required for this could be appointed as guardians *ad litem*. Every year, lawyers on this list should also undergo regular training to keep them informed of all new developments in the field and to ensure that they retain this specialisation. It should not be enough just to attend education and training, but the knowledge of these lawyers should be tested and, if they fail to act in the best interests of children in proceedings, there should be appropriate measures to deal with this.

Very important is paragraph 1 of the United Nations Convention on the Rights of the Child (UNCRC), which states that the best interests of the child must be the primary consideration in all activities relating to children, whether they are carried out by public or private social welfare institutions, courts, administrative authorities or legislative bodies. This is also the provision in Article 7(4) of the DZ. On this basis, the Court must consider in each case whether the child needs a guardian *ad litem* to represent his or her best interests in the proceedings. The child is an affected party to the proceedings and, in accordance with Article 9(2) of the United Nations Convention on the Rights of the Child, has the opportunity to participate in the proceedings and express his or her views. This can be done with the help of a guardian *ad litem*, therefore in such cases it is necessary to propose to the Court that a guardian *ad litem* be appointed. Every child must be given the opportunity to be heard and the right to make his or her voice heard.

Slovenia has a well-developed child protection and protection system that is in line with international standards and ensures a high level of children's rights. However, courts should decide more often on the appointment of a guardian *ad litem*.

2.3.2 The work and role of the lawyer in the proceedings

The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (17 November 2010) also contain guidelines on the training of professionals. The guidelines state that all professionals working with and for children should attend essential interdisciplinary training on the rights and needs of children of different age groups and child-sensitive procedures. Professionals in direct contact with children should also receive training in communicating with children of all ages and stages of development, and with particularly vulnerable children. On this basis, Slovenia should write in the DZ that the Court appoints a guardian *ad litem* for whom there is a special list. However, the Ministry could, by means of a Rules on the programme and ways of training for guardians *ad litem*, determine the manner and extent of training of lawyers as guardians *ad litem*.

The guardian *ad litem* guarantees all rights to the minor child in accordance with the DZ, the United Nations Convention on the Rights of the Child and the Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice. It is about respecting children's right to be informed of their rights in legal proceedings and to be heard in proceedings in which they are involved or which affect them. Children must be respected and treated as full rights-holders. They must be able to exercise their rights in a way that takes account of their ability to form their own opinions. It is in the best interests of the child that his or her views are taken into

account and that all the rights of the child, such as the right to dignity, liberty and equal treatment, are respected throughout the procedure, taking into account the child's physical and mental well-being, as well as the child's legal, social and economic interests. The benefits of all children involved in the same procedure should be assessed and weighed separately to eliminate potential conflicts of interest between them. In such a case, a separate guardian *ad litem* should be appointed for each child in the proceedings.

Another problem is that there is confusion about the principle of the best interests of the child, or what constitutes the best interests of the child. Article 93 of the UNCRC-1 sets out a series of procedures to protect the best interests of the child. Child protection proceedings, whether they are conducted alone or in conjunction with matrimonial proceedings or proceedings to establish or contest paternity or maternity, are proceedings to decide:

- custody,
- child maintenance,
- child's contacts,
- issues of parental responsibility, which has a significant impact on children's development,
- measures to protect the best interests of the child,
- placing the child under guardianship,
- placing the child in foster care,
- giving parental responsibility to a relative,
- adoption of a child and annulment of adoption of a child.

These are the most common situations in which the best interests of the child must be considered.

Paragraph 2 of the same Article provides that the procedure for the protection of the best interests of the child is also the procedure for deciding on the maintenance of a child of full age for as long as the obligation to maintain exists under the DZ.

The question is whether this is in the best interests of the child and whether the principle of the best interests of the child has been adequately addressed in the DZ. The best interests of the child should be more precisely defined in the DZ so that they can be applied in practice. The existing ambiguities regarding the principle of best interests also pose a problem for the guardian *ad litem*. The principle of the best interests of the child is laid down in Article 7 of the DZ, but these are vaguely defined. What is in the best interests of the child should be stated more specifically. Article 7(1) of the DZ provides that parents shall have the best interests of the child at heart in all activities relating to the child. Children are brought up with respect for their person, individuality and dignity. This is a vague provision, as it does not make it clear what the best interests of the child are. Paragraph 2 states that parents have priority over all others in their care for and responsibility for the best interests of the child. Paragraph 3 obliges parents to adequately meet the child's material, emotional and psychosocial needs through conduct that demonstrates their care for and responsibility towards the child, and to provide the child with appropriate educational guidance and encouragement in his or her development. Nowhere is it stated what the specific needs of the child are.

What is the content of the best interests of the child? The best interests of the child mean that the best interests of the child must always come first in all situations affecting the child. Maximum benefit is a very broad concept, which is not clearly defined in the DZ. It covers the child's well-being in all its aspects, so that he or she has the right to develop in a safe and stable environment that does not cause him or her physical or mental harm. The best interests of the child depend on

the individual case and the circumstances, so the child's age, the environment in which he or she lives, the child's stage of development, his or her wishes, past experiences, and the possible absence of a parent or both parents must be taken into account.

In each case, the guardian *ad litem* is faced with the issue of the best interests of the child. Therefore, it is not enough that the guardian *ad litem* can be a lawyer, as the DZ states. The guardian *ad litem* should be a lawyer who has the necessary skills in addition to legal knowledge, and who has sufficient experience of working in family matters and of protecting children's rights in all proceedings, not just civil ones.

In addition to guardians *ad litem*, lawyers who are appointed as legal representatives of parties to family proceedings and lawyers who represent a party to family proceedings on the basis of a LAS decision should be specialised to carry out such work.

Adequate training of lawyers to represent children in family proceedings could also have a significant impact on shortening family proceedings, which would be in the best interests of children. Most children, when asked by the guardian *ad litem* what they want most, reply that they want the proceedings before the Court to end.

The conditions for the appointment of a guardian *ad litem* need to be regulated in more detail in the DZ and in the ZNP-1, so that the standards for when such a guardian should be appointed are more clearly set out in a way that the best interests of the child are best protected. In this context, it is also necessary to delineate the role of the guardian *ad litem* and the other parties to the proceedings, whose task is to ensure that the best interests of the child are respected as far as possible. The extent to which the guardian *ad litem* represents the child and any other tasks and related duties of the Court in the proceedings *vis-à-vis* the guardian *ad litem* need to be further defined.

Rules on who can be appointed as a guardian *ad litem* and what conditions must be met in order for the Court to be able to appoint a person who is able to protect the best interests of the child to the greatest extent possible should be laid down in a by-law. It is also necessary to establish rules on how the Court determines who will be the guardian *ad litem* in a particular proceeding. It would be necessary to establish lists of persons who can be appointed by the Court as guardians *ad litem* and the manner of appointment from this list, similar to the way other Court staff are appointed in other proceedings (e.g. in order of the initial letters of their surnames).

Most lawyers do not have the knowledge to understand the best interests of the child standard. They were not able to acquire this knowledge during their law studies, so there is an urgent need for proper education and training for lawyers working in family proceedings. Additional training requirements for lawyers are needed. The manner in which a lawyer's fitness to practise is to be verified should be determined. Training in this area has been inadequate to date, as lawyers need to acquire more knowledge about the developmental needs of children, depending on their age. They also need to learn how to interview the child, especially how to interview the guardian *ad litem*. Lawyers need to acquire additional skills to be able to do their work even better for children, and to do so for their clients. The training of lawyers working in the field of family law should be run by the State, not the Bar Association, with the participation of experts in child development psychology, family counselling and therapy, and parenting skills. It is important for lawyers to acquire new knowledge on the developmental characteristics of the child, how separation of parents affects the child at different ages, what children need most when parents separate, what the lawyer's role is as a proxy for one parent, or as a proxy for a child who is already a party to the proceedings, or as a guardian *ad litem*, and how he or she can most effectively ensure the best interests of the child in this situation. It is also important to educate lawyers about communication with the parent client, how to help the parent communicate with the ex-partner and the child. A lawyer must be trained to act in the best interests of both the child and the client in confrontational or violent relationships between parents.

2.4 DOMESTIC VIOLENCE AGAINST A CHILD, RISK ASSESSMENT AND RECOMMENDED MANAGEMENT PROTOCOL

The Domestic Violence Prevention Act (ZPND) provides for measures to be taken by the Court against the perpetrator of violence to protect the victim. Pursuant to Article 4(1) of the ZPND, a minor family member, a child, enjoys special protection against violence. Pursuant to Article 5 of the ZPND, authorities and organisations are obliged to carry out all the procedures and measures necessary to protect the victim, taking into account the level of their risk and the protection of their best interests, whereby ensuring the integrity of the victim is respected in doing so. If the victim of the violence is a child, the child's best interests and rights take precedence over the best interests and rights of the other parties to the proceedings. The Family Code also provides for measures to protect children who are victims of domestic violence.

In accordance with Article 14(1) and (2) of the ZPND, the SWC provides the victim and the perpetrator of violence with services under the law regulating social protection, the aim of which is to eliminate the immediate threat and to ensure the victim's long-term security by eliminating the causes or circumstances in which the violence occurs, through addressing the victim's social and material living conditions. The SWC takes special care in cases of violence where the victim is a child, especially where there is suspicion of child sexual abuse.

The Court may order a perpetrator of violence who has caused bodily harm or damage to the victim's health or otherwise unlawfully interfered with his or her dignity or other personal rights, in particular: prohibit the victim from entering the dwelling in which the victim lives; prohibit the victim from being in a certain proximity to the dwelling in which the victim lives; prohibit the victim from being in or near places where the victim is normally found (e.g. workplace, school, kindergarten, etc.); prohibit the victim from being in or near places where the victim is normally found (e.g. workplace, school, kindergarten, etc.); prohibit contact with the victim by any means, including by means of distance communication and also through third parties; prohibit any meeting with the victim; prohibit the publication of the victim's personal data, documents from court and administrative files and personal records relating to the victim; decide on the sharing of the victim's home.

In addition to the measures listed above, in order to ensure the protection of children, the Court may: prohibit the crossing of the State border by the child, except with a specially designated person, authority or organisation; propose the withdrawal of the child's identity document in accordance with the law; prohibit the issue of an identity document to the child on the basis of an application filed by one or both of the child's parents or a third party; prohibit the service of the child's identity document on one or both of the child's parents or a third party; order an emergency medical examination of the child or the child's medical treatment and other medical interventions (Article 20 of the ZPND).

Where the victim is a child, proceedings under the ZPND are initiated at the request of the child over the age of 15, the parents, or one of the parents if they have not been deprived of their parental rights, the guardian or the SWC (Article 22b of the ZPND).

In deciding in proceedings under the ZPND, the Court shall also take into account the child's opinion if the child has expressed it himself or herself or through a person he or she trusts and has chosen, and if he or she is capable of understanding its meaning and consequences. If the measures are imposed for child protection reasons, they are monitored by the SWC. The SWC also takes all other necessary measures for the protection of the child in accordance with the law regulating family relationships (Article 22g of the ZPND).

In practice, interim injunctions and other measures of a more permanent nature are more common than measures under the ZPND to protect the child as a victim of violence. If violence against a child is perpetrated in the family, the relationships within the family must also be

regulated. The Court issues a provisional order if it is likely that the child is at risk (Article 161 of the DZ).

In order to protect the best interests of the child, the Court may issue an interim order which can achieve the interim protection of the best interests of the child, in particular:

- an order removing the child from his or her parents and placing him or her with another person, in a crisis centre, in foster care or in an institution;

- an order to enter the home or other premises where the child is staying against the parents' wishes;

– an order prohibiting or restricting contact;

– an order on how to carry out the contacts;

– a custody order

– a child maintenance order

– an order prohibiting you from crossing the border with your child;

– an order to evict the violent member from the shared home;

– an order forbidding people who pose a threat to the child to approach him or her;

– an order for security over the parents' or child's property;

– an order for a medical examination or treatment.

Notwithstanding the above-mentioned measures that can effectively protect a child victim of violence, the Court does not have a protocol or tool to guide it on how to determine the level of risk of the child victim and how to proceed in the light of the level of risk determined. Family proceedings are all priority proceedings under the law, some of which are urgent. Procedures for interim measures, measures of a more permanent nature, measures under the ZPND are urgent. To ensure the best interests of the child, the judiciary should adopt a recommended conduct protocol and allow the Court to make an assessment of the victim's level of risk. When violence against a child is perceived, the Court would fill in a special form (annexed to the protocol) to assess the level of risk of the victim and, depending on the level of risk of the victim, the Court would then follow the recommendations of the protocol in the further proceedings. The recommended treatment protocol would vary not only according to the level of risk identified, but also according to the type of violence against the child (e.g. specifically for sexual violence). The protocol should be accompanied by a form that would allow the child's level of risk to be determined in a quick and simple way.

Something similar already exists in the judiciary, namely the Protocol for the Conduct of Decision Enforcement Proceedings for the Removal of a Child by Direct Extradition. The Protocol was drafted by the Supreme Court in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Association of SWC, the Ministry of the Interior, the Ministry of Education, Science and Sport and the Chamber of Enforcement Officers of Slovenia, all of which participated with their representatives in the interdisciplinary working group that drafted the Protocol. The Protocol is not binding, but merely a working tool to better identify the circumstances relevant to the removal of the child in order to protect the best interests of the child. The Protocol foresees the obligation of all participants, after having established the factual circumstances and carried out a risk assessment, to draw up a detailed plan for the implementation of the removal of the child and to define the role and conduct of all the participants from the different institutions in the different stages, in such a way that the individual actions are the least burdensome for the child and the best interests of the child are best served. The protocol is used as a working tool to better identify the circumstances relevant

for the removal of the child, so as to protect the best interests of the child as much as possible, both in the case of the implementation of the interim order and in the case of the implementation of the final decision (judgment/conclusion) of the Court. The Protocol provides for the normal course of action and the distribution of the roles of all participants in the various stages of the enforcement procedure, and, in the context of the planning of the enforcement, also provides for the existence of certain special circumstances, in particular with regard to the characteristics of the child and the parents, and for a recommended course of action in such cases. The Protocol is also accompanied by a form entitled "Risk Assessment", which can help participants to identify the protective and risk factors relevant for direct enforcement. The Protocol contains detailed recommendations for each stage of the direct removal procedure. The Protocol is accompanied by a Risk Assessment Form (reminder as an aid), where the risk assessment is not a summation of protective or risk factors, but a reminder aimed at identifying risk and protective factors relevant to the immediate enforcement.

Similarly, the issue of developing a risk assessment and a protocol of recommended actions in cases of violence against children should be actively addressed. The first stage of the process of drawing up a risk assessment of violence against children and a recommended course of action would therefore be to set up an inter-institutional working group, including experts working in the field of child protection, to draw up a risk assessment and a recommended course of action protocol. This would maximise the best interests of the child in situations where he or she is a victim of violence.

There is also ECtHR case-law on the need for such a regime. In Bîzdîga v Moldova, the ECtHR heard a complaint by Vasile Bîzdîga, who claimed that the Moldovan authorities had failed to give him a fair trial regarding the custody of and right of access to his son.[23] Bîzdîga claimed that he had been denied the opportunity to be present at the decisions of the child protection authorities and that the courts had not adequately addressed his complaint about the contact schedule. In addition, contacts were often blocked or restricted. The ECtHR found that the rights under Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights had been violated, as the Moldovan courts had failed to ensure due process and to protect his parental rights. In the ECtHR judgment in Bîzdîga v Moldova, it was mentioned that the Moldovan child protection authority had prepared a risk assessment. A risk assessment is a form used to assess potential dangers or risks to the child when making decisions about custody and contact with one parent. It includes an analysis of the circumstances, such as the alleged violence, neglect, the psychological state of the parents and other factors that could affect the child's safety and well-being. The purpose of this assessment is to ensure that decisions are taken in the best interests of the child.

23 Bîzdîga v. Republic of Moldova, No. 15646/18, 17 October 2023.

3. CONCLUSIONS AND RECOMMENDATIONS

Chapter 2.1 of this report analyses in detail the judicial proceedings dealing with the protection of the best interests of the child, which has revealed several key challenges and possible improvements. We find that the length of judicial proceedings has a negative impact on the protection of the best interests of the child. This problem stems from the lack of forensic experts, especially in the field of clinical psychology, and the lack of adequate support programmes for parents and children with mental health problems. The measures taken by the Ministry of Justice will show their effectiveness in the future, but for the moment this problem remains a key obstacle.

The DZ sets mandatory prior consultation with the SWC as a prerequisite for submitting a proposal for a decision on custody. Courts follow these provisions and do not allow proceedings to proceed without prior consultation. Statistics show that more than 40% of all family proceedings before the Court are amicable, which raises the question of whether these procedures are unnecessarily time-consuming and burdensome for the judicial system.

In cases where the parents fail to reach an agreement before the SWC, the Court decides on the custody of the children. These procedures are often lengthy due to the need for expertise or the lack of additional programmes for parents, and the process is often unnecessarily prolonged because parents come to the procedure with little information about the possible (legal and *de facto*) family living arrangements after the parents' separation. Practice shows that the inability of parents to reach an agreement is often the result of a lack of understanding of the legality after the dissolution of parental relationship, leading to competition between parents to the detriment of the children.

The case-law of Slovenian courts shows that courts follow the concept of shared parenthood provided for in legislation. Case-law confirms that shared parenting is the most appropriate form of child custody, as it ensures that both parents are equally responsible for the child's development. The courts recognise that the best interests of the child are best protected when both parents are involved in his or her care and upbringing, even after the dissolution of conjugal life.

To improve the current situation regarding the excessive length of judicial proceedings, it would be reasonable:

- to increase the number of forensic experts in clinical psychology, especially those trained to work with young children;
- to develop and provide accessible psychological support programmes for parents and children before and during judicial proceedings;
- to provide more information to parents about shared parenting and judicial proceedings, and the legalities of family life after parents split up;
- to ensure that judicial proceedings for the amicable settlement of custody arrangements can be dealt with more expeditiously, including by means of a written court settlement, if this is in the best interests of the child.

Appropriate programmes and better information for parents could lead to quicker and more effective solutions, which would ultimately benefit children.

Despite legal provisions promoting shared parenting, parental agreements often fail to materialise because of misguided mindsets and a lack of information among parents. The research team recommends the following:

- ensuring that parents are better informed not only about shared parenting but also about judicial proceedings, which could significantly shorten judicial proceedings. To this end, appropriate programmes should be developed, websites improved, brochures created, etc.

As regards the measures for the protection of the best interests of the child in accordance with the DZ (discussed in section 2.2 of this report), which are applied when a child is at risk, the key finding is that these measures are geared towards ensuring the best interests of the child, and that the transfer of the competence to decide on these measures to the Court and the exercise of the advisory function by the SWC has, in principle, contributed to increasing the level of protection of the best interests of the child. However, some changes should be made to further improve the level of benefits for the child. In this area, the research team recommends the following changes:

- it is necessary to change the regime for the exercise of contact under the supervision of the SWC, which can only be regulated by a temporary order and only for 9 months (Article 173 of the DZ). Case-law has shown that a restriction of 9 months is contrary to the best interests of the child in concrete cases where there is no other way to arrange contact. We suggest that the DZ be amended to allow for the extension of the interim order in exceptional circumstances or, at least as an exception, to provide for the possibility of carrying out contacts under the supervision of the SWC also as a more permanent measure;
- temporary agreements or temporary court settlements between parents during the proceedings have proven to be a very effective instrument for ensuring the best interests of the child during the proceedings, as they allow communication difficulties to be overcome and relationships to be gradually mended. We propose that the ZNP-1 be amended to explicitly allow for the conclusion of interim court settlements in proceedings concerning measures for the protection of the best interests of the child and that consideration be given to amending the DZ to provide for interim court settlements between parents;
- as regards the more permanent measure regulated by Article 171 of the DZ (supervision of parental responsibility), the DZ should regulate in more detail the competences of the Court and the SWC. It would be necessary to provide for the possibility of imposing a financial penalty for non-compliance after reviewing the manner in which parental responsibility is exercised, along the lines of the possibility provided for in Article 103 of the ZNP-1;
- whereas, particularly for the implementation of measures of a more permanent nature, it is important to involve parents in appropriate programmes and forms of assistance and treatment, with the participation of the SWC on the basis of a family assistance plan (Article 170 of the DZ), it is important for the competent State authorities, in particular the Ministry of Social and Family Development and the Ministry of Health, to ensure the availability of therapies, psychiatric treatment, treatment for alcohol or illicit drug dependence, and of other health, educational and psychosocial programmes that are not currently available throughout the country.
- NGOs should be further involved in the provision of therapies, alcohol and drug treatment and other educational and psychosocial programmes. Greater involvement of NGOs in the implementation of these treatments could ensure their wider accessibility. However, an important condition is that the state must ensure that these programmes are funded in a way that makes them available free of charge to parents and children;
- the provisions of the DZ and the regulations concerning children with special needs (in particular the ZUOPP-1) should be harmonised in such a way as to ensure that the best interests of these children are taken into account, taking into account their specificities.

Improvements are needed (as outlined in Chapter 2.3 of this report) in the mechanisms for child participation and counselling, and in the structures for representation and advocacy in proceedings where the best interests of the child must be ensured. It is important that children are given the opportunity to express their views, taking into account their age and maturity. Children do not always have a say in the proceedings that concern them; judges are not always properly trained to work with children and children's advocates do not always have the power to effectively represent children's interests. We also note that the duties and responsibilities of guardians *ad litem* are not clearly defined, that there is no uniform system for appointing guardians *ad litem* and that they are not always adequately trained. It is also problematic that lawyers involved in family proceedings do not always have the necessary knowledge and experience, which can lead to lengthy and inefficient proceedings that are not in the best interests of the child. Accordingly, we recommend the following measures:

- legal amendments should be adopted to clearly define children's rights in judicial proceedings; adequate training should be provided for judges, SWC and other professionals working with children in judicial proceedings; and a child advocacy system should be put in place to ensure that children's voice is heard and that their interests are adequately represented, standards should be adopted for the training of guardians *ad litem*, ensuring that they have the necessary knowledge and experience to work with children, the training of lawyers involved in family proceedings should be improved and efforts should be made to shorten family proceedings in order to reduce the harm to children.
- the conditions for the appointment of a guardian *ad litem* and the extent to which the guardian *ad litem* represents the child and looks after the child's best interests should be regulated in more detail in the DZ or ZNP-1.
- the relevant by-laws should specify who can be appointed as a guardian *ad litem* and what conditions must be met. It is also necessary to lay down rules on how the Court determines who will be the guardian *ad litem* in a particular proceeding.
- the lists of persons who can be appointed as guardians *ad litem* by the Court and the method of appointment from this list should be specified.
- it is also important to define how to finance guardians *ad litem*.

Taking these recommendations into account will help to improve the situation of children in civil proceedings and ensure that their rights and interests are adequately protected. Above all, it is important that all those involved in the proceedings in question are aware that the best interests of the child is a key guiding principle in all judicial proceedings involving children. This means that all decisions must take the child's needs and interests into account. It is also important that children are given the opportunity to play an active role in the proceedings that concern them. This means giving them the opportunity to express their views, to be heard and to have their opinions duly taken into account. By ensuring that children have rights and opportunities to participate in judicial proceedings, we can help to make these proceedings less traumatic and ultimately in the best interests of children.

Furthermore, gaps in the legal framework (as referred in Chapter 2.4 of this report) need to be filled to ensure that children are effectively protected when they are victims of domestic violence. Slovenia already has a comprehensive legal framework to protect children from domestic violence. As possible actions, the research team recommends:

- the development of a tool for assessing the level of risk of a child and the introduction of a protocol of recommended actions in the event of a child being a victim of domestic violence;
- experts should be involved in the development of a protocol and a tool to assess the level of risk of a child who is the victim of domestic violence;
- allow the courts to take appropriate measures in each individual case, on the basis of expert assessments and guidelines drawn up in advance, according to the level of risk to the child, all with a view to identifying risk and protective factors;
- the protocol should include guidelines for identifying violence and assessing the level of risk for a child who is the victim of domestic violence, as well as recommended actions based on the level of risk identified;
- the tool should enable the Court to quickly and easily assess the child's level of risk, and appropriate education and training for judges should be provided;
- cooperation between the different institutions involved in dealing with domestic violence against children needs to be strengthened to ensure a more holistic approach to protecting children and preventing recurrence. Children must be protected from secondary victimisation. This means reducing the number of procedures to which the child is exposed and ensuring that he or she feels safe and accepted at all stages of the proceedings.

The implementation of these recommendations will contribute to improving the protection of child victims of domestic violence and to ensuring that all children in Slovenia live in a safe and respectful environment.

It is important to stress that domestic violence against children is a violation of children's rights and can have lasting consequences for a child's development and mental health. It is therefore essential that measures are taken at all levels of society to prevent violence and to protect children who are exposed to it.

It is also important that society changes its attitude towards violence and that it is not tolerated in any form. This can be done by raising public awareness of violence, promoting a culture of respect and providing support to victims of violence.