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REPORT WITH SPECIFIC RECOMMENDATIONS ON THE ROLE AND THE LEGAL STATUS OF GUARDIANS *AD LITEM*

(Actions 14 and 15 of Chapter 2: The best interests of the child)

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Contents

1. INTRODUCTION	3
2. METHODOLOGY	4
3. ANALYSIS OF THE PROVISIONS OF THE FAMILY CODE AND THE NON-CONTENTIOUS PROCEEDINGS ACT RELATING TO THE GUARDIAN <i>AD LITEM</i>	7
4. RECOMMENDATIONS FOR AMENDMENTS TO THE PROVISIONS OF THE FAMILY CODE AND THE NON-CONTENTIOUS PROCEEDINGS ACT RELATING TO THE GUARDIAN <i>AD LITEM</i>	9
4.1. Proposed solutions regarding the definition of the guardian <i>ad litem</i> 's duties and powers	10
4.2. Proposed solutions regarding the conditions for appointing a guardian <i>ad litem</i>	11
5. ADOPTION OF SUBSIDIARY LEGISLATION AND AMENDMENTS TO STATUTORY PROVISIONS TO BETTER DEFINE THE ROLE OF GUARDIAN <i>AD LITEM</i>	12
5.1. Amendment to the Non-Contentious Proceedings Act	12
5.2. Amendment to the Legal Profession Act	13
5.3. Regulations on the Training of guardians <i>ad litem</i>	14
5.4. Regulations on the maintenance of the list of guardians <i>ad litem</i>	17
6. CRITERIA AND PROCEDURE FOR THE SELECTION AND APPOINTMENT OF GUARDIAN <i>AD LITEM</i> BY THE COURT	18
7. SCOPE OF REPRESENTATION, PARTICULARLY IN CASES OF CHILD ABUSE.....	20
8. A CLEAR AND SUSTAINABLE MODEL FOR FUNDING GUARDIANS <i>AD LITEM</i> ..	21
9. CONCLUSION.....	22
Appendix 1 – List of recommendations.....	23

1. INTRODUCTION

The joint European Union and the Council of Europe project ‘Ensuring the best interests of the child in civil proceedings in Slovenia’, is currently underway in Slovenia. The project is being implemented by the Council of Europe’s Children’s Rights Division in close cooperation with the Ministry of Justice of the Republic of Slovenia and the European Commission, specifically its Reforms and Investments Task Force (SG REFORM). The aim of the project is to strengthen the protection of children’s rights and thereby fully realise the principle of the best interests of the child in civil proceedings.

As part of the project, the Strategy for Ensuring the Best Interests of the Child in Civil Proceedings in Slovenia (the Strategy) was adopted as a vision for a child-friendly and child-centred civil justice system for the next five years (2025–2030). Part of the Strategy is an Action Plan, which sets out specific measures for its implementation, monitoring and evaluation. The second chapter relates to the best interests of the child. The National Action Plan accompanying this Strategy sets out specific activities for the preparation of a standardised national protocol for proceedings to determine the best interests of the child, to be consistently applied by professionals, including lawyers and guardians *ad litem* representing children in civil proceedings.

Actions 14 and 15 of the Action Plan provide for the following measures in relation to the best interests of the child in civil proceedings:

- Regulate in more detail the conditions for the appointment of a guardian *ad litem* and the precise role / extent to which the guardian *ad litem* represents the child and looks after the child’s best interests in the Family Code of Slovenian (DZ)¹ or the Non-Litigious Civil Procedure Act (ZNP-1)².
- Adopt relevant by-laws which specify who can be appointed as a guardian *ad litem* and what conditions must be met. Lay down rules on how the Court determines who will be the guardian *ad litem* in a particular proceeding and how the appointment is made. Define how guardians *ad litem* shall be financed.

¹ [Družinski zakonik \(DZ\) \(PISRS\)](#).

² [Zakon o nepravdnem postopku \(ZNP-1\) \(PISRS\)](#).

2. METHODOLOGY

The preparation process included:

- a review of domestic case law
- a review of national legislation
- a review of the legal framework in Italy and Croatia
- consultations with lawyers who are frequently appointed as *guardians ad litem*
a short questionnaire sent to judges at the Family Law Division of the District Court in Ljubljana

The standard practice in Croatia is similar to that in Slovenia, where a lawyer is most commonly appointed as a guardians *ad litem*.

In Italy, the institution of the guardian *ad litem* is organised somewhat differently. Training and the list of lawyers qualified as guardians *ad litem* are managed by the Bar Association or regional bar associations.

As a rule, a guardian *ad litem* may be a lawyer with appropriate additional knowledge in the field of family law and child development. Given the nature of court proceedings, it is advisable for the guardian *ad litem* to be a lawyer, as they possess all the necessary legal knowledge to represent the child's best interests in the proceedings.

The regulation of the conditions for appointing a guardian *ad litem*, and the definition of their duties and powers, can be compared to the system of the guardian *ad litem* in Italy. In Italy, they are known as "special guardians for minors", who are lawyers registered on a special list of guardians for minors established by the council of their bar association, and who meet the following conditions:

- has been registered in the register of lawyers for at least five years;
- has not been subject to disciplinary sanctions more severe than a warning;
- has regularly fulfilled training obligations in the period prior to the application for entry on the register;
- has acquired and can demonstrate, by means of supporting documents, experience in the field of family and juvenile law;
- has attended specialised training courses and regular refresher courses in the field of family or juvenile law.

In the course of their duties, a special guardian of a minor is required to engage with the minor in order to:

- to get to know them;
- to listen to them;
- to ask them for their views on the proceedings in which they are involved, provided, of course, that the child is capable of making a statement and understands the consequences thereof.

In Italy, the court appoints a guardian *ad litem* or special guardian for a minor in the following cases:

- where the parents jointly, or the parent exercising sole parental responsibility, are unable or unwilling to perform one or more acts in the child's best interests that go beyond the ordinary management of the child's affairs;
- at the request of the child themselves;

- at the request of the public prosecutor or a relative with an interest in the matter, the court appoints a guardian *ad litem* for the child after hearing the parents and authorises them to perform such acts.

The appointment of a guardian *ad litem* is mandatory under Article 473 of the Code of Civil Procedure of the Italian Republic where:

- the public prosecutor has requested the removal of parental responsibility from both parents;
- one of the parents has requested the removal of parental responsibility from the other;
- the measures referred to in Article 403 of the Civil Code of the Italian Republic are involved, where the minor is at moral or material risk or is exposed in the family environment to serious harm or danger to his or her mental or physical safety, as a result of which the public authorities intervene to ensure his or her safe placement;
- the placement concerns a minor who is temporarily deprived of a suitable family environment;
- a situation arises during the proceedings which is in the minor's best interests and prevents both parents from being adequately represented in the proceedings;
- a minor who has reached the age of 14 expressly requests it;
- the judge considers, on compelling grounds, that the parents are not suitable to represent the minor's interests.

Given the duties performed by a guardian *ad litem* in civil court proceedings in Slovenia, a lawyer is the most suitable candidate for appointment as a guardian *ad litem*. As legal knowledge is required for the effective representation of a child in court proceedings, in practice, the court appoints a lawyer as guardian *ad litem*. Lawyers who are frequently appointed as guardians *ad litem* have stated that the court selects a lawyer whom it knows to possess, in addition to expertise in family law, other personal qualities and skills necessary for the role of guardian *ad litem*. Judges usually make their decision based on previous experience with a particular lawyer or on information they receive from other judges regarding guardians *ad litem*. Often, the social services centre also proposes a specific lawyer in its application for the appointment of a guardian *ad litem*. There are also cases where both parents have agreed to the appointment of a guardian *ad litem* for the child and their representatives have suggested which lawyer the court should appoint as guardian *ad litem*. Lawyers who are frequently appointed as guardians *ad litem* would like to undergo special training for guardians *ad litem*, acquire additional knowledge in this field, and see the establishment of a specific list of guardians *ad litem*. They also wish for their work to be remunerated under a specific provision in the Lawyers' Tariff. It is essential to define the duties and powers of the guardian *ad litem* more precisely.

From the judges' responses in the survey, it can be concluded that their experience in appointing guardians *ad litem* is positive and that these guardians *ad litem* adequately safeguard the best interests of the child in proceedings. In their view, guardians *ad litem* must understand the nature of non-contentious proceedings, grasp the importance of safeguarding the child's interests in such proceedings, act in the child's best interests, be aware of the child's developmental needs, and be able to establish a rapport with the child. The personal qualities of the lawyer are also important. When selecting a guardian *ad litem*, judges rely on their experience with lawyers from other proceedings, for example, when they have observed that a lawyer, in proceedings where they represent one of the parents, prioritises the child's best interests over the client's wishes. Judges appoint guardians *ad litem* from among lawyers. They are generally appointed in proceedings for the imposition of a measure of a more permanent nature, particularly where the measure involves the removal of a child or the withdrawal of

parental responsibility, where there is a highly conflictual relationship between the parents, where contact between the child and one of the parents has not taken place for a long time or where the measure involves the restriction or withdrawal of contact rights, and where it is clear that the parents, as legal representatives, will not adequately represent the child's best interests in the proceedings.

Guardians *ad litem* have observed that courts are now more frequently opting to appoint a guardian *ad litem* and that some guardians *ad litem* are already almost overburdened with this work, so it is essential that the courts have at their disposal a list of lawyers who are qualified to act as guardians *ad litem* and will not face difficulties in their appointment. Guardians *ad litem* have also highlighted the difficulties arising regarding the recognition of costs for work performed. Guardians *ad litem* are often appointed only during the proceedings and thus receive very voluminous case files to study. They spend several hours studying the file, yet the court usually does not recognise this cost. They propose that the service of interviewing a child should be specifically defined in the Lawyers' Tariff. The interview requires extensive preparation, and the interview itself should be remunerated differently than merely as time spent. Guardians *ad litem* also advocate for supervision, as they face difficult family situations in their work, which can also be stressful for them.

3. ANALYSIS OF THE PROVISIONS OF THE FAMILY CODE AND THE NON-CONTENTIOUS PROCEEDINGS ACT RELATING TO THE GUARDIAN *AD LITEM*

Only two provisions in the Family Code relate to the guardian *ad litem*.

Article 268 of the Family Code stipulates that, under the conditions laid down by the Family Code, in the cases referred to in Article 267 of this Code, a guardian may also be appointed by the authority before which the proceedings are taking place. That authority must immediately notify the social services centre thereof. The social services centre has the same rights in relation to this guardian as it would have in relation to a guardian appointed by the centre itself. This Article provides that a guardian *ad litem* may be appointed by the court and that the court must notify the social services centre thereof.

Article 269 of the Family Code provides that the social work centre or the court shall appoint a guardian *ad litem* for a child over whom parental responsibility is exercised by the parents, if their interests are in conflict. If the interests of children over whom the same person exercises parental responsibility, or the interests of persons who have the same guardian, are in conflict, the social work centre or the court shall appoint a guardian *ad litem* for each of them.

The only reason given for appointing a guardian *ad litem* is a conflict of interest between the child and their guardian. However, it is not specified more precisely when a conflict of interest arises and at which point the court should appoint a guardian *ad litem* for the child. In practice, the court appoints a guardian *ad litem* in the following cases:

- In proceedings for the care and upbringing of a minor child, if the court finds that the parents are not acting in the child's best interests, that their conflict is so severe as to endanger the child, and that the court itself, despite the cooperation of the social services centre and an expert, cannot safeguard the child's best interests, it may therefore appoint a guardian *ad litem* for the child.

It should be emphasised that the court should also appoint a guardian *ad litem* for the child in cases of a violent relationship between the parents, and only where their conflict is so severe that it endangers the child. A child is also seriously endangered by a violent relationship between the parents, particularly when they witness this violence or when they themselves are a direct victim of it.

- In paternity disputes in which the child is also a party to the proceedings. There is no doubt here about a conflict of interests, so the court always appoints a guardian *ad litem* for the child if the child has not yet reached the age of 15.
- In cases where the parents agree to the child being placed in care but the child does not, a guardian *ad litem* is appointed due to a conflict of interests; however, in practice, this does not apply to all courts. The law should stipulate that, in such cases, a guardian *ad litem* must always be appointed for the child.

The court should appoint a guardian *ad litem* for every child removed from their family, i.e. whenever the child is to be placed in a care home, with foster parents or with a relative.

With regard to the guardian *ad litem*, the ZNP-1 contains only one provision, namely in paragraph 5 of Article 45, which stipulates that if the interests of the child and their legal representative conflict, the court shall appoint a guardian *ad litem* for the child. It should be noted that case law indicates when courts consider that the interests of the child and their legal representative are in conflict. Consequently, there are varying practices among courts regarding

the appointment of guardians *ad litem*.

Case law indicates that the court appoints a guardian *ad litem*:

- for a child over whom the parents exercise parental responsibility, if their interests conflict, i.e. there is a conflict of interests between the parents and the child;
- where there is doubt as to whether the parents are capable of safeguarding not only their own interests in the proceedings, but first and foremost the child's best interests;
- because the parents are unable to adequately safeguard the child's best interests, rights and welfare during the proceedings;
- due to the intensity of the conflict between the parents, as a result of which they are unable to adequately safeguard the child's interests;
- if the adequate safeguarding of the child's best interests and the full realisation of their right to be heard are questionable, given the parents' conduct, which conflicts with the child's interests; and
- where there is an exceptionally complex family situation in which the interests of the parents are in conflict, and the interests of the child and his or her parents are also in conflict.

The aforementioned statutory provisions of the DZ and ZNP-1 do not establish a system for appointing a guardian *ad litem*, the conditions for placing lawyers on the list of conflict guardians, the training of guardians *ad litem*, or their duties and powers.

As the duties and powers of the guardian *ad litem* are not defined, the guardian *ad litem* acts in accordance with their own judgement and the knowledge and experience they possess, and in this way endeavours to act in the best interests of the child, even though they are not specifically trained for this purpose.

Despite the absence of any guidelines or protocols regarding the duties of the guardian *ad litem*, the guardian *ad litem* usually carefully and thoroughly reviews the case file upon receiving a copy of it. Sometimes they must begin their work even before they are familiar with the contents of the file, for example, when they are present during contact visits, where these take place in the presence of a third party for the sake of safeguarding the child's best interests. Once they have examined the file, they decide, based on the information contained therein, whether to conduct an interview with the child. If they do interview the child, they try to establish a relationship of trust with them. If necessary, they offer the child support and participate in multidisciplinary teams at the social services centre. They visit the child at their home, at a specialist centre, at a crisis centre, with foster carers and in hospital. They write a report on all this for the court and often give their opinion as well. If necessary, they obtain information from the social services centre. Guardians *ad litem* represent the child at court hearings, present arguments and evidence, and carry out all procedural actions. They establish contact with a child who is abroad via telephone or video link. They provide an opinion on expert reports and the opinions of the social services centre. They are increasingly present during contact visits, but these are not supervised visits, which may only be conducted by professionally qualified staff at social work centres. These are cases where contact can no longer be supervised, where supervision is not required, or where the child refuses supervised contact at the social work centre, but there is no third party present during the contact to safeguard the child's best interests.

To ensure that all children receive professional and equal representation from the guardian *ad litem*, the duties and powers of the guardian *ad litem* should be set out in the Family Code.

4. RECOMMENDATIONS FOR AMENDMENTS TO THE PROVISIONS OF THE FAMILY CODE AND THE NON-CONTENTIOUS PROCEEDINGS ACT RELATING TO THE GUARDIAN *AD LITEM*

Amendments to the Family Code and the Non-Contentious Proceedings Act, as well as the adoption of appropriate subordinate legislation, are required to clearly define the training of guardians *ad litem*, the conditions for their appointment, the grounds for their dismissal, and the scope of their duties and powers. Standards for the training of guardians *ad litem* must be adopted to ensure they possess the necessary knowledge and experience to work with children; on this basis, a list of lawyers qualified to act as guardians *ad litem* should be drawn up, which will facilitate their appointment by the courts.

Recommendation 1:

It is recommended that **the Family Code** and **the Non-Contentious Proceedings Act** be amended, and that appropriate subordinate legislation be adopted to clearly define the training of guardians *ad litem*, the conditions for their appointment, the grounds for their dismissal, and the scope of their duties and powers.

It is further recommended that standards for the training of guardians *ad litem* be adopted to ensure that they possess the necessary knowledge and experience to work with children, and that, on this basis, a list of lawyers qualified to perform the duties of a guardian *ad litem* be drawn up, which will facilitate their appointment by the courts.

The proposed solutions for implementing these recommendations are set out in the following sub-sections (4.1 and 4.2).

The tasks and powers of the guardian *ad litem*, as well as the grounds for their appointment, should be defined more precisely in the Family Code. A guardian *ad litem* is currently appointed for a child only in specific family proceedings; however, the child's best interests require that the child's representation be extended to proceedings under the Prevention of Domestic Violence Act (hereinafter PDVA) if the child is a victim of domestic violence, and where the child is involved in proceedings as a victim or witness of a criminal offence, with family proceedings running in parallel to the criminal proceedings. Amendments are also required to the Criminal Procedure Act (hereinafter ZKP-1) regarding the representative of a child who is a witness or victim of a criminal offence, where ZKP-1 provides for the child's representation by a representative. In the best interests of the child, it is important that the guardian *ad litem* also represents the child in other family proceedings running in parallel with the proceedings in which they were appointed, such as proceedings concerning the child's contact with grandparents, proceedings to replace the consent of one of the parents, and other proceedings under the Family Code.

Neither the Family Code nor the ZNP-1 specifies when a guardian *ad litem* may be dismissed. Currently, this may be requested for valid reasons by the court, the guardian *ad litem* themselves, or the social services centre. The question is whether other parties to the proceedings, namely the child's parents or guardian, may request dismissal, given that they do not have the right to appoint a guardian *ad litem*. Court practice on this matter is not uniform. Some courts reject the request as unfounded, whilst others dismiss the request on the grounds that the parents, as parties to the proceedings, do not have the right to file a motion or request for the removal of the guardian *ad litem*. A guardian *ad litem* should only be dismissed by the court that appointed them; a motion may also be submitted by the social services centre, whilst other parties have the right to draw the court's attention to any misconduct on the part of the

guardian *ad litem*. It is certainly necessary to specify the grounds for the dismissal of a guardian *ad litem*, particularly if they fail to perform their duties professionally and if they breach the Code of Conduct for Lawyers.

4.1. Proposed solutions regarding the definition of the guardian *ad litem*'s duties and powers

It is apparent from the reviewed decisions on the appointment of a guardian *ad litem* that the court does not specify the specific duties and powers of the guardian *ad litem* in its decision. It is usually stated that the guardian protects the child's rights in the proceedings and represents the child, that they examine the case file, speak with the child, submit any comments on the expert opinion, respond to a proposal, or that they are present during contact visits.

The duties and powers of the guardian *ad litem* may only be precisely defined in the Family Code. The proposed solution is to add Article 269a to the Family Code, which would read:

Article 269a (Duties and powers of the guardian *ad litem*)

(1) The duty of the guardian *ad litem* is to represent the rights and interests of the child in the proceedings in which they are appointed, to safeguard the child's procedural rights in the proceedings, to make submissions, to file motions relating to the protection of the child's rights, motions for the issuance of interim orders, and appeals, to propose evidence, and to comment on the procedural documents.

(2) The guardian *ad litem* shall, in a manner appropriate to the child's age and maturity, inform the child of the proceedings and the significance of individual procedural acts, and shall ensure that the child's voice is heard in the proceedings. Where children are unable to understand the meaning and consequences of their statements, or where they do not understand the proceedings, the guardian *ad litem* must, with regard to the matters to be decided in the proceedings, assess what decision would be in the child's best interests.

(3) Where it is in the child's best interests for contact with one of the parents or a guardian to take place in the presence of an adult, that adult may, by order of the court, be appointed as a temporary guardian *ad litem*.

(4) If the child is a victim of domestic violence and a guardian *ad litem* has already been appointed for them, proceedings under the Domestic Violence Prevention Act may also be initiated at the request of the guardian *ad litem*, who shall also represent the child in proceedings under the Domestic Violence Prevention Act.

(5) The guardian *ad litem* may also represent the child in criminal proceedings relating to offences against sexual integrity under Chapter XIX, offences against marriage, the family and children under Chapter XXI of the Criminal Code, the offence of enslavement under Article 112 and the offence of human trafficking under Article 113 of the Criminal Code, where the minor victim must have a representative who safeguards their rights at all times from the commencement of criminal proceedings onwards, particularly with regard to the protection of their integrity during questioning and the assertion of property claims, as well as when they are questioned during pre-trial proceedings. For a minor victim who does not yet have a representative, the court shall appoint as representative the guardian *ad litem* who was appointed for the child in family proceedings.

4.2. Proposed solutions regarding the conditions for appointing a guardian *ad litem*

As the guardian *ad litem* is appointed by the court by order, the ZNP-1 may lay down the conditions for the appointment of a guardian *ad litem*. The proposed solution is to add a new paragraph to Article 45(5) of the ZNP-1 with the following content:

“A lawyer who has completed basic and regular training for guardians *ad litem* may be appointed as a guardian *ad litem*.”

For the proper and effective protection of the best interests of children in civil proceedings, the training of guardians *ad litem* is essential, as has been noted by both judges and lawyers, who are frequently appointed as guardians *ad litem*. The proposed solution is that the Slovenian Bar Association should be responsible for the training of lawyers as guardians *ad litem*; therefore, this training should be regulated in the Lawyers’ Act, which should contain the following provisions in this regard:

(training of lawyers as guardians *ad litem*)

- (1) The Slovenian Bar Association is responsible for the basic and regular training of lawyers who act as guardians *ad litem*.
- (2) The Slovenian Bar Association maintains and publishes a list of lawyers who are professionally qualified to act as guardians *ad litem*.
- (3) The programme and method of delivery for the basic and regular training of conflict of laws administrators shall be determined by the Bar Association of Slovenia through specific regulations.

Due to the above-proposed statutory obligation regarding the training of guardians *ad litem*, the Legal Profession Act should contain an article with the following content:

(list and training of guardians *ad litem*)

- (1) The Slovenian Bar Association shall maintain and publish a list of lawyers who are professionally qualified for appointment as guardians *ad litem*. It shall include lawyers who meet the conditions and who have completed basic training in accordance with the Rules on the programme and method of implementation of basic and regular training for guardians *ad litem* in family proceedings.
- (2) The programme and method of conducting the basic and regular training referred to in the first paragraph of this Article shall be determined by the Slovenian Bar Association by means of a specific regulation.

Guardians *ad litem* must possess legal knowledge; therefore, in family proceedings, the court shall, as a rule, appoint a lawyer as guardian *ad litem*. Consequently, the training and maintenance of the list of lawyers eligible to act as guardians *ad litem* shall be entrusted to the Slovenian Bar Association. The Bar Association will organise the education and training of lawyers to act as guardians *ad litem*, set the conditions for inclusion on the list of guardians *ad litem*, monitor whether they continue to meet the conditions for acting as guardians *ad litem*, keep the list up to date, and also remove them from the list when appropriate. As in Italy, the Slovenian Bar Association should be responsible for all of this. In this way, compulsory training for guardians *ad litem* would be regulated, with the Slovenian Bar Association responsible for the method of training and the delivery of the training. The conditions that lawyers must meet in order to act as guardians *ad litem* would be specified, as would the grounds for their removal or dismissal from the list.

5. ADOPTION OF SUBSIDIARY LEGISLATION AND AMENDMENTS TO STATUTORY PROVISIONS TO BETTER DEFINE THE ROLE OF GUARDIAN *AD LITEM*

Recommendation 2:

The training of lawyers to perform the duties of guardians *ad litem* should fall within the remit of the Slovenian Bar Association; therefore, the Legal Profession Act should regulate basic and regular training, the training programme, the method of maintaining a list of lawyers qualified to perform the duties of a guardian *ad litem*, and the grounds for removal from the list.

The Slovenian Bar Association should adopt Rules on the programme and method of implementing basic and regular training for lawyers acting as guardians *ad litem*, and Rules on the conditions for registration, grounds for removal, and the method of maintaining the list of lawyers performing the duties of guardians *ad litem*.

In order to safeguard the best interests of children, it is recommended that a list of guardians *ad litem* who are specially trained for this work be drawn up as soon as possible.

The proposed solutions for implementing this recommendation are set out in the following sub-sections (5.1, 5.2, 5.3 and 5.4).

5.1. Amendment to the Non-Contentious Proceedings Act

Insofar as the appointment of a lawyer as a guardian *ad litem* is concerned, the proposed solution is to amend the provision of Article 45 of the ZNP-1, namely that, should the court appoint a lawyer as a guardian *ad litem*, it must appoint a lawyer from the list of specially qualified lawyers maintained by the Slovenian Bar Association.

The current provision of Article 45 of the ZNP-1 reads:

Article 45 (performance of procedural acts)

- (1) The court shall permit a party who is an adult placed under guardianship to perform individual procedural acts themselves for the purpose of asserting their rights or legal interests, if it assesses that they are capable of understanding the significance and legal consequences of such acts.
- (2) The court shall allow a child who has reached the age of 15 and is capable of understanding the significance and legal consequences of his or her actions to perform procedural acts independently as a party to the proceedings.
- (3) The child's legal representative referred to in the previous paragraph may perform procedural acts only until the child declares that they will perform procedural acts independently.
- (4) A child who has not yet reached the age of 15, or whom the court deems incapable of understanding the significance and legal consequences of their actions, shall be represented by a legal representative.
- (5) If the interests of the child and those of their legal representative conflict, the court shall appoint a guardian *ad litem* for the child.
- (6) The court may request an opinion from the social services centre as to which person should be appointed as guardian *ad litem*.

To implement the proposed solution, paragraph 5 of Article 45 of the ZNP-1 must be amended

so that the full stop at the end is deleted and the following text is added to the existing text:

“**and** insofar as a lawyer is appointed as the guardian *ad litem*, the lawyer must be appointed from the list of specially qualified lawyers maintained by the Slovenian Bar Association.”

5.2. Amendment to the Legal Profession Act

Given that the court almost always appoints a lawyer as the guardian *ad litem*, the proposed solution is also included in the statutory provisions that would regulate this in the Legal Profession Act.

A lawyer wishing to act as a guardian *ad litem* must have been registered in the register of lawyers for a specified period; the proposed solution is a minimum of one year. As this involves working with children, a further condition would be that the lawyer has not been subject to a final disciplinary sanction and has no ongoing disciplinary proceedings before the Slovenian Bar Association; nor may they have been convicted of a criminal offence or be subject to criminal proceedings.

The proposed solution is that the Legal Profession Act should contain provisions regarding the maintenance of a register of guardians *ad litem*, the conditions for entry onto this register and the conditions for removal from it.

The Legal Profession Act should therefore stipulate the following:

a)

(maintenance of a register of Guardians *ad litem*)

The Slovenian Bar Association shall maintain a special register of lawyers who are qualified to act as guardians *ad litem* in accordance with the Rules on the programme and method of conducting basic and regular training for guardians *ad litem* in family proceedings, adopted by the Slovenian Bar Association.

b)

(conditions for inclusion on the list of guardians *ad litem*)

- (1) Lawyers who have successfully completed the basic training in accordance with the Programme and Methodology for Basic and Regular Training for guardians *ad litem* in Family Proceedings, organised by the Slovenian Bar Association, may be entered on the list of conflict of laws administrators.
- (2) To be entered on, and to remain on, the list of guardians *ad litem*, the following is required:
 - the lawyer must have been registered in the register of lawyers for at least one year;
 - that parental responsibility has not been withdrawn from them;
 - that they have not been subject to a final disciplinary sanction and that no disciplinary proceedings are pending against them at the Slovenian Bar Association;
 - that they have not been convicted of an intentional criminal offence;
 - that no final indictment has been filed against them for an intentional criminal offence prosecuted ex officio;
 - that he has completed basic training and that he undertakes regular training each year in accordance with the Rules on the Programme and Method of Conducting

- Basic and Regular Training for Guardians *ad litem* in Family Proceedings; and
- that there are no other grounds for doubting that they will act in the best interests of the children.

c)

(conditions for removal from the list of guardians *ad litem*)

- (1) A lawyer shall be removed from the list;
 - if he or she no longer meets the conditions for entry on the list of guardians *ad litem* in accordance with these Rules, or
 - if he or she so requests.
- (2) The Slovenian Bar Association may, upon the proposal of an interested party or the President of the Bar, after hearing the guardian *ad litem* and in accordance with the provisions of the Legal Profession Act relating to disciplinary bodies, decide on his removal from the list if:
 - he performs the duties of a guardian *ad litem* in an irregular and negligent manner,
 - he has seriously breached the Code of Conduct for Lawyers, and
 - he has, without justifiable reason, declined two appointments as a guardian *ad litem* within a single calendar year.

5.3. Regulations on the Training of guardians *ad litem*

To better define the role of the guardian *ad litem*, the Slovenian Bar Association should adopt the following regulations:

Pursuant to paragraph 6 of Article 45 of the Non-Contentious Proceedings Act, the Slovenian Bar Association adopts

**REGULATIONS
on the programme and method of delivery of basic and regular training for conflict of
laws administrators in family proceedings**

I. GENERAL PROVISIONS

**Article 1
(Subject matter)**

These Regulations set out the programme and method of delivery of basic and regular training (hereinafter: training) for lawyers appointed by the court as guardians *ad litem*.

**Article 2
(purpose of professional training)**

The purpose of professional training is for guardians *ad litem* to acquire in-depth, additional and specialised knowledge regarding the understanding of the best interests of the child, knowledge of children's developmental needs according to their age, appropriate techniques for interviewing children, how parental separation affects children at different stages of their development, and what children need most when their parents separate. It is important that they familiarise themselves with scientific advances in the field of dealing with children in civil proceedings, child psychology and communication in language adapted to the child.

II. PROFESSIONAL TRAINING PROVIDER AND CONTENT OF PROFESSIONAL TRAINING PROGRAMMES

Article 3 (Provider of professional training)

- (1) The professional training provider is the Slovenian Bar Association in accordance with its Statutes and internal organisational rules.
- (2) The professional training provider shall provide professional training in accordance with identified needs. Regular training shall be provided at least once a year.

Article 4 (basic training programme)

The basic training programme for the fulfilment of the purpose set out in Article 2 of these Rules shall include, in particular, the following content:

1. understanding the principle of the best interests of the child;
2. understanding children's developmental needs in relation to their age;
3. techniques for interviewing children;
4. how parental separation affects children at different stages of their development;
5. what children need most when their parents separate;
6. what the duties and powers of a guardian *ad litem* are.

Article 5 (Regular training programme)

The regular training programme shall be designed to ensure the acquisition of in-depth knowledge, the updating of knowledge and familiarisation with scientific and professional developments within the scope of the content set out in the previous article.

III. DURATION AND METHOD OF DELIVERY OF PROFESSIONAL TRAINING

Article 6 (Duration of professional training)

- (1) Basic training shall last for at least 26 teaching hours, namely:
 1. understanding the principle of the best interests of the child – 3 teaching hours;
 2. understanding children's developmental needs according to their age – 6 teaching hours;
 3. techniques for talking to children – 5 teaching hours;
 4. how parental separation affects children at different stages of their development – 4 teaching hours;
 5. what children need most when their parents separate – 4 teaching hours;
 6. what are the duties and powers of a guardian *ad litem* – 4 teaching hours.
- (2) Regular training lasts at least 6 teaching hours.
- (3) One teaching hour of professional training lasts 45 minutes.

Article 7
(method of delivery of professional training)

- (1) Professional training is delivered in the form of lectures, seminars and workshops. The number of participants in each basic training course must allow for the active participation of all participants.
- (2) Regular training may also be conducted in the form of field visits.

Article 8
(Certificate)

- (1) Upon completion of the professional training, the provider shall issue the participant with a certificate of completion of professional training.
- (2) The certificate of completion of professional training must include:
 - the name and address of the provider;
 - the type of training (basic / regular);
 - the date and delivery of the training;
 - the participant's first name, surname and date of birth
 - the certificate reference number;
 - the signature of the President of the Slovenian Bar Association and the Director of the Bar Academy;
 - the seal of the Slovenian Bar Association

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 9
(initial rounds of basic training)

Lawyers who, in accordance with the Rules on the conditions for registration, grounds for removal and rules on the maintenance of the list of lawyers qualified to act as guardians *ad litem* for children in family proceedings, adopted by the Slovenian Bar Association, meet the conditions for appointment as a guardian *ad litem* for children in civil court proceedings, shall be offered basic training within three years of the entry into force of these Rules.

Article 10
(Entry into force)

These Rules shall enter into force 15 days after their publication.

5.4. Regulations on the maintenance of the list of guardians *ad litem*

The list of lawyers qualified to act as guardians *ad litem* must be regulated by regulations. The proposed solution is for the Slovenian Bar Association to adopt appropriate regulations on the maintenance of a list of lawyers qualified to act as guardians *ad litem*.

Proposed regulations:

REGULATIONS ON THE MAINTENANCE OF A LIST OF LAWYERS QUALIFIED TO ACT AS GUARDIANS *AD LITEM* IN FAMILY PROCEEDINGS

Article 1

The Slovenian Bar Association shall maintain and update a list of lawyers qualified to act as guardians *ad litem*, who are available to the courts in the Republic of Slovenia.

Article 2

The Slovenian Bar Association shall organise basic training for lawyers who meet the conditions for inclusion on the list of guardians *ad litem*. Successful completion of the training is a prerequisite for inclusion on the list of guardians *ad litem*.

A condition for remaining on the list of guardians *ad litem* is that the guardian *ad litem* attends regular training each year.

Activities carried out by lawyers included on the list of guardians *ad litem* as trainers during training sessions shall be deemed to fulfil the obligation of regular training.

Article 3

An application for inclusion on the list of guardians *ad litem* shall be submitted on a form prepared by the Slovenian Bar Association.

Article 4

The list contains details of the guardian *ad litem*: first name and surname, address, email address and telephone number.

The list is published on the website of the Slovenian Bar Association and is freely accessible to all.

6. CRITERIA AND PROCEDURE FOR THE SELECTION AND APPOINTMENT OF GUARDIAN *AD LITEM* BY THE COURT

Recommendation 3:

The conditions for the appointment of a guardian *ad litem* must be specified. The guardian *ad litem* is appointed by a court order; therefore, the appropriate solution is to amend the Non-Contentious Proceedings Act (ZNP-1) by adding a provision stating that a lawyer who has completed basic and regular training for guardians *ad litem* may be appointed as such.

Currently, there are no criteria or prescribed procedure for the selection and appointment of a guardian *ad litem* for a child in family proceedings. Social work centres frequently propose the appointment of a guardian *ad litem*, provide extensive and well-founded reasons for such a proposal, and sometimes even suggest a specific lawyer. They propose a specific lawyer primarily on the basis of experience they have gained with that lawyer in court proceedings. There is no specific list of lawyers from which judges could select a guardian *ad litem*.

There is inconsistency regarding the profile of the guardian *ad litem*, their role and the procedures for their appointment, all of which leads to unpredictability. There are differences between courts regarding appointment, a lack of precise definitions regarding the required qualifications or additional skills of a guardian *ad litem*, their responsibilities and the procedures for their appointment. It is also questionable whether the court currently has a sufficient number of qualified lawyers available to act as guardians *ad litem*. In practice, therefore, district courts do not limit themselves to lawyers from their own district when appointing a guardian *ad litem*.

Judges usually appoint a lawyer as a guardian *ad litem* based on their experience of working with that lawyer in family court proceedings. They often consult with other judges on this matter. Judges certainly face difficulties in deciding which lawyer to appoint as a guardian *ad litem*. The number of those who are frequently appointed and whom judges know to have sufficient experience and other skills to perform the duties of a guardian *ad litem* is small. Therefore, judges often first check with the lawyer to see if they are prepared to take on the role of guardian *ad litem* in a specific case. It also happens that the parties to the proceedings propose the appointment of a guardian *ad litem*, and sometimes they even agree on a specific lawyer.

It would be easiest for judges if there were a list of lawyers specially qualified to act as guardians *ad litem*, so they would have no difficulty in selecting them. This would also allow them to gain experience with a wider range of guardians *ad litem*.

A further problem is that there are no clear criteria as to when it is in the child's best interests to appoint a guardian *ad litem*. Consequently, judges make differing decisions regarding the appointment of a guardian *ad litem*. There are courts where judges have no experience with the work and role of a guardian *ad litem*, and some believe that the child's interests are sufficiently safeguarded and that the child's voice is adequately heard in proceedings through the child advocate at the Human Rights Ombudsperson. Some judges do not distinguish between the role of the child's advocate and that of the guardian *ad litem*. There are also judges who believe that they are the ones who constantly look after the child's best interests and that a guardian *ad litem* is therefore unnecessary.

It should be emphasised that the existence of a conflict of interest between the parents and the

child forms the basis for the appointment of a guardian *ad litem* under Article 269(1) of the Family Code, and not for advocacy under Article 192 of the Family Code. The roles of the guardian *ad litem* and the child's advocate in proceedings are distinct. In accordance with Article 25a(2) of the Human Rights Ombudsperson Act, the advocate provides professional assistance to the children to enable them to express their views in all proceedings and matters in which they are involved, and conveys the children's opinion to the competent authorities and institutions that decide on their rights and interests, but is not their legal representative. The purpose of the advocate is to provide the child with psychosocial support, to talk to them about their wishes, feelings and opinions. The advocate explains the proceedings and activities to the child in a manner appropriate to the child's age and stage of development, seeks the most suitable solutions together with the child, and assists them at the conclusion of the proceedings. The advocate helps the child to express their views during the proceedings, but cannot represent them in the proceedings. The role of the guardian *ad litem* is to represent the child in the proceedings, to explain the proceedings and the significance of individual procedural steps to the child in an appropriate manner, and to make submissions, propose evidence and comment on the procedural documents on the child's behalf. The appointment of a guardian *ad litem* ensures that the child receives professional representation in the proceedings.

Courts often do not opt to appoint a guardian *ad litem* on the grounds that this would place an additional burden on the proceedings, or because they consider that the court itself is already obliged to safeguard all the child's rights in the proceedings and act in the child's best interests. Another issue is the financing of the guardian *ad litem*, as this is said to place too great a burden on the courts' budget; consequently, efforts are being made to ensure that guardians *ad litem* are paid directly by the Ministry of Justice.

7. SCOPE OF REPRESENTATION, PARTICULARLY IN CASES OF CHILD ABUSE

Recommendation 4:

In order to protect the interests of a child who has a guardian *ad litem* appointed pursuant to the Family Code, it is recommended that the same guardian *ad litem* also represent the child in any proceedings under the Prevention of Domestic Violence Act and in criminal proceedings if the child is a victim of domestic violence or another criminal offence.

As already stated in section 4, the scope of the child's representation should not be limited solely to the specific family proceedings in which a guardian *ad litem* was appointed for the child. It is in the child's best interests to be represented by the same lawyer in all proceedings concerning them, i.e. the same guardian *ad litem* whom the child knows, and whom, in turn, knows the child. This means the child will not have to recount certain circumstances or events multiple times. The guardian *ad litem* will have an overview of all proceedings relating to the child and will thus be able to act in the child's best interests in all proceedings. If the child is involved in multiple family proceedings, proceedings under the Prevention of Domestic Violence Act (ZPND)³ or criminal proceedings, they should have the same lawyer in all of them.

Children are also often direct or indirect victims of domestic violence, which is why proceedings under the ZPND are frequently initiated. The child is thus often a party to these proceedings; however, as they cannot file an application under the ZPND before the age of 15, the proceedings may be initiated by a parent who has been a victim of violence, with the proposed measures under the ZPND also applying to the child.

The proposed solution is to amend the second paragraph of Article 22b of the ZPND so that, where the victim is a child, proceedings may also be initiated at the request of a guardian *ad litem*, who would also represent the child in those proceedings.

It would also be in the best interests of a child who is the victim of a criminal offence to be represented in criminal proceedings by a guardian *ad litem*, provided that such a guardian has already been appointed in civil proceedings. The Criminal Procedure Act (hereinafter ZKP) stipulates in the third paragraph of Article 65 that in criminal proceedings concerning offences against sexual integrity under Chapter XIX, criminal offences against marriage, the family and children under Chapter XXI of the Criminal Code, the criminal offence of enslavement under Article 112, and the criminal offence of human trafficking under Article 113 of the Criminal Code, a minor victim shall, from the commencement of criminal proceedings onwards, have a representative who safeguards their rights, particularly in relation to the protection of their integrity during questioning and the assertion of property claims. A minor victim of the criminal offences referred to in the preceding sentence must also have a representative when questioned during pre-trial proceedings. Where a minor victim does not yet have a representative, the court shall appoint one *ex officio* from among the bar.

The proposed solution is to add the following text at the end of the third paragraph of Article 65 of the Criminal Procedure Act: 'or a guardian *ad litem*, insofar as one has been appointed for the child in family proceedings.' This would safeguard the best interests of the child, as they would not have one lawyer in civil proceedings and another in criminal proceedings.

³ [Zakon o preprečevanju nasilja v družini \(ZPND\) \(PISRS\)](#).

8. A CLEAR AND SUSTAINABLE MODEL FOR FUNDING GUARDIANS *AD LITEM*

Recommendation 5:

Once the duties and powers of the guardian *ad litem* have been clearly defined, the method of calculating costs and billing for legal and other services provided by the guardian *ad litem* must be set out in the Lawyers' Fee Schedule.

As long as guardians *ad litem* are appointed by the court, the costs of the guardian *ad litem* are covered by the budget of the court that appointed them.

The court appoints a guardian *ad litem* for each specific proceeding, and the appointment order also stipulates that the costs and remuneration for the guardian *ad litem*'s work are to be paid from the court's budget.

Since the guardian *ad litem* is appointed on the basis of a court order and is remunerated in accordance with the Lawyers' Tariff, it is appropriate that they be paid from the court's budget, provided, of course, that the courts also receive the necessary funds to cover these costs. A lack of budgetary funds at the court must never be a reason for failing to appoint a guardian *ad litem* for a child in a specific case. Guardians *ad litem* submit claims for their fees in accordance with the Lawyers' Tariff. By way of comparison, even when the court appoints a defense counsel ex officio, a lawyer under the Mental Health Act, or a temporary representative for a party in proceedings, the costs are borne by the court's budget; therefore, it is right that the same should apply to the costs and remuneration of the guardian *ad litem*.

However, the guardian *ad litem* also performs work that is not covered by the Lawyers' Tariff. Often, the guardian *ad litem* is appointed in the middle of proceedings and is given a very voluminous file to read, running to several hundred pages. It often takes several hours to study the file, sometimes as many as eight or more, which the court generally does not recognise as a cost, even though the guardian *ad litem* must familiarise themselves with the file in detail. Furthermore, there is no specific fee set for the guardian *ad litem*'s interview with the child, which requires considerable time to prepare and conduct. Sometimes the interview must be repeated because the child was not prepared to talk. Nor does the Lawyers' Fee Schedule specify a fee for the presence of the guardian *ad litem* as an adult during contact visits, for visiting the child at home, with foster carers, at the Specialist Centre, the Crisis Centre or in hospital.

It is the state that must provide the courts with sufficient funds to finance guardians *ad litem* for children involved in family proceedings.

9. CONCLUSION

To precisely define the role and scope of powers of the guardian *ad litem*, the solution lies in the adoption of a new provision in the Family Code, which will precisely define the tasks and powers of the guardian *ad litem*. In order to protect the interests of a child who has a guardian *ad litem* in proceedings under the Family Code, the same guardian *ad litem* should also represent the child in any proceedings under the Protection of Children and Young Persons Act and in criminal proceedings, if the child is a victim of domestic violence or another criminal offence.

The conditions for appointing a guardian *ad litem* must be specified. The guardian *ad litem* is appointed by a court order, therefore the solution is to set out the conditions for appointing a guardian *ad litem* in the ZNP-1 by adding a provision stating that a lawyer who has completed basic and regular training for guardians *ad litem* may be appointed as a guardian *ad litem*. The training of lawyers to become guardians *ad litem* would be the responsibility of the Slovenian Bar Association, therefore the Lawyers Act should regulate basic and regular training, the training programme, the method of maintaining a register of lawyers qualified to act as guardian *ad litem*, and the grounds for removal from the register. The Slovenian Bar Association should adopt Rules on the programme and method of conducting basic and regular training for lawyers acting as guardians *ad litem*, and Rules on the conditions for registration, grounds for removal, and rules for maintaining the register of lawyers acting as guardians *ad litem*.

Once the tasks and responsibilities of a guardian *ad litem* have been clearly defined, the method for valuing and billing the legal and other services provided by the guardian *ad litem* must be set out in the Lawyers' Tariff. Until such time as the court appoints conflict guardians, the costs of the guardian *ad litem* shall be paid from the budget of the court that appointed the guardian *ad litem*.

In order to safeguard the best interests of the children, it is essential that a list of guardians *ad litem* who are specially qualified for this work be drawn up as soon as possible.

Appendix 1 – List of recommendations

Recommendation 1:

It is recommended that the Family Code and the Non-Contentious Proceedings Act be amended, and that appropriate subordinate legislation be adopted to clearly define the training of guardians *ad litem*, the conditions for their appointment, the grounds for their dismissal, and the scope of their duties and powers.

It is further recommended that standards for the training of guardians *ad litem* be adopted to ensure that they possess the necessary knowledge and experience to work with children, and that, on this basis, a list of lawyers qualified to perform the duties of a guardian *ad litem* be drawn up, which will facilitate their appointment by the courts.

The proposed solutions for implementing these recommendations are set out in the following sub-sections (4.1 and 4.2).

Recommendation 2:

The training of lawyers to perform the duties of guardians *ad litem* should fall within the remit of the Slovenian Bar Association; therefore, the Legal Profession Act should regulate basic and regular training, the training programme, the method of maintaining a list of lawyers qualified to perform the duties of a guardian *ad litem*, and the grounds for removal from the list.

The Slovenian Bar Association should adopt Rules on the programme and method of implementing basic and regular training for lawyers acting as guardians *ad litem*, and Rules on the conditions for registration, grounds for removal, and the method of maintaining the list of lawyers performing the duties of guardians *ad litem*.

In order to safeguard the best interests of children, it is recommended that a list of guardians *ad litem* who are specially trained for this work be drawn up as soon as possible.

The proposed solutions for implementing this recommendation are set out in the following sub-sections (5.1, 5.2, 5.3 and 5.4).

Recommendation 3:

The conditions for the appointment of a guardian *ad litem* must be specified. The guardian *ad litem* is appointed by a court order; therefore, the appropriate solution is to amend the Non-Contentious Proceedings Act (ZNP-1) by adding a provision stating that a lawyer who has completed basic and regular training for guardians *ad litem* may be appointed as such.

Recommendation 4:

In order to protect the interests of a child who has a guardian *ad litem* appointed pursuant to the Family Code, it is recommended that the same guardian *ad litem* also represent the child in any proceedings under the Prevention of Domestic Violence Act and in criminal proceedings if the child is a victim of domestic violence or another criminal offence.

Recommendation 5:

Once the duties and powers of the guardian *ad litem* have been clearly defined, the method of calculating costs and billing for legal and other services provided by the guardian *ad litem* must be set out in the Lawyers' Fee Schedule.

As long as guardians *ad litem* are appointed by the court, the costs of the guardian *ad litem* are covered by the budget of the court that appointed them.