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FROM PARENTAL RIGHTS TO PARENTAL RESPONSIBILITY: DEVELOPMENTS IN SLOVENIAN FAMILY LAW

The long awaited Family Code (DZ), which replaced Marriage and Family Relations Act (ZZZDR), represents the most important recent development in Slovenian family law, as the enactment thereof affected practically all aspects of the regulation of family matters. The article focuses on the comparison of provisions regulating parental rights under ZZZDS and those regulating parental responsibility under DZ, with a special emphasis on the most important changes and resulting implications for the relationship between the parents and their children, as well as for the protection of the child's best interests. Among the topics addressed are the scope, exercise and termination of parental responsibility, measures for the protection of the child's best interests, the new institution of granting parental responsibility to a relative, etc. The article also contains a spreadsheet that allows for easier comparison between both the previous and current regime.

Keywords: parental rights, parental responsibility, parental obligations, child's best interests, reform of family law.

1. Introduction

For a long time, Slovenian family law was centred around Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*, hereinafter: ZZZDR)¹ of 1976, which was later amended with several amending acts (most notably in 1989, 2001 and 2004) and certain acts in other areas of law (e.g. Civil Procedure Act, Notary Act, etc.). However, as there was no comprehensive and systemic solution that would properly consider contemporary legal challenges in family matters, ZZZDR no longer sufficed; some provisions were even considered to be unconstitutional,² and decisions issued by both courts and social work centres demonstrated many shortcomings and legal vacuums.³ For that reason, a new Family

1 Official Gazette of RS, No. 69/04 – officially consolidated text, 101/07 – odl. US, 90/11 – odl. US, 84/12 – odl. US, 82/15 – odl. US, 15/17 – DZ and 30/18 – ZSVI.

2 See for example Constitutional Court of the Republic of Slovenia decision No. U-I-312-00-40 of 23 April 2003, Official Gazette of RS, No. 42/03.

3 For more, see Proposal of Family Code (*Besedilo Predloga družinskega zakonika*) of 20 December 2016, EVA: 2016-2611-0062, <<https://imss.dz-rs.si/imis/9b7fa9f28fe58285777f.pdf>> (accessed 5 July

Code, which aimed to address these issues and regulate the entire scope of family law in one place, was drafted and adopted in 2011, but it never came into force due to a failed referendum. The new proposal, which was finally successfully enacted, left out the most controversial topics, such as the regulation same-sex partnerships and the prohibition of corporal punishment of children.⁴

The new Family Code (*Družinski zakonik*, hereinafter: DZ)⁵ enacted major changes in all the most important areas regulating of family law, relating to, *inter alia*, marriage, cohabitation, relations between parents and their children, assistance provided by the state in cases of difficulties in cohabitation and family life, measures to protect the best interests of the child and maintenance obligations, adoption, foster care, guardianship, etc. It also redefined or replaced some fundamental concepts, which included the replacement of parental rights with parental responsibility and the adaptation of certain important aspects related to the implementation of parents' rights and obligations towards their child. The following article focuses on the presentation, comparison and evaluation of both legal institutes in the framework of previous and current regulation.

2. Parental rights under ZZZDR

The constitutional foundation for regulation of parental rights and obligations is represented by Article 54 of the Constitution of the Republic of Slovenia,⁶ according to which the parents have the right and duty to maintain, educate, and raise their children, which may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. These constitutional rights and obligations are reflected in the family law provisions that regulate parental rights (now parental responsibility), the right to maintenance and the right to contacts.⁷ ZZZDR defined parental rights in very general terms, as the right and obligation of parents to ensure through direct care, by their work and social activities, the successful physical and mental development of their children (Article 4 of ZZZDR). Even though the expression "parental rights" implies that we are discussing the right granted to the parents, the main purpose of parental rights is the pursuit of the child's best interests, which is why in a relationship between the parents and their child, legal provisions mainly refer to the parents' duties and obligations.⁸

2019), pp. 1-2.

4 Both are regulated in separate legal acts: Civil Union Act (*Zakon o partnerski zvezi*, Official Gazette of RS, No. 33/16) and Domestic Violence Prevention Act (*Zakon o preprečevanju nasilja v družini*, Official Gazette of RS, No. 16/08, 68/16 and 54/17 – ZSV-H).

5 Official Gazette of RS, No. 15/17, 21/18 – ZNOrg and 22/19.

6 *Ustava Republike Slovenije*, Official Gazette of RS, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 and 75/16 – UZ70a.

7 B. Novak, *Družinsko pravo*, 2. spremenjena in dopolnjena izdaja, Uradni list RS, Ljubljana, 2017, pp. 41-42; K. Zupančič et al., *Reforma družinskega prava*, Uradni list RS, Ljubljana, 2009, p. 144.

8 See e.g. K. Zupančič, *Družinsko pravo*, Uradni list RS, Ljubljana, 1999, p. 132; M. Geč-Korošec and S. Kraljić, *Družinsko pravo*, 1. del, III. spremenjena in dopolnjena izdaja, Pravna fakulteta Univerze v Mariboru, Maribor, p. 152. Nevertheless, this does not mean that children have no obligations towards

In order to provide healthy growth, balanced personal development and the capacity for independent life and work, ZZZDR granted parents the right and obligation to care for the subsistence, personal development, rights and benefits of their underage children (i.e. parental rights). In that regard, parents had the obligation to maintain their children, to care for their life, health and upbringing, and, within their powers, to provide for the schooling and professional education of their children according to their capacities, talents and wishes.⁹ Individual elements of parental rights were further specified and regulated in other provisions of ZZZDR (especially Articles 102-112, but also other provisions).¹⁰ The most important provisions regulating the exercise, termination, withdrawal and restriction of parental rights that were changed along with the replacement of parental rights with parental responsibility will be considered in the following chapters.

3. Parental responsibility under DZ

The scope of rights and obligations under the institution of parental responsibility, which replaced parental rights, is not significantly broader or narrower than under the previous regulation, but it did bring along some changes, the short overview of which will be presented below.¹¹ Particularly worth mentioning is a shift towards the preference of joint exercise of parental responsibility (especially when the parents do not live together); a new systematic approach to measures for the protection of the child's best interests (including the restriction and withdrawal of parental responsibility, the application of which should follow the principle of the least restrictive measure that still offers sufficient protection of the child's best interests); protecting interests of adult persons, who are not capable of defending their own rights and interests, by placing them under guardianship instead of extending their parents' parental responsibility beyond the age of majority; the new institution of granting parental responsibility to a relative; etc.

Terminological implications of replacing the institution of "parental rights" with "parental responsibility" should not be overlooked either. In Slovenian language, the term for parental rights was *roditeljska pravica*, which originates from the word *roditelj* (a word for "a parent", but it implies that the person gave birth or is a biological parent of a child) and *roditi* (to give birth).¹² The use of the term *roditeljska pravica* was unsuitable because it implied that only the child's biological parents have this right and not, for example, their adoptive parents (who would not be considered as *roditelji*). The new term for parental responsibility in Slovenian language is *starševska skrb*, which originates from the word *starši*, meaning, inter alia, "men and

their parents; for example, see Article 112 of ZZZDR on the child's obligation to contribute to their subsistence and education.

9 See Articles 4, 102 and 103 of ZZZDR. See also Zupančič, *supra* n. 9, p. 182.

10 For a detailed explanation of individual elements of parental rights, see e.g. Zupančič, *supra* n. 9, pp. 130-148; Geč-Korošec and Kraljič, *supra* n. 9, pp. 170-188; or B. Novak, *supra* n. 8, pp. 195-213.

11 See also »Appendix« with the comparison of regulation under ZZZDR and DZ.

12 See also *Slovar slovenskega knjižnega jezika* (Dictionary of Standard Slovenian Language), ZRC SAZU, available at <<https://fran.si/>> (accessed on 10 July 2019).

women in relation to their child” or “men and women with children”.¹³ This term has a notably broader scope and, therefore, covers all persons who may be considered parents to a child and are therefore granted parental responsibility. Another reason why this expression is more appropriate is the fact that some parents understood the word “right” in a somewhat possessive manner, as implying that the child is the subject of their rights and in a way their property. The new expression is more child-oriented and implies that the parents have not only the right but also obligations to take care of the children and their interests. Such terminological change is also in line with international acts on the parents’ rights and obligations (e.g. Brussels IIa Regulation¹⁴ or European Convention on the Exercise of Children’s Rights¹⁵) and solutions found in comparable legal systems (e.g. Austrian or German).¹⁶

3.1. Scope of parental responsibility and parental obligations

Compared to the regulation of parental rights in ZZZDR, the scope of parental responsibility and obligations under DZ is not significantly changed. The first paragraph of Article 6 of DZ defines parental responsibility as the entirety of obligations and rights of parents to create, in accordance with their capacities, conditions for the comprehensive development of a child. Parental responsibility refers to the obligations and rights of parents concerning care for the child’s life and health, upbringing, care and treatment, supervision of the child and providing for the child’s education, as well as the obligations and rights of parents concerning representation and maintenance of the child and managing the child’s property. Derived from parental responsibility are parental obligations, which oblige the parents to care for the life and health of their children, providing safety, basic care, upbringing and supervision; provide their children with conditions for healthy growth, balanced personal development and independent life and work; maintain their children; and, within their powers, provide for the schooling and professional education of their children according to their capacities, talents and wishes.¹⁷ The scope of parental responsibility is further specified in several provisions of DZ (such as Articles 138 and 139 on the custody of children, Article 140 on the maintenance of children, Articles 141 and 142 on the contacts with parents and other persons, Article 144 on the advanced expression of will by parents, Article 145 on representing

13 See *Slovar slovenskega knjižnega jezika*, *supra* n. 13.

14 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338 23.12.2003, p. 1.

15 ETS No. 160, Strasbourg, 25/01/1996.

16 See also Proposal of Family Code, *supra* n. 4; and B. Novak, *Družinski zakonik z uvodnimi pojasnili*, Uradni list RS, Ljubljana, 2017, pp. 46-47.

17 See Articles 136 and 137 of DZ.

children, etc.) and in other statutes and acts (e.g. Obligations Code,¹⁸ Personal Name Act,¹⁹ Patients' Rights Act,²⁰ etc.).²¹

It is worth emphasising that parental responsibility, the right to maintenance and the right to contacts are independent and separate rights and should be interpreted as such (e.g. withdrawal of parental responsibility does not affect the parents' obligation to maintain their children).²² These rights were considered separate under ZZZDR as well.²³

Parental responsibility pertains to both parents and shall also be exercised, by common agreement, by both parents in the best interests of the child. If the parents do not live together and the child does not live in the custody of both parents, the parent with whom the child lives in custody decides on issues pertaining to the child's everyday life and on the child's permanent residence, while both parents decide on issues that are critical for the child's development by common accord and in the best interests of the child. This provision promotes joint custody and parenthood even after the child's parents no longer live together (or have never lived together, in accordance with the principle of equality between children born in and out of wedlock), which is an important difference compared to ZZZDR, under which joint custody was an exception.²⁴ If the parents cannot reach an agreement, they shall be assisted by a social work centre (or, at their request, a mediator), and if they still fail to reach an agreement on issues that are critical for the child's development,²⁵ the matter shall be decided by a court. In cases where one parent is prevented from exercising their parental responsibility, the other parent shall exercise it alone. Similarly, if one of the parents is dead or unknown, or has been deprived of their parental responsibility, their parental responsibility shall belong to the other parent (Article 151 of DZ).²⁶

18 *Obligacijski zakonik* (OZ), Official Gazette of RS, No. 97/07 – officially consolidated text, 64/16 – odl. US and 20/18 – OROZ631.

19 *Zakon o osebnem imenu* (ZOI-1), Official Gazette of RS, No. 20/06.

20 *Zakon o pacientovih pravicah* (ZPacP), Official Gazette of RS, No. 15/08 and 55/17.

21 For more information on different aspects of parental responsibility, see S. Kraljić, *Družinski zakonik s komentarjem*, Poslovna založba MB, Maribor, 2019, pp. 64-68 and 435-511.

22 Novak, *supra* n. 17, p. 48.

23 For more, see Zupančič, *supra* n. 9, pp. 134-136. Cf. A. Berden, Roditeljska pravica staršev in pravica otrok do stikov, *Pravna praksa*, No. 4, 1997, pp. I-IV; and A. Berden, Ponovno o roditeljski pravici in iz nje izvedenih pravicah, *Pravna praksa*, No. 17-18, 1996, pp. 15-17. Berden argues that the parents' right to contacts with their child is not a separate right but an element of parental rights. His opinion is not widely followed in Slovenian legal theory. He does agree with other authors, however, that where parents do not live together, they should still jointly exercise parental rights. See below (*infra* n. 25).

24 See also Kraljić, *supra* n. 22, pp. 516-517. Cf. Novak, *supra* n. 8, pp. 199-200; and Zupančič, *supra* n. 9, p. 148; Zupančič already pointed out that a solution, where the parent who did not live with the child could only exercise his parental rights in a limited manner, was not in the child's best interests, because it encouraged the other parent to act in a proprietary manner towards the child and prevent or restrict their contacts.

25 E.g. decisions regarding the child's education, profession, major medical treatments, religious upbringing, etc. Kraljić, *supra* n. 22, p. 517.

26 See also K. Zupančič, Izvrševanje roditeljske pravice po smrti roditelja, kateremu je sodišče ob razvezi zakonske zveze zaupalo otroka v varstvo in vzgojo, *Pravnik*, No. 4-6, 1980, pp. 141-148.

3.2. Termination of parental responsibility

Termination of parental responsibility is regulated by Article 152 of DZ, the content of which is basically the same as the previously valid Article 117 of ZZZDR. As a general rule, the parental responsibility terminates when the child attains the age of majority, i.e. the age of eighteen, which is a consequence of presumption that this is the age when a person is mature and capable enough to obtain the full capacity to contract and to independently conclude legal transactions.²⁷ Furthermore, two exceptions are stipulated for termination of parental responsibility before the child attains the age of majority; namely by gaining full capacity to contract through marriage,²⁸ or if a court acknowledges full capacity to contract for a child that has become a parent and has reached adequate physical and mental maturity to be capable of independent life (the second and third paragraph of Article 117 of DZ).

Even though the law does not explicitly state it, parental responsibility also terminates upon the death of a parent or a child or upon the adoption of a child.²⁹

3.3. Restriction and withdrawal of parental responsibility

Slovenian legislation firmly follows the principle that the parents' rights and obligations may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests (the second paragraph of Article 54 of the Constitution of the Republic of Slovenia). Under ZZZDR, social work centres had the authority and obligation to take necessary measures that were required for the upbringing and care of a child or the care of their assets and other rights and benefits, e.g. taking a child from their parents and placing them in the care of another person or institute, or place restrictions on the parent's rights and obligations regarding their child's property (Articles 119-122 of ZZZDR). Furthermore, the court was granted authority to withdraw parental rights from a parent who abused parental rights or abandoned the child, or by their behaviour clearly showed that they will not care for the child, or otherwise seriously evaded their responsibilities (Article 116 of ZZZDR). Thus, while ZZZDR generally provided social work centres and the court with several options to protect the child's best interests, it did not establish a clear hierarchy of these measures or determine the conditions for their implementation in sufficient details, especially for less restrictive measures that would not require the removal of the child from their environment.³⁰ DZ now regulates available measures

27 Kraljić, *supra* n. 22, p. 524.

28 A court may, for justified reasons, allow the conclusion of a marriage for a child who attained the age of fifteen, if they obtained sufficient physical and mental maturity to understand the meaning and consequences of the rights and obligations arising from marriage (the second paragraph of Article 24 of DZ).

29 Kraljić, *supra* n. 22, p. 525. See also Zupančič, *supra* n. 9, pp. 157-158; Geč-Korošec and Kraljić, *supra* n. 9, p. 191.

30 For more, see Zupančič, *supra* n. 9, pp. 149-156; Geč-Korošec and Kraljić, *supra* n. 9, pp. 192-195; or Novak *supra* n. 8, pp. 251-261.

in a more comprehensive and systematic manner, by regulating reasons to apply each measure, maximum duration of the measure, monitoring of the measure, etc. Moreover, under the new law, social work centres decide on urgent measures only, while the courts were granted authority to decide on interim injunctions and on measures of a more permanent nature.³¹

DZ provides a list of measures to protect the child's best interests, which include the restriction and withdrawal of parental responsibility. In principle, parents have priority over any other person concerning the right and obligation to protect a child's interests; and, consequently, the State shall adopt measures to protect a child's rights and interests only in cases where parents fail to exercise these rights and obligations or exercise them contrary to the child's best interests (and only until the child gains full capacity to contract; see Article 154 of DZ).³² For that reason, when the court decides on a measure (ex officio or upon a proposal), it has to follow two restrictions: (1) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should be the least restrictive for the parents in the exercise of their parental responsibility; and (2) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should not seek to take the child away from their parents (Article 156 of DZ). Under these conditions, the court and social work centre are given a general authorisation to carry out necessary measures concerning custody of children or the protection of their property and their other rights and interests (Article 153 of DZ).

DZ provides three types of measures that may be issued in such cases: interim injunctions (Articles 161 – 166 of DZ),³³ emergency removal of a child (Article 167 of DZ)³⁴ and measures of a more permanent nature (Articles 169 – 176 of DZ). The measures to protect the child's best interests are intended to protect the child and not

31 Proposal of Family Code, *supra* n. 4, p. 14.

32 A court may only adopt a measure to protect the child's best interests where it establishes that the child is endangered, meaning that they suffer or are very likely to suffer damage (damage to the child's physical and mental health and development, and to the child's property), or where the damage or the likelihood of damage is the consequence of action or lack of action of parents or the consequence of the child's psychosocial problems that manifest themselves as behavioural, learning and other difficulties in growing up (Article 157 of DZ). In deciding on a measure, the court shall consider the child's opinion if it has been expressed by the child or by a person the child trusts and was chosen by the child, provided that the child is capable of understanding its meaning and consequences (Article 158 of DZ). The court is required to decide on the termination of a measure if reasons for the measure no longer exist, to adopt another measure if the measure proves to be detrimental to the child's health, development or property, decide to extend the measure or to reapply the measure. The implementation of measures is monitored by the competent social work centre (Article 160 of DZ). See also Kraljić, *supra* n. 22, pp. 528-542; Novak, *supra* n. 17, pp. 150-153.

33 A court may issue interim injunctions (e.g. an injunction to remove a child from the parents and place them in the care of another person, a crisis centre, a foster carer or an institution; an injunction prohibiting or restricting contacts; an injunction on the manner of carrying out contacts; an injunction on custody of the child; an injunction on the child's maintenance, etc.) for the purpose of temporarily protecting the child in cases where the fact that the child is endangered is demonstrated as probable. For more, see e.g. Kraljić, *supra* n. 22, pp. 542-558 or Novak, *supra* n. 17, pp. 153-162.

34 If there is a likelihood that a child is in great danger, and that their best interests may only be protected by immediate removal of the child from their parents, the social work centre shall remove the child and place them with another person, in a crisis centre, with a foster family or in an institution before

to punish the parents, which is why the child's interests should be the principle guide and the main motivation when choosing the appropriate measure, while also trying to respect the principle of the least restrictive measure.³⁵

The most restrictive among the measures of a more permanent nature is the withdrawal of parental responsibility, which is why the court shall opt for this measure only where no other available measure is deemed sufficient for the protection of the child's best interests. A court may withdraw parental responsibility from one or both parents where the child is endangered or where the circumstances of the case indicate that there is little likelihood that they will be able to resume custody of the child, in particular, if they have severely violated their obligations or abused their rights related to parental responsibility, or if they abandoned the child or their conduct has manifestly shown that they will not assume custody (the first paragraph of Article 176 of DZ). This would, for example, include acts that would threaten the child's physical, moral or intellectual development (physical, sexual or emotional abuse, forced labour, encouraging the child to conduct criminal activity, and similar).³⁶ The court shall also decide on placing the child with another person, in foster care or in an institution and on guardianship. On the other hand, even though the third paragraph of Article 176 of DZ states that the court may also restrict or withdraw the right to contacts from one or both parents, the decision to withdraw parental responsibility does not automatically or necessarily result in the restriction or withdrawal of the parents' right to contacts, as the latter is not considered to be one of the elements of parental responsibility. Nevertheless, due to the serious nature of reasons that demand the withdrawal of parental responsibility, it would be very unlikely that the court would indeed allow further contacts in such case.³⁷ It is important to note that Slovenian legislation does not provide for a collective withdrawal on parental responsibility, which means that the court has to decide for each individual child (as well as for each parent) if this measure is in their best interest.³⁸ The obligation of maintenance among parents and children is not an element of parental responsibility either, which is why it does not cease with the court's decision to withdraw parental responsibility. Consequently, the court is also authorised to decide on the maintenance obligations of each parent and determine the manner of payment – generally, the maintenance in such cases would be transferred to a special account that was opened by the guardian on the child's behalf.³⁹

While the measure of withdrawal of parental responsibility is not limited in its duration (and is usually permanent), DZ recognises a possibility that the

a court decides on a motion to issue an interim injunction. For more, see e.g. Kraljić, *supra* n. 22, pp. 558-562 or Novak, *supra* n. 17, p. 162.

35 See also Kraljić, *supra* n. 22, p. 540.

36 Kraljić, *supra* n. 22, p. 587.

37 The third and fourth paragraphs of Article 176 of DZ. See also Novak, *supra* n. 17, pp. 171. Cf. Kraljić, *supra* n. 22, p. 593.

38 It is possible that in a family with more than one child, only one child's interests are endangered for different reason (e.g. personal attachment to one child but not to another, the child's age, the child's personal characteristics). In such case, parental responsibility should only be withdrawn in relation to this child. See Kraljić, *supra* n. 22, p. 593.

39 Novak, *supra* n. 17, pp. 171-172.

circumstances could change and that parental responsibility may be reinstated, if the reasons for which it had been withdrawn cease to exist, but only if the child has not been adopted in the meantime (the second paragraph of Article 176 of DZ).⁴⁰

If the child's best interests can be sufficiently protected without withdrawing parental responsibility, the court may restrict it instead in accordance with the principle of the least restrictive measure, by prohibiting one or both parents from exercising certain rights pertaining to parental responsibility where the child is endangered or where, considering the circumstances, such a measure ensures that the best interests of the child are sufficiently protected (Article 171 of DZ). DZ does not provide a comprehensive list of rights that may be limited, but it does list some examples of restrictions,⁴¹ such as deciding that the parents act as guardians managing the child's property, prohibiting the parents from managing the child's maintenance or other property and prohibiting the disposal or encumbering of the child's property – these measures are usually applied when the parents are not managing their child's property in a responsible manner, e.g. when the parents are addicts or gamblers. Where the court restricts parental responsibility, it shall also place the child under legal guardianship in relation to those rights the parents may not exercise and appoint a guardian. It may also decide that the social work centre shall supervise the exercise of parental responsibility and define the method of such supervision (the third and fourth paragraphs of Article 171 of DZ).⁴² The measure of restricting parental responsibility may not apply for more than one year, but can be extended if that is necessary for the protection of the child's best interests (unless where the court issues a measure to restrict parental responsibility together with the measure of removal of the child or the measure of placing the child in an institution, when it can apply for up to three years, the fifth paragraph of Article 171 of DZ).

Other measures of a more permanent nature also include a decision on medical examination or treatment (Article 172 of DZ), restriction or withdrawal of right to contacts (Article 173 of DZ), removal of child from parents (Article 174 of DZ), and placing a child in an institution (Article 175 of DZ).⁴³

3.4. Non-extendable nature of parental responsibility

Another notable change under DZ is a non-extendable nature of parental responsibility. According to the previously valid Article 118 of ZZZDR (and Article 57 of Non-Contentious Civil Procedure Act),⁴⁴ the court was granted authority to extend parental rights beyond the child's attainment of full age, if the child was

40 See also ECHR decision *S.S. v. Slovenia* (app. no. 40938/16) of 30 October 2018.

41 The second paragraph of Article 171 of DZ.

42 See also Kraljić, *supra* n. 22, pp. 565-567 and Novak, *supra* n. 17, p. 164.

43 For more about other measures, see e.g. Kraljić, *supra* n. 22, pp. 568-585; Novak, *supra* n. 17, pp. 163-172; N. Marolt, Ukrepi za varstvo otrokove koristi po Družinskem zakoniku, *Odvetnik*, No. 85, 2018, p. 58.

44 *Zakon o nepravdnem postopku* (ZNP), Uradni list SRS, št. 30/86, 20/88 – popr., Uradni list RS, št. 87/02 – SPZ, 131/03 – odl. US, 77/08 – ZDZdr, 10/17 – ZPP-E in 16/19 – ZNP-1. In 2019, previous ZNP was replaced by ZNP-1, which no longer regulates the extension of parental responsibility.

determined to be incapable of taking care of themselves, their rights and interests for reasons of physical or mental disabilities, upon the proposal submitted by the child's parents or social work centre. Most criticism referred to one of the implications of the provision, which effectively allowed the court to limit or withdraw the capacity to contract for a reason of physical disability, even though a person with such disability could be capable of making their own (reasonable) decisions, or which potentially resulted in unjustifiable infringement of the affected person's personal life. Namely, following the extension of parental rights, the child (who attained full age) had the same legal status as a child who reached 15 years of age, which required the parents' consent for all important legal acts, or even the same legal status as a child who has not yet reached 15 years of age, which prevented such person from concluding any legal transactions on their own.⁴⁵

With the adoption of DZ, the interests of adult persons, who are not capable of defending their own rights and interests for reasons of mental development disabilities or mental health problems or any other grounds that affect their capacity to decide, are protected under Article 262 of DZ, which grants the court authority to place such persons under guardianship and appoint them a guardian. The scope of the guardian's obligations and rights, which includes a specification of which legal transactions may be concluded only by a guardian or with their consent, is determined by the same court decision.⁴⁶ In accordance with the principle of proportionality, the court is required to adopt those measures that will be the least restrictive while still providing adequate protection of the affected person's interests.⁴⁷ Such solution is considered more suitable, given the fact that parental responsibility also includes the obligations and rights of parents concerning care for the child's upbringing (e.g. religious and moral upbringing), and not only for their legal transactions, which could adversely affect their personal development. An adult person, who is incapable of protecting their own rights and interests, nevertheless remains an autonomous legal subject and should be allowed to shape their own life in accordance with their wishes and expectations, which is why the extension of parental responsibility to the adulthood would not be appropriate. Furthermore, these changes are in line with legislative trends in international legal acts aimed at the protection of human rights (e.g. Convention on the Rights of Persons with Disabilities of 13 December 2006).⁴⁸

3.5. Granting parental responsibility to a relative

A completely new institution of granting parental responsibility to a relative was introduced into Slovenian legislation as a result of a single notorious case that sparked public outrage and subjected the existing ZZZDR provisions to criticism

45 See Proposal of Family Code, *supra* n. 4, p. 18. See also Novak, *supra* n. 8, p. 215; Zupančič, *supra* n. 9, pp. 143-146.

46 See also Novak, *supra* n. 17, pp. 206-207.

47 Kraljić, *supra* n. 22, p. 1051.

48 Proposal of Family Code, *supra* n. 4, pp. 17-19. For a detailed presentation of the background and scope of guardianship for adult persons, see Kraljić, *supra* n. 22, pp. 1042-1068.

(the so-called *koroška dečka*/boys from Carinthia).⁴⁹ Slovenian legislation does not allow adoption between certain close relatives (relatives in a direct line or siblings), in order to avoid the occurrence of confusing family relationships and potential legal problems, e.g. with succession.⁵⁰ For that reason, a child's grandparents, for example, could only be granted the status of guardians or foster parents, if all legal requirements were met. Since these solutions have proven to be insufficient in practice, the option of granting parental responsibility to a relative is intended to prevent similar cases in the future and to better protect the affected child's best interests.

Because of its specific purpose, the new provision has a very narrow scope and only applies to a limited number of persons. According to the first paragraph of Article 231 of DZ, a court may grant parental responsibility to a relative of a child whose parents are no longer alive,⁵¹ if this is in the best interests of the child, and if the relative is ready to assume custody and fulfils the conditions for the adoption of a child.⁵² Under this article, the court may grant parental responsibility to a grandparent for their grandchild; to a brother or a sister for their sibling, to an aunt or an uncle for their niece or nephew, to a niece or a nephew for their (much younger) aunt or uncle, to a cousin for their cousin, or to a relative for their brother's or sister's grandchild. This also includes half-relatives (e.g. half-brothers and half-sisters).⁵³ The court may only grant parental responsibility to be exercised jointly to relatives who are married or cohabiting (or to a relative and their spouse or cohabitant) who fulfil the necessary conditions (the second paragraph of Article 231 of DZ). If persons who were granted parental responsibility jointly later divorce or separate, the court needs to establish

49 In 2015, the father of two young boys was arrested and imprisoned after murdering their mother, effectively leaving them orphans. Their grandmother, who was taking care of them after the tragedy, applied for a permission to act as their foster parent, but her application was refused as not being in the best interest of the children. With what was later determined to be an improper conduct by the social work centre, they were placed with another foster family, which caused a public outrage that was fuelled even further by the media. For a case history, see the judgement of Administrative court of RS II U 127/2016 of 11 May 2016 and the judgement of Supreme Court of RS I-Up-161/2016 of 19 October 2016.

50 Article 136 of ZZZDR and Article 214 of DZ. See also Kraljić, *supra* n. 22, p. 816; Novak, *supra* n. 8, p. 267. Cf. Zupančič et al., *supra* n. 8, p. 291.

51 Only if both parents are already dead (and not, for example, if one or both parents' parental responsibility has been withdrawn). See Kraljić, *supra* n. 22, p. 816-817.

52 These conditions are listed in the first paragraph of Article 215 and in Article 216 of DZ and refer to age requirements for the prospective adoptive parent/relative who is to be granted parental responsibility, as well as required personal characteristic. Namely, only a person who has attained the age of majority and who is at least 18 years older than the child may be an adoptive parent. In exceptional cases, a person who is less than eighteen years older than the child may be allowed to adopt where all the circumstances of the case have been examined and it is established that such adoption would be in the best interests of the child. Furthermore, a person may not become an adoptive parent if their parental responsibility was withdrawn or if they live with a person whose parental responsibility was withdrawn; if they have been sentenced for certain serious criminal acts or if they live with a person who has been sentenced for such criminal act; if there are justified reasons to suspect that they would use the adoption to the detriment of the child; if they provide no guarantee that they will exercise parental responsibility in the best interests of the child; or if they lack the capacity to contract or have such mental developmental disorder or illness that adoption would not be in the best interests of the child.

53 See Novak, *supra* n. 17, p. 189 and Kraljić, *supra* n. 22, p. 818.

whether the granted parental responsibility is still in the best interest of the child and either decide on the custody, withdraw either person's granted parental responsibility or replace a measure with a more suitable one.⁵⁴

The person, who is granted parental responsibility, acquires the same rights and obligations that the child's parents would have had and becomes the child's legal representative. Since the scope of the granted parental responsibility is the same as the "regular" parental responsibility, the obligation to maintain the child, the exercise and termination of granted parental responsibility, and measures for the protection of the best interest of the child are regulated by general provisions of DZ (the third and fourth paragraphs of Article 231 of DZ). While the granted parental responsibility is being exercised, the conditions for adoption are not fulfilled, since this institution is a measure to protect the child's best interests by its nature and thus stands as a substitute for adoption.⁵⁵

4. Conclusions

The replacement of the term "parental rights" with "parental responsibility", which has its own terminological implications, did not significantly change the fundamental characteristics of a relationship between the parents and their child. However, while the scope of rights and obligations arising from this relationship remained similar, the new DZ introduced several new legal concepts related to parental responsibility (e.g. granting parental responsibility to a relative), adopted important and necessary changes (e.g. abolishing the possibility to extend parental rights beyond the age of majority) and provided a more detailed and comprehensive regulation in areas where the most shortcomings and gaps were detected in practice (e.g. the regulation of measures for the protection of the child's best interests according to the principle of the least restrictive measure). These adaptations and changes of Slovenian family law, which were presented above, were a necessary development that was long in the making. While not enough time has passed since DZ entered into force to determine whether it will successfully address contemporary challenges encountered in family matters, and to evaluate whether it will better protect the child's best interests than the previous legislation, the expert public is mainly in agreement that the changes should be beneficial and are better aligned with both international legal acts and recent legislative developments in this field.

54 Novak, *supra* n. 17, pp. 190-191 and Kraljić, *supra* n. 22, p. 823.

55 Novak, *supra* n. 17, p. 191. Note the essential differences between the adoption and granted parental responsibility: the adoption is a permanent measure, whereas parental responsibility may only be granted until the child attains the age of majority; an adopted child has a general obligation to maintain their adoptive parent, whereas the child has no such obligation towards the person who was granted parental responsibility; there is no right to succession between the child and the person who was granted parental responsibility (except if such right exists under general provisions of succession law). See also Kraljić, *supra* n. 22, pp. 821-822.

APPENDIX: Comparison of regulation under ZZZDR and DZ

Table 1: Comparison of relevant provisions

Law on Marriage and Family Relations (ZZZDR)	Family Code (DZ)
Introductory provisions Article 4 (1) Parents shall have the right and obligation to ensure through direct care, by their work and social activities, the successful physical and mental development of their children. (2) In order to provide healthy growth, balanced personal development and the capacity for independent life and work, parents shall have the right and obligation to care for the subsistence, personal development, rights and benefits of their underage children. These rights and responsibilities shall compose parental rights. (3) Parental rights shall pertain jointly to the father and mother.	Article 6 (Parental responsibility) (1) Parental responsibility shall be the entirety of obligations and rights of parents to create, in accordance with their capacities, conditions for the comprehensive development of a child. (2) Parental responsibility shall pertain jointly to both parents. Article 136 (Scope of parental responsibility) (1) Parental responsibility shall be the obligations and rights of parents concerning care for the child's life and health, upbringing, care and treatment, supervision of the child and providing for the child's education, as well as the obligations and rights of parents concerning representation and maintenance of the child and managing the child's property. (2) Parental responsibility may be restricted to or withdrawn from one or both parents by the competent authority subject to the conditions laid down in this Code.
Rights and obligations of parents and children Article 102 Parents shall be obliged to provide their children with conditions for healthy growth, balanced personal development and independent life and work. Article 103 (1) Parents are responsible to maintain their children, to care for their life, health and upbringing. (2) Parents are responsible, within their powers, to provide for the schooling and professional education of their children according to their capacities, talents and wishes.	Article 137 (Parental obligations) (1) Parents shall be obliged to care for the life and health of their children, providing safety, basic care, upbringing and supervision. (2) Parents shall be obliged to provide their children with conditions for healthy growth, balanced personal development and independent life and work. (3) Parents shall maintain their children in accordance with the provisions of this Code. (4) Parents shall, within their powers, provide for the schooling and professional education of their children according to their capacities, talents and wishes.

Exercise of parental rights Article 113 (1) Parental rights shall be exercised, by common agreement, by both parents in the best interests of the child. If parents cannot reach an agreement, a social work centre shall assist them to conclude an agreement. (2) If the parents do not live together and are not both in charge of the child's care and upbringing, they shall decide on issues that are critical for the child's development by common accord and in the best interests of the child. If parents cannot reach an agreement, a social work centre shall assist them to conclude an agreement. Issues concerning the child's daily life shall be decided by the parent who is in charge of the child's care and upbringing. (3) If even with the assistance of a social work centre, the parents fail to agree on issues that are critical for the child's development in cases referred to in the preceding paragraphs, the court shall decide thereon in a non-litigious procedure at the request of one or both parents. The proposal must be accompanied by a supporting document from a competent social work centre, stating that the parents tried to agree on the exercise of parental rights with its assistance. (4) Before the court gives its ruling, it should seek the opinion of a social work centre regarding the child's interests. The court shall also consider the child's opinion if it is expressed by the child himself, or by a person the child trusts and who has been chosen by the child himself, and provided the child is capable of understanding its meaning and consequences. (5) If one parent is prevented from exercising his or her parental right, the other parent shall exercise it alone. Article 115 If one of the parents is no longer living or is unknown, or if parental rights have been taken away from them, or if business competence has been taken away from them, parental rights shall fall to the other parent.	Article 151 (Exercise of parental responsibility) (1) Parental responsibility shall be exercised, by common agreement, by both parents in the best interests of the child. If parents cannot reach an agreement, a social work centre or, at their request, a mediator, shall assist them to conclude an agreement. (2) If the parents do not live together and the child does not live in the custody of both parents, the parents shall decide on issues that are critical for the child's development by common accord and in the best interests of the child. If parents cannot reach an agreement, a social work centre or, at their request, a mediator, shall assist them to conclude an agreement. (3) The parent with whom the child lives in custody shall decide on issues pertaining to the child's everyday life and on the child's permanent residence if such decisions do not affect issues that are critical for the child's development. (4) If parents fail to reach an agreement on issues that are critical for the child's development in cases referred to in paragraphs one, two and three of this Article, the matter shall be decided by a court. (5) If one parent is prevented from exercising their parental responsibility, the other parent shall exercise it alone. (6) If one of the parents is dead or unknown or has been deprived of their parental responsibility, their parental responsibility shall belong to the other parent.
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Termination of parental rights Article 117 (1) Parental rights shall terminate when the child attains the age of majority, i.e. when the child reaches the age of eighteen, or if the child concludes marriage prior to attaining the age of majority. (2) A minor shall gain the full capacity to contract through marriage. (3) Full capacity to contract may also be acquired by a minor who has become a parent if there are compelling reasons for this. The court shall decide thereon in a non-litigious procedure.	Article 152 (Termination of parental responsibility) (1) Parental responsibility shall terminate when the child attains the age of majority, i.e. when the child reaches the age of eighteen, or earlier if the child gains the full capacity to contract before the age of majority. (2) A child shall gain the full capacity to contract through marriage. (3) A court may acknowledge full capacity to contract for a child that has become a parent and has reached adequate physical and mental maturity to be capable of independent life.
Measures of a social work centre Article 119 A social work centre shall be obliged to take necessary measures which are required for the upbringing and care of a child or the care of its assets and other rights and benefits. Article 120 (1) A social work centre may take a child from its parents and give it into the upbringing and care of another person or institute if the parents neglect the child's upbringing and care, or if this is to the child's benefit for other important reasons. (2) With such a removal, the other obligations and rights of parents to the child do not cease. (3) A social work centre shall follow the implementation of measures under the first paragraph of this article. Article 122 (1) A social work centre may demand of parents that they account for the management of a child's assets. It may demand of a court that for the protection of the child's material benefits, it permits security against the assets of the parents. (2) In order to ensure the material benefits of the child, a court in a non-litigious procedure may decide that the parents have the position of guardian in relation to managing the child's assets.	Article 171 (Restriction of parental responsibility) (1) A court may prohibit one or both parents from exercising certain rights pertaining to parental responsibility where the child is endangered or where, considering the circumstances, such a measure ensures that the best interests of the child are sufficiently protected. (2) In order to protect the child's property rights, the court may decide that the parents act as guardians managing the child's property. The court may prohibit the parents from managing the child's maintenance or other property, or prohibit only the disposal or encumbering of the child's property. (3) The court may, considering the circumstances of the case, decide that the social work centre shall supervise the exercise of parental responsibility and shall define the method of such supervision. (4) The court shall, in deciding on a measure, place the child under legal guardianship in relation to those rights the parents may not exercise under the restriction of parental responsibility and shall appoint a guardian. (5) The measure of restriction of parental responsibility shall apply for no more than one year. Where the court issues a measure to restrict parental responsibility together with the measure of removal of the child or the measure of placing the child in an institution, the measure to restrict parental authority shall apply for no more than three years.

Withdrawal of parental rights Article 116 (1) The parental rights of a parent who abuses parental rights or abandons the child, or by their behaviour clearly shows that they will not care for the child, or otherwise seriously evades their responsibilities, shall be taken away by court order. (2) Parental rights shall be reinstated by a decision of the court where the reason for which it had been withdrawn ceases to exist, except in cases where in the meantime the child has been adopted. (3) The court shall decide on the issues referred to in the preceding paragraphs in a non-litigious procedure.	Article 176 (Withdrawal of parental responsibility) (1) A court may withdraw parental responsibility from one or both of the parents where the child is endangered or the circumstances of the case indicate that there is little likelihood that they will be able to resume custody of the child, in particular, if they have severely violated their obligations or abused their rights related to parental responsibility, or if they abandoned the child or their conduct has manifestly shown that they will not assume custody. (2) Parental responsibility shall be reinstated by a decision of the court where the reason for which it had been withdrawn ceases to exist, except in cases where in the meantime the child has been adopted. (3) Where the court decides on withdrawal of parental responsibility it may also restrict or withdraw the right to contacts from one or both parents in accordance with Article 173 of this Code. (4) In deciding on the measure referred to in paragraph one of this Article the court shall also decide on placing the child with another person, in foster care or in an institution and on guardianship, if such decision has not yet been adopted. In such cases, the court shall appoint the other person, the foster carer or the institution, and the guardian. The child shall not be placed with a person who may not be a guardian. The provisions of the act governing foster care shall apply, mutatis mutandis, to the obligations of the other person with whom the child is placed and to the supervision of the placement. (5) In deciding on withdrawal of parental responsibility the court shall also decide on the maintenance obligations of each parent in accordance with Article 184 and other provisions of this Code on the obligation of maintenance among parents and children.
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Extending parental rights Article 118 (1) A court may, upon the proposal of parents or a social work centre, issue a decision in a non-litigious proceeding that parental rights be extended beyond the child's attainment of full age, if the child is not capable to care for themselves, their rights and interests for reasons of physical or mental disabilities. (2) If a person has already attained full age and the proposal of parents for the extension of parental rights has not been lodged in due time, a court may recognise the parental rights of parents and extend it beyond the child's full age. (3) When the reasons for which parental rights have been extended have ceased, the court shall issue a decision on terminating parental rights, upon the proposal of a social work centre. (4) Decisions under the previous paragraphs of this article shall be recorded in the Register, as well as in the land register and other public records if the child owes immovable property.	Article 262 (Placing adults under guardianship) (1) A court shall place a person who for reasons of mental development disabilities or mental health problems or on any other grounds that affect their capacity to decide is not capable to defend their rights and interests on their own, under guardianship and appoint them a guardian. (2) In the decision on placing a person under guardianship, the court shall define the scope of the guardian's obligations and rights. (3) The court shall immediately send to the social work centre the final decision by which it placed the adult under guardianship and appointed a guardian.
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OD RODITELJSKOG PRAVA DO RODITELJSKE SKRBI: RAZVOJ SLOVENAČKOG OBITELJSKOG PRAVA

Dugo očekivani Obiteljski zakon (DZ), koji zamjenjuje Zakon o bračnoj zajednici i obitelji (ZZZDR), predstavlja najvažniji razvoj u slovenačkom obiteljskom pravu, kako je njegovo donošenje utjecalo praktički na sve aspekte pravne regulacije u obiteljskim pitanjima. Članak se fokusira na usporedbu roditeljskih prava po ZZZDR i roditeljske skrbi po DZ, a detaljno se bavi najvažnijim promjenama i njihovim implikacijama za odnos između roditelja i njihove djece, a također i za zaštitu dječjih interesa. Među temama koje članak obrađuje, nađemo i izvršavanje i prestanak roditeljske skrbi, mjere zaštite najboljih djetetovih interesa, nova institucija za dodjelu roditeljske skrbi rođaku, itd. Članak također uključuje tabelu usporedbi, koja omogućuje lakšu usporedbu između prethodnog i trenutnog pravnog režima.

Ključne riječi: roditeljsko pravo, roditeljska skrb, roditeljske obaveze, najbolji interes djeteta, reforma obiteljskog prava.