

THE RIGHT OF CHILDREN TO BE HEARD IN CROATIAN CIVIL LAW*

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ABSTRACT

The active involvement of a person in court proceedings is essential for his effective participation and is a reflection of his right to be heard. The right to be heard is one of the basic procedural rights, which implies that a person should be allowed to express his concerns as well as his experience that what he said has been taken into account in the decision-making process. Competent authorities are obliged to listen to the participants in the procedure and talk with them, not about them. Although in some situations this will be difficult and incomprehensible, especially in relation to children or persons deprived of legal capacity, everyone capable of expressing their will and preferences in some way needs support to facilitate that expression. That is, to every person should be made possible to participate in court proceedings in such a way that they can influence its outcome by articulating their will. In this paper, we will analyze the child's right to be heard and express his opinion, and in this regard, we will warn about the inconsistency of the provisions of the Croatian general procedural regulation - the Law on Civil Procedure with the provisions of the Croatian Family Law, as well as international regulations and practice. We will refer to the question of the procedural legitimation of the child in court proceedings in which his rights are decided. Also, we will analyze the issue of the procedural legitimation of a child in family law disputes, in which the individual rights of the child are adhesively decided in accordance with the principle that everyone should have the opportunity to actively participate in the litigation that is conducted about his rights and interests.

Keywords: *child in court proceedings, procedural legitimation of the child, right to a fair trial, right to be heard*

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1. INTRODUCTION

Modern regulations require that the child's point of view be respected in accordance with his or her age and degree of maturity, whereby the child's active participation in the proceedings is the basis for strengthening his or her procedural position.¹ The child's right to be informed and heard is a prerequisite for the correct assessment and protection of the child's best interests.² Therefore, in all proceedings concerning the rights or interests of the child, the child has the right to be adequately informed about the relevant circumstances of the case and to express his or her views. This article analyses the international regulations and case law of the European Court of Human Rights, the Court of Justice of the European Union, and the Constitutional Court of the Republic of Croatia, as well as the regulations of the Republic of Croatia on the child's right to be heard and to express his or her opinion.

2. GENERAL INFORMATION ON THE RIGHT TO BE HEARD

The European Convention for the Protection of Human Rights and Fundamental Freedoms³ is an international agreement that was adopted on 4 November 1950. The Republic of Croatia has also been a signatory to the Convention since 1997. In addition to a number of basic human rights, it also guarantees the basic procedural right, the right to a fair trial, which is guaranteed in Article 6(1). In the Republic of Croatia and on the basis of Article 29(1) of the Constitution of the Republic of Croatia⁴, everyone has the right to have their rights and obligations decided fairly and within a reasonable time by a court. Notwithstanding the fact that the right to a fair trial is a fundamental human right, the European Court of Human Rights has recognised that it is not absolute and may be subject to restrictions. The basic assumptions of possible restrictions were first expressed in the judgements *Golder v United Kingdom* and *Kreuz v Poland*.⁵ These judgments emphasise that the restrictions imposed are only in conformity with the Convention if they pursue a legitimate aim which is proportionate to the restrictive measures applied (*Golder v United Kingdom*, § 37; *Kreuz v Poland*, § 55).

¹ Lowe, N.; Douglas, G., *Bromley's Family Law*, Tenth edition, Oxford University Press, 2007, p. 481.

² Rešetar, B., *Komentar Obiteljskog zakona – I. Knjiga*, Organizator, Zagreb, 2022, p. 349.; Lucić, N., *Child's special guardian – International and European expectations and Croatian reality*, Balkan Social Science Review, 2021/17, p. 112.

³ European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette, International treaties, No. 18/97., 6/99., 14/02., 13/03., 9/05., 1/06., 2/10.

⁴ Constitution of the Republic of Croatia, Official Gazette No. 85/10., 05/14.

⁵ For more see: Brems, E., *Human Rights: University and Diversity*, Hague: Kluwer Law International, 2001.; Van Dijk, P.; Van Hoof, G. J. H., *The margin of appreciation, Theory and Practice of the European Convention on Human Rights*, Haag, Kluwer Law International, 1998.

The right to a fair trial encompasses several aspects, namely the right to a court established by law, independence and impartiality in the trial, access to the court, public and adversarial trial, legal aid, procedural equality, hearing, evidence, public disclosure of judgements, trial within a reasonable time, prohibition of arbitrary treatment, effective enforcement of judgements and the right to legal certainty.⁶ Among these rights, the right of access to justice and the right to be heard stand out, as they are fundamental rights that enable the fulfilment of other guarantees. In order for any person, including a child and a person deprived of legal capacity⁷, to fully exercise their right to a fair trial, they must be able to participate in the entire process on an equal footing and argue their case in an adversarial manner.

2.1. A child's right to be heard

Thanks to the adoption of the UN Convention on the Rights of the Child⁸ in 1989, the idea developed that children have special rights that differ from the rights of adults due to their dependence on adults, their vulnerability and their immaturity.⁹ With regard to the rights of children in court proceedings, this fundamental international legal instrument, the Convention on the Rights of the Child, stipulates that a child who is capable of expressing his or her opinion should be given the opportunity to be heard. Article 12 of the Convention on the Rights of the Child stipulates the following: “1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a represen-

⁶ Uzelać, A., *Pravo na pošteno suđenje: opći i građanski aspekti čl. 6. st. 1. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, in: I. Radačić (ed.), *Usklađenost zakonodavstva i prakse sa standardima Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, Zagreb: Centre for Peace Studies (*Centar za mirovne studije*), 2011, pp. 89-125.

⁷ On people with disabilities' right to be heard, see Knol Radoja, K.; Fegeš, M., *Pravo osoba s duševnim smetnjama na saslušanje kao pretpostavka ostvarenja njihovog prava na pristup sudu*, *Osobe s invaliditetom u umjetnosti, znanosti, odgoju i obrazovanju*, Zbornik radova s 1. Međunarodne umjetničke i znanstvene konferencije, Bilić, A.; Bertok-Zupković, T.; Ileš, T. *et al.* (ed.). Osijek: Academy of Arts and Culture of the Josip Juraj Strossmayer University in Osijek; Croatian Academy of Sciences and Arts (*HAZU*), 2021, pp. 529-546.

⁸ United Nations Convention on the Rights of the Child from 1989, Official Gazette of the SFRY, 15/90; Official Gazette of the Republic of Croatia – International treaties, 12/93.

⁹ Hrabar, D., *Postmoderno doba kao predvorje negacije dječjih prava*, *Zbornik Pravnog fakulteta u Splitu (Collected Papers of the Faculty of Law in Split)*, Vol. 57, No. 3, 2020, pp. 657–688, 658; Tobin J., *Justifying Children's Rights*, in: *The Future of Children's Rights*, Michael Freeman (ed.), Brill – Nijhoff, Leiden – Boston, 2014, pp. 296.

tative or an appropriate body, in a manner consistent with the procedural rules of national law”.¹⁰ The right under Article 12 is closely linked to the right to protection of the best interests of the child under Article 3 of the Convention.¹¹ Hrabar defines the best interest of the child as acting or making a decision in accordance with what the child would decide if it were capable of doing so.¹² It is important to emphasise that the Convention does not place any limits on the child’s right to express their opinion freely with the terms “the best interests of the child” and “the child’s ability to form their own opinion”, but on the contrary presupposes that the child is able to form their own opinion and express it, not necessarily verbally, but through play, drawing, body language, facial expressions.¹³ According to the Committee on the Rights of the Child,¹⁴ the child decides whether and how he or she wishes to be heard. In any case, the Committee recommends that the child be given the opportunity to be heard directly whenever possible. It is therefore primarily up to the child to decide whether he or she wishes to be heard directly or through a representative, and it is up to the court or other authority involved in the proceedings to enable him or her to do so. The competent authorities are obliged to inform the child about the right to express his or her views and the right to be heard directly or through a representative in all proceedings concerning him or her, as well as about the influence of the views expressed on the final outcome of the decision.¹⁵ If the child decides to express him or herself through a representative, the representative must act in such a way that he or she exclusively represents the child’s interests, accurately reflects the child’s views and has sufficient knowledge and understanding of the various aspects of the decision-making process as well as experience in working with children. In addition, the Committee warns

¹⁰ The County Court in Zagreb upheld the first instance decision on the interim measure and at the same time rejected the request for a direct hearing of a minor child older than 14 years, as it considered that, in accordance with the provisions of Art. 12 of the Convention on the Rights of the Child, the minor child was given the opportunity to express his opinion through the professional staff of the Social Welfare Centre and the special guardian, and in this way his opinion was heard and determined in the specific legal matter, and since it follows from the statements of the special guardian, that he does not wish to come to court and testify, that forced bringing of a minor child would be contrary to his interests and welfare and to the principles of the Convention on the Rights of the Child, and the refusal to hear a minor child directly is in accordance with Art. 360 of the Family Act. County Court in Zagreb, Gž Ob-1049/16.

¹¹ For more see Rešetar, B., *op. cit.*, note 2, 2022.

¹² Hrabar D., *The Legal Protection of the Best Interests of the Child*, in: European Training on the Convention on the Rights of the Child, ed. Rädde Barnen/Swedish Save the Children & Centre for Social Policy Initiative, Zagreb, 1998, p. 27.

¹³ Hrabar, D. (2020), p. 664.

¹⁴ UN Committee on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child to be Heard, UN Doc. CRC/C/GC/12.

¹⁵ *Ibid.*

that in many cases there may be a conflict of interest between the child and their representative (e.g. parent).¹⁶ A particular problem in Croatian practise is also the fact that the number of children represented per representative is far higher than it should be because there are not enough representatives.¹⁷ For example, the annual report of the Croatian Ombudsman for Children for 2021 cites figures of 5,274 children represented, while the number of special guardians was 18, which corresponds to an average of 293 cases per special guardian.¹⁸ Šimović warns that the representation of children by a special guardian is therefore often reduced to a mere formality in practise and calls into question the quality of the conduct of the proceedings in the best interests of the child.¹⁹

In addition to analysing the above conclusions of the Committee, the European Court of Human Rights in the case of *M. and M. v. Croatia* concluded that the applicants' complaints that the domestic authorities ignored the child's wish to live with the mother and that she had not yet been heard in civil proceedings called into question the issue relating to the right to protection of private and family life. The court is particularly surprised that, after four years and three months, the child has not yet been heard in civil proceedings for a decision on parental responsibility and has therefore not had the opportunity to express her opinion on which parent she wishes to live with. The findings and opinions of the psychiatric and psychological experts showed that the child wanted to live with the mother. At the time the civil proceedings in question were initiated, the second applicant was 9 years old, an excellent student with above-average intellectual abilities. Therefore, the claim that she was not capable of developing and freely expressing her opinion given her age and level of maturity is unjustified. The court therefore concluded that the second applicant's right to a private and family life had been violated because the domestic authorities did not take into account her wish to live with her mother.²⁰ Likewise, in another case against the Republic of Croatia, *C v Croatia*, the Court concluded that the combination of flawed representation and the failure to properly present and hear the applicant's opinion in the proceedings irreparably compromised the decision-making process in this case.²¹

¹⁶ *Ibid.*

¹⁷ Lucić, N., *op. cit.*, note 2, 2021, p. 108.

¹⁸ Annual Report of the Croatian Ombudsman for children (2021), Available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2022-04-01/154306/IZVJ_PRAVOBRANITELJ_DJECA_2021.pdf], p. 104.

¹⁹ Šimović, I., *The right of the child to be heard in the Croatian family law system*, European Integration Studies, 19 (1). (2023).

²⁰ Case of *M. and M. v Croatia*, Application no. 10161/13, judgement of 3 September 2015.

²¹ Case of *C v Croatia*, Application no. 80117/17, judgement of 8 October 2020, para. 81.

The courts are therefore obliged, whenever possible, to give the child the opportunity to express his or her opinion and to listen to him or her. With regard to the best interests of the child, situations must be avoided in which others make decisions instead of the children without them having the right to express their opinion, because this can cause children to develop attachment issues and feelings of powerlessness.²² The Convention on the Rights of the Child confirms that children are not only subjects of protection, but also subjects of human rights. This created a direct link between the state and children, without the need for an intermediary such as parents or guardians.²³ However, the perspective of the best interests of the child sometimes requires the rejection of the child's wishes, so that the hearing of the child before the judge should not be insisted upon at all costs.²⁴ This was established by the European Court of Human Rights²⁵ (hereinafter: ECHR) in the case of *Sahin v Germany*.²⁶ In this case, the ECHR relied on the statement of an expert heard by a court in Germany, who made a decision without hearing the child about their wish to see their father. After several meetings with the parties and the child, the expert concluded that questioning the child in court would pose a risk that could not be avoided even by a special organisation in court.²⁷ It states that the national court had not exceeded its discretion in relying on the expert's findings, even though it had not asked direct questions about the child's relationship with the parent.²⁸ The court therefore concluded that, in these circumstances, the procedural condition of hearing the child does not require the

²² Hemrica, J.; Heyting, F., *Tacit Notions of Childhood: An Analysis of Discourse about Child Participation in Decision-Making Regarding Arrangements in Case of Parental Divorce*, *Childhoods*, Vol. 11, No. 4, 2004., p. 462.; Knol Radoja, K., *Pravo na saslušanje i izražavanje mišljenja u posebnim ovršnim postupcima radi predaje djeteta i ostvarivanja osobnih odnosa s djetetom*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* (Collected Papers of the Faculty of Law in Rijeka), Vol. 42, No. 1, 2021, p. 171.

²³ Couzens, M., *Autonomy rights versus parental autonomy*, in: *The UN Children's Rights Convention: theory meets practice*, André Alen. *et al.* (eds.), 2nd ed., Antwerpen; Oxford, Intersentia, 2007, p. 407.

²⁴ Poretti, P., *Pristup pravosuđu za djecu*, in: *Prekogranično kretanje djece u Europskoj uniji*, Župan, M. (ed.), Osijek, J. J. Strossmayer University in Osijek, Faculty of Law 2019, p. 78; Korać Graovac A., Eterović, I. *Pravo djeteta na izražavanje mišljenja*, in: *Vodič za ostvarivanje prava djeteta na: – informacije, – izražavanje mišljenja, – zastupnika i – prilagođen postupak u sudskim postupcima razvoda braka i o roditeljskoj skrbi*, Sladana Aras Kramar *et al.* (ed.), Zagreb, Hrvatski pravni centar, 2015, p. 40; Majstorović, I., *The Realisation of the right of the child to express his/her views – How “visible” are children in Croatian family judicial proceedings?*, *Ljetopis socijalnog rada*, Vol. 24. No. 1, 2017, p. 65.

²⁵ For ECHR jurisprudence relating to the child's right to express an opinion, see, e.g. *Kutzner v Germany*, Application No. 46544/99, judgment of 26 February 2002; *Sahin v Germany* [GC], Application No. 30943/96, judgment of 8 July 2003; *Sommerfeld v Germany* [GC], Application No. 31871/96, judgment of 8 July 2003.

²⁶ *Sahin v Germany* [GC], Application no. 30943/96, judgment of 8 July 2003.

²⁷ *Sahin v Germany* [GC], para. 74.

²⁸ *Sahin v Germany* [GC], para. 75.

child to be questioned directly.²⁹ That in certain circumstances it is still justified not to give the child the opportunity to be heard in accordance with his or her best interests was also confirmed in the *Sommerfeld v Germany* case. In this case, the ECHR states that in determining whether the denial of access was “necessary in a democratic society”, it is necessary to examine whether the reasons put forward to justify this measure are relevant and sufficient in the light of the case as a whole within the meaning of Article 8(2) of the European Convention on Human Rights. Consideration of the best interests of the child is crucial in every case of this kind.³⁰ Furthermore, the Court emphasises the fact that the child has already been questioned in court and considers that the procedural requirements of Article 8 of the European Convention on Human Rights have been met.³¹

Similarly, in *Zarraga v Simone Pelz*, the EU Court of Justice concludes that conflicts and tensions arising in custody proceedings lead to situations where hearing the child could be inappropriate and even harmful to the child’s mental health. Therefore, according to Article 24(2) of the Charter of Fundamental Rights, hearing the child cannot therefore be an absolute obligation, but its possibility is assessed on a case-by-case basis according to the best interests of the child.³²

A kind of supplement to the European Convention on the Exercise of Children’s Rights is the Convention on the Rights of the Child, that has been in force in the Republic of Croatia since 2010. This Convention protects children’s procedural rights; such as the right of the child to receive all relevant information, to be consulted and express his or her views and to request a special representative in proceedings before the competent authorities.³³ Under Art. 3 “children considered by internal law as having sufficient understanding are entitled to request relevant information, to be consulted and to express their views and to be informed of the possible consequences of compliance with their views or of any decision.” As the Explanatory Report to the European Convention on the Exercise of Children’s Rights states, this article guarantees a number of procedural rights to children who have a sufficient level of understanding. These rights are not mutually exclusive, so even if the child does not request information, he or she must be informed of the right to express his or her opinion and the possible consequences.³⁴ Internal law

²⁹ *Sahin v Germany* [GC], para. 77.

³⁰ *Sommerfeld v Germany* [GC], Application No. 31871/96, para. 62. and 88.

³¹ *Sommerfeld v Germany* [GC], para. 72.-74.

³² Case C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v Simone Pelz*, 22 December 2010, para. 64.

³³ European convention on the exercise of children’s rights, Official Gazette – International treaties no. 1/10.

³⁴ Council of Europe (1996). *Explanatory report to the European convention on the exercise of children’s rights*. Retrieved from:

determines whether the child is represented or participates directly, but whenever possible, the views of the child involved in the proceedings should be presented.³⁵

In addition, there are several other international documents that guarantee children the right to be heard and to express their views in various proceedings. For example, Resolution (77) 33 of the Committee of Ministers of the Council of Europe on the placement of children recommends governments of member States to incite the participation of children and to give them the opportunity to discuss their situation gradually as they mature in understanding. Recommendation No. R (84) 4 of the Committee of Ministers of the Council of Europe on parental responsibilities prescribes: “when the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits”. Recommendation No. R (87) 6 on foster families prescribes that, before making a decision concerning the grant of certain parental responsibilities “the child should be consulted if his degree of maturity with regard to the decision so permits”.³⁶ The fundamental piece of legislation that protects children’s right to be heard at EU level is the Charter of Fundamental Rights of the European Union³⁷ which in Art. 24 paragraph 1 stipulates: “Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.” The above provision imposes a clear obligation on Member States to ensure that children have the opportunity to express their opinions and that their opinions are taken into account. Deviations from the rules are possible depending on the age and maturity of the child.

3.1.1. The right of the child to be heard in the Republic of Croatia

In the Republic of Croatia, Articles 86 and 360 of the Family Act³⁸ stipulate the explicit right of the child to express his or her opinion. It is important to emphasise that it is fully about the child’s possibility to express his or her opinion, and not about the obligation to do so.³⁹ The child can also decide at any point in the

[<https://rm.coe.int/16800cb5ee>], Accessed 12 February 2024.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Charter of fundamental rights of the European Union (2012), Official Journal of the European Union, C 326, 26 October 2012.

³⁸ Family Act, Official Gazette No. 103/15., 98/19., 47/20., 49/23., 156/23.

³⁹ Majstorović, I., *op. cit.*, note 24, p. 66.

process not to participate anymore.⁴⁰ On the basis of these articles, a great step forward has been made in recognising the child's right to participate in court proceedings in the Republic of Croatia.⁴¹

Article 86 of the Family Act emphasises the duty to take the child's opinion into account according to his or her age and maturity. According to this article, in all proceedings in which the rights or interests of the child are decided, the child has the right to be adequately informed of the important circumstances of the case, to be consulted and to express his or her opinion and to be informed of the possible consequences of taking his or her opinion into account.

In accordance with Article 360, the court is required to give the child the opportunity to express his or her views in proceedings concerning the child's personal and property rights and interests, unless the child objects to this. The court shall make it possible for the child to express his or her opinion in an appropriate place and in the presence of an expert if it deems this necessary in view of the circumstances of the case. The court shall make it possible for the child to express his or her opinion in accordance with the Regulation on the method for assessing the child's opinion.⁴² The child shall always express his or her views without the presence of the parents or guardian or other person caring for the child (Article 4 of the Regulation).

The Regulation prescribes the conditions under which a place can be considered suitable for the examination of a child's opinion. This place should ensure the privacy and safety of the child. In addition to the premises of the court, this may also be special premises of a social welfare centre, a centre for special guardianship or other suitable premises designated by the court (e.g. parental home, foster family, etc.). Provided that the technical possibilities allow it, the expression of the child's views can also be made possible by video link (Article 5 of the Regulation). However, as far as suitable premises are concerned, the Republic of Croatia does

⁴⁰ Hrabar, D. (2020), p. 663.

⁴¹ Hrabar, D. *Europska konvencija o ostvarivanju dječjih prava – Poseban zastupnik djeteta*, in: Filipović, G., Osmak- Franjić, D. (eds.), *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava*. Zagreb: Ombudsman for children, 2012, pp. 103-116. Data from court practise show just how bad the situation was. Radina presents unbelievable information about how not a single child was heard in a representative sample of 79 cases at the Split City Court between 2009 and 2011, Radina, A., *Praksa suda i posebnog skrbnika u postupcima radi odlučivanja o mjerama zaštite osobnih prava i dobrobiti djeteta*. in: Rešetar, B.; Aras, S. (eds.), *Represivne mjere za zaštitu osobnih prava i dobrobiti djeteta – Interdisciplinarni, komparativni i međunarodni osvrti*, Osijek, J. J. Strossmayer University in Osijek, Faculty of Law, 2014, pp. 23-39.

⁴² Regulation on the method for assessing the child's opinion, Official Gazette No. 123/15.

not yet have a sufficient number of such premises in which the implementation of this right would be possible without hindrance.⁴³

The court's obligation to give the child the opportunity to express his or her views is laid down in Article 360 of the Family Act and applies to all proceedings concerning the child, regardless of the child's age. The exceptions provided for therein are that the child objects to this (Art. 360(1) of the Family Act), the delivery of the child's opinion in an appropriate place in the presence of an expert (Art. 360(2) of the Family Act) and that there is a particularly justified reason for not determining the child's opinion (Art. 360(3) of the Family Act), for which the judge needs to provide an explanation. However, the law does not define what this "particularly justified reason" could be, so that the judge has a wide margin of manoeuvre to take into account different life situations. This will be the case, for example, if the child is exposed to a conflict of loyalty or a high level of stress or manipulation (by parents or third parties). Also, the Constitutional Court of the Republic of Croatia in his judgment stipulates that the child has the right to freely express his/her views, but during the proceeding it was unequivocally established that in this particular case the child cannot freely express his opinion because the mother constantly exerts a negative influence on the child.⁴⁴

Until the recent amendment to the Family Act in 2023, this act provided for another exception to the obligation to directly determine the child's opinion, which concerned children under the age of fourteen, in such a way that they were allowed to express their opinion through a special guardian or expert (Art. 360 of the Family Act 2015). This exception was repealed by the decision of the Constitutional Court of the Republic of Croatia from 18 April 2023⁴⁵ due to incompatibility with Article 3⁴⁶ of the Constitution of the Republic of Croatia. As the Constitutional Court points out, the above-mentioned legal provision does not impose any legal restrictions on the age of the child but allows the court to make it possible

⁴³ Majstorović, I., *op. cit.* note 24, p. 65; Rešetar, B., Lucić, N., *Child Participation in Family Law – Croatia*, in: Schrama W.; Freeman, M.; Taylor, N.; Bruning, M. (eds.), *International Handbook on Child Participation in: Family Law*, Morsel, Cambridge, Intersentia, 2021, pp. 143–155, 154.

⁴⁴ Constitutional Court of the Republic of Croatia, U-III/1525/2015, judgment from 17 July 2015, par. 12.

⁴⁵ Decision of the Constitutional Court of the Republic of Croatia U-I/3941/2015 from 18 April 2023.

⁴⁶ Freedom, equality, national equality and gender equality, peacekeeping, social justice, respect for human rights, inviolability of property, preservation of nature and the human environment, the rule of law and the democratic multi-party system are the highest values of the constitutional order of the Republic of Croatia and the basis for the interpretation of the Constitution (Art. 3 of the Constitution of the Republic of Croatia, Official Gazette No. 56/90., 135/97., 8/98. – official consolidated text, 113/00., 124/00. – official consolidated text, 28/01., 41/01. – official consolidated text, 76/10., 85/10. – official consolidated text, 5/14.).

for the child to express their opinion in the presence of an expert in order for the expert to help the child express his or her opinion with his or her knowledge and expertise. When this will be necessary is for the court to decide, as it knows best the facts and circumstances of the case, and its judgement may or may not include the age of the child. It therefore remains completely unclear why the legislator, by providing for the already prescribed exception to paragraph 2 of Article 360 of the Family Act, which in the opinion of the Constitutional Court sufficiently ensures that the child will actually be able to express his or her opinion under appropriate conditions and with appropriate assistance, has provided for an exception to the exception that is no different in nature from that provided for in paragraph 2 of the same Article of the Family Act, except that it refers to the age limit of 14 years and provides for the provision of an opinion by a special guardian in addition to an expert. At the same time, the legislator has not provided any explanation as to why the opinion of a special guardian has a special quality.⁴⁷

In addition to the child's right to express their opinion, the Family Act also provides for the obligation to inform the child of the subject matter, course, and possible outcome of the proceedings in a manner appropriate to the child's age and maturity and if this does not jeopardise the child's development, upbringing, and health. The obligation to inform the child within the meaning of paragraph 4 of this Article shall be incumbent on the special guardian of the child, the court, or an expert of the Croatian Institute of Social Work, depending on the circumstances of the case, which the court shall take into account (Article 360(4) and (5) of the Family Act).

A particular problem that we encounter in the Family Act concerns the disproportionate regulation of the child's right to express his or her views in enforcement proceedings for the purpose of surrendering the child and in proceedings for personal contact with the child due to an excessive insistence on the exercise of this right in enforcement proceedings for the purpose of personal contact with the child. The doctrine therefore proposes that the provision on the hearing in proceedings for the purpose of establishing personal contact with the child be amended so that the enforcement court can hear the parties and give the child the opportunity to express his or her opinion, all in order to protect the interests and welfare of the child.⁴⁸ According to the Family Act,⁴⁹ the court is obliged to give the opportunity to be heard to the parties and the child in enforcement proceed-

⁴⁷ Decision of the Constitutional Court of the Republic of Croatia U-I/3941/2015 from 18 April 2023., par. 78.

⁴⁸ More in Knol Radoja, K., *op. cit.*, note 22, p. 168.

⁴⁹ Family Act, Official Gazette No. 103/15., 98/19. (hereinafter: Family Act).

ings in order to establish personal relations with the child. On the other hand, in enforcement proceedings for the purpose of surrendering a child, the same law prescribes the hearing of the person against whom enforcement is being carried out and the referral of the child for an interview with an expert only as a possibility. The insistence on the possibility and not the obligation of the court to hear the child in this case arises from the fact that all parties, including the child, would already have had the opportunity to present their arguments during the proceedings preceding the enforcement proceedings for the purpose of the surrender of the child and the establishment of personal relations with the child. If the parties and the child have already exercised their right to be heard in extrajudicial or civil proceedings preceding the enforcement proceedings, in order to simplify the enforcement proceedings, prevent their prolongation and reduce the emotional burden that undoubtedly exists, Knol Radoja points out that the right to be heard and to express one's opinion in both enforcement proceedings should be left to the discretion of the judge who is best placed in a given situation to weigh up the justification for taking these procedural actions, in accordance with the best interests of the child.⁵⁰

However, the most problematic aspect of the child's right to be heard and to express his or her opinion is the incompatibility of general Croatian civil law – the Civil Procedure Act⁵¹ with the court's duty under family law to allow the child to express his or her opinion in an appropriate place and in the presence of an expert. As far as the independent performance of acts in the proceedings is concerned, the Civil Procedure Act provides for this possibility only for a party with full legal capacity, and a person without litigation capacity is represented by his or her legal representative (*arg. ex.* Article 80(1) of the Civil Procedure Act). Pursuant to Article 267 of the Civil Procedure Act, for a party lacking litigation capacity, their legal representative shall be heard. The court may decide to hear the party itself instead of the legal representative or in addition to the legal representative if the hearing of the party is possible. Therefore, the hearing of the party itself, instead of or in addition to the legal representative, is prescribed only as a discretionary option, not as a duty of the court. This act thus derogates the child's right to express their opinion before the court, whereby it is particularly questionable whether the child even had the opportunity to indicate whether they wished to be heard directly or through a representative. In practise, this leaves children powerless and deprives them of the opportunity to participate in the decision-making process

⁵⁰ Knol Radoja, K., *op. cit.* note 22, p. 169.

⁵¹ Civil Procedure Act, Official Gazette No. 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 148/11 – official consolidated text, 25/13., 89/14., 70/19., 80/22., 114/22., 155/23.

that could potentially change their lives.⁵² An acceptable exception to the court's obligation to allow the child to express his or her opinion is when the child has no objection to doing so. The next exception to the court's obligation to allow the child to express his or her views is for the court to allow the child to express his or her views, but not in court, but in another appropriate place and in the presence of an expert, if it considers this necessary in the circumstances of the case. Finally, the court conducting the proceedings is not obliged to ascertain the child's opinion if there are particularly justified reasons for doing so, which must be explained in the decision.⁵³ As already mentioned, in the opinion of the Constitutional Court of the Republic of Croatia, these exceptions provided for by the Family Act sufficiently ensure that the child can actually express its opinion.⁵⁴ Furthermore, according to the interpretation of the Committee on the Rights of the Child, despite the fact that the Convention on the Rights of the Child provides for the possibility for the child to be heard not only directly but also through a representative, the child must be given the opportunity to be directly heard in any proceedings and the child chooses how they want to be heard.

4. CAPACITY TO CONDUCT PROCEEDINGS AND LEGAL ACTIONS OF THE CHILD

4.1. Capacity to be a party, legal, and litigation capacity

The child is a party in all court proceedings in which his or her rights and interests are decided (Art. 358 Family Act).⁵⁵ The position of the child as a party is also laid down in certain provisions relating to certain family and civil court proceedings. For example, the child is a party to proceedings in which it is decided which parent the child will live with, how parental custody, personal relationships with the other parent and child maintenance are to be regulated, which are decided in separate proceedings or in addition to a matrimonial, maternity, or paternity dispute. The child is also a party to simplified proceedings to determine child maintenance,

⁵² James, A. L.; James, A.; McNamee, S., *Turn down the volume? – Not hearing children in family proceedings*, Child and Family Law Quarterly, Vol. 16, No. 2, 2004, pp. 189-207, 193.

⁵³ The Zagreb County Court upheld the first instance decision on the family protection measure issued and stated that the opinion of the child is a relevant circumstance when it comes to decisions on the personal rights and interests of the child, but this opinion is not the only decisive factor, but the court also makes its decision on the basis of other relevant established facts. County Court in Zagreb, Gž Ob-480/17.

⁵⁴ Decision of the Constitutional Court of the Republic of Croatia U-I/3941/2015 from 18 April 2023., par. 78.

⁵⁵ In general, on the party capacity of legal entities, see Triva, S.; Dika, M., *Gradansko parnično procesno pravo*, 7th ed., Narodne novine, Zagreb, 2004.

special extrajudicial proceedings to obtain parental custody and personal relations with the child, proceedings to determine measures to protect the rights and welfare of the child and proceedings to replace consent to the adoption of a child. The child is also a party to the parents' agreement on certain aspects of parental care and its implementation (joint parental care plan, agreement on personal contact with the child, maintenance agreement), represented by both parents.⁵⁶

As holders of subjective rights, children should be able to initiate proceedings themselves in order to protect or exercise their rights. However, more often than not, children are “dragged” into proceedings initiated by their parents in relation to certain rights of the child, e.g. in relation to certain contents of parental care, or by a social welfare centre in the exercise of its powers and duties in the field of public protection of children.

In the Croatian legal system, there is an institute of categorising the legal capacity of natural persons, thus we distinguish between three degrees: full legal capacity, limited legal capacity and legal incapacity. The degrees of legal capacity and their effects on the litigation capacity are also important from the point of view of the child as a specific subject of legal proceedings.⁵⁷

Since children before the age of eighteen generally do not have legal capacity, they also do not have litigation capacity in the area of legal disputes. Therefore, the child cannot initiate court proceedings with procedural legal effect nor take any further action in the proceedings, but rather the child's legal representative initiates proceedings on behalf of the child and represents the child in the proceedings.⁵⁸ As a rule, the parents act as legal representatives of the children. However, the situation is different in divorce proceedings, in which decisions are made about certain aspects of parental custody, as well as in independent parental custody proceedings. In these proceedings, there is usually a conflict of interest both between the parents and between the child and the parent or parents. For this reason, the child is represented by a special guardian in court proceedings in which there is a conflict of interest between the child and its parents, e.g. in divorce and parental custody proceedings.⁵⁹

⁵⁶ Aras Kramar, S., *Komentar Obiteljskog zakona, II. knjiga, Postupak pred sudom i prijelazne i završne odredbe, sa sudskom praksom, literaturom i stvarnim kazalom*, Organizator, Zagreb, 2022, pp. 97-98.

⁵⁷ Hrabar, D., *Obiteljskopравни odnosi roditelja i djece*, in: Hrabar, D.; Hlača, N.; Jakovac Lozić, D.; Korać Graovac, A.; Majstorović, I.; Čulo Margaletić, A.; Šimović, I., *Obiteljsko pravo*, Narodne novine, Zagreb, 2021, p. 194.

⁵⁸ Opširnije Hrabar, D., *Zastupanje djece i postupovna prava djeteta pred sudskim i upravnim tijelima u obiteljskopравnim stvarima*, Hrvatska pravna revija, No. 10., 2002, pp. 46 – 53.

⁵⁹ See also Bošnjaković, L., Kokić, T., *Kako ubrzati postupak u obiteljskim sporovima*, Priručnik za polaznike/ice, Judicial Academy (*Pravosudna akademija*), Zagreb, April 2022, p. 14.

Children who have reached the age of 15 and are independent earners have limited legal capacity⁶⁰ as do children who have reached the age of 16, fulfil the legal requirements and can independently give their consent to examinations, tests, or medical interventions. Their limited legal capacity in legal transactions is reflected in the fact that they can independently represent some of their own property rights, i.e. the personal rights of underage patients. The above-mentioned categories of children therefore have litigation capacity within the limits in which they are recognised as having legal capacity, i.e. they have litigation capacity in proceedings relating to acts, rights, and obligations for which they are recognised as having legal capacity, whereas they would not have litigation capacity in all other proceedings.⁶¹

4.2. Procedural legitimation of a child

In contrast to the capacity to be a party to proceedings and litigation capacity, which exists independently of the specific legal dispute, procedural legitimation is a quality that entitles a particular person to be a party to a particular legal proceeding. When we talk about the procedural legitimation of a child in family court proceedings, we distinguish between the following situations:

- a) when the child has acquired full legal capacity before reaching the age of majority by entering into a marriage and thus also the procedural capacity;
- b) when the Family Act recognises the legitimacy and the special procedural capacity of the child to initiate certain proceedings and to perform acts in these proceedings; 1. in proceedings for the granting of a marriage licence, a child who has reached the age of sixteen independently makes an application in an extrajudicial proceeding;⁶² 2. a minor parent independently submits a proposal to the court to make a decision as to who should represent the child in relation to decisions that are important to the child under Article 108 of the Family Act in the event of disagreement between the minor parent and the other parent or guardian of the child; 3. a child who has reached the age of 14 independently applies for the court to recognise him or her as

⁶⁰ On the legal and litigation capacity of an employed minor, see more in Šimović, I., *Utjecaj dobi na poslovnu i parničnu sposobnost*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 61. No. 5, 2011, pp. 1633 – 1636.

⁶¹ Hrabar, D., *Obiteljskopравни odnosi roditelja i djece*, in: Hrabar, D.; Hlača, N.; Jakovac Lozić, D.; Korać Graovac, A.; Majstorović, I.; Čulo Margaletić, A.; Šimović, I., *Obiteljsko pravo*, Narodne novine, Zagreb, 2021, p. 195.

⁶² Šimović, I., *Utjecaj dobi na poslovnu i parničnu sposobnost*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 61. No. 5, 2011, pp. 1628 – 1629.

- having procedural capacity for taking certain or all actions in the proceedings in which his or her rights and interests are being decided;
- c) when deciding on the personal rights and interests of a child, the court may, by order, authorise a child who has reached the age of fourteen to present facts, propose evidence, submit legal remedies, and take other actions in the proceedings if he or she is capable of understanding the significance and legal consequences of these actions;
 - d) when the Family Act authorises the child to initiate proceedings for the purpose of deciding on: the parentage of the child (filing an action to establish maternity or paternity, filing an action to contest maternity or paternity); on the manner of exercising parental care and personal relations with the child (with which parent the child will live for the purpose of exercising parental care, the child's personal relations with the other parent, relatives and other persons, and the maintenance of the child); on the protection of rights and welfare of the child (measure of temporarily entrusting the child to another person, a foster family or a social institution, prohibition of contact with the child, withdrawal of the right to live with the child and to entrust him/her with the daily care of the child, entrusting a child with behavioural problems to an educational aid, withdrawal or restoration of the right to parental custody, measures to protect the child's property rights).

In matters concerning the personal rights and interests of the child, the court shall, at the request of the child, issue a decision enabling a child who has reached the age of fourteen to present facts, propose evidence, submit legal remedies, and perform other procedural acts if he or she is capable of understanding the significance and legal consequences of these acts (Art. 359, para. 1 of the Family Act). Before making this decision, the court is obliged to obtain the opinion of the Croatian Institute for Social Work (Art. 359, para. 2 of the Family Act). A special appeal is not admissible against the decision recognising the child's procedural capacity to perform certain or all acts in the proceedings (Art. 359, para. 3 of the Family Act). In addition to the child, the child's legal representative is also authorised to take actions in the proceedings (Art. 359, para. 4 of the Family Act). If the actions of the child and the child's legal representative contradict each other, the court examines whether it will take into account the actions of the child or the child's legal representative, taking into account all circumstances, in particular the best interests of the child (Art. 359, para. 5 of the Family Act). This provision gives the child new rights (limited legal capacity) that he or she did not have until the Family Act 2015, and the judge is instructed to give special protection to the rights and interests of the child through the court's obligation to determine whether the child

is capable of understanding the meaning and legal consequences of his or her legal acts, and then by the court's obligation to obtain the opinion of the social welfare centre, which is a good solution considering that the social welfare centres employ psychologists, social pedagogues and social workers and have data on whether the child or family has already been treated by the centre.

Parallel to the establishment of a new institution for the representation of children, however, the possibility was recognised in the Family Act 2015 that the court may grant a child who has reached the age of fourteen the procedural capacity (litigation capacity) and to perform all or some acts in the proceedings (359 of the Family Act 2015). In this case, if a child recognised as having procedural capacity was to authorise a representative, the child would not be represented in the proceedings by a special guardian from the institution for the representation of children (240, paragraph 4, Family Act 2015). It follows from the cited provision that the Family Act 2015 recognises the limited legal capacity of a child to enter into a power of attorney agreement, i.e. to appoint an attorney who would have to be a lawyer,⁶³ and whose costs for representation in court proceedings would have to be borne by the parents.⁶⁴

Considering who is legitimised to initiate proceedings in which the rights and interests of the child are decided, situations may arise in which simultaneous proceedings are conducted in which decisions are made about the same child, but initiated by different persons, so that two files are formed, and they are decided on by two judges. For example, one parent or child initiates proceedings to make a decision on which parent the child will live with and what personal relationships he or she will have, and the other parent or child applies for a security measure, i.e. the adoption of a provisional measure in this matter. In some cases, the proceedings can be merged into a single hearing, which is the most appropriate and economical solution, but very often this cannot or does not happen, so the child participates in two proceedings, which can be stressful for him or her, especially

⁶³ Namely, if it were permissible under the provisions of the Civil Procedure Act, Art. 89, paragraph 3, for this to be a direct line blood relative, brother or sister, if he/she has legal capacity and if he/she is not involved in unlicensed legal practice, this would put the child in the situation of being represented by a grandparent, brother or sister who, by the very fact of kinship, is involved in the family relationship and whose impartiality may therefore be questionable.

⁶⁴ Guide to realising the right of the child to: Information, Expression, Representation and Adapted Procedure in Divorce and Parental Care Court Proceedings, Project "Protection of Children in Divorce and Parental Care Court Proceedings", Aras Kramar, S.; Korać Graovac, A.; Rajhvan Bulat, L.; Eterović, I., Ministry of Social Policy and Youth of the Republic of Croatia, electronic issues, publisher: Croatian Law Centre (*Hrvatski pravni centar*), Zagreb, 2015.,
[<https://www.hpc.hr/wpcontent/uploads/2017/12/Vodiczaostvarivanjopravadjetetarazvodbrakaroditeljskaskrb-27-11-15.pdf>], p. 50.

in view of the rules for determining the child's opinion, and the judges may make two different decisions.⁶⁵

4.3. Representation of the child in court proceedings

The Family Act 2015 regulates in more detail the legal representation of the child in family and civil court proceedings in which decisions are made on the rights and interests of the child. A distinction is made between situations in which both parents represent the child, situations in which one parent represents the child, situations in which the Croatian Institute for Social Work represents the child and situations in which the child is represented by a special guardian.⁶⁶

The child is a party to the agreement on the manner in which parental authority is exercised and to the procedure for its authorisation and is represented by both parents in these cases. Both parents exercising joint parental authority represent the child in extrajudicial proceedings for the purpose of authorising an agreement on personal contact with the child (Art. 468 of the Family Act).

Legal representation of a child by a parent, namely the parent with whom the child lives, is mandatory in out-of-court proceedings to authorise maintenance agreements, in simplified out-of-court proceedings to determine maintenance and in out-of-court proceedings to protect the right of residence of children and a parent in a dwelling or other property constituting a family home. The parent with whom the child lives is authorised to represent the child in civil or extrajudicial maintenance proceedings against the other parent liable for maintenance (Art. 424, para. 2, Art. 470, para. 2, Art. 474, para. of the Family Act).

Based on Art. 355 of the Family Act, the Croatian Institute for Social Work, when initiating proceedings in the name and on behalf of the child to establish paternity and maintenance of the child, has the position of the child's legal representative in these proceedings.

On the basis of public authority, through the appointed special guardian, the Centre for Special Guardianship:

1. represents children before courts and other authorities in accordance with the act governing family relations, and

⁶⁵ Šantek, R.; Parać Garma, M.; Sudjelovanje djeteta u sudskim postupcima te zaštita prava i dobrobiti djeteta u tim postupcima, Priručnik za polaznike/ice, Judicial Academy (*Pravosudna akademija*), Zagreb, November 2016, p. 36.

⁶⁶ Aras Kramar, S., *op. cit.*, note 56, pp. 98 – 107.

2. represents adults before courts and other authorities in accordance with the act governing family relations (Article 3, paragraph 1 of the Act on the Centre for Special Guardianship, hereinafter: ACSG).⁶⁷

The Centre also performs other professional tasks related to representation: 1. informs the child or adult of the subject matter, progress, and outcome of the dispute in a manner appropriate to the child's age or the adult's functional abilities; 2. contacts the parents or other persons close to the child or adult, as appropriate; 3. informs the child or adult of the content of the decision and the right to appeal; 4. obtains the opinion of the child or adult; and 5. performs other tasks assigned to the centre by law and statute (Article 3, paragraph 3, ACSG).

On the basis of Art. 240 of the Family Act, the social welfare centre⁶⁸ or the court appoints a special guardian for the child in order to protect specific personal and property interests of the child.⁶⁹

In the cases defined by law, the child has the right to a special guardian. The question therefore arises as to whether this right also extends to cases in which meetings and contact are decided. Since the social welfare centre is obliged to appoint a special guardian for the child when the parent is deprived of the right to live with his/her child and when the child is entrusted to the care and education of the social welfare office due to behavioural disorders (i.e. when deciding on public-legal relations), the special guardian should also represent the child in the issue of meeting and contact, which should be decided by adhesion in this type of procedure.

In other cases where meetings and contact are decided, such as in the case of divorce, the Family Act does not provide for an explicit obligation to appoint a special guardian. However, such a possibility could be based on the provision according to which the social welfare centre is obliged to appoint a special guardian for the child if this is necessary to protect his or her personal rights and interests in cases where the interests of the child and the parents are in conflict. This means

⁶⁷ Act on the Centre for Special Guardianship, Official Gazette No. 47/2020.

⁶⁸ "...the decision on the appointment of a special guardian is taken by the Social Welfare Centre, unless the law stipulates that the decision on the appointment of a special guardian is taken by the court." County Court in Zagreb, Gž Ob-78/2016 from 21 June 2016.

⁶⁹ In the proceedings, the child's parents, as the child's legal representatives, had jointly submitted an application to the court for authorisation to sell a car belonging to the minor child in the name and on behalf of the minor child. In the first instance decision, a special guardian was appointed for the minor child in order to protect his personal rights and interests in these proceedings. However, the court of second instance upholds the appeal of the special guardian and revokes the appointment decision on the grounds that it cannot be concluded from the information in the file that there is a conflict of interest between the parents and the minor child in relation to this proposal and this procedure. County Court in Split, GŽ Ob-439/2016 from 18 October 2016.

that a special guardian should also be appointed for the child in proceedings in which the interests of the child and the parents are in conflict and decisions are made regarding meetings and contact.

5. CONCLUSION

The child's right to be heard arises from the final recognition of the child as the subject and not the object of law.⁷⁰ Croatian family law regulations, although they can still be improved, are undoubtedly well on the way to fulfilling the criteria established by international legal acts and practises. However, there is still some lag in the application of the prescribed rights in practise. However, the biggest stumbling block to the full fulfilment of the child's right to be heard lies in the general civil law regulation – the Civil Procedure Act, which gives the court too much discretionary power through the wording “the court may decide to hear the party (without litigation capacity) themselves instead of or in addition to the legal representative”.

The relevant part of General Comment No. 12 (2009) on the right of the child to be heard, adopted by the Committee on the Rights of the Child stressed that Art. 12/1 provides that States parties shall assure the right of every child capable of forming his or her own views to freely express her or his views. In connection with the above, it is important to emphasize the following:

- shall assure is a legal term which leaves no freedom for discretion. Therefore, States parties are obliged to undertake measures to implement the right to be heard for every child. The child can be heard directly or through a representative, but the decision lies primarily with the child.
- the phrase should be seen as an obligation for States parties to evaluate the capacity of the child to form an opinion to the greatest possible extent. This means that States parties should presume that a child has the capacity of expressing her or his own views and not to presume that a child is incapable for that; it is not up to the child to first prove her or his capacity.
- and the last but not least, the Committee emphasizes that article 12 imposes no age limit on the right of the child to be heard, and discourages States parties from introducing age limitations.⁷¹

De lege ferenda we therefore propose that the above-mentioned legal provision of Art. 267 of the Civil Procedure Act be amended so that it reads: A party who does not have litigation capacity shall be heard if it is possible to hear them. The court

⁷⁰ Hrabar, D., *op. cit.* note 41, p. 104.; Tobin, J., *op. cit.* note 9, p. 296.

⁷¹ Committee, *op. cit.* note 14.

may decide that the legal representative of this party shall be heard instead of the party lacking litigation capacity if the hearing of the party is not possible for justified reasons.

REFERENCES

BOOKS AND ARTICLES

1. Aras Kramar, S., *Komentar Obiteljskog zakona*, II. knjiga, Postupak pred sudom i prijelazne i završne odredbe, sa sudskom praksom, literaturom i stvarnim kazalom, Organizator, Zagreb, 2022
2. Bošnjaković, L.; Kokić, T., Kako ubrzati postupak u obiteljskim sporovima, Priručnik za polaznike/ice, Pravosudna akademija, Zagreb, April, 2022
3. Brems, E., *Human Rights: University and Diversity*, Hague: Kluwer Law International, 2001
4. Couzens, M., *Autonomy rights versus parental autonomy*, in: The UN Children's Rights Convention: theory meets practice, André Alen. *et al.* (eds.), 2nd ed., Antwerpen; Oxford, Intersentia, 2007
5. Hemrica, J., Heyting, F., *Tacit Notions of Childhood: An Analysis of Discourse about Child Participation in Decision-Making Regarding Arrangements in Case of Parental Divorce*, *Childhoods*, Vol. 11, No. 4, 2004
6. Hoof, G. J. H. *The margin of appreciation, Theory and Practice of the European Convention on Human Rights*, Haag, Kluwer Law International, 1998
7. Hrabar D., *The Legal Protection of the Best Interests of the Child*, in: European Training on the Convention on the Rights of the Child, ed. Rädda Barnen/Swedish Save the Children & Centre for Social Policy Initiative, Zagreb, 1998.
8. Hrabar, D., *Zastupanje djece i postupovna prava djeteta pred sudskim i upravnim tijelima u obiteljskopравnim stvarima*, Hrvatska pravna revija, No. 10, 2002, pp. 46 – 53
9. Hrabar, D. *Europska konvencija o ostvarivanju dječjih prava – Poseban zastupnik djeteta*, in: Filipović, G.; Osmak- Franjić, D. (eds.), *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava*. Zagreb: Pravobranitelj za djecu, 2012., pp. 103-116.
10. Hrabar, D., *Postmoderno doba kao predvorje negacije dječjih prava*, Zbornik Pravnog fakulteta u Splitu, Vol. 57, No. 3, 2020, pp. 657–688
11. Hrabar, D., *Obiteljskopравni odnosi roditelja i djece*, in: Hrabar, D.; Hlača, N.; Jakovac Lozić, D.; Korać Graovac, A.; Majstorović, I.; Čulo Margaletić, A.; Šimović, I., *Obiteljsko pravo*, Narodne novine, Zagreb, 2021, pp. 175 – 257
12. James, A. L.; James, A.; McNamee, S., *Turn down the volume? – Not hearing children in family proceedings*, *Child and Family Law Quarterly*, Vol. 16, No. 2, 2004, pp. 189-207
13. Knol Radoja, K.; Fegeš, M., *Pravo osoba s duševnim smetnjama na saslušanje kao pretpostavka ostvarenja njihovog prava na pristup sudu*, Osobe s invaliditetom u umjetnosti, znanosti, odgoju i obrazovanju, Zbornik radova s 1. Međunarodne umjetničke i znanstvene konferencije, Bilić, A.; Bertok-Zupković, T.; Iles, T. *et al.* (eds.), Osijek: Akademija za umjetnost

- i kulturu Sveučilišta Josipa Jurja Strossmayera u Osijeku; Hrvatska akademija znanosti i umjetnosti (HAZU), 2021, pp. 529-546
14. Knol Radoja, K., *Pravo na saslušanje i izražavanje mišljenja u posebnim ovršnim postupcima radi predaje djeteta i ostvarivanja osobnih odnosa s djetetom*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 42, No. 1, 2021, pp. 167-184
 15. Korać Graovac A.; Eterović, I. *Pravo djeteta na izražavanje mišljenja*, in: Vodič za ostvarivanje prava djeteta na: – informacije, – izražavanje mišljenja, – zastupnika i – prilagođen postupak u sudskim postupcima razvoda braka i o roditeljskoj skrbi, Aras Kramar, S. *et al.* (eds.), Zagreb, Hrvatski pravni centar, 2015
 16. Lowe, N.; Douglas, G., *Bromley's Family Law*, Tenth edition, Oxford University Press, 2007
 17. Lucić, N., *Child's special guardian – International and European expectations and Croatian reality*, Balkan Social Science Review, 2021/17, pp. 97–116.
 18. Majstorović, I., *The Realisation of the right of the child to express his/her views – How “visible” are children in Croatian family judicial proceedings?*, Ljetopis socijalnog rada, Vol. 24, No. 1, 2017, pp. 55–71
 19. Poretti, P., *Pristup pravosuđu za djecu*, in: Prekogranično kretanje djece u Europskoj uniji, Mirela Župan (ed.), Osijek: Pravni fakultet Sveučilišta J. J. Strossmayera u Osijeku, 2019
 20. Radina, A., *Praksa suda i posebnog skrbnika u postupcima radi odlučivanja o mjerama zaštite osobnih prava i dobrobiti djeteta*. in: Rešetar, B., Aras, S. (eds.), Represivne mjere za zaštitu osobnih prava i dobrobiti djeteta – Interdisciplinarni, komparativni i međunarodni osvrti, Osijek, Sveučilište J. J. Strossmayera u Osijeku, Pravni fakultet, 2014, pp. 23-39
 21. Rešetar, B., *Komentar Obiteljskog zakona – I. Knjiga*, Organizator, Zagreb, 2022
 22. Rešetar, B.; Lucić, N., *Child Participation in Family Law – Croatia*, in: Schrama W.; Freeman, M.; Taylor, N.; Bruning, M. (eds.) *International Handbook on Child Participation in Family Law*, Mortsel, Cambridge, Intersentia, 2021., pp. 143–155
 23. Šantek, R.; Parać Garma, M., *Sudjelovanje djeteta u sudskim postupcima te zaštita prava i dobrobiti djeteta u tim postupcima*, Priručnik za polaznike/ice, Pravosudna akademija, Zagreb, 2016
 24. Šimović, I., *The right of the child to be heard in the Croatian family law system*, European Integration Studies, Vol. 19, No. 1, 2023
 25. Šimović, I., Utjecaj dobi na poslovnu i parničnu sposobnost, Zbornik Pravnog fakulteta u Zagrebu, Vol. 61, No. 5, 2011, pp. 1625 – 1686
 26. Tobin J., *Justifying Children's Rights*, in: *The Future of Children's Rights*, Michael Freeman (ed.), Brill – Nijhoff, Leiden – Boston, 2014
 27. Triva, S.; Dika, M., *Gradansko parnično procesno pravo*, 7. izdanje, Narodne novine, Zagreb, 2004
 28. Uzelać, A., *Pravo na pošteno suđenje: opći i građanski aspekti čl. 6. st. 1. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, in: I. Radačić (ed.), *Usklađenost zakonodavstva i prakse sa standardima Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, Zagreb: Centar za mirovne studije, 2011, pp. 89-125

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

1. Constitutional Court of the Republic of Croatia, U-III/1525/2015, judgment from 17 July 2015
2. Family Act, Official Gazette No. 103/15., 98/19., 47/20., 49/23., 156/23
3. Decision of the Constitutional Court of the Republic of Croatia U-I/3941/2015 from 18 April 2023
4. Regulation on the method for assessing the child's opinion, Official Gazette No. 123/15
5. Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 8/98 - official consolidated text, 113/00, 124/00 – official consolidated text, 28/01, 41/01 – official consolidated text, 76/10, 85/10 – official consolidated text, 5/14
6. Act on the Centre for Special Guardianship, Official Gazette No. 47/20
7. Civil Procedure Act, Official Gazette No. 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 148/11 – official consolidated text, 25/13, 89/14, 70/19, 80/22, 114/22, 155/23
8. County Court in Split, GŽ Ob-439/2016 from 18 October 2016
9. County Court in Zagreb, Gž Ob-1049/2016
10. County Court in Zagreb, Gž Ob-480/2017
11. County Court in Zagreb, Gž Ob-78/2016 from 21 June 2016

EU LAW

1. Charter of fundamental rights of the European Union (2012), Official Journal of the European Union, C 326
2. European convention on the exercise of children's rights, Official Gazette – International treaties no. 1/10
3. European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette, International treaties, no. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10
4. United Nations Convention on the Rights of the Child from 1989, Official Gazette of the SFRY, 15/90; Official Gazette of the Republic of Croatia – International treaties, 12/93
5. UN Committee on the Rights of the Child, General Comment No 12 (2009)
6. The Right of the Child to be Heard, UN Doc. CRC/C/GC/12

COURT OF JUSTICE OF THE EUROPEAN UNION

1. Case C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, 22 December 2010
2. Case of *C. v Croatia*, Application no. 80117/17, judgement of 8 October 2020
3. Case of *M. and M. v Croatia*, Application no. 10161/13, judgement of 3 September 2015

ECHR

1. *Kutzner v Germany*, application no. 46544/99, judgment of 26 February 2002
2. *Sahin v Germany* [GC], application no. 30943/96, judgment of 8 July 2003

3. *Sommerfeld v Germany* [GC], application no. 31871/96, judgment of 8 July 2003

WEBSITE REFERENCES

1. Annual Report of the Croatian Ombudsman for children (2021), Available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2022-04-01/154306/IZVJ_PRAVOBRAN-ITELJ_DJECA_2021.pdf], Accessed 10 February 2024
2. Council of Europe (1996). *Explanatory report to the European convention on the exercise of children's rights*. Retrieved from: [<https://rm.coe.int/16800cb5ee>], Accessed 12 February 2024
3. Guide to realising the right of the child to: Information, Expression, Representation and Adapted Procedure in Divorce and Parental Care Court Proceedings, Project "Protection of Children in Divorce and Parental Care Court Proceedings", Aras Kramar S.; Korać Graovac, A.; Rajhvan Bulat, L.; Eterović, I., Ministry of Social Policy and Youth of the Republic of Croatia, electronic issues, publisher: Croatian Law Centre (*Hrvatski pravni centar*), Zagreb, 2015, [<https://www.hpc.hr/wpcontent/uploads/2017/12/Vodiczaostvarivanjopravadjetetarazvod-brakaroditeljskaskrb-27-11-15.pdf>], Accessed 8 February 2024