

COMPARATIVE REVIEW OF ADOPTION IN CROATIA AND SLOVENIA: SIMILARITIES, DIFFERENCES AND EFFICIENCY

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Abstract The similarities between the adoption institute in Croatia and Slovenia are caused primarily by historical aspects. However, many contemporary links have influenced the regulation of the institute of adoption – Croatia and Slovenia are signatories of many international documents and are, at the European level, members of the Council of Europe and the European Union. The author gives a comparative overview of adoption according to the preconditions for adoption, required consents, legal effects, and procedural aspects. This paper also analyzes compliance with the revised 2008 European Convention on Adoption, which neither of the two countries has signed, although they almost fully accept its guidelines. In addition, the relevant cases against Croatia and Slovenia concerning adoptions decided by the European Court of Human Rights are analyzed, as well as the effects of these decisions on their legislation. To gain a more complete insight into the effectiveness of adoption, the paper also analyzes statistical data related to the adoption in Croatia and Slovenia.

Keywords

adoption,
Croatia,
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European Convention
on Adoption,
the effectiveness of
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1 Introduction

The institute of adoption is one of the most important alternative forms of protection of the child's right to family and family life. With the legal regulation of this family law institute, the state *de facto* assumes the role of choosing the child's family, taking into account their best interests. In general, it is necessary to protect the interests of three parties – the child, potential adoptive parents, and biological parents, which indicates the complexity of this institute. It is also linked to fundamental human rights, such as the right to found a family and the child's right to upbringing and family (Jakovac-Lozić, 2021, p. 279). Croatian and Slovenian family legislation harmonizes the interests of all participants in adoption, with similarities and certain differences in the regulation of this institute. The advanced approach to the regulation of the adoption institute, viewed from the historical aspect, is reflected in the fact that the legislation of these two countries has developed an equal approach to all participants in the adoption procedure. It is especially important to point out that the Slovenian legislature in the 1970s regulated (exclusively) the full form of adoption (Alinčić & Bakarić-Mihanović, 1980, p. 226). This completely strengthened the position of the child by affirming the approach of *adoptio naturam imitatur*. The contemporary regulation of the institute of adoption in Croatia and Slovenia has resulted in the entry into force of the “new” family legislation – in Croatia, the 2015 Family Act¹ (hereinafter: FA), and in Slovenia the 2017 Family Code² (hereinafter: FC). The similarities of adoption in Croatia and Slovenia includes the fact that their legislation provides for the possibility of adoption only by heterosexual couples and individuals. However, certain changes are beginning to occur in this realm as well, with the decisions of the High Administrative Court of the Republic of Croatia and the Constitutional Court of the Republic of Slovenia. Those decisions established discriminatory treatment to homosexual couples, more precisely life partners - therefore, it is necessary to harmonize the legislation with the aforementioned decisions.

Despite many similarities, there are many differences between the Croatian and Slovenian approaches to the regulation of adoption, especially those relating to the adoption decision. In Croatia, the entire adoption procedure is carried out and the final decision is made by the social welfare centers as state administration bodies,

¹ Official Gazette, no. 103/15, 98/19.

² Official Gazette of the RS, no. 15/17, 21/18, 22/19, 67/19, 200/20, 94/22.

with the courts acting “exceptionally” when it is necessary to replace the adoption consent. In Slovenia, the adoption procedure is divided between the social welfare centers, which conduct the procedure, and the courts, which make the final decision. The Slovenian procedure can be interpreted as a form of enhanced supervision over the adoption procedure and provides for an additional assessment of the best interests of the child. European law has undoubtedly influenced changes and adjustments to the family legislation of Croatia and Slovenia, but the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR) has also given a significant impetus in this direction. Both countries are members of the Council of Europe (hereinafter: CE) and the European Union (hereinafter: EU), which place special emphasis on the protection of the right to family life.

The paper aims to present the similarities and differences of the institute of adoption in Croatia and Slovenia from several aspects and to point out its complexity. It also provides an overview of contemporary links in the organization of the institute of adoption, primarily international documents, with an emphasis on the importance of the principle of the best interests of the child. The central part of the paper analyses the provisions of family law and their compliance with the revised 2008 European Convention on the Adoption of Children³ (hereinafter: 2008 ECA) in parallel with considering that Croatia and Slovenia are not signatories thereof, but have nevertheless almost fully harmonized their legislation with its provisions. The jurisprudence of the ECtHR significantly influences the creation of provisions of contemporary (family law) legislation in which decisions were made on adoption procedures, more precisely the rights of biological parents. In cases against Croatia, the ECtHR found a violation of the right to respect for family life, more specifically, discriminatory treatment of the competent Croatian authorities in the adoption procedure for preventing the right to express the opinion of biological parents deprived of legal capacity and the right to parental care. On the other hand, in the case against Slovenia, the ECtHR found that there was no violation of the right to respect for family life, given that the competent Slovenian authorities had taken all necessary actions to protect this right. To answer the questions about the effectiveness of adoption procedures in both countries and whether the number of adopted children has been a success or failure, the paper analyzes statistical data related to the number of adopted children in Croatia and Slovenia. The conclusion

³ European Convention on the Adoption of Children (Revised), Council of Europe Treaty Series – No. 202, Strasbourg, 27 November 2008.

analyzes the advantages and disadvantages of Croatian and Slovenian legislation and the need for further action in strengthening the efficiency of adoption.

2 Relevant international sources

Contemporary social movements have led to a different understanding of the institute of adoption. The patriarchal approach based exclusively on the preservation of the family was abandoned. The focus of adoption shifted to the protection of the child without adequate parental care, which realizes the right to parents and family. The Croatian and Slovenian legislation has moved in this direction as well, focusing on regulating the criteria for adoption on the side of the adoptive parents (Huseinspahić, 2014, p. 202). To better understand the contemporary regulation of the institute of adoption in Croatian and Slovenian legislation, it is necessary to clarify their obligations in the context of international documents and organizations, as well as the importance of the standard of the best interests of the child. Article 3 of the 1989 UN Convention on the Rights of the Child⁴ (hereinafter: CRC), to which Croatia and Slovenia are signatories, obliges all public and private bodies deciding on children's rights to act in the best interests of the child, which consequently applies to adoption.⁵ In the context of adoption, particular emphasis is placed on Article 21 of the CRC, which imposes an obligation on States Parties to act in the best interest of the child when establishing adoption (Jakovac-Lozić & Vetma, 2006, p. 1410). The principle of the best interests of the child is highly complex and involves taking into account the circumstances of the child's living environment and all other details related to the child. It can also be interpreted as a "limiting" factor in relation to adults who must take into account the interests of the child (Šelih, 2014, p. 14), and not their own interests that they seek to achieve by certain actions, the primary purpose of which is not to ensure a certain person's right to a family, but the opposite – to ensure the child's right to parents and family. The modernization of family law, and thus adoption, is the result of the acceptance of international standards in the protection of children's rights by accepting international treaties. In addition to being member states of the United Nations, Croatia and Slovenia are also members of the CE and the EU, which directly binds

⁴ Official Gazette of SFRY – International Agreements, no. 15/90, Official Gazette – International Agreements, no. 12/93, 20/97, 4/98, 13/98.

⁵ The Declaration of the Rights of the Child of 1959 was also known for the best interests of the child, i.e. the principle of the best interests of the child was used in that international document for the first time. (Jakovac-Lozić, 2006, p. 19).

them to European law in a broader sense. European law, in addition to existing international law, acts as an additional mechanism for the protection of family rights. Accession to these European organizations was preceded by the harmonization of national legislation with the highest standards of human rights protection. In this regard, it is especially important to point out the European Convention on Human Rights (hereinafter: ECHR),⁶ which, although it does not regulate adoption as a special institute, guarantees its protection by Art. 8 of the right to family life. The Charter of Fundamental Rights of the European Union has the same approach to adoption⁷ guaranteeing, in Articles 7 and 9, the rights both to respect for family life and to found a family, while Art. 24 guarantees the procedural rights of the child by emphasizing the protection of the child's interests in proceedings before public or private bodies. Regarding the similarities between Croatia and Slovenia in the regulation of the institute of adoption, there are other relevant, primarily European, documents which are binding or non-binding. In 1967, the CE adopted the European Convention on Adoption of Children⁸ (hereinafter: ECA 1967), which sought to harmonize adoption in Europe. However, a revised 2008 ECA was adopted in 2008, which sought to modernize adoptions in Europe with a more liberal approach. The revised Convention emphasizes full adoption, which raises the protection of the rights of children (adoptees) to a higher level (Majstorović, 2009, p. 70). Croatia and Slovenia are not signatories to these Conventions,⁹ although they have harmonized their legislation with their guidelines. The question arises whether in this case the Croatian and Slovenian legislation act in accordance with the best interests of children and modern trends. Croatian and Slovenian legislative solutions regarding adoption are fully in line with the best interests of children, and although they are not signatories to the ECA 1967/2008, they have almost fully adopted all its principles and guidelines. Croatia and Slovenia are signatories to the 1996 European Convention on the Exercise of the Children's Rights (hereinafter:

⁶ (European) Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette – International Agreements, no. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10.

⁷ Charter of Fundamental Rights of the European Union, Official Journal of the European Union, C 202/389, 7 June 2016.

⁸ European Convention on the Adoption of Children, European Treaty Series – No. 058, Strasbourg, No. 058, Strasbourg, 24 April 1967.

⁹ Chart of signatures and ratifications of Treaty 058, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=058>, Chart of signatures and ratifications of Treaty 202, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=202> (21 April 2022).

ECECR),¹⁰ although it entered into force in 2000 and 2010, respectively.¹¹ This Convention addresses all proceedings concerning children, and its impact on adoption is reflected in the strengthening of the child's role in such proceedings. It also emphasizes the welfare of the child and their right to express their opinion in proceedings before state bodies, which acts in the direction of protecting the procedural rights of children (Hrabar, 2013, p. 71).

Although this paper focuses on the legislative regulation of domestic adoption, of note is the regulation relevant to adoptions with a foreign element.¹² Namely, both countries are signatories to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (hereinafter: the Hague Convention),^{13 14} which establishes guarantees for the protection of children's rights in the adoption procedure with a foreign element guaranteed by international legal instruments (Priručnik o pravima djeteta u europskom pravu, 2015, p. 100). Although adoption with a foreign element is not particularly desirable due to conflicting views (Jakovac-Lozić, 2006, pp. 22–28), national legislation still seeks to regulate it and accept international standards, thus safeguarding the best interests of children. Croatia and Slovenia are characterized by a high percentage of domestic adoptions, thus 90 percent or more of domestic adoptions take place in these two countries (Child Adoption, 2009, p. 70). Analyzing statistical data for the period from 2016 to 2020, in Croatia there was only one adoption with a foreign element,¹⁵ while in Slovenia there were 77 adoptions with a foreign element.¹⁶

¹⁰ European Convention on the Exercise of Children's Rights, European Treaty Series – No. 160, Strasbourg, 25 January 1996; Official Gazette - International Agreements, no. 1/10.

¹¹ Chart of signatures and ratifications of Treaty 160, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyid=160> (21 April 2022).

¹² In this sense, it is necessary to distinguish between interstate and international adoption. Jakovac-Lozić (2006) defines intercountry adoption as „in which the child changes the state in which he or she has lived regardless of the adopter's nationality“, while international adoption is defined as adoption „in which the adoptive parents are persons of another nationality in relation to the child and may or may not live in the same state“.

¹³ Official Gazette – International Agreements, no. 5/13.

¹⁴ Convention of 29 May 1993, on Protection of Children and Co-operation in Respect of Intercountry Adoption, Official Gazette – International Agreements, no. 5/13.

¹⁵ Strategije, planovi, programi, izvješća, statistika, <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (25 April 2022).

¹⁶ Acknowledgement and ascertainment of paternity and adoptions of children, Slovenia, 2015 – 2020, <https://www.stat.si/StatWeb/en/News/Index/6082>, <https://www.stat.si/StatWeb/en/News/Index/6831>, <https://www.stat.si/StatWeb/en/news/Index/7551>, <https://www.stat.si/StatWeb/en/news/Index/8251>, <https://www.stat.si/StatWeb/en/News/Index/8941>, <https://www.stat.si/StatWeb/en/News/Index/9653> (15 April 2022)

3 Comparative overview of adoption in Croatia and Slovenia

3.1 Defining adoption

Defining the concept of adoption in the national legal order has its genesis in several international documents. However, defining adoption is also subject to socio-political circumstances. Article 64, para. 5 of the Constitution of the Republic of Croatia¹⁷ is the fundamental basis for the legislative regulation of the institute of adoption in Croatia. It emphasizes that the State directs special care to minors without adequate parental care, i.e., minors without parents and those who are not cared for by their parents. Adoption is defined as a special form of family law care and protection of children without adequate parental care, which creates a lasting relationship between parents and children (Article 180 of the FA). Adoptive parents acquire the right to parental care, and adoption can take place if it represents the best interest of the child. Since the relationship between parents and children is created by legal means (act) of the competent state body (Alinčić et al., 2001, p. 303), it follows that this is a special form of parenthood that is not fully autonomous since it must be approved by the competent state authority. From the definition of adoption, it follows that in the Croatian legal system there is only the concept of full adoption with the aim of full inclusion of the adoptee in the family (Hrabar, 2019, p. 199), which indicates action in the best interests of the child. By introducing this type of adoption, the interests of the child are better fulfilled, considering that the ties between them and the adoptive parent are strengthened (Mignot, 2017, p. 2), and the integration of the child into the new family is facilitated (Cantwell, 2014, pp. 8, 26).

Article 56 of the Slovenian Constitution¹⁸ emphasizes that children enjoy special care and attention, while in the context of adoption there is an important provision according to which special protection by the State is directed to children and minors who are not cared for by parents, and who do not have parents or adequate parental care (Kraljić, 2021a, pp. 279-280). Adoption is defined as a special form of child protection that creates a relationship between the adoptive parent and the adoptee

¹⁷ Constitution of the Republic of Croatia, Official Gazette, no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

¹⁸ Constitution of the Republic of Slovenia, Official Gazette of the RS, no. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13, 75/16, 92/21.

as it exists between the parent and the child (Article 9 of the FC). Slovenian legislation also recognizes only full adoption (Kraljić, 2019, p. 731). The definitions of adoption set in this way show the following. The first part of the definition of adoption indicates that it is an institute of family law, while the second part of the definition defines the basic content of adoption, i.e., care and protection of children without adequate parental care. The principles of adoption derive from the definitions set out in this way: the principle of protection of the child's interests, the principle of subsidiarity, the principle of implementation of adoption by the competent state body, and the principle of longevity (Kraljić, 2019, pp. 726-730). These principles need to be viewed through the prism of social work as well, which plays an important role in adoption and can be interpreted as the State's effort to ensure the right of every child to parents and family, with adoption acting as an alternative.

Although neither Croatia nor Slovenia are signatories to the 1967 and 2008 ECA, it is necessary to look at the conceptual definition of adoption contained therein. Although these documents do not contain a specific definition of adoption as do the comparable national regulations, they nevertheless define the basic principles of adoption, certain terms (for example, the term child, competent authority), and set guidelines for determining the preconditions for adoption (Jakovac-Lozić, 2006, p. 43). However, according to the scope of both Conventions, it logically follows that they seek to encourage the regulation of full adoption. This conclusion is also evident when considering the scope of their application – exclusively to children and minors, given that its application to persons (adoptees) under the age of 18 is explicitly determined at the time of applying for adoption, minor status, and non-marriage (Article 3 of the 1967 ECA; Article 1 of the 2008 ECA). Therefore, although Croatia and Slovenia are not signatories to these Conventions, it is clear that both States have embraced their core principles in regulating the institute of adoption.

3.2 Preconditions for adoption

According to Croatian legislation, only a minor child can be adopted, while in the case of a child of unknown origin (i.e., birth parents undeterminable), the child can be adopted three months after their birth or abandonment (Article 181 of the FA). Kinship is one of the preconditions, or on the other hand – an obstacle to adoption, so that a blood relative in a straight line, brother or sister, as well as a ward by a

guardian, cannot be adopted until the guardian is relieved of their duties (Article 182 of the FA). A special assumption for the adoption of a child is that the birth parents must be over the age of majority. Therefore, according to Croatian legislation, it is generally not possible to adopt a child born of minor parents, unless the child is unlikely to be raised in the family of parents, grandparents, or other close relatives under the conditions stated until after the child turns one year of age, which requires the consent of minor parents (Article 183 of the FA). Regarding the adoptive parents, the preconditions for adoption are their age, status and citizenship. Adoptive parents in Croatia are limited only by the minimum age for adoption, so a person over the age of 21 and at least 18 years older than the adoptee can adopt. The purpose of this provision is to “imitate” the natural parent-child relationship (Hrabar, 2019, p. 201). However, the FA makes an exception to this rule and allows adoption to a person under the age of 21, at least 18 years older than the adoptee, provided that there are justifiable reasons for such adoption (Article 184 of the FA). Furthermore, adoptive parents may be marital and extramarital partners jointly or one of them if the other is a parent or adoptive parent of a child, one marital/extramarital partner with the consent of the other and a person who is not married or in an extramarital partnership (Article 185 of the FA). However, the fact that a single person can adopt *de facto* also means that a single person of homosexual orientation could adopt just as well as one of heterosexual orientation. Although the FA stipulates that life partners are not allowed to adopt, the High Administrative Court of the Republic of Croatia ruled that life partners should be given access to the adoption procedure and the possibility of being registered in the register of potential adopters. The Court emphasized, however, that both the public interest and the protection of children's rights are of paramount interest when selecting potential adopters. The Court's decision repeatedly emphasized the importance of the ECHR's interpretation in light of contemporary developments.¹⁹

While generally only a Croatian citizen can adopt, exceptions are made for foreigners if adoption by them would be in the best interests of the child, and subject to the approval of the competent ministry. The FA also lists obstacles to adoption. Adoptive parents cannot be persons deprived of the right to parental care, deprived of legal capacity, or persons whose previous behavior and characteristics indicate the undesirable entrustment of care to such a person (Article 187 of the FA). Therefore,

¹⁹ Judgment of the High Administrative Court of the Republic of Croatia, no. Usž-2402/21-4, 20 April 2022.

concerning the age of adopters, the emphasis is still on older adults, avoiding allowing adoption immediately after reaching adulthood, and strictly limiting situations when foreigners can adopt, thus maximizing the opportunities for Croatian citizens to adopt (Jakovac-Lozić, 2006, p. 17). In view of the ban on adoption by persons deprived of legal capacity and the right to parental care, and by emphasizing the importance of the adoptive parent(s) previous behavior and characteristics, the FA provides sufficient flexibility to act in the best interests of the child and find the most appropriate adoptive parent(s). Disqualifying characteristics may relate to issues including addiction, unemployment, illness, or the inability to provide the child with a suitable standard of living (Hrabar, 2019, p. 202). Setting the stated preconditions for adoption is undoubtedly in the best interests of the child. On the one hand, these criteria help prevent placing children in insecure family environments and optimize the likelihood they land in safe and secure homes (Skivenes, 2010). However, such widespread limitations on adoption potentially leads to discretion and autonomy in making adoption decisions.

According to Slovenian legislation, only a child can be adopted (Article 212 of the FC), excluding the possibility of adopting an unborn child. If the adoption of an unborn child were allowed, the principle of the best interests of the child would be derogated, since the child's needs and characteristics that enable finding the best potential adoptive parent could not be determined (Kraljić, 2018, pp. 738-739). Importantly, it is especially challenging to find the most suitable potential adoptive parent for a newborn, given that their characteristics and needs emerge only when the child is older (Sladović Franz, 2019, p. 39). In addition to the general assumption of child adoption, the FC stipulates certain special preconditions. These include cases of adoption of a child of unknown parents, a parent whose residence has been unknown for one year, and a child of deceased parents. By fulfilling the conditions for adoption, the child is entered into the register of adoptive children (Article 218 of the FC). With regard to obstacles to adoption when it comes to the child, the ward cannot be adopted until the guardian is relieved of their duties, as well as a relative in the direct line, brother or sister (Article 214 of the FC). Such an approach is justified, on the one hand, in relation to the adoption of blood relatives, i.e., siblings, trying to prevent duplication of kinship, while concerning guardianship, it tries to (preventively) protect the ward as a weaker party in that relationship (Kraljić, 2019, pp. 743-744). The FC specifies in more detail the preconditions for adoption regarding the adoptive parents. As is the case under the Croatian law, adoptive

parents can be spouses or extramarital partners who, generally, adopt a child jointly, except in the case when one of them adopts the child of a spouse or extramarital partner. A child can also be adopted by a person who is not married or who is in an extramarital partnership, assuming that would be in the best interests of the child (Article 213 of the FC). Thus, adoption pursuant to both Croatian and Slovenian legislation is intended exclusively for heterosexual couples, which points to the traditional approach of the compared legislation. Legislation in both countries also emphasizes conjugal life, but not individuals and their sexual orientation. It follows that a homosexual person could adopt a child if he or she is not part of a conjugal life, but this is also questionable considering that the adoption authorities examine all the life circumstances of the adopter (Urh, 2020, p. 71). However, as in Croatia, changes regarding the possibility of adoption to homosexual couples, more specifically life partners, are also visible in Slovenia. Namely, the Constitutional Court of the Republic of Slovenia found unconstitutional the provision that stipulates that only persons of different sexes can enter into marriage, as well as the provision according to which life partners cannot adopt a child. Concerning adoption by life partners, the Constitutional Court of the Republic of Slovenia pointed out that they have the right to be registered as potential adoptive parents, and that the best interest of the child is only evaluated when choosing an adoptive parent.^{20 21}

Likewise, both legislations recognize full adoption, which creates an inseparable parent-child relationship, but in the formal sense, it is possible to speak of both unilateral and bilateral full adoption, depending on whether the spouses adopt jointly or individually (Klun, 2009, p. 37). Regarding the age of the adoptive parents, according to Slovenian legislation, only adults at least 18 years older than the adoptee can adopt, while adoption under the age of 18 is exceptionally allowed if it is in the best interests of the child (Article 215, para. 1 of the FC). It is clear that this is a distinguishing feature from the Croatian FA, which sets a lower age limit for adoptive parents to 21 years. Jurić & Blažeka Kokorić (2019, p. 84) state that the higher age of the adoptive parents affects them in such way that they often adopt an older child or a child with disabilities. Regarding the citizenship of the adoptive parents, Slovenian legislation follows Croatian solutions. Only Slovenian citizens can

²⁰ So, the legislator has been given a deadline by which to change the unconstitutional provisions.

²¹ Decision of the Constitutional Court of the Republic of Slovenia, no. UI-486/20-20, Up-572/18-42, UI-91/21-26, Up-675/19-39, 23 June 2022.

adopt, while adoptive parents can exceptionally be foreign nationals in the case when an adoptive parent cannot be found among potential adoptive parents who are nationals of Slovenia, if that is in the best interest of the child and with the consent of the competent ministry ²² (Article 217 of the FC). The Slovenian legislation contains detailed eligibility requirements for prospective adoptive parents (Article 216 of the FC). Adoption is not possible for a person deprived of the right to parental care, who lives with a person deprived of parental care, who has been convicted of a crime against life and limb or sexual integrity, or who lives with a person convicted of criminal offenses (or for an attempted crime), who is suspected of using the adoption to the detriment of the child, who does not guarantee the provision of parental care for the benefit of the child or who is legally incapable, more precisely, has some form of mental disorder in which case adoption would not be for the benefit of the child (Article 216 of the FC). In addition to direct adoptive obstacles, Slovenian legislation also lists indirect ones that apply to other persons living with a potential adoptive parent, whose actions may harm the interests of the child. The Slovenian legislation clearly distinguishes between absolute and relative obstacles to adoption, i.e., obstacles related to the impossibility of adopting any child and a particular child (Kraljić, 2019, pp. 751, 753).

Regarding the preconditions for establishing adoption, Croatian and Slovenian legislation follows the guidelines of the 2008 ECA. It provides for the possibility of adoption by two persons of different sexes who are married or in a registered partnership, or by one person, giving the opportunity for signatory states to regulate the right to adoption by same-sex couples and extramarital partners living in stable relationships (Majstorović, 2009, p. 67). Concerning the age of the adoptive parent, the 2008 ECA stipulates that the minimum age of the adoptive parent should not be lower than 18 or higher than 30 years of age, and the age difference between the adoptive parent and the adoptee should be a minimum of 16 years. However, the possibility exists under national legislation to lower the minimum age of adoptive parents below the envisaged level if this would be in the best interests of the child and due to extraordinary circumstances (Article 9 of the 2008 ECA). Clearly, there are some minor differences between Croatia and Slovenia – in Croatian legislation the minimum age for an adoptive parent is 21, exceptionally 18, while under

²² Adoption with a foreign element is also provided as an exception under the CRC. Therefore, Art. 21 stipulates that intercountry adoption may be established only when the child cannot be provided with accommodation in the adoptive family (or foster parent) or there is no way to provide care for the child in his/her homeland.

Slovenian legislation adoption can exceptionally be provided to a person under 18 years of age. An important feature of both legislations is their traditional approach to adoption, restricting this right to heterosexual couples only, which potentially opens the door to potential discrimination as they allow adoption by extramarital partners. However, decisions from both the High Administrative Court of the Republic of Croatia and the Constitutional Court of the Republic of Slovenia demonstrate that adoption should no longer be reserved exclusively for heterosexual couples, considering that (following the determination of the two courts), the current legislative arrangement is discriminatory to persons of homosexual orientation, more precisely, life partners, which is why legislative changes are needed.

3.3 Consent to adoption

By adopting, the biological parents *de facto* renounce the right to parental care or this occurs through the activities of state services, while the adoptive parents acquire the right to parental care. Through adoption, the biological parents renounce the fundamental human right – the right to family life with the child. This is why it is necessary for them to clearly manifest their will to leave the right to care for the child to someone else. The fundamental right of a parent to live with their child is guaranteed by the CRC, which stipulates that a child can be separated from their parents only exceptionally when it is in the best interests of the child (Alinčić et al., 2001, p. 319). In the adoption procedure, it is particularly important to respect the provisions on consent to adoption, as this procedural violation would be contrary to the child's welfare and could result in the child being returned to the biological parents, which is also generally not in the best interests or well-being of the child (Bussiere, 1998, p. 11). Croatian family legislation regulates in detail the procedure for giving consent to adoption – it is given by the child's biological parents, spouse or extramarital partner of the adoptive parent, the child, and the child's guardian - which indicates that consent is a precondition for adoption (Jakovac-Lozić, 2021, p. 307). The parents must give consent to adoption (Article 188, para 1 of the FA), with certain exceptions. An important limitation for parents is that they cannot give consent for adoption before six weeks have passed since the child was born (Article 194, para. 3 of the FA). If the consent is given by parents deprived of legal capacity or minor parents, to be granted this right, they must be able to understand the meaning of the consent itself, in which case the social care center plays a key role in the adoption procedure as it is obligated to familiarize the biological parents with

the meaning and consequences of giving consent to adoption (Article 188, para. 2 of the FA; Hrabar & Gašparić, 2018). When minor parents or parents deprived of legal capacity are unable to understand the meaning of consent to adoption, their consent is replaced by a court decision (Article 188, para. 3 of the FA). Consent to adoption is not required when the parents are dead, unknown, or missing, or when the parents are deprived of parental rights. Considering that adoption also affects many fundamental rights of parents, the FA provides parents may revoke consent within 30 days from the day of signing the record on giving consent to adoption (Article 188, para 6 of the FA). If the parents refuse to give their consent to the adoption, the social welfare center must warn them that their consent may be replaced by a court decision after three months from the day they were warned of such possibility.²³ The three-month period for giving consent cannot expire before five months have passed from the birth of the child (Article 189, para. 5 of the FA). The court exceptionally, in the extrajudicial procedure, issues a decision on the replacement of the consent for adoption. Exceptional cases are those when parents abuse or grossly violate their parental responsibility, i.e., show disinterest for the child; when they abuse their parental responsibility in such a way that they will likely no longer be able to be permanently entrusted with the care of the child and if the parent is incapable of providing parental care to such an extent or there is no prospect that the child would be raised in the family of close relatives, which is why adoption is the best option for the child (Article 190 of the FA). In cases where the parent is not obliged to give consent to the adoption of the child, the consent is given by the child's guardian.²⁴ If the guardian's consent is not required, their opinion shall be taken into account. When the guardian gives consent to adoption, the consent cannot be revoked, which is also the case when one spouse or extramarital partner adopts (Article 192 and 193 of the FA). Croatian legislation provides that the first 12 years of a child's life is crucial for their active role in the adoption procedure. Therefore, a child over the age of 12 is required to give consent to adoption (Article 191, para. 1 of the FA), but has the right to revoke it until the decision on adoption becomes final (Article 191, para. 2 of the FA), which is a much longer period compared to parents who have a fixed deadline of 30 days. A child under the age of 12 gives an opinion on adoption, which is taken into account per

²³ According to Article 189, para. 1 and 2 of the FA, parents may also be imposed a measure of intensive professional assistance and supervision over the exercise of child care if there is a possibility of changing their behavior.

²⁴ These are cases, according to Article 188, para. 5 of the FA, when the parents have died, disappeared, are unknown, or have been deprived of the right to parental care.

the child's age and maturity (Article 191, para. 3 of the FA). By actively participating in the adoption procedure, the child manifests their will to be adopted at all, and expressing their attitude towards potential adopters (Alinčić et al., 2001, p. 323), which is why the child gives consent or opinion outside the presence of (biological) parents and potential adoptive parents (Article 191, para. 4 of the FA). When they give their consent to adoption, the parents lose the right to parental care, and the child is appointed a guardian (Article 195 of the FA).

The Slovenian legislature also envisages the obligation to give consent to adoption but regulates this aspect of adoption somewhat differently. According to the FC, a child can be adopted only if the parents have given their consent for their adoption before the social welfare center or the court. There is an exception for consent to adopting a child under the age of eight months; in this case the consent must be confirmed after the child reaches eight months to be legally valid (Article 218, para. 1 of the FC). This approach reflects the effort to protect parents, especially the haste of the mother in the case of postpartum trauma (Kraljić, 2019, p. 776). Consent to adoption is not required from a parent deprived of parental care, i.e., a parent who is permanently unable to express their will (Article 218, para. 1 of the FC). Consent to adoption is also important because of the establishment of adoption in general. Therefore, adoption can be established only once six months from the consent to the adoption have passed, and exceptionally before the expiration of that period if it would be in the best interests of the child (Article 218, para. 3 of the FC). Clearly, the Slovenian legislation provides a much longer deadline for establishing adoption after giving consent, which takes into account the interests of biological parents and potential adoptive parents; biological parents may reconsider their decision to “waive” the right to parental care, while potential adoptive parents may opt out of adoption (Kraljić, 2019, p. 777). Also, the FC envisages giving the consent and opinion of the child for adoption. Therefore, a child gives consent to adoption if they can understand the meaning and consequences of the consent, and the same goes for opinion. Unlike the consent given by the child independently, the opinion of a person of the child's trust chosen by the child may also be taken into account (Article 215, para. 2 and 3 of the FC). While the Croatian legislature sets a fixed age for a child to give consent or an opinion to the adoption at 12 years, the Slovenian legislature leaves it to the competent decision-making bodies and their discretionary assessments of the child's maturity for consent or opinion, guided by their best interests. The child's consent is extremely important because of the child's change in

the biological family, which is related to their emotional and social ties, but also their identity (Krutzinna, 2021, p. 197).

Croatian and Slovenian legislative solutions regarding the consent to adoption have been harmonized with the 2008 ECA. Consent for adoption is given by the mother and father, exceptionally another person or body authorized to represent the child when the parents cannot give consent, a child who according to the circumstances of the case can understand the consequences of giving consent and adoption with an age limit of no more than 14 years or a registered adoptive partner, while consent must be given freely and in writing (Article 5, para. 1 and 2 of the 2008 ECA). The mother's consent for the adoption of a newborn is specially regulated, so this period cannot be shorter than six weeks (Article 5 para 5 of the 2008 ECA). Whenever the child's consent is not sought, the child has the right to express an opinion (Article 6 of the 2008 ECA; Luhamaa & O'Mahony, 2021, p. 182). Thus, giving consent to adoption by all participants completes the adoption procedure. A special shift can be seen in the Croatian legislation in which, after the decision of the ECtHR, persons deprived of legal capacity and parental rights were given the right to express their opinion.²⁵ This was a significant step in protecting both their rights and respect for the right to family life.

3.4 Legal effects of adoption

The legal effects of adoption mean the rights and duties arising from that relationship, which occur on the day the decision on adoption becomes final (Jakovac-Lozić, 2021, p. 335). According to Croatian legislation, the establishment of adoption prohibits the contestation and determination of maternity or paternity (Article 196 of the FA). Adoption creates an unbreakable relationship - on the one hand, between the adoptive parent and the adoptee, and on the other hand, between the adoptee and their descendants. Thus, all rights and duties between the adoptee and their blood relatives cease. An exception exists only in the case when the child is adopted by a spouse or extramarital partner (Article 197 of the FA). Adoptive parents acquire the right to choose a personal name and determine the child's nationality. As a general rule, adoptive parents assign a personal name to the adoptee, who receives the common surname of the adoptive parent. However, there is also

²⁵ Case of *X v. Croatia*, Application no. 11223/04, 17 July 2008; case of *A.K. i L. v. Croatia*, Application no. 37956/11, 8 January 2013.

the possibility that the adoptee can keep their name and surname or add the surname of their adoptive parents to the existing surname. To realize this possibility, the social welfare center must determine whether it is in the interest of the adoptee (Article 198, para. 1 - 3 of the FA). Adoptive parents also have the right to determine the nationality of the adoptee (Article 198, para. 4 of the FA), but their freedom to determine personal name and nationality is not absolute. Namely, in the case when the adoptee is older than 12 years, their consent is also required for the change of personal name and nationality (Article 198, para. 5 of the FA). Concerning the citizenship status of the adoptee, it is especially important to emphasize that the adoptee is considered a Croatian citizen from birth, thus acquiring citizenship by origin (Hrabar & Korać Graovac, 2019, p. 133; Article 4 of the Croatian Citizenship Act).²⁶ There are no obstacles to the adoptee's relationship to the right to inherit, and this right needs to be viewed bilaterally. On the one hand, the adoptee and their descendants acquire the right to inherit the adopter, their relatives by blood and adoption, while on the other hand, the adopter, their relatives by blood and adoption, acquire the right to inherit the adoptee and their descendants (Article 199 of the FA). This is called civil kinship and civil relatives, i.e., relatives by adoption (Gavella & Belaj, 2008, p. 193). Ultimately, the legal effect of adoption is also based on the registration of the adoptive parent as a parent in the register of births (Article 215 of the FA), which is a fundamental feature of full adoption. Although it is a full, unbreakable relationship, the adoptee has the right to know their origin and therefore has the right to access the file of the adoption case and the birth register (Article 217 of the FA).

According to Slovenian legislation, the act of adoption between a child and their descendants on the one hand, and the adoptive parent and his relatives, on the other hand, creates the same relations as that between relatives (Article 219 of the FC). Likewise, the adoptee loses all rights and obligations towards their biological parents and relatives, as well as those towards them, except for the adoption of a child by a spouse or extramarital partner (Article 220 of the FC). Such a provision refers to the mutual right of inheritance (Kraljić, 2019, pp. 790-782). While the right to determine the personal name of the adoptee in Croatia is determined by the FA as a *lex generalis*, in Slovenia this right is determined by the Personal Name Act²⁷ (hereinafter: PNA) as *lex specialis*, according to which the adoptee may retain the personal name they had

²⁶ Official Gazette, 53/91, 70/91, 28/92, 113/93, 4/94, 130/11, 110/15, 102/19, 138/21.

²⁷ Official Gazette of the RS, no. 20/06, 43/19.

at the time of adoption. However, the surname of the adoptee can be changed at any time, except that the name cannot be changed between the fourth and ninth year of life. Therefore, determining the name after the age of nine requires the consent of the adoptee, if, given their development and abilities, they are able to express consent (Article 14 of the PNA). As in Croatian legislation, Slovenian legislation stipulates that the adoptee acquires citizenship by origin (Article 7 of the Citizenship of the Republic of Slovenia Act).²⁸ One of the effects of adoption in Slovenian legislation is its indissolubility (Article 221 of the FC), which results in the registration of the adopter as a parent in the registry books (Article 222, para. 1 of the FC). The adoptee has the right of access to the documentation on adoption, i.e., the right to know one's origin (Article 222, para. 2 of the FC). The Slovenian solution, in this case, is quite strict, so the consent of the data subject is required, to fully protect all adoption data (Kraljić, 2021b, 104). Croatian legislation, as compared to Slovenian, also requires the consent of a child older than 12 years (Article 213, para. 4 of the FA), which is another in a series of examples of the child's active participation in the proceedings. Such treatment contributes to the strengthening of the child's "adoptive" identity and the positive aspects of this procedure (Krutzinna, 2021, p. 219).

According to the 2008 ECA, the adoptee acquires full rights in the family and a parent-child relationship is established between them and the adoptive parent (Article 11 of the 2008 ECA). Regarding citizenship, States undertake to simplify the acquisition of citizenship by an adoptee (Article 12 of the 2008 ECA). The Convention also guarantees the right to know one's origin by establishing the concept of appropriate counseling for a minor adoptee and the obligation to keep adoption documents for at least 50 years (Majstorović, 2009, p. 72). Ensuring the right of access to the adoption documentation enables the child to preserve their own identity (Hrabar, 1997, p. 690), and thus their fundamental human right. The complexity of adoption, therefore, is reflected in the fact that the child *de facto* acquires a new identity, while legislative solutions through mechanisms such as the visiting rights with biological parents and knowledge of origin, seek to preserve the previous identity, as a contribution to building the child's personality.

²⁸ Citizenship of the Republic of Slovenia Act, Official Gazette of the RS, no. 24/07, 40/17.

3.5 Procedural aspects of adoption

For the adoption to be valid and achieve its desired effects, both material and procedural preconditions must be satisfied. States have complete freedom in regulating the adoption procedure, taking into account the interests of all three parties in the adoption procedure – the biological parents, the child, and the adoptive parents. Different treatment is contradictory and endangers the rights of these parties in the adoption procedure (Luhamaa & O'Mahony, 2021, p. 187). The adoption procedure in Croatia is the responsibility of social welfare centers and consists of two parts – the assessment of the suitability and eligibility of potential adopters and the procedure of establishing adoption. The procedure of assessing the suitability and eligibility of potential adopters is an interdisciplinary procedure. Namely, in addition to the application of the usual procedural rules of administrative law, in this procedure, the methods of social work are applied, which aim to improve the quality of family life (Sladović Franz, 2019, pp. 46-47). Potential adoptive parents first submit a written application of the intention to adopt and a request for issuing an opinion on suitability and eligibility for adoption (Article 203 of the FA), after which the social welfare center determines their suitability and issues a final opinion within six months of submitting the request (Article 204 of the FA). Persons who receive a positive opinion are required to undergo education, in the so-called school for adoptive parents (Article 205 of the FA; Jurić & Blažeka Kokorić, 2019, p. 85), followed by entry into the register of potential adoptive parents (Article 207 of the FA). The adoption procedure is also the responsibility of the social welfare center (according to the child's permanent residence/place of temporary residence), which is initiated and conducted *ex officio* (Article 208 of the FA). In the procedure of establishing adoption, the parties are the child and the most appropriate potential adoptive parent(s) (Article 209, para. 1 of the FA), but not the child's biological parents (Jakovac-Lozić, 2021, p. 326). The child, according to national law, also has the right to be informed and to express their opinion. During the proceedings, the social welfare center talks to the child's close relatives, if necessary, as well as the parent deprived of the right to parental care whose opinion is taken into account following the best interests of the child (Article 210 of the FA). After the procedure, the selection of the most appropriate adoptive parents is made according to potential adoptive parents registered, with two conditions: *i*) that the adoptive parent meets the characteristics and needs of the child described in the report and that *ii*) there is an expert opinion of the social welfare center (Article 211 of the FA). The above

indicates a permanent obligation to act in the best interests of the child so that the potential adoptive parent and the child are provided with probationary accommodation (Article 212 of the FA). Although adoption in Croatia is irrevocable, it can end by annulling or depriving the adopter of the right to parental care (Hrabar, 2008, p. 1121). Considering that the FA did not specify in detail the cases in which the annulment of adoption may occur, and that the adoption procedure is the responsibility of the social welfare centers, the provisions of the General Administrative Procedure Act apply.²⁹

The adoption procedure in Slovenia also consists of two parts: *i*) the procedure for determining the preconditions for adoption and *ii*) making a decision on adoption. Persons who want to adopt (potential adopters) submit a request for adoption to the competent social welfare center (Article 223 of the FC), after which the social welfare center determines the existence of preconditions and motives for adoption. While the Croatian legislation provides for six months, in Slovenia, the deadline for issuing an opinion on the suitability for adoption is one year from the date of receipt of the application (Article 224 of the FC). When persons meet the criterion for adoptive parents, they first acquire the status of a candidate for adoption (in Croatia – potential adoptive parents), become registered in the database of adoptive parents, and conclude a contract with the social welfare center on preparation for adoption (Article 225 of the FC). Slovenian legislation further formalized the adoption procedure by the fact that potential adopters sign a contract on professional preparation for adoption. This is followed by the selection of the most appropriate adoptive parent, taking into account several criteria: characteristics, needs and wishes of the child, wishes of the candidate, the expert opinion of the social welfare center, and the opinion of biological parents (Article 226 of the FC). The second phase of the procedure is aimed at making a final decision on adoption. This phase of the procedure is within the jurisdiction of the court which in extrajudicial proceedings decides on adoption based on the procedure conducted by the social welfare center (Article 229 of the FC). However, the court may also, before deciding on adoption, decide on the probationary accommodation of the child (Article 227 of the FC), so

²⁹ According to Article 117 of the General Administrative Procedure Act, Official Gazette, no. 47/09, 110/21, the second instance body will annul the decision and resolve the administrative matter independently if it finds *i*) that the facts were incompletely or erroneously established in the first instance proceedings, *ii*) that the procedural rules that affected the decision were not taken into account administrative matter, *iii*) that the operative part of the challenged decision is unclear or contradicts the reasoning, and *iv*) that the legal regulation based on which the administrative matter is resolved has been incorrectly applied.

the decision once again belongs to the court and not the social welfare center. While the Croatian FA does not provide for the explicit possibility of annulling an adoption, the Slovenian FC does. The procedure for annulment of adoption is also within the jurisdiction of the court in extrajudicial proceedings, whereby the *lex specialis*, the Non-Contentious Civil Procedure Act, Article 121, para. 3, stipulates that this procedure may be initiated upon the proposal of one of the biological parents, an adoptee at the age of 15, provided that the adoptive parents and the social welfare center understand the legal consequences. The Slovenian solution, which provides for the division of the adoption procedure between the social welfare center and the court, allows a higher level of impartiality and treatment in the best interests of the child. The judge makes the final decision based on the case file, but probationary accommodation is also available. In this way, the judge objectively makes the adoption decision, further reviewing what is in the best interests of the child by preventing potentially unwanted scenarios.

Croatian and Slovenian legislation in the context of procedural issues follows the principles of the revised 2008 ECA – adoption is within the competence of public bodies (Article 2 of the 2008 ECA), annulment of adoption is possible only by decision of the competent body (Article 14 of 2008 ECA), the issue of access to information on adoption has also been regulated (Article 22 of the 2008 ECA). Croatia and Slovenia are signatories to the ECECR, and their family legislation conforms to its principles. The right of the child to actively participate in the proceedings is guaranteed, although the child does not have the status of a party to the proceedings (Rešetar, 2011, p. 139). In the context of adoption, the child has the right to obtain the requested information, consult, express their opinion or consent, and be informed of the legal consequences of their actions (Article 3 of the ECECR), while the competent authorities, before making a decision, consider whether the child has sufficient information, allow the child to express their opinion, giving importance to their opinion (Article 6 of the ECECR). However, crucial criteria for the relevance of information are the age of the child and their ability to understand information (Hrabar, 2002, p. 335). The goals of the ECECR are related to the promotion of children's rights, ensuring their procedural rights, and their simplified realization (Majstorović, 2021, p. 46). In addition to ECECR, Croatian and Slovenian family legislation also implements the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which also emphasizes the availability of information (Stalford, Cairns & Marshall, 2017) and the principles of

participation, best interests, dignity, protection against discrimination and rule of law (Guidelines of the Committee of Ministers of the Council of Europe, 2011, pp. 17–19).

4 The impact of the ECtHR on adoption in Croatia and Slovenia

For the interpretation of the institute of adoption in Europe, Article 8 of the ECHR is relevant, i.e., the right to respect for family life (Priručnik o pravima djeteta u europskom pravu, 2015, p. 100; Kilkelly, 2004, p. 71; Desmond, 2018, pp. 265–266; Scherpe, 2021, pp. 257–258). The right to family life is an indeterminate but definable term, which, among other things, starts from the fact that the family is based on emotional connections and that there are different perceptions of the family at the national level (Korać, 2002, p. 250). Therefore, it is “one of the most open and dynamically interpreted provisions of the ECHR” (Scherpe, 2021, pp. 257–258). According to the jurisprudence of the ECtHR, the protection of family relations also includes adoption,³⁰ more precisely the relationship between adoptive parents and adoptees, which indicates the definability of the concept of family life from Article 8 of the ECHR. In this sense, the ECtHR has, through its jurisprudence, significantly influenced the creation of adoption institutes in Europe (Jakovac-Lozić, 2013).

In the case of *X v. Croatia*,³¹ the child was adopted without the participation of the biological mother in the proceedings, more precisely, without parental consent. Namely, Ms. X. suffered from schizophrenia and was deprived of legal capacity. In the meantime, the applicant gave birth to a daughter and applied for reinstatement of legal capacity. The court did not accept her request and appointed a guardian for the daughter without submitting a decision on the appointment of guardianship to the biological mother, after which the adoption procedure was initiated for the daughter, who was adopted with the consent of the guardian (§ 5, 12, 15, 17–20). Therefore, the competent court did not accept the request of the biological mother to restore her legal capacity, she was only subsequently informed by telephone about the adoption of her daughter, and her opinion was not requested either. The legislative solution did not provide for the participation of a person deprived of legal

³⁰ Case of *Kurochkin v. Ukraine*, Application no. 42276/08, 20 May 2010, para 37; Case of *Pini and others v. Romania*, Application no. 78028/01 and 78030/01, 22 June 2004, para 140, 148.

³¹ Case of *X v. Croatia*, Application no. 11223/04, 17 July 2008.

capacity in the proceedings as a party, guided by the fact that due to health problems they are unable to take care of their own or the child's interests (Briški, 2018). The ECtHR conducted a test of necessity in a democratic society which established the legitimacy of state interference in family life – the legitimacy of adoption, but also determined that parents must be involved in the procedure in which the rights and interests of the child are determined (Šeparović, 2014, pp. 187, 188). As a shortcoming at the level of the national procedure, the ECtHR found that the relationship between the daughter and the biological mother had not been assessed, and pointed out that the biological mother had to some extent continued to fulfill her parental responsibilities (§§ 51, 52). Without questioning the expediency of adoption and the disease of the biological mother, the ECtHR pointed out the violation of the right to respect for family life because the biological mother, as a person deprived of legal capacity, was not allowed to be heard before the adoption of the child (Jakovac-Lozić, 2013; § 54, 55).

The case of *A.K. and L. v. Croatia*,³² also involved an adoption without parental consent. Namely, Ms. A.K. gave birth to a son L, who was placed in a foster family immediately after birth due to her unemployment and poor living conditions. After the birth of her son, the applicant was deprived of the right to parental care due to mild mental retardation and inability to care for the child (§§ 4-9). Ms. A.K. also requested free legal aid to apply for the return of her parental rights. In the meantime, she was informed by the social welfare center that proceedings had been initiated for her son's adoption. The social welfare center also informed her that her consent for adoption was not required and that, because she was not a party to the proceedings and the secrecy of the proceedings, she was not entitled to further information on the adoption procedure (§§ 10-16; Briški, 2018). In this case, the ECtHR provided a comprehensive overview of the legislative regulation of the participation of parents deprived of the right to parental care in the adoption procedure, finding inconsistencies in the decision. It was also pointed out that Croatia did not adequately eliminate the shortcomings identified in the judgment in case of *X v. Croatia* (Briški, 2018; § 60). The ECtHR emphasized the legitimacy of adoption, the purpose of which is to protect the interests of the child, but also focused on issues directly related to adoption. The Court noted that the national authorities did not sufficiently protect the interests of the biological mother

³² Case of *A.K. and L. v. Croatia*, Application no. 37956/11, 8 January 2018.

concerning her health (psychological) difficulties, adding to the obligation provided by national legislation (Šeparović, 2014, p. 190). The ECtHR also pointed out (as problematic) the fact that the applicant did not have the opportunity to regain her right to parental care before the child was adopted (§ 78), which ultimately resulted in a violation of the right to family life. In this case, not only were the mother's rights violated, but so were the child's during the actions of the competent authorities (Lucić, 2015, p. 368).

In the case of *S.S. v. Slovenia*,³³ Ms. S.S. suffered from paranoid schizophrenia (§ 18) and she often went to visit her husband in France. Considering that she was often absent and it was necessary to leave the child in someone's care, Ms. S.S. had a mother (the child's grandmother) from a close relative who did not want to take care of the child, which is why the child was entrusted to foster carers (therefore, it follows that mother abandoned the child) (§§ 16, 17). Although the social welfare center sought to encourage Ms. S.S.'s contact with the child, despite all efforts, she did not show significant interest in her child and was therefore deprived of the right to parental care (§ 43), while foster parents adopted the child (§ 50). Ms. S.S. appealed against the decision to deprive her of the right to parental care, but the higher court found that there would be no family reunification and the development of family ties because of giving priority to the adoption procedure (§ 45). The ECtHR did not find a violation of the right to family life in this case, stating that the competent national authorities had acted in the best interests of the child (§ 103). The ECtHR based its decision on the fact that the competent authorities had taken all necessary steps to enable the applicant to care for the child, but there was no emotional connection between the mother and the child, and contact with the mother had a negative effect on the child. The Court also observed that due to the small chances of reuniting the biological family, it was in the child's interest to be in a stable, adoptive family (§ §100, 101; Breen et al., 2020, p. 22). Ms. S.S. also claimed that she had been discriminated against on the grounds of mental illness, but the ECtHR also rejected this allegation, noting that she had been repeatedly allowed to participate in the proceedings concerning the child (§ 108).

³³ Case of *S.S. v. Slovenia*, Application no. 40938/16, 30 October 2018.

The analyzed jurisprudence of the ECtHR in cases against Croatia and Slovenia shows the following. Under its legislative solution, Croatia has twice in a row violated the right to family life in adoption proceedings, which ultimately affected the new family law legislation (Lucić, 2015). In particular, Croatia acted in the interest of the child but neglected the interest of the biological parents to express their opinion, even through “formal” participation in the procedure. Thus, according to Article 130 of the Family Act 2003,³⁴ consent to adoption was denied to parents deprived of the right to parental care, deprived of legal capacity, and minor parents who were unable to understand the meaning of consent to adoption. Among other things, the opinion of a parent deprived of legal capacity was not sought. In the Slovenian case, the ECtHR found that there was no violation of the right to family life. On the contrary, it was the biological parents who did not take advantage of the given opportunities to (actively) participate in the adoption procedure of their child. In general, both Croatian and Slovenian legislation, as well as the actions of their bodies, strictly take into account the best interests of the child and their guaranteed rights, and as a key issue related to Croatia and many other European countries, neglect of biological parents in the adoption procedure, which directly led to the violation of the best interests of the child.

5 Efficiency of adoption in Croatia and Slovenia

The number of adopted children is a reaction to the functionality or dysfunctionality of the family and social system of a country. In the context of adoption, this form of permanent protection of children is preceded, albeit potentially, by threats to their rights and welfare. The small number of such violations of the rights and welfare of the child is the result of the state's comprehensive efforts to protect the family and the interests of its members (Hrabar, 2021).

Table 1 shows the number of adopted children in Croatia and Slovenia from 2015 to 2020. During this six-year period, a total of 703 children were adopted in Croatia, which shows the following: an average of 117 children are adopted annually in Croatia, an average of nine children are adopted per month, and one child is adopted every third day. The number of adoptable children in Croatia varies between 340 and 440 per year, with the average number of adopted children being 30.43 percent.

³⁴ Official Gazette, no. 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13, 75/14, 5/15, 103/15.

Slovenian statistical indicators regarding adoption are significantly different. In the observed six-year period, 251 children were adopted, which shows the following: an average of 42 children are adopted annually in Slovenia, an average of three children are adopted per month, and it follows that one child is adopted every nine days. Complete statistical indicators on the number of adoptable children are not available for Slovenia, but according to available data, only 2.5 percent of adoptive parents adopt a child (Črnak Meglič & Kobal Tomc, 2016, p. 180). It is necessary to take into account the fact that Slovenia has a smaller population, which consequently reflects on social issues.³⁵ However, it is characteristic of Slovenia to have a larger number of adoptions with a foreign element, i.e., adopted children from abroad (Črnak Meglič & Kobal Tomc, 2016, p. 181). Because the Slovenian FC entered into force in 2019, the data for 2021, when 41 children were adopted, has started to show signs of the effectiveness of the current adoption system in Slovenia.^{36 37}

Table 1: Number of adopted children in Croatia and Slovenia from 2015 to 2020

Year		2015	2016	2017	2018	2019	2020	In total
Number of adopted children	Croatia	126	87	105	132	117	136	703
	Slovenia	39	45	54	45	47	21	251

Source: Ministry of Labour, Pension System, Family and Social Policy; Statistical Office of Republic of Slovenia³⁸

What is the cause of such a small number of adoptions? Theoretically, they could be hampered by the consent of the biological parents (although this is their right and there is a possibility of replacing their consent to adoption through the courts), insufficient financial support, and lack of counseling (Meysen & Bovenschen, 2021,

³⁵ For comparison, Croatia has 3 888 529 inhabitants, while Slovenia has 2 106 215 inhabitants. Prvi rezultati Popisa 2021, <https://popis2021.hr/> (2 July 2022); Prebivalstvo, <https://www.stat.si/StatWeb/Field/Index/17> (1 July 2022).

³⁶ Acknowledgement and ascertainment of paternity and adoptions of children, Slovenia, 2021, <https://www.stat.si/StatWeb/en/News/Index/10356> (3 July 2022).

³⁷ Only data on the number of adoptions in 2021 for Slovenia are indicated, considering that at the time of the conclusion of the paper, data on the number of adoptions in Croatia in 2021 were not available.

³⁸ Strategije, planovi, programi, izvješća, statistika, <https://mrosp.gov.hr/strategije-planovi-programi-izvjescastatistika/4165> (25 April 2022); Acknowledgement and ascertainment of paternity and adoptions of children, Slovenia, 2015 – 2020,

<https://www.stat.si/StatWeb/en/News/Index/6082>,

<https://www.stat.si/StatWeb/en/News/Index/6831>,

<https://www.stat.si/StatWeb/en/news/Index/7551>,

<https://www.stat.si/StatWeb/en/news/Index/8251>,

<https://www.stat.si/StatWeb/en/News/Index/8941>,

<https://www.stat.si/StatWeb/en/News/Index/9653> (15 April 2022)

pp. 129, 130), but the slowness of the system and administrative obstacles must also be considered. These obstacles violate the principle of urgency in child-related proceedings. Delaying the adoption procedure results in repeated violations of children's rights because, as long as the child is not adopted and thus does not establish a permanent parent-child relationship, their right to family life is continually violated (Hrabar, 2021, p. 7). In both countries, the problem with adoption is the untenable length of the procedure. In Croatia, the adoption procedure lasts between one and three years, while in Slovenia it lasts as long as four to eight years (Urh, 2021, p. 72). These unacceptable delays fly in the face of the best interests of the child and must be rectified.

There are significantly fewer adopted children in Slovenia than in Croatia, but there is still a significant number of adoptable children. The crucial problem in Croatia is the small number of adopted adolescents, children with disabilities, and developmental problems.³⁹ Of course, in this sense, the length of the adoption procedure is emphasized, which is influenced by several factors. These are primarily problems of personnel organization in social welfare centers, i.e., overworked social workers, irresponsible behavior of biological parents (primarily their manipulative actions), and in some cases long-term decisions of social welfare centers regarding sanctioning parents (Čižmek, 2011). On the other hand, in Slovenia between 30 and 50 children are adopted annually, and there are more potential adopters than children. This is also the reason why there are more adoptions of children from other countries in Slovenia. However, the number of adoptions is still small,⁴⁰ which is why foster care is used in practice as an alternative method that brings the child into a kind of legal uncertainty since adoption can guarantee the longest-lasting alternative protection of family life. These figures do not necessarily indicate the inefficiency of the adoption system. The purpose should not be sought in the procedure, but in the outcome, which is the placement of the child in an appropriate family environment. But if we take into account the cause that leads to the need for adoption – dysfunctional families and/or troubled parents, it is clear that high numbers of adopted children do not always reflect the success of the State. On the

³⁹ Zašto 3000 djece nema dom, a samo ih je 204 spremno za posvojenje, <https://www.vecernji.hr/vijesti/kako-posvojiti-dijete-i-zasto-3000-djece-nema-dom-1432506> (20 April 2022).

⁴⁰ V Sloveniji letno posvojijo med 30 in 50 otrok, <https://www.bibaleze.si/novice/posvojitve-sirotisnice-rejnistvo-v-sloveniji.html> (20 April 2022).

contrary, fewer adoptions can be interpreted as the success of the State striving to preserve the biological family with appropriate preventive measures.

6 Conclusion

Analyzing the institute of adoption in the Croatian and Slovenian family law legislation, it is possible to notice numerous similarities, but also differences. The principle of the best interests of the child has been implemented in both legislations, which means that adoption is completely aimed at the child's protection. Legislation in both States have a balanced effect on all participants in the adoption procedure, which can be interpreted as the consistent implementation of the right to respect for family life, as a broader concept. States guarantee the right to the family and its protection by their regulations, but by adoption, this right is derogated by emphasizing the child and their right to the family, not the parent's right to parenthood.

Historically, the greatest achievement of Croatian and Slovenian legislation is undoubtedly the establishment of adoption in the best interests of the child. In the substantive sense, adoption in Croatia and Slovenia is almost completely equal, but there are differences in certain procedural provisions and actions directly related to the adoption. The Croatian legislator seeks to protect the interests, primarily of the child, but also the adoptive parent in the pre- and post-adoption phase. Namely, adoption represents a change, both for the adoptee and for the adoptive parents, so the Croatian legislature envisages education for adoptive parents, the so-called school for adoptive parents before the adoption is established. The special care of the State for protection of the relationship between the adopted child and the adoptive parent is also reflected in their "supervision" after the adoption is established. This approach could also be interpreted as a form of encroachment on the right to family life, and thus a violation of Art. 8 of the ECHR. However, adoption needs to be viewed from a broader perspective. It creates a family "artificially", taking into account the interests of the child and potential adoptive parents and the decision of the competent State body. This type of professional support seeks to help the newly established adoptive family when the need arises. A unique aspect of adoption in Slovenian legislation is that there are explicitly determined cases in which the annulment of adoption is possible while concurrently legitimizing the adoptee in the right to annulment. This gives rise to the possibility

of ending a relationship that is harmful to the child and endangers their best interests. The difference between the Croatian and Slovenian adoption procedures also exists in the final decision-making stage of adoption. The Slovenian decision, which left the determination on adoption to the jurisdiction of the court, deprived the social welfare center of exclusive jurisdiction over the adoption procedure. This heightens the responsibility of social welfare centers when carrying out the pre-adoption procedure. The recommendation of the social welfare center on the need for adoption is thus evaluated because the court acquires the opportunity to once again determine the best interests of the child, and this does not always have to be adoption.

The length of the adoption procedure is problematic both in Croatia and Slovenia. When adoption occurs, it is the only way to provide adequate protection for a child's right to a family. Neither the Croatian approach, in which the adoption procedure is exclusively administrative with elements of court proceedings related to consent to adoption, nor the Slovenian approach, which is a combination of administrative with an emphasis on court proceedings in which adoption is finally based, contribute to solving this problem. However, in the adoption procedure, it is equally necessary to focus on its material and formal significance, which derives from the fundamental human rights guarantee contained in the ECHR. Therefore, the child, as a subject of rights, must be guaranteed both the right to respect for family life and to a fair trial, given that adoption is the ultimate measure of interfering in family life. The previous jurisprudence of the ECtHR on the example of Croatia pointed to a violation of the procedural rights of parents in the adoption procedure, but according to established standards and interpretations, the violation of this right is undoubtedly present in the long duration of the adoption procedure.

Along with numerous similarities and differences between the Croatian and Slovenian regulations of the institute of adoption, it is clear that there are the same problems in this area, mostly of a procedural nature. The analyzed data on the number of adopted children indicate significant differences between Croatia and Slovenia. Significantly, the "new" family legislation is in force in both Croatia and Slovenia, while in the analyzed period of the number of adopted children, the FC entered into force. Accordingly, the analysis carried out should therefore be "conditionally" taken into account. Referring to the length of the adoption procedure, it is obvious that the formally set deadlines for taking certain actions,

such as making decisions on the suitability for adoption, lose their meaning. *De lege ferenda*, instead of fixed deadlines, it would be more appropriate for both legislatures to use the term “reasonable deadline” to make individual decisions, considering the complexity of the case, because not every case related to adoption is the same. Considering the decisions of the High Administrative Court of the Republic of Croatia and the Constitutional Court of the Republic of Slovenia regarding the possibility of adoption by life partners, there is no doubt that these decisions will affect certain changes in their national family legislation. Future research issues, as well as guidelines for Croatian and Slovenia legislation, should focus in two directions. The causes that lead to adoption must be further examined. Research must also focus on mechanisms that can facilitate adoption procedures for the benefit of all participants.

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