

THE IMPLEMENTATION OF THE CHILD'S RIGHT TO BE HEARD: THE SLOVENIAN VIEW

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ABSTRACT

The Convention on the Rights of the Child represents a crucial international instrument related to children's rights. Article 12 enshrined children's right to express their views or be heard. Right to be heard ensures that children are listened to and taken seriously. They are entitled to give their opinions on all matters affecting them, especially in judicial proceedings. Slovenia adopted a new Family Code (2017) and the Non-Contentious Civil Procedure Act (2019). Both acts brought about essential improvements in the children's right to be heard. The article offers a general analysis of the conventional understanding of this right, followed by a presentation of its inclusion in the two new legal acts and Slovene contemporary case law.

KEYWORDS

*right to be heard
capacity
principle of child's best interest
parental care
interim measure*

1. Introduction

In the past, the child's voice, opinion, or view has often been ignored. The child has been considered legally incompetent and incapable of legal speech. They have been denied the right to express their views. Children's access to the court was not even considered possible. Children were seen but not heard.¹ The legal position of

1 | Parkes, 2013, p. 1.

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children has improved with the adoption of the Convention on the Rights of the Child² (CRC).

The children's right to be heard, enshrined in Article 12 of the CRC, has undoubtedly contributed to the development of the children's rights. We should not ignore that adults (for example, parents or guardians as legal representatives), still make decisions for their children, because they often think that a child is an incomplete human being.³ However, a significant shift was observed. According to Article 12 of the CRC, children have the right to express their views and decide on matters that affect their lives. Children's opinions will be considered considering their age and maturity. The latter is particularly crucial in court proceedings where decisions are made on important issues for the children, in the short, medium, or long term. The ability to ascertain what is in the child's best interest is why the right of the child to be heard is of utmost significance. A child who is heard feels appreciated, cherished, and involved. Even if the court rules against the child's wishes, the child's involvement may help them comprehend the proceedings and reasoning behind the court's choice.

2. Constitutional bases

Today, children enjoy special protection guaranteed by many international instruments, starting with the Geneva Declaration on the Rights of the Child⁴ in 1924, which clearly outlined and laid the foundations to protect children's rights. A key milestone was established in 1989 by the CRC. States quickly recognized the importance of the CRC and the resulting protection of the child and their rights. To ensure adequate protection of children and their rights, as dictated by the CRC, as well as by other comparable international instruments whose content is relevant to children's law, the Republic of Slovenia (RS) also guaranteed respect for the rights of the child in the Constitution of the Republic of Slovenia⁵ (CRS). Article 56(1) of the CRS states that children should enjoy special protection and care. Article 56(2) of the CRS states that children shall enjoy human rights and fundamental freedoms consistent with their age and maturity.

Article 56 of the CRS is complemented by Article 39 of the CRS, which refers to the general freedom of expression that children enjoy in accordance with age and

2 | Convention on the Rights of the Child, 196 parties on 22 July 2022 [Online]. (Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en) (Accessed: 22 July 2022).

3 | Krappmann, 2010, p. 502.

4 | The Geneva Declaration on the rights of the Child is a historic declaration adopted by the League of Nations in 1924 (26th September). It was the first declaration that acknowledged and recognized the child's rights and the responsibilities of adults toward children.

5 | Constitution of the Republic of Slovenia: Uradni list RS, no 33/1991-I, 42/1997 – UZS68, 66/2000 – UZ80, 24/2003 – UZ3a, 47, 68, 69/2004 – UZ14, 69/2004 – UZ43, 69/2004 – UZ50, 68/2006 – UZ121, 140, 143, 47/2013 – UZ148, 47/2013 – UZ90, 97, 99, 75/2016 – UZ70a, 92/2021 – UZ62a.

maturity. The above demonstrates that the CRS does not explicitly define a child's right to freedom of expression. However, it is recognized through the generally guaranteed constitutional freedom of expression.⁶ On the other hand, countries have explicitly included the right of the child to be heard in their constitutions. The right to be heard prevents a person turning into an object in judicial proceedings. Therefore, the right to be heard reflects a direct expression of respect for human (child) personality and dignity.⁷

The Constitution of Ecuador (1998) contains extensive references to children's rights, including freedom of expression.⁸ The Constitution of Finland provides that children shall be treated equally and given the opportunity to influence matters relating to them in accordance with their level of development.⁹ The Constitution of Poland (1997) stipulates that to establish the rights of children, the state authorities and persons responsible for children shall take into account, as far as possible, the need to prioritize the views of the child.¹⁰ The Constitution of Iceland also explicitly guarantees the child's right to be heard in matters concerning them.¹¹ However, like Article 12 of the CRC, the Constitution of Iceland binds it to the age and maturity of the child.

3. Article 12 of the CRC as the pathway for the Slovenia regulation

Therefore, a key milestone in the field of children's law was reached in 1989 with the CRC, which definitively placed the child in the position of a rights-bearer. One of the fundamental children's rights is undoubtedly enshrined in Article 12 of the CRC:

6 | Kraljić, 2016, p. 14.

7 | Kraljić in Kraljić et al., 2022, p. 53.

8 | See Article 39(2) of the Ecuador's Constitution (Constitución de la República del Ecuador): 'The State shall recognize young people as strategic players in the country's development and shall guarantee their right to education, health, housing, recreation, sports, leisure, freedom of expression and association. The State shall foster their incorporation into the labor force in fair and decent conditions, with emphasis on training, guarantee of access to first employment, and promotion of their entrepreneurial skills.'

9 | See Article 6(2) of the Chapter II of the Finland's Constitution (Suomen perustuslaki): 'Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.'

10 | See Article 72(3) of the Constitution of Poland (Konstytucja Rzeczypospolitej Polskiej): 'Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.'

11 | See Article 12(3) of the Constitution of Iceland (Stjórnarskrá lýðveldisins Íslands): 'A child shall be guaranteed the right to express its views regarding all its affairs, and just account shall be taken of the child's views in accordance with its age and maturity.'

1. States 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 representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The CRC introduced a new concept in international law in 1989 and challenged many countries where the culture of listening to children was not normative or even acceptable.¹² The provision of Article 12 of the CRC is unique as it addresses the legal and social status of children who, on the one hand, do not have full autonomy as adults but, on the other hand, children today are subjects of rights.¹³ This is particularly important in judicial proceedings as it allows the child to be heard. The children's right to freedom of expression should be understood as a tool for the judge to better assess the situation, especially when it comes to making decisions that are crucial for the child at the time of the decision, as well as for the child's future.

States Parties to the CRC are obliged to guarantee the children's right to be heard in accordance with Article 12(1) of the CRC. In this respect, this guarantee by states must be seen as a legal concept with a special force, since it leaves little room for discretionary decisions by states. Indeed, States Parties are strictly obliged to adopt all appropriate measures to fully realize this right for all children.¹⁴

The CRC has made the child a central subject and an active voice in all matters concerning children by explicitly recognizing the children's right to be heard in Article 12. The right to be heard and taken seriously constitutes the foundation of human dignity and is essential for the healthy development of every child. Listening to the children's views and considering them in accordance with their age and maturity is necessary for the effective implementation of their rights, to ensure their best interests as the guiding principle in all matters, and to ensure adequate protection for all children from violence, abuse, neglect, and maltreatment.¹⁵

Article 12(1) of the CRC assures that every capable child has a right to express their own views on 'all matters affecting the child.' Such matters can concern education, dietary and lifestyle choices, and the acceptance of medical treatment. However, should the children freely express their own views, it should be weighted in accordance with age and maturity. Therefore, following Article 12(1) of the CRC, the capacity to form and express one's own views could not be possessed by all children. The decision to recognize the capacity to form and express one's own views will be made by adults (e.g., parents, judges, social workers, teachers, and

12 | Landsdown, 2011, p. 1.

13 | United Nations, 2009, p. 3.

14 | ECtHR, *M. and M. v. Croatia*, app. no. 10161/13, 3 September 2015.

15 | See Recommendation CM/Rec(2012)2.

physicians). Adults must follow the principles that consider the children's best interests.¹⁶

It should be stressed that a children's views under Article 12 of the CPR cannot be linked to age alone, as a child's level of understanding is not uniformly linked to their biological age. Research has demonstrated that information, experience, environment, social and cultural expectations, and level of support contribute to developing a child's understanding and ability to form their views. Therefore, children's views should be assessed on a case-by-case basis.¹⁷

A child's maturity refers to their capacity to understand and evaluate consequences and should therefore be considered when determining an individual's capacity. Thus, Article 12 of the CRC does not restrict the children's right to expression by any age limit. Maturity, therefore, refers to the capacity of children to express their views on issues in a reasonable and independent form and appropriately and reasonably. The impact of the matter itself on the children must also be considered. The more significant the impact of the outcome (e.g., of court proceedings) on the child's life, the more important it is to properly assess the child's maturity.¹⁸ The more mature the child, the more weight and decisiveness their view will have.^{19 20}

In this regard, the Committee on the Rights of the Child has opined that the child's developmental capacities, as referred to in Article 5 of the CRC, must be considered, including when it comes to the child's right to be heard. The Committee on the Rights of the Child notes that the more a child knows, experiences, and understands, the more the parents, guardians, or other persons legally responsible for a child must turn guidance and direction into reminders and advice and later into an equal exchange. Similarly, as children mature, their views carry more weight in assessing their best interests. In evaluating a children's best interests, infants and very young children have the same rights as all children, even if they cannot express their views or represent themselves in the same manner as older children. States should ensure that appropriate arrangements, including representation where necessary, are in place to assess their best interests. The same applies to children who are unable or unwilling to express their views.²¹ In addition, the Committee on the Rights of the Child has particularly emphasized that the mere fact that a child is very young (as mentioned above) or in a vulnerable situation (for example, disabled, belonging to a minority, unaccompanied, or a migrant)

16 | Article 3 of the CRC.

17 | United Nations, 2009, p. 8.

18 | United Nations, 2009, p. 8–9.

19 | Čujovič in Novak, 2019, p. 447.

20 | Archard and Uniacke (2021, p. 528) clarify that a threshold standard determines whether a child is either mature enough (and gets to choose) or not (and have no choice). In contrast, Article 12(1) of the CRC differs in two ways in proposing a weighting of the child's views: it adopts a scalar rather than a threshold standard of maturity and it weights the child's views as opposed to giving or not giving effect to their choices. The scalar standard recognizes that the contrast between an adult and a child is not a simple binary one and that children might exhibit more or lesser maturity.

21 | Committee on the Rights of the Children, 2013, p. 11.

does not deprive them of the right to express their views, nor does it diminish the importance of the child's views in determining their best interests.²²

States Parties must, therefore, ensure that every child who is capable of forming an opinion has the right to express it. This should in no way be understood as a restriction, but rather as an obligation to assess the child's capacity to form their own opinion as independently as possible. However, it is impossible to assume that children cannot express their own opinions. It should not be the starting point for children to first prove their capacity. On the contrary, the assumption must be that the child has the capacity to form and express their own opinions.²³

In this respect, the child's 'expression of views' must be seen in light of a larger dimension than mere verbal expression. Children can also express their will through non-verbal forms of communication, such as facial expressions, body language, play, artwork, music, and even silence. The child is encouraged and able to express themselves in various ways (for example, singing, dancing, and drawing).²⁴

Right to be heard during court proceedings is particularly important. Until recently, this right had been neglected. The reasons for this were mainly based on the premises that: i) parents should act in a way that is in the best interests of their children; ii) children needed to be protected from a traumatic event; iii) there was a desire to prevent children from siding with one parent in a dispute between parents; and iv) children were considered incapable of action. Today, we face the opposite situation. Denying children the opportunity to express their views in court proceedings is seen as more harmful than making their voices heard. Children also desire to be heard and considered, ensuring the credibility of the whole process.²⁵

The European Convention on the Exercise of Children's Rights²⁶ (ECECR) is also important. The objective of the ECECR is to promote the rights of the child, grant them procedural rights, and facilitate the exercise of these rights by ensuring that children are themselves or through other persons or bodies, informed and allow them to participate in proceedings affecting them before a judicial authority.²⁷ The ECECR provides that a child with a sufficient level of understanding, in the case of proceedings before a judicial authority affecting them, shall be granted, and shall be entitled to request, the following rights: a) to receive all relevant information; b) to be consulted and express their views; c) to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.²⁸

The ECECR provides that the children shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before

22 | Committee on the Rights of the Children, 2013, p. 13.

23 | ECtHR, *M. and M. v. Croatia*, app. no. 10161/13, 3 September 2015.

24 | Koller, 2021, pp. 1–2; Landsdown, 2011, p. 21.

25 | Ubertazzi, 2017, pp. 45–46.

26 | European Convention on the Exercise of Children's Rights: Uradni list RS – MP, no 26/1999.

27 | Article 1(1) of the ECECR.

28 | Article 3 of the ECECR.

the judicial authority affecting the child, where internal law precludes the holders of parental responsibility from representing the child as a result of a conflict of interest.²⁹

In EU law, Article 24(1) of the Charter of Fundamental Rights of the European Union³⁰ (CFREU) also provides that children are free to express their views and that these views shall be considered in matters concerning them in accordance with their age and maturity. This provision is general and not limited to specific proceedings.³¹ The CJEU explained in case *Joseba Andoni Aguirre Zarraga v Simone Pelz*³² that hearing a child cannot constitute an absolute obligation. Judicial authority must always assess what is required in the best interests of the child in each individual case.³³ However, if the judicial authority decides that a hearing of a child is necessary and appropriate, it must offer the child an accurate and adequate opportunity to express their views. The CJEU held that the children's right to be heard requires that children should be subjected to legal procedures and conditions that enable them to freely express their views.³⁴ Information, experience, environment, social and cultural expectations, and levels of support may influence a child's capacity to form their views.

Freedom of expression is also guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms³⁵ (ECHR), which implies that everyone, including children, has the right to freedom of expression. This right includes the freedom to have opinions and receive and impart information and ideas without interference from public authorities. In the case *Sahin v Germany*³⁶, the European Court for Human Rights (ECtHR) found that the procedural requirements of Article 8 of the ECHR do not necessarily imply an obligation to hear the child directly in court. In the present case, the expert assessed that the procedure of hearing the child in court might pose an undue risk to the child. Therefore, the court must carefully assess each case wherein the benefits of hearing the child justify distressing the child. The court should refrain from conducting a hearing if, after a careful assessment, it has concluded that the hearing is either not in the best interests of the child or that the child's statement cannot be reasonably expected to influence the decision.³⁷

Owing the above-mentioned reasons, the age and capacity of the child should not be viewed as a limitation, but as obligations of the state to assess the child's capacity to form autonomous views to the maximum extent possible. The fundamental premise should not be that the child is incapable of expressing their opinion. On the contrary, states should start from the premise that the child is

29 | Article 4 in connection with Article 9 of the ECECR.

30 | Charter of fundamental rights of the European Union, OJ C 326, 26.10.2012, pp. 391–407.

31 | FRA, 2022, p. 44.

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

33 | See CJEU, C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, §64.

34 | FRA, 2022, p. 45.

35 | European Convention for the Protection of Human Rights and Fundamental Freedoms: Uradni list RS-MP, no 3-20/1994.

36 | See ECtHR, *Sahin v. Germany*, app. no. 30943/96, 8 July 2003.

37 | Rijavec in Rijavec and Galič, 2020, p. 224.

capable of forming and expressing their views. The burden cannot be placed on the child first to demonstrate their capacity.³⁸

4. Implementing the child's right to be heard in Slovenian Family Matters

Slovenia's long-awaited new Family Code³⁹ (FC) was adopted in March 2017. Due to preparations for the changes that the FC had brought, its enforcement was postponed for two years. FC began to be enforced on April 15, 2019, and replaced the Marriage and Family Relations Act (MFRA),⁴⁰ which had been prevalent for over forty years. Although the MFRA was amended three times (1989, 2001, and 2004), family law, particularly child law, required significant substantive, material, and procedural revisions and adjustments. FC has, as a substantive law, brought newly regulated family law relations, but the FC also required an update of the procedural rules. Thus, the new Non-contentious Civil Procedure Act⁴¹ (NCCPA-1) was adopted in 2019, constituting the fundamental procedural law on family law matters.

4.1. Informing the child

Article 45 of the NCCPA-1 provides for a child who has reached the age of 15 and is able to understand the meaning and legal consequences of their actions to become a party in the proceedings. The children may express their opinion in an interview with an expert who may be appointed in a family law case if the court finds it necessary to determine the best interest of the child.

Article 96(1) of NCCPA-1 also follows Article 12 of the CRC. In proceedings, for the protection of the best interests of the child, the court shall invite the social work center to inform the child, who is capable of understanding the meaning of the proceedings and the consequences of the decision, in an appropriate manner of the initiation of the proceedings and of their right to express their views. The content of Article 96(1) of NCCPA-1 indicates an important difference from the previous regulation in Article 410(1) of the Civil Procedure Act.⁴² Under the new rules introduced by the FC and NCCPA-1, notifications are transferred to the social

38 | Ubertazzi, 2017, p. 47.

39 | Family Code (Slovene Družinski zakonik): Uradni list RS, no 15/2017, 21/2018 – ZNorg, 22/2019, 67/2019 – ZMatR-C, 200/2000 – ZOOMTVI, 94/2022 – odl. US, 94/2022 – odl. US).

40 | Marriage and Family Relations Act (Slovene Zakon o zakonski zvezi in družinskih razmerjih): Uradni list RS, no 69/2004 – UPB, 101/2007 – odl. US, 90/2011 – odl. US, 84/2012 – odl. US, 82/2015 – odl. US, 15/2017 – DZ.

41 | Non-contentious Civil Procedure Act (Slovene Zakon o nepravdnem postopku): Uradni list RS, no 16/2019.

42 | Civil Procedure Act (Slovene Zakon o pravdnem postopku): Uradni list RS, no 73/07 – official consolidated text, 45/2008 – Zarbit, 45/2008, 111/2008 – odl. US, 57/2009 – odl. US, 12/2010 – odl. US, 50/2010 – odl. US, 107/2010 – odl. US, 75/2012 – odl. US, 40/2013 – odl. US, 92/2013 – odl. US, 10/2014 – odl. US, 48/2015 – odl. US, 6/2017 – odl. US, 10/2017, 16/2019 – ZNP-1, 70/2019 – odl. US, 1/22 – odl. US, 3/2022 – ZDeb.

work center. The court will inform the social work center about the proceedings, and the social work center will inform the child. However, neither Article 410(1) of the CPA nor Article 96(1) of the NCCPA-1 defines what constitutes an 'appropriate manner of notification.' The answer to this question will have to be sought in each specific case by the social work center, which will inform the child. The social work center informs the child, who is capable of understanding the meaning of the proceedings and the consequences of the decision. The child will be informed of the initiation of the proceedings and their right to express their views in an appropriate manner. The right to information is essential as it is a prerequisite for children's decision-making.⁴³

| **4.2. Determining a child's capacity**

Before appropriately informing the children about the proceedings and their right to express their views, the social work center will first need to establish whether the children can understand the procedure's meaning and the consequences of their decision. Therefore, the social work center will first have to interview the child to assess their capacity. In an interview to assess the child's capacity, the social work center can also conclude as to whether the child has capacity, immediately after the interview with the child. If the social work center deems that the child has the capacity, it may also inform the child in an appropriate manner of the initiation of the procedure and the right to express their views.

| **4.3. Freedom of expression**

Children's right to express their views is their right of choice. The child should not be forced to express their views; it should be their free choice. Article 96 of the NCCPA-1 does not use the word 'freely' – i.e., to express a view freely. However, the word 'freely' is explicitly mentioned in Article 12(1) of the CRC. 'Freely' denotes that the child is free to express views without pressure and that they can choose whether or not to express them. 'Free' also means that the child must not be manipulated⁴⁴ or subjected to undue influence or pressure. Furthermore, 'free' also means inherent in the child's 'own' perspective that the children have the right to express their own views and not those of others.⁴⁵

When a child decides to express their views, they can do so: a) at a social work center b) in an interview with the child's advocate assigned to him under the

43 | Ubertazzi, 2017, p. 47.

44 | Comp. ECLI:SI:VSLJ:2020:IV.CP.1774.2020, 21 October 2020: 'The best interests of the child is a legal concept that must be given substance in each case, considering all the circumstances of the particular case. In any event, the child's best interests include not only the best interests of the person up to the age of 18 (short-term best interests), but also the best interests that will be manifested in adulthood (long-term best interests). The healthy and holistic development of the child, that is, their development into an independent adult, must be pursued. However, the child's wishes and the child's best interests are not synonymous. The court may decide differently from the child's wishes where the court has good reasons. One of these reasons is that the child's will is not free because it is manipulated.'

45 | United Nations, 2009, p. 7; Landsdown, 2011, p. 22.

provisions of the Human Rights Ombudsman Act⁴⁶ (HROA) or c) depending on the child's age and other circumstances, in an informal interview with a judge, possibly with the assistance of a professionally qualified person, always without the presence of parents⁴⁷.

We should emphasize that these options are equivalent alternatives to hearing the child. Which of these options is applied depends on the circumstances of the individual case. Rijavec defends the opinion that a judge should interview a child if possible and acceptable according to the circumstances of the particular case.⁴⁸

| 4.4. *Presence of a confidential person or child's advocate*

A person whom the child trusts and chooses (a so-called confidential person or confidant)⁴⁹ or the child's advocate, if assigned to the child in accordance with the provisions of the HROA, may be present at the interview at the social work center and with the judge. The confidant can only be a person spontaneously chosen by the child and cannot be a person chosen for the child by someone else, a participant in the proceedings, a proxy, or the court.⁵⁰ A confidant cannot be a parent, guardian, or person chosen by the parent.

A confidant could be a sibling or other relative, godparent, teacher, doctor, or coach. A person with whom the child has come into contact in official proceedings and trust has spontaneously developed and been established between the child and this person (for example, an expert witness in court proceedings, a social worker at a social work center, or a conflict guardian) may also acquire the position of the child's confidant.⁵¹

Such a person, or a child's advocate, can help the children express their views. The court may prohibit the presence of such a person if it considers that he or she is not a person in whom the child has confidence and whom the child has chosen, or if the participation of that person in the proceedings would be contrary to the best interests of the child (Article 96(3) of NCCPA-1).⁵² In doing so, the child's advocate must be aware that he or she is representing the child's interests exclusively and not those of other persons (for example, parents), institutions, or bodies (for example, an institution, an association).⁵³

46 | Human Rights Ombudsman Act (Slovene Zakon o varuhu človekovih pravic): Uradni list RS, no 69/2017 – official consolidated text.

47 | Article 96(2) of NCCPA-1. ECLI:SI:VSLJ:2020:IV.CP.503.2020, 17 April 2020; see also Kraljić in Kraljić et al., 2022, pp. 406–408.

48 | Rijavec in Rijavec and Galič, 2021, p. 225.

49 | See also Article 144(1) of the FC: 'In deciding on the custody, upbringing, and maintenance of the child, on contact, the exercising parental care and granting of parental care to a relative, the court shall also consider the child's views, expressed by the child himself or through a person whom they trust and had chosen, provided that the child is capable of understanding its meaning and consequences.'

50 | ECLI:SI:VSLJ:2018:IV.CP.1760.2018, 12 September 2018.

51 | Končina Peternel, 2015, p. 75.

52 | Kraljić in Kraljić et al., 2022, p. 407.

53 | ECtHR, *M. and M. v. Croatia*, app. no. 10161/13, 3 September 2015.

| 4.5. *Language*

When interviewing the child, the judge should use language that the child can easily understand. Repetition of questions should be avoided. Children have different perceptions and communication skills than adults. Words often have different meanings for children and adults. Their life experiences also differ from those of adults. The judge should use simple language appropriate to the age and maturity of the child. Children may have difficulty understanding adult language, especially if it contains foreign words (for example, procedure or process, conversation, communication, or discussion), technical terms (for example, settlement), terms that the child is not familiar with etc. The judge should use language appropriate to the child's age and level of understanding. Children also do not understand the legal system or complex legal issues. Judicial decisions affecting children should be adequately clarified and explained in a language that children understand, especially when decisions have not considered children's views.⁵⁴ Hearing a child requires a judge's empathy and awareness that children are often influenced and pressured by their parents. The judge must ensure that their questions are not suggestive. The judge must also be cautious of how the questions are asked, as children are excellent listeners and observers. How the question is asked and the tone, facial expressions, and gestures used by the judge can influence the child's responses.⁵⁵ The judge must, therefore, take care at all times to preserve their dignity, judicial impartiality, and neutrality.⁵⁶

| 4.6. *Record of the Interview*

A record of the interview will be made. The judge or social work center may also decide to record the interview by audio or audio-visual means. To protect the child's best interests, the court may decide that the parents should not be allowed to see, listen to, or watch the recording. There is no specific appeal for such a court decision. The court will summarize parts of the statements made in the interview with the child if decisions have been based on them.⁵⁷ Although the question of ensuring the principle of adversarial proceedings may arise in this case, the ECtHR has adopted the view that the particularly sensitive nature of the relationship and child protection measures may also justify a special procedural regime—that is, in our case, the court not allowing the parents to see the recording or to listen to or view the recording. However, the procedure must not lead to the negation of the fundamental right of the parties to be informed of the opposing party's allegations, submissions, and evidence. Therefore, the assurance that in such a case, the court will summarize parts of the statements made in the child's interview and the reasons for the decision also provide adequate legal protection.⁵⁸ However, the provision of Article 96(4) of the NCCPA-1 binds the court to summarize the child's statements only with respect to relevant statements on

54 | Svet Evrope, 2013, pp. 27–28.

55 | Knittel in Schnitzer, 2008, p. 613.

56 | Kraljić, 2016, p. 25.

57 | Article 96(4) of NCCPA-1.

58 | Končina Peternel, 2019.

which the court has based its decisions. The court is not obliged to summarize other statements.

The court will not base its decision on the child's opinion if it finds that the child's expressed wishes are contrary to their best interests.⁵⁹ The child's views constitute evidence that the court must assess together with other evidence, as this is the only way to determine whether the child's expressed views are in their best interests.⁶⁰ In any event, the right of the child to express their own views must not be interpreted as effectively giving the child an unconditional veto right without considering other factors and carrying out a test to determine the best interests of the child.⁶¹

As adults, we must listen to children and take their wishes and needs seriously. When a child is asked to express a view and is evaluated as mature enough to understand its meaning and implications, we should take it into account and otherwise explain to the child why we have not taken it into account.⁶² The principle of continuity of care and upbringing and the principle of accelerated child development also play crucial roles in the court's decision. Both these principles are the basis on which the court will assess the views expressed by the child.⁶³ However, if the court believes that a child's views or wishes cannot be complied with, the child must always be informed of the decision and its reasons.⁶⁴

An exception is provided in Article 158(2) of the FC, which expressly states that a court, when deciding on a measure for the protection of the child's best interests, may issue an interim measure without first obtaining the child's opinion.⁶⁵ The procedure for issuing interim measures is based on specific features arising from their nature, which justifies and allows for particular derogations. An interim measure is a child's protection measure. It is sufficient that the application of an interim measure is well founded. In most cases, an interim measure will achieve its purpose only if it is granted in an expedited procedure.⁶⁶ Therefore, there is a permissible derogation from the general principle of the adversarial procedure. It is not necessary to ensure that the principle of *audi alteram partem* is complied

59 | Comp. ECLI:SI:VSLJ:2017:IV.CP.1333.2017, 12 July 2017: 'The minor A. expressed to the clinical psychology expert and to child's advocate his wish to reduce the amount of contact with his father, but the Court of First Instance was correct not to base his decision on his expressed wish. In doing so it was correct to base its decision on the expert's convincing opinion that A.'s wish was the result of the influence of his mother's statements and her suggestions. If the child's expressed wishes are contrary to the child's best interests, in particular, if they are the result of the parent's suggestions, such wishes are disregarded.'

60 | Compare also ECLI:SI:VSLJ:2019:IV.CP.830.2019, 23 May 2019; ECLI:SI:VSLJ:2019:IV.CP.2039.2019, 13 November 2019: 'While the court is obliged to take into account the child's opinion in accordance with the child's maturity and age, this does not mean, as the parents mistakenly believe, that such opinion is the sole criterion for the court's final decision, but that only a full evidentiary procedure will be able to give a convincing answer to the question of whether the creditor's application for the child's pre-adoption will be justified.'

61 | ECLI:SI:VSLJ:2021:IV.CP.1514.2021, 2 November 2021.

62 | ECLI:SI:VSLJ:2015:IV.CP.2188.2015, 23 September 2015.

63 | ECLI:SI:VSLJ:2017:IV.CP.3332.2016, 5 January 2017.

64 | Landsdown, 2011, p. 23.

65 | ECLI:SI:VSLJ:2021:IV.CP.1769.2021, 2 November 2021.

66 | Kraljić, 2019, p. 538.

with before the interim order is granted. Compliance with the principle of *audiatur et altera pars* is ensured by the possibility of opposing interim order. The interim order enables the court to ensure that the rights and best interests of the child are safeguarded through an expeditious procedure, thereby preventing irreparable or disproportionately serious harm to the child. An interim order may be granted based on the application itself if the protection and best interests of the child require urgent action during the proceedings, provided that statutory prerequisites are met. Therefore, the court may issue an interim order without hearing the parties or without first obtaining the child's views. The probability of the existence of the conditions for granting an interim order is sufficient, which means that the standard of proof is lowered to the level of probability.⁶⁷ However, the speed of the procedure should not precede the children's welfare.

Within a time limit set by the court, which may not be less than 30 days, the social work center must send the court an opinion that the child is incapable of understanding the meaning of the proceedings and the consequences of the decision, or a record that the child has been informed of the initiation of the proceedings and of the right to express their views, and the child's views if they have expressed them.⁶⁸

The court will serve the child, who has reached the age of 15 and has expressed their view in the proceedings, with the decision against which they will have the right to appeal.⁶⁹

5. Conclusion

More than 30 years have passed since the adoption of CRC. It has contributed to improving the situation of children, protecting their rights, and considering their best interests in many areas of everyday private and public life. However, it cannot be ignored that there are still too many children worldwide whose right to be heard has not yet been realized. Children belonging to marginalized groups such as girls, children with disabilities, children from indigenous groups, unaccompanied children, children in conflict with the law, and children living in extreme poverty.⁷⁰ Slovenia has taken a step towards improving children's rights and ensuring their protection by adopting new substantive (Family Code) and procedural (Non-Contentious Civil Procedure Act) legislation. In particular, it has taken an essential step in ensuring that a child's right to be heard is respected. The child, if they are capable according to age and maturity, is now an active participant in the proceedings in which decisions are taken about them and their best interests. The Slovenian courts and social work centers play a crucial role in guaranteeing this child's right.

67 | Rijavec and Ivanc, 2018, p. 1277.

68 | Article 96(5) of the NCCPA-1.

69 | Article 96(6) of NCCPA-1.

70 | Landsdown, 2011, p. vi.

The new legislation (FC and NCCPA-1) ensures respect for and the exercise of the child's right to freedom of expression. Legislative bases are in line with contemporary guidelines on this right. However, problems in practice are evident. Decision-making procedures for the protection of children's rights and best interests are often complex, emotionally burdensome, and time-consuming. Moreover, they often require the involvement of experts, of whom there is a shortage in Slovenia. To ensure that this right of the child is realized in practice, it would be necessary to ensure that court proceedings are carried out at an appropriate speed, so as to ensure that the rights and best interests of the child are safeguarded in a timely manner. Judges point out that long waiting times for hearings, especially in the context of forms, prolong the hardship and suffering of all parties involved, and in particular, children; therefore, it is important to ensure that practice can also guarantee the adequate, high-quality, and timely exercise of the child's right to express their views, which can also be crucial in the final judicial decision-making process.

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