

Child Contact Arrangements during the Coronavirus Pandemic in the Republic of Slovenia and the EU

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Abstract

The COVID-19 pandemic and the accompanying emergency measures have restricted fundamental human rights and freedoms, which undoubtedly also had consequences in the family context. One of the directly affected rights of the child during the pandemic is the right to maintain regular direct contact with both parents. Digital communication can alleviate the lack of direct personal contact, but all children and parents do not have access to the necessary technologies, which is why embarrassment and discrepancies may occur between the parents regarding such direct contact. In addition, the lockdown measures of justice and social services shifted the burden of dispute resolution regarding contacts almost entirely on parents.

This article aims to examine the appropriate legal framework and measures adopted in relation to the right of the child to maintain contact with both parents during the pandemic with an emphasis on the Slovenian model and the model in certain EU Member States and the response of the authorities to the challenges arising from this state of emergency and to determine the measures that could be adopted in order to improve the child's contact with the non-resident parent.

Keywords: best interests of the child, rights of the child, contacts, non-resident parent, COVID-19, pandemic, parents, state measures

1. INTRODUCTION

Since the spring of 2020, we have all become concerned regarding health and interpersonal relations because of the COVID-19 pandemic. We want to preserve our health, the health of our families, and genuine relationships. We certainly want this coronavirus to be gone and never to return. How to best accomplish this is what is discussed now all around the world. However, even if the measures aimed at stemming the spread of this viral disease are eased, the life of certain parents (separated from children) and their children will be far from normal.

During the pandemic, it is necessary to pay special attention to the safeguarding and respect of family values. Family breakdown is unpleasant and stressful for all, spouses or partners and children, who are often forgotten. It is thought that children will become accustomed to the changed conditions because they are still young and do not understand relationships. However, this is not the case. Children desire quality contact with both parents. After partners separate, it is most important for them to set boundaries in their partner relationship and focus all energy on the upbringing and care of their children. The normal psychophysical development of a child requires both parents; otherwise, it is possible to expect parental alienation syndrome (PAS)¹ to occur.

Children of separated families also have to move between households, and the child's interest should be followed because they represent the key element conditioning the allowance of the child's contacts with the non-resident parent. Based on the first paragraph of Article 141 of the Slovenian Family Code (DZ),² the child has the right of access to both parents, and both parents have the right of access to their child. The child's contact with parents is protected by Articles 53 and 54 of the Constitution of the Republic of Slovenia (URS)³ and by Article 8 of the European Convention on Human Rights (EKČP).⁴

During the pandemic, a court can adopt a decision to prevent personal contacts and to arrange contacts somewhat differently (for example, via electronic media) if the child's interests can be protected in this manner, which is why it is necessary to act restrictively in issuing temporary decisions regarding the restrictions of the child's contact with the non-resident parent and to restrict or withdraw the right of contact only if this is considered absolutely necessary.

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¹PAS – Parental alienation syndrome

²Official Gazette of the Republic of Slovenia, No. 15/17 et seq.

³Official Gazette of the Republic of Slovenia, No. 33/91-I et seq.

⁴Official Gazette of the Republic of Slovenia - MP, No. 7/94.

Based on Article 6 of the Family Code, both parents have joint parental care and must create conditions guaranteeing the comprehensive development of their child in accordance with their abilities. This means that they must consult each other on important long-term decisions, such as education and medical treatment of the common child unless the court decides otherwise. When the children are in the care of the parent with custody of the child, that parent can decide on a daily basis regarding what the children will eat and which activities they will perform.

2. THE RIGHT OF THE CHILD TO MAINTAIN CONTACT IN THE REPUBLIC OF SLOVENIA DURING THE PANDEMIC

Parental care belongs to both parents, and the rights of the child are interdependent with parents' obligations. The Convention on the Rights of the Child (KOP)⁵ defines that the states parties to this convention must respect the right of the child, which is separated from one or both parents, to maintain regular personal contact and direct relationship with both parents, except where this would be contrary to his interests.⁶ We believe that in cases in which the parent and the child do not reside together, it would also be necessary to enforce contacts during the corona crisis, because this is the way to maintain their interconnectedness and safe attachment impacting the child's comprehensive growth and development. The child's right of contact is a personal, non-inheritable, and non-transferable right related to the child's closest family relationships. In practice, the right of contact is expressed with the child visits, the right to participate in education, and the right to take the child on holiday. When making contact, the parent must take care and protect the child's safety and health and supervise him/her.

During the COVID-19 pandemic, the absence of contact should not be an excuse not to enforce contacts, which is also the position of caselaw in the Republic of Slovenia. The pandemic is not a reason to terminate personal contacts. Enforcement of contacts between parents and children not residing in the same municipality is possible because the published opinion of the Ministry of the Interior states that the measure prohibiting movement outside the municipality of permanent or temporary residence does not apply to the maintenance of contact between parents and children governed by a settlement or court decision.⁷ If the parents adhere to the prescribed safety measures and respect the opinion of the Ministry of Justice, personal contact should be maintained despite the pandemic crisis whenever possible. The Higher Court in Ljubljana similarly decided that the Covid-19 pandemic does not represent a reason not to enforce contact when no risky circumstances can be determined on the side of parents, children, or other close relatives living in the same household.⁸ The Supreme Court of the Republic of Slovenia warns that the enforcement of contact should include an assessment of whether such contact will give rise to risk factors and recommends that the parents reach an agreement regarding the enforcement of contact during the pandemic. If no risk factors are detected, the Higher Court takes the position that contacts can be enforced.⁹

Spouses are primarily enabled to reach an agreement regarding contact because they are the most familiar with family dynamics, child's needs, and their own capabilities regarding the enforcement of contact. If the spouses are unable to reach an agreement, they shall receive help from the Social Services Centre and other mediators. When the spouses cannot reach an agreement, they can propose to the court to conclude a judicial settlement. The Court shall *ex officio* examine such an agreement and reject it if it is not in line with the child's interests.¹⁰ If the spouses were unable to reach an agreement regarding contacts, the issue of the right of contact shall be decided by the court. The court can also restrict or withdraw the right of contact from one or both parents and decide that contact should not be enforced via personal meetings and socialising if this is the only way to protect the child's interests. The child's right to contact also belongs to the parent whose child is entrusted to a third party or institution.¹¹

On the basis of Article 173 of the Family Code, the court has the right to restrict or withdraw the right of contact if it determines that enforcement of contact would not be in the best interest of the child. For example, the court can restrict or withdraw the right of contact with the child from one or both parents if this is the only way to protect the child's interests. The court can also decide that contact should not take place via personal meetings.¹²

⁵Official Gazette of the SFRY - MP, No. 15/90.

⁶Convention on the Rights of the Child (KOP), Article 9, paragraph 3.

⁷ Decision of the Higher Court in Ljubljana, IV Cp 897/2020 from June 17, 2020

⁸Decision of the Higher Court in Ljubljana, IV Cp 1978/2020 from December 2, 2020

⁹Izvajanje med starši in otroki v času epidemije, April 6, 2020, <http://www.sodisce.si/vsrs/objave/2020040610490634/>.

¹⁰Article 141 of the Family Code.

¹¹Kraljić, S.: Družinskizakonik s komentarjem. Poslovnazaložba MB, Maribor 2019, p. 299-300.

¹²Kraljić, S., *ibid.*, p. 459-460.

During the pandemic, the number of applications to temporarily terminate contact and applications to give custody of the child to the other parent increased because certain parents cannot reach an agreement regarding the enforcement of contact during the pandemic even though such contact is already legally determined with the decision of the court.¹³ For example, when a parent with whom the child resides prevents contact between the child and the other parent and when such contact cannot be enforced even with the help of the Social Services Centre, the court can, following an application by the parent, decide to take the custody of the child away from the parent preventing contact. In such cases, the right is granted to the other parent if the court determines that this parent will allow contact and if this is in the child's best interest.¹⁴

Article 8 of the European Convention on Human Rights defines the right to respect for one's private and family life (i.e., the right to maintain the relationship through contact), which is why the term of the CJEU, 'the right of contact with the child', from Articles 1(2)(a) and 2, items 7 and 10 of the Council Regulation (EC) No. 2201/2003, from Nov. 27, 2003, concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility should be interpreted as including the right of access of grandparents to their grandchildren.¹⁵

3. CHILD'S INTERESTS DURING THE COVID-19 PANDEMIC

A final judicial ruling on the contact between the child and the parent with whom the child does not reside is also valid during the pandemic; however, this raises a legitimate question regarding the child's interests and the reasonableness of the child's potential exposure to the coronavirus. At this time of crisis, it was possible to perceive the child's interest as maintaining contact with the non-resident parent via telephone, computer, or video conference.

The Supreme Court appealed to parents that it would be in the best interests of children if the parents were to reach a temporary agreement regarding the enforcement of contact, taking into account all adopted national measures aimed at stemming the spread of the virus and that the court would only decide in cases where such an agreement could not be reached.

The measures aimed at stemming the spread of the coronavirus infection, which are obviously necessary, resulted in an increasing number of cases of children alienated from parents, which will realistically only be revealed after the pandemic ends. Neither the Family Code (DZ) nor the Non-contentious Civil Procedure Act (ZNP-1)¹⁶ regulates the enforcement of contact in extraordinary circumstances. In such cases, the parents are obliged to reach an agreement regarding the enforcement of contact, taking into account the child's best interests.

When parents cannot reach an agreement on the enforcement of contact during the pandemic, they can file an application at the competent District Court for interim measures during the pandemic, which would regulate enforcement of contact in a different manner than stated in the final judicial ruling, court settlement, or temporary decision. For example, a temporary decision may be issued for the purpose of prohibiting contact with the child because of the danger of infection or because the other parent unjustifiably prohibits contact due to the danger of infection. In the case of an application for interim measures, the court shall take into account all circumstances of the specific case and examine what is in the child's best interest.

In normal times it is difficult to manage a child's contact with parents due to the circumstances arising from conflicts and discord between the parents. However, the global pandemic is not a circumstance we were prepared for and not a one-off event because it is ongoing. Therefore, as we deal with this reality, we have to ask ourselves how we can arrange the time of the contact with the child while simultaneously not alienating the other parent or alienating ourselves from the child.

4. THE RIGHT OF THE CHILD TO MAINTAIN CONTACT IN THE UNITED KINGDOM DURING THE PANDEMIC

It is reported in the UK that strong relationships and contacts with the non-resident parent weathered the storm during the first months of the pandemic regardless of the lockdown. Some children even had more contact with their non-resident parents than before.

¹³Vsevečljudi v finančni, družinski in duševnistiski, May7, 2020, <https://www.rtvsl.si/klepet/novi-koronavirus/vse-vec-ljudi-v-financni-druzinski-in-dusevni-stiski/523055>.

¹⁴Kraljić, S., *ibid.*, p. 460.

¹⁵See C-335/17, *NeliValchevaprotiGeorgiosuBabanarakisu* from April 12, 2018.

¹⁶OfficialGazette of therepublic of Slovenia, No. 16/19.

However, it is concerning that relationships that were troubled before the pandemic became even worse, which is why it will be necessary to monitor whether any of the negative consequences of the pandemic are long-term. If that proves to be the case, fewer contacts and greater proximity with the non-resident parent mean that the pandemic can have a negative impact on the child's wellbeing and long-term development. The good news is that COVID-19 had no impact on the majority of child support arrangements. The conclusions drawn were based on the data of the study performed by Understanding Society COVID-19 financed by the Economic and Social Research Council and The Health Foundation. Understanding Society provides data regarding the experiences of separated families in the first months of the COVID-19 pandemic.¹⁷

5. THE RIGHT OF THE CHILD TO MAINTAIN CONTACT IN HUNGARY DURING THE PANDEMIC

It was detected in Hungary that, during the first wave of the pandemic, contacts with the non-resident parent were in many cases less frequent or interrupted. Therefore, it is necessary to investigate the participants' views regarding whether it would be possible to make up for the lost contact and, if this is the case, how the participants plan to do so. It was determined that the majority of parents have no intention to make up for the lost contact.

I found a study focused on personal contact between non-resident parents and their children in which contact under special circumstances was investigated: during the COVID-19 pandemic.¹⁸ A question was asked regarding how the pandemic can affect parental visits. The previous studies were expanded on in terms of different contact forms, such as telephone calls and video conferences.

Significant changes in patterns of personal visits have been determined. Six out of twenty-two participants reported changing their visit habits, whilst nine participants reported that they had no personal contact during the pandemic. Termination of contact was connected with the direct effect of the pandemic: when one of the parents assessed the situation to be too dangerous to maintain regular contact, the non-resident parents stopped visiting their children. Resident parents were cooperative during the period of no contact and helped the other parent maintain contact with children via modern electronic technology.

However, we must be aware that, in addition to personal contact, communication via electronic media only plays a complementary role and cannot replace personal contact and become a habit.

Further studies are being conducted in Hungary regarding how patterns of contact between non-resident parents and their children are changing after the pandemic ended and regarding whether the use of modern communication technology will remain an important way of communication between non-resident parents and their children in the longterm.¹⁹

6. THE RIGHT OF THE CHILD TO MAINTAIN CONTACT IN CROATIA DURING THE PANDEMIC

The international community expressed its opinion regarding the rights of children not able to live with both of their parents also by recognising the right of the child to contact with the non-resident parent in order to maintain their relationship,²⁰ whilst the Croatian legal framework is certainly in accordance with the opinion of the international community. The right to contact is important for both children and parents because cooperation between parents and their children represents the key element in the construction of a positive relationship between children and both of their parents. The state plays the role of the protector of the family and the child; however, in many cases, it is the state that is violating the rights of parents and children.²¹

During the pandemic, the performance of the state's protective role regarding the fulfilment of the right to contact between children and non-resident parents was significantly compromised. The Social Services in Croatia required reform even before the start of the pandemic, which only further exposed these deficiencies.²²

¹⁷University of Essex, Institute for Social and Economic Research. Understanding Society: COVID-19 Study, 2020. [data collection]. 3rd Edition. UK Data Service. SN: 8644, 10.5255/UKDA-SN-8644-3

¹⁸Ivett Szalma & Krisztina Rékai Personal and Online Contact during the COVID-19 Pandemic among Non-resident Parents and their Children in Hungary, *International Journal of Sociology*, 50:6, 2020, 495-503

¹⁹Ibid.

²⁰Jakovac-Lozić, D., *Susreti i druženja djeteta s odvojenim roditeljem u presudama Europskog suda za ljudska prava*, Zbornik Pravnog fakulteta u Zagrebu, vol. 55, No. 3-4, 2005, p. 870.

²¹Vučković Šahović, N.; Petrušić, N., *Prava djeteta*, Pravni fakultet Univerziteta u Nišu, Niš, 2016, p. 140

²²Council of Europe, *The COVID-19 pandemic and children: Challenges, responses and policy implications*, 2021, [<https://rm.coe.int/covid-19-factsheet-revised-eng/1680a188f2>], Accessed June 9, 2021, p. 3.

Examination of the relevant legal framework regarding the child's right to maintain regular contact with both parents not only revealed the rights of children and parents regarding the role of the state and the competent bodies but also to what extent these rights and obligations were violated. There are several legal tools in force intended for the protection and promotion of child's rights, but such tools were not used.

During the pandemic, the questions of contact were left to parents to resolve; however, many parents were unable to resolve these questions in a spirit of cooperation to put the child's best interest before theirs. It is in this regard that the pandemic revealed that it is necessary to further develop the counselling services for parents regarding the content and importance of their parental role and regarding the key impact of cooperation on their family relationships. Parents should be educated that the child's rights are not only words on paper archived somewhere far away in the UN or the Council of Europe. They should be entirely aware that these words are included in the national legislation and that nonfulfillment of rights in accordance with their parental responsibilities brings certain sanctions and especially damages the development of their children.²³

It would be good to keep the skills acquired in participation in educational and counselling activities during the pandemic in the family also when the pandemic ends so they would generally contribute to the reduction of the level of conflict and to the increase of the level of cooperation when resolving family conflicts, which would reduce the need to include the judicial or social system. The duty of the judiciary and social welfare agencies also includes raising parental awareness regarding the child's rights to maintain contact with both parents and alerts on legal consequences for the nonenforcement of contact.²⁴

7. CONCLUSION

We believe that, during the pandemic, children will not be left without any contact with the other parent with whom they otherwise would be in contact. Therefore, the duty of the parent with whom the child resides during the pandemic is to try to help the child maintain and develop an appropriate relationship also with the other parent. The only difference is that such a relationship can be maintained during the pandemic through electronic communication and not physical contact.

Alienation of the child from the other parent only gives the manipulative parent short-term satisfaction because the consequences of such manipulation and indoctrination are reflected in the child's low educational achievements and, even worse, in long-term problems in terms of the child's social development and various behavioural problems.²⁵

Alienation of the child from one of the parents can happen when the other parent psychologically manipulates the child in the sense of acting against the first parent. If children are sometimes exposed to family violence and severe conflicts between parents, they identify with one of the parents and often express unwillingness to spend time with the other parent. This can happen when a child's defensive mechanism is triggered in order to avoid further conflict in the family.

It is the duty of the parent with whom the child resides during the pandemic to make an effort for the child to maintain and develop the relationship with the parent with whom he does not reside. During the pandemic, contacts can also be maintained via modern communication means and not through direct contact. Therefore, the parents must act with even greater responsibility in accordance with the principle of the child's best interest and must not expose the child to dangerous circumstances, which are advised against and prohibited on the national level.

Responsible actions of parents are reflected in the fact that the non-resident parent, whose physical contact is prevented during the pandemic, must be patient and must not put undue pressure on the other parent, who has no control of the course of the pandemic and is obliged to respect all of the prescribed and recommended measures for the prevention of the spread of the virus. The parent with whom the child resides is obliged to make an effort to help the child maintain contact with the other parent at least remotely when direct contact is impossible.

²³Radina, A. The child's right to maintain contact with both parents in the age of pandemic. EU and Comparative Law Issues and Challenges Series (ECLIC), 5, 2021, p. 626.

²⁴Ibid, p. 626.

²⁵Stadler, A., Starič Žikič, N., Borucky, V., Križan Lipnik, A., Černetič, M., Perpar, I. in Valenčak, K.: *Otrok in ločitev staršev: da bi odrasli lažje razumeli otroke*. Ljubljana: Otroci, 2009, p. 39.

Alienation syndrome is recognised more than ever in cases including child disputes, whose number increased during the pandemic due to parents' personal distress.

8. SOURCES AND BIBLIOGRAPHY

- Constitution of the Republic of Slovenia(URS), Official Gazette of the Republic of Slovenia, No. 33/91-I et seq. Family Code (DZ), Official Gazette of the Republic of Slovenia, No. 15/17 et seq.
- European Convention on Human Rights(EKČP, Official Gazette of the Republic of Slovenia - MP, No. 7/94.Convention on the Rights of the Child (KOP), Official Gazette of the SFRY - MP, No. 15/90.
- Council of Europe, The COVID-19 pandemicandchildren: Challenges, responsesandpolicyimplications, 2021, [https://rm.coe.int/covid-19-factsheet-revised-eng/1680a188f2], AccessedJune 9, 2021, p. 3.
- Ivett Szalma & Krisztina Rékai Personal and Online Contact during the COVID-19 Pandemic among Non-resident Parents and their Children in Hungary, *International Journal of Sociology*, 50:6, 2020, 495-503.
- Jakovac-Lozić, D., Susretiidruženjadjeteta s odvojenimroditeljem u presudamaEuropskogsudazaljudskaprava, *ZbornikPravnogfakulteta u Zagrebu*, vol. 55, No. 3-4, 2005, p. 870.
- Kraljić, S.: *Družinski zakonik s komentarjem*. Poslovna založba MB., Maribor 2019, p. 299-300.
- Radina, A. Thechild's right to maintaincontactwithbothparents in the age of pandemic. *EU andComparativeLawIssuesandChallengesSeries (ECLIC)*, 5, 2021, p. 626.
- Stadler, A., Starič Žikič, N., Borucky, V., Križan Lipnik, A., Černetič, M., Perpar, I. in Valenčak, K.: *Otrok in ločitev staršev: da bi odrasli lažje razumeli otroke*. Ljubljana: Otroci, 2009, p. 39.
- University of Essex, Institute for Social andEconomicResearch.*UnderstandingSociety: COVID-19 Study*, 2020. [datacollection]. 3rd Edition.UK DataService. SN: 8644, 10.5255/UKDA- SN- 8644- 3.
- VučkovićŠahović, N.; Petrušić, N., *Pravadeteta*, *PravnifakultetUniverziteteta u Nišu, Niš*, 2016, p. 140.
- Izvajanje stikov med starši in otroki v času epidemije, April 6, 2020, <http://www.sodisce.si/vsrs/objave/2020040610490634/>.
- Vse več ljudi v finančni, družinski in duševni stiski, May 7, 2020, <https://www.rtv slo.si/klepet/novi-koronavirus/vse-vec-ljudi-v-financi-druzinski-in-dusevni-stiski/523055>.