

# THE MANAGEMENT AND DISPOSAL WITH CHILD'S PROPERTY – ESPECIALLY IN LIGHT OF KIDFLUENCERS

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## ABSTRACT

*A child's property refers to all the properties of the child, which may include money, movable property, and immovable property. Because the child is a minor and lacks business capacity, parents usually manage the child's property. However, when a child is placed under guardianship, the child's property is managed by a parent or a guardian, who has the right and obligation to manage their child's property in the child's best interests. At age 15, the child acquires certain autonomy under Slovenian law concerning the disposition of their property. However, certain limitations still exist, mainly for their own benefit. Indeed, a child's property can play an important role in planning the child's financial future, both in the short and long term, that is, after the age of the majority. The latter is particularly unsettled today, both in Slovenia and other countries, regarding the so-called kidfluencers and the property they generate. The lack of proper regulations can expose kidfluencers to violations of their rights.*

## KEYWORDS

property  
legal standard  
best interest  
salary  
kidfluencers

## 1. Introduction

The Constitution of the Republic of Slovenia<sup>2</sup> (CRS) guarantees the right to private property and inheritance in Article 33 and further provides in Article 67 that the law shall

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2 | Constitution of the Republic of Slovenia (Slovene Ustava Republike Slovenije) (CRS): Uradni list RS, not. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a.



determine how property may be acquired and enjoyed in such a way as to ensure its economic, social, and ecological functions. This law determines the method and conditions of inheritance. Article 33 of the CRS aims to secure the holder of fundamental rights and the freedom to act in the sphere of property, thus enabling him to shape his life responsibly.<sup>3</sup> Article 37(1) of the Law of Property Code<sup>4</sup> (hereafter LPC) defines the right to property as the right to possess, use, enjoy, and dispose of an object in the most extensive manner.<sup>5</sup> However, only the law can impose restrictions on the use, enjoyment, and disposal<sup>6</sup>.

Based on the above-mentioned constitutional and statutory provisions, the question immediately arises as to what happens to the freedom to act in the area of property if the child is the owner of the property. As a rule, at the age of 18, a child acquires full business capacity, defined as the capacity of a natural person to enter into legal transactions independently and, hence, the capacity to acquire rights and bind themselves. Since a child acquires business capacity only at 18 but can acquire property even earlier, this raises many questions about the management and disposal of the child's property. The latter is particularly interesting from the perspective of the children of influencers (kidfluencers) and the wealth they create in the process.

## 2. Child's property

A child acquires legal capacity at birth and thus becomes a holder of rights and obligations. This means that although the child lacks business capacity, they can also have a right to property and, thus, to own property. According to Article 39 of the LPC, the right to property may be acquired by legal transactions (e.g. gift agreement, contract of sale), succession (e.g. intestate and testate inheritance), law (e.g. possession), or a decision of a public authority (e.g. denationalisation). A child may also acquire the following property constituting their estate in any of the aforementioned ways:

- a) real estate (e.g. house, dwelling);
- b) movable property (e.g. toys, phones, pets, bicycles, jewellery, cars)
- c) money (e.g. cash or in a bank account);
- d) securities (e.g. shares, bonds);
- e) property rights (e.g. material copyright);
- f) investments (e.g. investments in various financial instruments and mutual funds);
- i) intellectual property rights (e.g. copyright, patents, trademarks);

3 | Virant and Šturm, 2002.

4 | Law of Property Code (Slovene Stvarnopravni zakonik) (LPC): Uradni list RS, no. 87/02, 91/13, 23/20.

5 | Comp. also Article 17 of the EU Charter of Fundamental Rights (Official Journal of the European Union C 303/17, 14 December 2007):

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

6 | Article 37(1) of the LPC.

- j) business property (e.g. share or ownership in a business);
- k) other financial investments (e.g. cryptocurrencies, raw materials, works of art).<sup>7</sup>

Therefore, a child may own property despite being a minor, although parents manage the property under parental responsibility.

## 2.1. *Managing the child's property*

Article 136(1) of the Family Code<sup>8</sup> (FC) explicitly mentions the right and obligation of parents to manage their children's property, falling within the scope of parental responsibility. Additionally, Article 147 of the FC states that a child's property should be managed by the child's parents for the child's benefit.

The scope of this paper pertains to children under 15 years of age or those with no capacity to conduct a business. This paper does not address children with some capacity to enter legal transactions, including managing their own property, provided that the legal transactions do not significantly affect their lives.<sup>9</sup>

Parents are free to manage their children's property but must comply with the fundamental principles of obligation. Their management must respect the principles of good faith and fair dealing.<sup>10</sup> They must also act as stewards. According to Article 6(1) of the OC, parties to a contractual relationship must, in performing their obligations, act with the care required by the law for the relevant type of contractual relationship (the duty of a good steward). This is the legal standard applicable to parties in a contractual relationship that have the status of a layman. Good stewardship standards compare a layperson's conduct with that of another person with the same characteristics and acting in the same circumstances.<sup>11</sup> Good stewardship is a legal standard that the court must fulfil substantively. In this case, the criterion is of an objective nature.<sup>12</sup>

To assess whether a parent's behaviour qualifies as good stewardship, their education, skill, ability, responsiveness, age, and other qualities are considered.<sup>13</sup> The environment in which the parents lived is also considered. An objective criterion is established for any person with the same characteristics as the parent who is judged as to whether they have acted as a good steward in the management of the child's property. Parents may also be liable for damages caused to a child by inadequate conduct in managing the child's property, and children are entitled to compensation.<sup>14</sup> To ensure the protection of children and their rights, limitation periods do not run as long as parental responsibility lasts.<sup>15</sup> The general limitation period of five years for the establishment of liability for

7 | Vagner-Ličenoski, 2006, p. 14.

8 | Family Code (Slovene Družinski zakonik) (FC): Uradni list RS, no. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odločba US, 94/22 – odločba US, 5/23.

9 | Article 146 of the FC.

10 | Article 5(1) of the Obligation Code, hereafter referred to as OC. Obligations Code (Slovene Obligacijski zakonik) (OC): Uradni list RS, no. 97/07 – official consolidated text, 64/16 – odl. US, 20/18 – OROZ631.

11 | Plavšak, Juhart and Vrenčur, 2009, p. 141.

12 | VSK sodba Cp 402/2008, 18 June 2008.

13 | Cigoj, 1989, p. 185.

14 | Matefi, 2016, p. 188; Draškić, 2016, p. 322.

15 | Article 358(2) of the OC.

damages of a parent who, by improper conduct in the management of the child's property, has caused damage to the child, will generally start to run when the child reaches the age of the majority. That is, the child reaches the age of 18.<sup>16</sup>

For example, many children have savings accounts into which their parents or other relatives (e.g. grandparents, godparents) transfer money on various occasions (e.g. birthdays, christenings, Christmas). Additionally, children have property that they have inherited (e.g., dwellings, bonds) and toys, clothes, bicycles, and pets given to them as gifts. Parents manage these assets for their children. As a starting point and rule, parents have a duty of care as good stewards of their children's property. If possible, they should also seek to increase it (e.g. by claiming damages, selling fruits, or renting out the dwelling). The rent fee, interest, dividends, and money received from the sale of fruits can be then used to increase children's assets.<sup>17</sup>

Since responsibility belongs to both parents,<sup>18</sup> the management of the child's property is also carried out by both parents by mutual agreement and in the child's best interests.<sup>19</sup> However, when parents cannot agree with the management or are of opposing views, the social work centre may assist them or, if they wish, by a mediator.<sup>20</sup> However, if the parents still cannot reach an agreement, the Court decides in proceedings concerning the dispute over the exercise of parental responsibility.<sup>21</sup>

When managing a child's property, parents must also consider the child's wishes, provided that the child can express them and understand the meaning of their expressed wishes and the consequences that may arise from them. However, while the child's wishes should help parents make the right decisions in managing the child's property, the child's best interests must remain the guiding principle.<sup>22</sup>

## 2.2. Revenue from the child's property

Revenue can be both natural and civil. The LPC provides that fruits are the direct product of things that, until separation, are constituent parts of the thing, but which, upon separation, become independent things.<sup>23</sup> Natural fruits (e.g. products of the earth or animals) are thus the direct and natural (biological or physical) products of the parent thing, which are produced periodically without impairing the substance of the parent thing.<sup>24</sup> A civil fruit (e.g. interest, dividends, rents, lease payments<sup>25</sup>, on the other hand, is a property return in which a legal relationship replaces the natural (biological or physical) yield of the object, the thing of which is a fruit-bearing entity (real, such as movable or immovable property, or ideal, such as a right), and the direct legal consequence of which is the periodic and pre-determined giving of a property benefit, a generic return, usually money.<sup>26</sup>

16 | *VSK sklep I Ip 9/2014*, 21 January 2014; *VSL sklep II Ip 307/2017*, 25 April 2017.

17 | Novak, 2019, p. 459.

18 | Article 6(1) of the FC.

19 | Article 147 of the FC.

20 | Article 151(1) of the FC.

21 | Article 151(4) of the FC.

22 | *VSL sklep IV Cp 1871/2021*, 22 December 2021.

23 | Article 20(1) of the LPC.

24 | *VSRs sodba in sklep II Ips 291/2008*, 14 October 2009.

25 | Novak, 2019, p. 463.

26 | *VSRs sklep II Ips 15/2022*, 30 June 2022.

Parents may use the revenue from their children's property primarily for the child's maintenance, upbringing, and education, and, if they do not have sufficient resources themselves, for the urgent needs of the family community.<sup>27</sup> Thus, parents may use revenue from their children's property in justified cases.

A distinction must be made between two circumstances:

- a) In the first case, parents can use the revenue from their child's property primarily for the child's maintenance,<sup>28</sup> upbringing, and education. It is also possible to cover other (non-urgent) needs that are necessary to ensure the child's development.<sup>29</sup> Parents may, therefore, use revenue from the child's property to provide all that the child needs for harmonious physical and mental development, which the parents would otherwise be unable to provide or at least would be unable to provide to a satisfactory level.<sup>30</sup> Similarly, the use of the word 'primarily' shows the additional breadth of this provision. Since the primarity for the child's needs in the context of maintenance, education, and upbringing is given, it is still possible to use the revenues from the child's property for other needs if the circumstances so impose (e.g. to provide for the child's health), even for the provision of an above-standard standard of living.<sup>31</sup>
- b) In the second case, parents may also use the revenue from the child's property for the family's immediate (urgent) needs. Following the principle of family solidarity, which obliges family members to help each other (financially) before applying for social assistance from the state, revenue from the child's property may also be used in exceptional cases for the medical treatment of the child's parents or siblings but only if it is not used for the maintenance, upbringing, or education of the child owing the property.<sup>32</sup> The use of revenue from the child's property for the family's needs will therefore only be possible if two conditions are cumulatively fulfilled, namely, that the parents themselves do not have sufficient resources and that it is to cover the immediate (urgent) needs of the family community.<sup>33</sup>

However, parents cannot represent both themselves and their children in a legal transaction. In such a case, the child must be represented by the other parent or a conflict guardian must be appointed, who needs the authorisation of the social work centre to

27 | Article 148 of the FC.

28 | *VSM sklep III Cp 365/2018*, 10 May 2018:

...the Court of First Instance, starting from the judgment awarding custody of the child to the grandparents and ordering the father to pay maintenance for his daughter, correctly found that the child's needs amounted to at least EUR 374,00 per month. Since the father is obliged to pay maintenance for the child in the amount of EUR 200,00 per month, it is necessary to provide for the child's maintenance for at least EUR 174,00 from the child's own resources (pension). Having made such a finding, the Court of First Instance was correct in deciding that EUR 174,00 per month should be transferred from the child's care account to the TRR of the child's grandmother, with whom the child lives, for the maintenance of the child.

29 | Cf. Article 149(1) of the FC.

30 | *VSL sklep III Cp 2855/2010*, 6 October 2010.

31 | Novak, 2019, p. 464.

32 | Alinčić et al., 2007, pp. 439 and 443.

33 | Kraljić, 2019, pp. 505–506.

dispose of the child's immovable or movable property of a higher value, or to dispose of property rights of a higher value.<sup>34</sup>

Considering all the above, we can summarize:

- a) As part of their parental responsibility, parents are obliged to bear the primary costs of their children's needs. This follows from their obligation to maintain their children.<sup>35</sup>
- b) If parents cannot meet the costs related to the child's needs, they can rely on the child's revenue, that is, civil and natural fruit. They may also have recourse to these in case of immediate (urgent) needs of the family community.
- c) Only if the parents' resources are insufficient to cover the child's needs within their means and not the revenues from the child's property, will the parents be able to interfere with the substance of the child's property.<sup>36</sup>

### | 2.3. Disposals and encumbrances of things from child's property

Innovations were introduced in the FC regarding the disposal of children's property. Since April 2019, parents no longer need the consent of the social work centre if they want to sell their child's property and use the funds for their child's life or education. Parents exercise parental responsibility jointly, through mutual agreement, and in the child's best interests. However, when legal transactions are concluded (especially when it is necessary to act quickly, e.g. due to a fall in the value of shares), the child must be represented by only one of their parents.

As parental responsibility belongs to both parents jointly, they are consequently responsible for providing for the child's maintenance, upbringing, and education. Parents are primarily expected to provide their own resources to cover their child's needs; however, they are also allowed to use the child's property to meet the child's needs. Parents may dispose or encumber things on their child's property only for the child's maintenance, upbringing, and education, or if their child's best interests require it.<sup>37</sup> However, suppose there is a risk that parents will jeopardise their child's best interests by disposing of or encumbering their child's property. In this case, the court must impose the measures provided in the FC to protect the best interests of the child.<sup>38</sup> To protect the child's best interests, the Court may, *inter alia*, decide to prohibit parents from disposing of or encumbering the child's property.<sup>39</sup>

On the one hand, parents' resources will not be sufficient to cover the child's maintenance or educational needs and other benefits, and on the other hand, if the child has their own property, the parents may dispose of or encumber the child's property. This need does not merely meet the child's minimum or essential needs. Nevertheless, parents may use the child's property to provide all that the child needs for harmonious physical and mental development, which the parents would otherwise be unable to provide or at least would be unable to provide satisfactorily. When assessing which needs are in the child's best interests, the court must consider all relevant circumstances. In doing so, it

34 | Article 248(1) of the FC. Kraljić and Križnik, 2021, pp. 289–390.

35 | Cf. Article 140 of the FC.

36 | Novak, 2019, p. 465.

37 | Article 149(1) of the FC.

38 | Article 146(2) of the FC.

39 | Article 171(2) of the FC. VSL sklep IV Cp 113/2021, 17 February 2021.

will have to consider the child's personality, circumstances and conditions in which they live, and the fact that the child's best interests are of primary importance to their parents' interests. The needs and interests of the child will not be evaluated in subjective terms, that is, as a projection of their subjective aspirations. However, they must be considered as objectively recognised values in the case of concrete circumstances.<sup>40</sup>

Although parents may dispose of or encumber things from the child's property to provide for non-urgent needs, they must exercise due care and diligence (the good stewardship standard) and their actions must not cause harm to the child.

The question is whether parents can dispose or encumber things from their children's property, including the purposes of the family community. A comparison of Articles 148 and 149 of the FC, which relate to the child's property, reveals fundamental differences. Parents may also use revenue from the child's property to meet the needs of the family community in the event of a lack of their own resources or assets. The revenues from the child's property may 'only be used for the family community's immediate (urgent) needs'<sup>41</sup>. However, the disposal or encumbrance of the child's property is only permitted for the child's maintenance, upbringing, education, or other interests.<sup>42</sup> This implies that only the use of revenue from the child's property is for the immediate (urgent) needs of the family community, as provided for in Article 148 of the FC.

On the other hand, the content of Article 149(1) of the FC indicates the impossibility of disposing or encumbering a child's property for the needs of the family community. Namely, it allows for encumbering or disposing of only the child's maintenance, upbringing, and education, or if other best interests require it. However, the wording of the article 'or if their other interests so require' indicates that the child's property may also be encumbered or disposed of for the urgent needs of the family community. Indeed, the satisfaction of the family's immediate needs may also be reflected in the satisfaction of the child's needs (e.g. the payment of overheads) and, thus, in the child's best interests.

#### **| 2.4. Disposition with salary**

Under Slovenian law, children acquire partial business capacity when they reach the age of 15. Before the age of 15 years, they are entirely business-incapable, making the contract they would have entered absolutely invalid, that is, null and void. The child's upbringing should also include preparing the child to handle money independently and responsibly.<sup>43</sup> The 'financial upbringing' may start at a very early age by involving the child in different financial situations in which they learn to handle money (e.g. pocket money or money received for a birthday). Children need to learn social rules regarding the private ownership of money to be able to integrate into the society of their peers and the wider society.<sup>44</sup>

Determining an employment contract on your own is undoubtedly a big step towards a child's independence before the age of the majority. The provision of Article 150 of the

40 | *VSL sklep III Cp 2855/2010*, 6 October 2010.

41 | Article 148 of the FC.

42 | Article 149(1) of the FC.

43 | Dethloff, 2015, p. 413.

44 | Blake and Harris, 2009, p. 133.

FC is thus also in line with Article 21 of the Employment Relationship Act<sup>45</sup> (ERA-1), which provides that a person who has reached age 15 may conclude an employment contract. However, if an employment contract is concluded by a child under the age of 15, it is null and void.<sup>46</sup>

A child who reaches the age of 15 and is employed can dispose of their salary. To raise the child and thus prepare them for independence after the age of 18, the child must contribute to their maintenance and education. However, parents are obliged to maintain and provide education until the age of 18 or 26. This legal norm is essential for minors, as it has an educational and social character. The aim is to encourage minors to acquire their own resources and work and take responsibility for their own actions and existence, especially once they have reached the age of majority, become fully capable of working, and have reached the age of legal emancipation.<sup>47</sup> Should a conflict of interest arise between the parents, as the child's legal representatives, and the child in the aforementioned relationship, the appointment of a conflicting guardian may be required.<sup>48</sup>

### | 2.5. *The specifics of child's property care when the child is placed under guardianship*

The guardian is the legal representative of the minor. Whether a natural or legal person has been appointed as guardian is irrelevant. The guardian's obligation of representation is subsidiary in nature since the child's primary legal representatives are the parents, which is particularly relevant when the parents are subject to a measure that limits parental responsibility under Article 171 of the FC. Only if a child has no parents or is not cared for by their parents will the court place the child under guardianship for children and appoint a guardian who becomes the child's full legal representative.

One of the most important obligations of a guardian is to look after the ward's property. When a child is placed under guardianship and if the minor ward has property, the court or the social work centre shall immediately order that it be inventoried, valued, and handed over to the guardian for management.<sup>49</sup> The fundamental purpose of the inventory was to ensure protection of the ward's property rights. The property inventory is governed by the 'Rules on the inventory and assessment of the property of persons under guardianship and on the drawing-up and content of the guardian's reports'.<sup>50</sup> The property inventory implements the principle of separation of property, as it is the only way to ensure the delimitation of guardians' and wards' assets. The separation of property is also provided for parents and children, but there is no need for inventory or valuation of property. However, an exception is made where a court prohibits one or both parents from exercising the individual rights of parental responsibility. This will be given if the

45 | Employment Relationship Act (Slovene Zakon o delovnih razmerjih) (ERA-1): Uradni list RS, no. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – odl. US, 22/19 – ZPosS, 81/19, 203/20 – ZIUPOPDVE, 119/21 – ZČmIS-A, 202/21 – odl. US, 15/22, 54/22 – ZUPŠ-1.

46 | Kraljić and Križnik, 2021, p. 271.

47 | Draškić, 2005, p. 417.

48 | Article 269(1) of the FC.

49 | Article 246(1) of the FC.

50 | Rules on the inventory and assessment of the property of persons under guardianship and on the drawing-up and content of the guardian's reports (Slovene Pravilnik o popisu in ocenitvi premoženja oseb pod skrbništvom in o sestavi in vsebini skrbniškega poročila): Uradni list RS, no. 22/19.



child is found to be at risk but the best interests of the child could have been sufficiently protected by a measure limiting parental responsibility, considering the circumstances of the case.<sup>51</sup> Following Article 157(2), a child is at risk if they have suffered or are likely to suffer harm, and that harm, or the likelihood of harm, is the result of an act or omission of a parent or psychosocial problems manifested by behavioural, emotional, learning, or other difficulties in the child's upbringing. Damage includes damage to the child's physical or mental health and development, or the child's property.<sup>52</sup>

To protect the child's best interests, the court may decide that the parents have the status of guardians concerning the management of the child's property. The court may prohibit parents from managing the child's maintenance and other property, or only from disposing of or encumbering the child's property. Depending on the circumstances of the case, the court may decide that the social work centre supervises the exercise of parental responsibility and determines the manner of such supervision. When imposing this measure, the court shall place the child under guardianship for representation to the extent that it limits parents' rights under parental responsibility and shall appoint a guardian. The measure of the restriction of parental responsibility is of limited duration, as it may last for a maximum of one year. However, if the court has decided on the measure of restriction of parental responsibility together with the measure of removal of the child from the parents or the measure of placement of the child in an institution, the measure of restriction of parental responsibility may last for a maximum of three years.<sup>53</sup>

The guardian carries out the regular business and management of the ward's property independently, in its name, and on behalf of the ward. In doing so, the best interests of minor wards must be the primary consideration. The guardian must also consult the minority ward and consider their opinion if the minority ward has expressed it and is capable of understanding its meaning and consequences.<sup>54</sup>

The guardian may not do anything that goes beyond the ordinary course of business (e.g. taking out ordinary property insurance constitutes ordinary business, but taking out extra-standard property insurance goes beyond the ordinary course) or the management of the ward's property (e.g. the sale of perishable fruit constitutes the regular framework, but the sale of all 100 heads of small livestock exceeds the regular framework).<sup>55</sup> The purpose of such an arrangement is to provide an additional safeguard for the work of the guardian, the aim of which is (in this case) to protect minor wards and their property.<sup>56</sup>

The guardian may only act with respect to the ward's property with the authorisation of the social work centre:

- a) Disposal (e.g. gift) or encumbrance (e.g. mortgage, easement) of the ward's immovable property;
- b) Disposal (e.g. gift, sale) from the ward's movable property of greater value or disposal of property rights of greater value;

51 | Article 171(1) of the FC. Kraljić, 2019, p. 565.

52 | Article 157(3) of the FC. Kraljić, 2019, p. 534; Novak, 2019, p. 486.

53 | Kraljić and Križnik, 2021, p. 248.

54 | Article 247(1–2) of the FC.

55 | Article 247(3) of the FC.

56 | Kraljić, 2019, p. 1030.

- c) Renouncing the inheritance, legacy, or refusing a gift.<sup>57</sup> The renunciations of succession apply not only to an inheritance that the heir acquires *ipso jure*, without a specific request, at the moment of the deceased's death. It also covers the waiver of exercising the ward's right to a forced share.<sup>58</sup>

To manage and dispose of a minor ward's property, a guardian must act with the care of a good steward. If the social work centre itself is appointed as a guardian and the representation is carried out under the authority of a professional employee of the social work centre, the standard of care of a good professional applies. The guardian shall ensure that the ward's property is preserved and if possible, increased. Managing and disposing of the ward's property includes collecting fruits, safeguarding the property, paying obligations (e.g. taxes, house bills), taking care of debts (e.g. paying rent, collecting unpaid maintenance), and bringing court actions for damages.<sup>59</sup> The exercise of guardianship of children also entails certain costs. The costs may also be covered in the following order: I) the ward's revenues, II) funds obtained from parents who are obliged to maintain the child, III) the ward's property, and IV) the budget of the Republic of Slovenia.<sup>60</sup>

Article 259 of the FC further stipulates that the guardian's authorisation is required for the conclusion of legal transactions of such importance as having a significant impact on the child's life before or after the age of the majority. The validity of a legal transaction entered into by a child without the guardian's authorisation is judged according to the rules of the law of obligations. The problem is statutory wording: 'legal transactions which have a significant impact on the child's life before or after the age of majority'. This is the legal standard that the court must fulfil on a case-by-case basis. The starting point may be the obligations incurred by the minor ward as a result of the transaction, their general financial situation, whether the acquisition (e.g. of a motorbike) can be expected to result in additional costs immediately or in the future (e.g. insurance, repairs, registration), or whether the acquired object entails a risk for the minor ward (e.g. riding a motorbike).<sup>61</sup>

### 3. Outstanding selected property issues related to kidfluencers

#### | 3.1. General

Today, the disposition of property acquired by children through work raises many questions, including about the security of children and their assets. In particular, if we consider the fact that we have a child under the age of 15 who cannot independently and legally dispose of their property under Slovenian law, but who, on the other hand, has the

57 | Article 248(1) of the FC.

58 | *VSRŠ sklep II Ips 32/2020*, 28 August 2020.

59 | Mitić, 1980, pp. 485–486.

60 | Article 279(1) of the FC.

61 | Brus, 2011, p. 176.

capacity and maturity to acquire it.<sup>62</sup> Examples of such include child film actors, singers, and models.

Today, many aspects of our lives occur in a digital environment. The digital environment has had an impact on our everyday personal and professional lives, and it has had a particular impact on the lives of children. It is therefore not surprising that some parents have recognised and quickly moved 'children and their lives' into the digital environment.<sup>63</sup> The so-called 'Kid Influencers', or kidfluencers, represent a new digital phenomenon. Kidfluencers are children whose posts are viewed on various social media platforms. They have numerous viewers and followers and often earn money for sponsored content.<sup>64</sup> Today, these children make a sizeable fortune by appearing in videos posted by their parents on platforms such as YouTube or TikTok. Since children are usually still very young, some of them even infants, they are left to their parents to post discoveries and to manage and dispose of these assets.

Problems already arise when signing up to social media platforms. Some platforms (e.g. Instagram and YouTube) require users to be 13 years or older to create accounts on their websites. However, there are no guidelines preventing parents from posting videos featuring their children. Therefore, it is not surprising that account holders on social media platforms are mostly the parents of kidfluencers. Parents also manage these accounts to maintain their online presence.<sup>65</sup>

Problems are evident in inadequate legislation for protecting children, their property, and other rights. This is because children's activities are not considered 'work' since they do not establish an employer-employee relationship. Advocates (mainly parents) see these activities as children doing everyday activities (e.g., playing, opening boxes or gifts, eating (so-called unboxing videos), dressing) in front of a camera, and children are not playing a show.<sup>66</sup> However, parents deliberately publish videos of their children. It is often not spontaneous reactions or free play of children but carefully planned and organised activities and encouragement from parents. Parents choose the setting and the children's clothes, write the script, and, in the end, produce, professionally edit, and 'embellish' videos. What appears to be a few minutes of footage can result from days of work. In this way, children's interests and rights are forgotten. Because such video posts can bring a lot of money to the child and, thus, to the entire family, children can also be victims of financial abuse by their parents.<sup>67</sup>

We have already mentioned that Article 147 of the Slovene FC provides that the child's property shall be administered by their parents for their benefit. Parents are expected to manage their child's property conscientiously until the child reaches the majority age. At this point, they are able to manage them independently. Kidsfluencers gain considerable properties from their work.

The children earn money from companies that pay them to advertise their products. Social media platforms also sell advertisement spaces on the kidfluencer channels.<sup>68</sup>

62 | Hranjec, 2022.

63 | Van der Hof et al., 2020, p. 846.

64 | Masterson, 2020, p. 579.

65 | Cordeiro, 2021.

66 | Wong, 2019.

67 | Van der Hof et al., 2020, p. 846.

68 | Masterson, 2020, p. 579.

Children's property is often negligently managed by their parents; parents squander their children's property, which may result in the children having little to nothing when they reach adulthood. As a result, many legal questions have arisen, which select countries are already seriously and actively addressing.

### | 3.2. *The US has taken significant steps*

In the USA, the first case of negligent management of a child's assets was linked to child actor Jackie Coogan, who starred in various Charlie Chaplin films (e.g. 'The Kid'). Jackie Coogan's 20-year film career gave him immense wealth. However, when Jackie Coogan turned 21, he realised that his parents had spent most of the money he had earned from his film career. Under Californian law at the time, all property acquired by a child before the age of the majority became his parents' property. Jackie Coogan could not accept that his assets were being squandered. He took action against his mother and the head of the company. This court case led in 1939 to the adoption of the so-called 'California Child Actor's Bill' (also known as 'Coogan's Law'), which sought to protect the income of child entertainers who had made high incomes during their careers but who were left to the film industry on the one hand and their parents on the other.<sup>69</sup>

Coogan's Law underwent several amendments. In 2003, it was stipulated that parents must set up a trust in the State of California and notify their employer within ten days of signing the employment contract, who must then make payments to the trust. If parents fail to do so, 15 percent of the child's income must be paid to the Actor's Fund of America's (AFA) account, which acts as a trust. The child then receives the money when they reach the age of 18 or become legally independent from their parents. The arrangement cannot be seen as positive in any way, since 85 percent of the child's earned money is still unsecured and left to the parents' discretion and free spending, over which the child has no influence.<sup>70</sup> Indeed, the parents can use the remaining 85 percent of the money that is their child's property to raise and care for the child, whether to buy a house, cover the child's expenses, or even pay their own salary to manage the child's career.<sup>71</sup>

### | 3.3. *France as an example of good practice in the EU*

France has also recognised the problem of kidney influencers. France, therefore, adopted a new law in 2020 to strengthen protection further in general, and in particular with regard to kidfluencers.<sup>72</sup> This phenomenon often has significant economic and financial consequences, either for children's families, who usually generate significant income from it or for brands that use these videos as a new form of advertising. However, most consequences are observed in under-aged children. The activity of kidfluencers was thus not covered by French labour law, since the money earned by children could not be deposited in the 'Caisse des dépôts et consignations' until they reached the age of majority. Thus, money is paid directly to the owners of the channel, who are usually their parents.<sup>73</sup>

69 | Reardon, 2022, p. 171; Masterson, 2020, p. 579; Cordeiro, 2021; Walker, 2022.

70 | Hranjec, 2022.

71 | Wong, 2019.

72 | Blocman, 2020.

73 | Blocman, 2020.

The change in labour law has had the effect that kidfluencers, whose activities do not constitute an employment relationship and, therefore, do not benefit from the protection of Article 7124-1 of the French Labour Code,<sup>74</sup> are now also protected. The new regulation,<sup>75</sup> which came into force in 2021, placed kidfluencers on an equal stage with child models, children working in the entertainment industry, and child advertising models in terms of legal protection, thus contributing to equal protection under the French Labour Code. Before filming their children or distributing their videos, parents must apply if they exceed certain thresholds in terms of the length and number of videos produced or the income generated and apply to the authorities for a specific licence or authorisation for the income generated by their distribution. Their children's rights and the consequences of publishing their images online are explained to them. Parents also have a new financial obligation and must deposit part of the income earned by their child with the 'Caisse des dépôts et consignations' (the so-called child's nest egg account) until the child reaches the age of sixteen or is emancipated, as is already the case for children in the entertainment industry. This prevents the entire family from relying solely on the child's income from social networks. Parents are sanctioned to keep money for their own use. If parents have not obtained permission or authorisation, the authorities may take the matter to court (Article 6-2 of the Law on Confidence in the Digital Economy<sup>76</sup>).<sup>77</sup> The new law also introduced the right to erase or be forgotten, allowing children to remove content from social media platforms at their direct request. However, parental consent is not required.<sup>78</sup>

### 3.4. *Quo vadis Slovenia?*

#### 3.4.1. *Legislative framework*

The Slovenian ERA-1 stipulates that the work of children under the age of 15 years is prohibited.<sup>79</sup> However, a child under the age of 15 may, exceptionally, participate in remuneration in the making of films, the preparation and performance of artistic, scenic, and other works in the field of cultural, artistic, sporting, and advertising activities.<sup>80</sup> A child who has reached the age of 13 may also perform light work for a maximum of 30 days in any calendar year during school holidays in other activities, in the manner to the extent and provided that the work to be performed does not endanger their safety, health, morals, education, and development.<sup>81</sup>

74 | Labour Code (French Code du Travail) [Online]. Available at: [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006072050/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/) (Accessed: 23 October 2023).

75 | Law regulating the commercial exploitation of the image of children under the age of sixteen on online platforms (French LOI n° 2020-1266 du 19 Octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne) [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054> (Accessed: 23 October 2023).

76 | Law on Confidence in the Digital Economy (French Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique [Online]. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT00000801164> (Available: 23 October 2023).

77 | Blocman, 2020.

78 | Weiss, 2021; Blocman, 2020; Krischick and Müller-Röme, 2021.

79 | Article 211(1) of the ERA-1.

80 | Article 211(2) of the ERA-1.

81 | Article 211(3) of the ERA-1.

Work under Article 211(2-33) of the ERA-1 may only be carried out by a child if a prior permit has been obtained from the Labour Inspector. The prior permit is granted based on an application by the legal representative, that is, the parent or guardian.<sup>82</sup> The procedure and conditions for granting a permit by the Labour Inspector are set out in more detail in the 'Rules on issuing work permits for children under 15 years of age'<sup>83</sup> (hereafter: Rules 2018).

The working hours of children under 15 years of age performing light work during school holidays may not exceed seven hours per day and 35 hours per week. However, work performed by a child outside school hours during the school year may not exceed two hours per day or twelve hours per week.<sup>84</sup> In any event, children are prohibited from night work between 8 p.m. and 6 a.m. They must also be guaranteed a daily rest period of at least 14 consecutive hours in each 24-hour period.<sup>85</sup> It should be noted that the Slovenian ERA-1 does not directly address child labour by kidfluencers, but it can be indirectly linked to the parts mentioned in Article 211(2) of the ERA.

#### 3.4.2. *Work Permits for Children*

A work permit for a child under fifteen years of age is granted: I) for participation in the making of films, the preparation and performance of artistic, scenic and other works in the field of cultural, artistic, sporting, and advertising activities; and II) if the child has attained the age of thirteen years, for the performance of light work as defined in the 'Rules on protection of health at work of children, adolescents and young persons'<sup>86</sup> (hereafter: Rules 2015).<sup>87</sup>

Article 3 of the Rules 2015 sets out what constitutes light work that can be carried out under certain conditions by a child who has reached the age of 13 years. Light work is work which, by its nature and with regard to the working conditions in which it is carried out: I) is not detrimental to the safety, health, and development of the child; and II) does not adversely affect the child's attendance at school, their enrolment in vocational guidance or training programs approved by the competent authority, or their ability to make positive use of the education received. Examples of light work considered in the guidelines for the approval of work for a child who has reached the age of 13 years do not include the recording of videos that parents would then post online.

82 | Article 211(4) of the ERA-1.

83 | Rules on issuing work permits for children under 15 years of age (Slovene Pravilnik o izdaji dovoljenj za delo otrok, mlajših od 15 let) (Rules 2018): Uradni list RS, no. 24/18.

84 | Article 212(1) of the ERA-1.

85 | Article 212(2-3) of the ERA-1.

86 | Rules on protection of health at work of children, adolescents and young persons (Slovene Pravilnik o varovanju zdravja pri delu otrok, mladostnikov in mladih oseb) (Rules 2015): Uradni list RS, no. 62/15.

87 | Article 2(2) of the Rules 2018.

The Labour Inspector issues a work permit<sup>88</sup> for a child based on an application from the legal representative, that is, the parent or guardian.<sup>89</sup> In the application for a child work permit, the applicant must provide all prescribed and required information relating to the child's work: I) information on the applicant, II) information on the child, III) information on the employer, iv) information on the person who will be responsible for the child during working hours with the employer, V) information on the type of work the child will perform, VI) a detailed description of the work the child will perform, and VII) information on the time and place where the work will be performed. The application for a child work permit must be accompanied by a signed copy of the contract under which the child will work.<sup>90</sup>

Before authorising a child to work, the Labour Inspector assesses whether the work to be carried out by the child is likely to endanger the child's safety, health, morals, education, and development. Before issuing a child work permit, the Labour Inspector may, at their discretion, visit the employer where the child will be working under the child work permit, depending on the work circumstances.<sup>91</sup> Where the Labour Inspector cannot visit the employer, they shall request an opinion from the competent social work centre, the school advisory service, or other competent organisations before authorising the child to work.<sup>92</sup>

A child work permit is issued for the child to work for the employer for whom the work will be carried out. The Labour Inspector shall also send the decision issued in the child work permit procedure to the employer.<sup>93</sup> The employer must notify the Labour Inspectorate of the exact start of the work (date, time) at least 24 hours before the event or on the last working day before the event.<sup>94</sup> The employer must keep a daily record of the child's arrival and departure for work or the time of attendance during the recording.<sup>95</sup> A child work permit under the Rules 2018 is issued for no more than one year. A child work permit shall be valid as long as the conditions based on which it was issued continue to exist. The conditions based on which the child work permit was issued are verified by the Labour Inspector.<sup>96</sup>

In November 2022, the Slovenian Labour Inspectorate imposed a fine of 1,500 EUR on two Slovenian influencers who 'used' their children in their videos. The Labor Inspectorate considered the videos to be illegal child labour and issued a misdemeanour decision imposing a fine of 1,500 EUR. The parents of the kidfluencers had not previously filled out an application for a work permit for a child under 15 years of age. Consequently, they also had not obtained a work permit for a person under the age of 15 years.<sup>97</sup>

88 | Slovene Labour Inspectorate issued in the year 2021 505 permits for child work (in year 2019 – 649 and in 2018 – 530 permits). Most of the permits concerned child labour in the filming of advertisement, commercials and films (Inšpektorat Republike Slovenije za delo, 2021, pp. 25 and 28).

89 | Article 3 of the Rules 2018.

90 | Article 5 of the Rules 2018.

91 | Article 5(1) of the Rules 2018.

92 | Article 7 of the Rules 2018.

93 | Article 8 of the Rules 2018.

94 | Article 9 of the Rules 2018.

95 | Article 10 of the Rules.

96 | Article 11 of the Rules 2018.

97 | STA, 2022; Savič, 2023.

This also raises the question of whether child labour was actually involved in this case. Under Slovenian law, a child under the age of 15 may participate in remuneration for the making of films, and the preparation and performance of artistic, scenic, and other works of cultural, artistic, sporting, and advertising activities. However, this requires an *a priori* permit from the Labour Inspector. The Inspector must be satisfied that the work to be carried out by the child does not endanger their safety, health, morals, education, or development. In this case, no application, verification, or prior permit was not given. Because of this, the Labour Inspector believed that infringement had occurred. First, the best interests of children were established. The latter is dictated by Slovenian law and the Convention on the Rights of the Child<sup>98 99</sup>).

Kidsfluencers' activities cannot be characterised as free play, as they are often not spontaneous. Parents conduct business deals, prepare scripts for videos, edit them, and distribute them on social networks. However, we can quickly find out that this is not just play. The contracts entered into by parents on behalf of their children dictate certain activities expected of the kidfluencers (e.g. posting certain content during a certain period).<sup>100</sup>

From the above, we can conclude that the arrangement of children's work was adequate. However, this still leaves open questions regarding kidfluencers, since they usually do not enter into an employment relationship with their employers. Parents are the ones who take care of their recordings and post on social networks. As a result, Slovenian legislation has not yet provided satisfactory regulations or legal protection for these children.<sup>101</sup> In particular, the legal aspects of children's earnings and the management of this property are not defined anywhere.

98 | Convention on the Rights of the Child: Uradni list RS – MP no. 9/92 [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Accessed: 23 October 2023).

99 | See Article 32 of the CRC:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

100 | Savič, 2023.

101 | Wong (2019) states that kidfluencers can be subject to human rights violations, and in particular, children's rights (e.g., loss of privacy, child labour, child exploitation, deprivation of education and other opportunities such as play with friends, leisure). Damage could be caused to child's physical and psychological health, which can be manifested in the short term (fatigue) as well as in the long term (alcohol dependence, other addictions, suicidality). Without appropriate labour legislation or work permits, these children are subjected to endless working hours without any regulations on their well-being or their rest and recreation time; they are also subjected to long working hours without any rules on their well-being or their rest and recreation time.



## 4. Final Thoughts

We believe that Slovenia has adequate legislation on children's property and related property issues. By abolishing the authorisation to encumber and alienate a child's property, the legislator places trust in parents to manage and dispose of the child's property for the child's benefit. The case law in this area also does not point to certain open, recurring problems. However, the area of concern is all the more problematic regarding the activities of kidfluencers and the property and labour relations arising from their activities. Many countries, including Slovenia, have not yet adopted appropriate legislation to protect children's and property rights. Apart from labour law protection, there is not a single provision in Slovenian legislation that addresses property issues related to kidfluencers.

In February 2023, two questions were addressed to the European Parliament: I) Does the Commission believe that all Member States should have similar kidfluencer laws?; II) Does the Commission plan to propose legislation on kidfluencers?<sup>102</sup> The idea of the uniform regulation of kidsfluencers at the European Union level is welcomed to achieve a uniform and transparent regulation. The latter is all the more important, given that social networks are not limited to the country of origin but can also have a global reach. Therefore, it is important and necessary to strive for regulations that would also offer adequate regulation and protection of children's property and other rights in this area.

102 | European Parliament, 2023.

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