

# **EMPOWERING WOMEN IN THE FAMILY: *SUI GENERIS* ROLE OF WOMEN IN ESTABLISHING A FAMILY AND IN PARENTAL RESPONSIBILITY**

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## **Abstract**

Family planning in this technological age is no longer a process beyond human control. The birth of a child has surpassed what is called a natural and biological process. Childbirth and the establishment of parenthood, in modern times, can be a planned process as well as a conscious transformation in a person's life when s/he decides to become a parent. What has remained, though, unchanged is the unique role of the woman in conceiving of a child, both biologically and artificially. In this regard, the authoress emphasizes two of the many methods of artificial reproduction (ART) that enable women to establish a single-parent family, namely the in vitro process with donated genetic material and the *posthumous* reproduction. The authoress singles out these women as women who want to become mothers without wanting to enter into a marital or extramarital union in advance. The other aspect that the authoress addresses in this paper is the concept of joint parental responsibility after divorce. With the change in the pattern of divorce, the role of the woman as a parent has intensified, given that she together with her ex-husband decides on the issue of joint custody after the divorce. The authoress points out that the concept of Joint Custody in no way changes the attribute of parenthood for any of the parents, while the emancipation and economic independence of the woman enable her to exercise parental responsibility after the divorce on her own and independently. The authoress concludes her work with the thesis that the improvement of the position of women in society has significantly helped to strengthen her role in family planning and the exercise of parental responsibility.

**Keywords:** *independent woman, family by ART, parental responsibility.*

## Introduction

The position of women in the society has always been an intriguing and debatable topic both from the historical and philosophical perspective. In the 21st century, the issue of gender equality continues to be a topical issue in many societies, including the Republic of North Macedonia (RNM). It is important to note that the unequal position of women is related to the biological difference between men and women, especially the fact that women have the attribute of giving birth to children, thus historically there has been a prejudice that mothers are forced to deal with children and take care of their education and formation more than fathers. The concept that the main role of a woman is to be a housewife who must be completely subordinated to the man and his interests, has been long defended and propagated. This concept, according to which the woman should be an obedient wife, a devoted mother, whose life purpose should be her husband and the family, is a concept represented in all European countries in the first half of the 16th century. Juan Luis Vives' work "Instruction of a Christian Woman", published in 1523, states: "In the marital union the man is the soul, while the woman is the body; one commands and the other serves"(Vives, 1523, as cited in Zendeli *et al.* 2020, p.29). Therefore, gender equality has been and will be a current topic not only in RNM but worldwide despite many international documents which have been developed to ensure non-discrimination on the basis of gender.<sup>1</sup>

Inequality in the exercise of gender roles, historically viewed, has been particularly pronounced in marital and family relationships; restrictions that have been the result of unequal treatment of women in society. The woman has had a submissive role in all aspects, starting from equating her to a minor with regards to her ability to act, not recognizing the quality of heiress, and overlooking her completely in the framework of parental relationships as well as in the rights deriving from marital relationships.

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<sup>1</sup> Universal Declaration of Human Rights; Convention on the elimination of all forms of discrimination against women; Convention on the right of the child (Outlining the rights of children, including civil, social, economic, and health rights, this treaty changed the way children are viewed and treated as human beings with their own distinct set of rights. This treaty is especially useful to us when we take on cases of girls' rights.

See more for the Case law regarding the protection of reproductive rights before the European Court of Human Rights, *Tysi c v. Poland*; *A, B, and C v. Ireland*, *R.R v. Poland*; *Parrillo v. Italy*; *Ternovszky v. Hungary*, *f Dubsk a and Krejzov a v. the Czech Republic*; *Pojatina v. Croatia*; *Nedesceu v. Romania*; *A.K v. Latvia*; *K.H and Others v. Slovakia*, etc, [https://www.echr.coe.int/documents/fs\\_reproductive\\_eng.pdf](https://www.echr.coe.int/documents/fs_reproductive_eng.pdf)

In this paper, the authoress looks at the historical evolution of the position of women as slaves to male domination until their liberation from male influence, the time when they become equal and independent, have a stable material condition, are socially ready to handle all responsibilities as individuals in a society and as wives-parents in a family, up to the recognition of the right to establish a single-parent family. Currently a woman should be, in principle, free to act independently in terms of social life as well as in terms of family life as a single parent. In this paper, the authoress emphasizes the *sui generis* position of women in terms of establishing a single-parent family through new methods of artificial reproduction. The authoress also emphasizes the usefulness of changes in parenting concepts in contemporary family legislation which nevertheless giving priority to the joint exercise of parental responsibility after divorce, an opportunity that helps a divorced woman to exercise parental responsibility on an equal footing with her ex-husband. This equal opportunity has been recognized for women due to the establishment of the institute of joint parental plan, according to which the burden of exercising parental responsibility does not fall only on the mother but is equally respected and realized by both ex-spouses. This paper focuses on some aspects of establishing parenthood by a single woman or continuing to practice parenthood. The following section explains some forms of parenthood for a single woman, namely a family which can be established by a woman through their own choice, through artificial insemination with donated sperm, through posthumous reproduction with previously frozen sperm of the husband or extramarital partner, surrogacy,<sup>2</sup> or adoption. Parenthood for a single woman can also happen without her own prior choice, by imposing a situation beyond her control, in the event of divorce, widowhood or the end of an extramarital affair.

### **1. Single mother by choice: Family Planning, International and National norms and jurisdictions**

The rapid development of science and technology has penetrated into family law, more specifically into the concept of establishing a family and parenthood. Thus today we cannot call for a unique definition of the family, but perhaps we can rely on different definitions apropos of the concept of a single parent. The

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<sup>2</sup> In the RNM, according to the Law on Amendments to the Law on Biomedically Assisted Fertilization, the procedure for biomedically assisted fertilization can be initiated only by a man and a woman who are married, in no case by a woman living alone, in order to have a child through surrogacy. So in RNM the woman herself has no right to hire a surrogate woman who would carry and give birth to the child for her, a right that in some countries is recognized to both women and men.

idea of a single parent can refer to a person who has child(ren) but does not live with a partner due to various reasons (divorce, death of a partner, artificial insemination with anonymous sperm donor). For some authors, single parents are those women who have decided to be left alone from the moment they decide to become beneficiaries of a sperm donation, as opposed to a teenage pregnancy or older mothers who have adopted a child (Murray and Golombok, as cited in Mickovik *et al.*, 2016, p.189).

Therefore, the concept of a single parent can be viewed in three aspects: (1) families from the mother alone or the father alone (in relation to the holder of the role of a single parent); (2) single parent under various circumstances (divorce, separation, death) or (3) single parent by choice (a form of parenting that is the focus of this paper), parenthood established through the conception of the child single-handedly by one parent using artificial insemination methods (Mickovik *et al.*, 2016; Novakov, 2012).

The exercise of reproductive rights, however, must be related to the principle of family planning, which is one of the most important principles of family law and derives from the fundamental human right to be a parent. The reproductive right is guaranteed by two basic international documents: the Universal Declaration of Human Rights (article 16 paragraph 1)<sup>3</sup> as well as the European Convention on Human Rights (ECHR) (Article 12).<sup>4</sup> As can be seen, this right is guaranteed to all those persons who will enter into marriage and through this act will gain the right to establish a family. However, with the advancement of science and technology in the field of biomedicine, contemporary birth policies have expanded the possibility of starting a family. Therefore, artificial insemination, in vitro fertilization, surrogate motherhood, posthuman reproduction and other methods of artificial reproduction enable choices for new couples as well as the individual to become parents artificially. On the other hand, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) guarantees the right of women to freely decide on their reproductive rights (Articles 12 and 16).<sup>5</sup> This is related

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<sup>3</sup> Article 16 paragraph 1, Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. Universal Declaration of Human Rights (1948).

<sup>4</sup> Article 12, Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right. The European Convention on Human Rights (1950).

<sup>5</sup> Article 12, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting

to the reproductive right of women as a fundamental human right. The Convention takes credit as the first international human rights treaty to promote women's reproductive rights. We find provisions relevant to reproductive rights in articles 4(2), 5, 11(f), 11(2)(a), 11(2)(b), 11(2)(c), 11(2)(d), 12(1) and 12(2). In article 10(h) the Convention mentions family planning. Thus far, it is the only human rights treaty that has incorporated family planning in the education process. In article 16(e) the concept of planned and responsible parenthood is also upheld (Shivdas and Comenan, 2010, p.51). This right is also a promotional part of the feminist philosophy, according to which a woman has the right to decide on her reproduction or non-reproduction, including the absolute freedom to carry a pregnancy, to terminate or initiate a pregnancy with donated genetic material (see more at Shalev, 2000). Thus, not only the numerous methods for establishing parenthood but also the improvement of the position of women in society, helped in the area of family planning. This is certainly very well established in the part of the creation of the family by the woman herself through adoption (Article 100-a, Family Law Act), through new reproductive technologies of fertilization or as a consequence of an unplanned pregnancy.<sup>6</sup> According to Jordana-Pröpper, the term 'single' refers to a certain stage in life that a woman decides to adopt or conceive and give birth, a vital stage without cohabitation with any affective-sexual partner (Jordana-Pröpper, 2013, p.47) Hertz *et al.* points out that "the women who choose this route to motherhood know that their children will not likely meet the donor. But today it is possible to meet donor siblings, children who share the same donor through various Internet registries that connect these families. Known donors – who usually sign contracts saying that they will have no legal right to the children know the child and may have a relationship with the child like that of an uncle."(Hertz *et al.*2016, p.1).

So, this category includes women who want to be realized as mothers but do not want to establish marriage. In the category of single mothers, there are women who, after achieving some personal and professional ambitions, want to pass their love to the child they would like to have. However, because the

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free services where necessary, as well as adequate nutrition during pregnancy and lactation; Article 16 paragraph 1, The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the bodily integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

<sup>6</sup> In situations when the woman does not abort but decides to give birth to the child.

social stigma of being an unmarried mother has lessened, more women are deciding to have children on their own and making that choice at a younger age (Hertz *et al.* 2016, p.1). Most often, a network of kin or friends are closely involved in the everyday life of the single-mother family, allowing the single parent with full child-caring and bread-winning responsibility to make ends meet (Malmquist *et al.*, 2018, p.167). According to the definition given by González “Single motherhood” is defined as above and incorporates all single mothers independently of their co-residence situation, i.e. including single mothers living with other relatives, such as the grandparents of the children (González, 2006, p.8). The second outcome variable, which we will refer to as “single headship”, indicates a single mother who lives by herself with her dependent children.

In her study, Hertz states that in cases that were not open adoption or known donors, the women strategized ways to address the inevitable question “who is the child’s father?” (Hertz, 2008, p.91). The children have “imagined fathers” and “bio dads.” There are, of course, “father figures” but those have been around a long time. These issues have been faced by adopted children. They are not insurmountable. An important aspect regarding the identity of person is the right of knowing his/her genetic origin.<sup>7</sup> This right of the children to know his/her origin is guaranteed by Article 7 paragraph 1<sup>8</sup> and 8<sup>9</sup> of the UN Convention on the Rights of the Child (OHCHR) which guarantees the right of the child to have information on his genetic origin and his identity, as well as article 8 paragraph 1<sup>10</sup> of the ECHR which protect the right to respect for private

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<sup>7</sup> Problems related to genetic identity are expressed in cases of incompatibility of legal and biological parenting 1) when the child is conceived with biomedical methods, especially when his conception is made with donated genetic material; 2) cases of adoption; and 3) illegitimate children whose motherhood/fatherhood is unknown.

<sup>8</sup> The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. UN Convention on the Rights of the Child (1989).

<sup>9</sup> States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his/her identity

<sup>10</sup> Everyone has the right to respect for his private and family life, his home and his correspondence. In fact, many cases have been brought before the European Court of Human Rights precisely because of the violation of this right by the signatory states of Article 8 of the ECHR. The cases submitted to the ECHR for the protection of the right to personal identity refer precisely to the provisions of Article 8 of the ECHR. Many cases related to establishing or

and family life. The child's right to recognition of his/her origin is also guaranteed by other international documents such as: The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption<sup>11</sup>, European Convention on the Adoption of Children.<sup>12</sup> The right of the child to know his/her origin is introduced as one of the principles set out in the "White Paper" (Article 28).<sup>13</sup>

Parenthood, we all know, has far more to do with day-to-day care than genetics. Still, there is something unresolved about the issue of fathers. Biological, social, and imagined, they seem to hang like ghosts (Hertz, 2008, p.91).

Regarding what has been said above it should be noted that, the woman is a key factor in conceiving a child both biologically and through the methods of biomedical fertilization, and that fact cannot be denied. This right of women in recent years is recognized as a trend in many countries, including the RNM. By 2010, many European countries had introduced legislation to allow for the possibility of women to conceiving through biomedically assisted fertilization (BAF): Belgium, Bulgaria, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Montenegro, Russia, Spain, the United Kingdom, Belarus, Serbia, Ukraine and RNM (Jones, 2010, p.22). According to the Law on Biomedical Assisted Fertilization of RNM (LBAF), the rights of BAF can also be used by adult and legally capable women who are not married or do not live in an extramarital union, if the previous treatment is unsuccessful or the treatment

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disputing paternity through DNA testing have been reviewed before the ECHR, in order to establish the biological connection of the father with the child, all in order to find out the child's origin. For example, the case of Mikulić v. Croatia, similar to the case of Mizzi v. Malta, the case of Shofman v. Russia, or the interesting case of Jäggi v. Switzerland - in which case the plaintiff states that he was not allowed to perform post mortem testing- DNA tissue testing of the deceased he believed to be his father to determine the biological link. See more at Selmani- Bakiu and Zendeli, (2018), p. 243. See also: Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence

<sup>11</sup> See article 30 of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry, (1993), The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State,

<sup>12</sup> See article 22 of the European Convention on the Adoption of Children (Revised), (2008),

<sup>13</sup> The interest of a child as regards information on his or her biological origin should be duly taken into account in law, Principles Concerning the Establishment and Legal Consequences of Parentage – "The White Paper" (1997).

with other methods is hopeless and which according to age and general health status are capable of parental care (Article 9, paragraphs 1 and 2 of the LBAF). This right is certainly a product of the model of a modern natal policy, which recognizes the right of a woman who, without entering the institution of marriage, can become a parent, give birth, and raise her child on her own. The only exception to these methods in RNM is surrogacy,<sup>14</sup> whereby the unmarried woman cannot be a surrogate mother, nor through another surrogate mother establish a parental relationship, in situations where she is sterile or has no uterus or has a congenital anomaly of the uterus (Article 12-a of the LBAF). The science of biomedicine as well as artificial technology are not yet in such an advanced stage as to make an artificial uterus whereby a child might be born. For now, only uterine transplantation is possible, as evidenced by the case of a newborn baby from a deceased donor.<sup>15</sup> Therefore, the woman continues to maintain the primacy of establishing a family, without the help of which conception can take place, but carrying the pregnancy and childbirth is in her exclusivity. As Graham points out, “age, emotional maturity and financial stability, characteristics of this population, are marshalled to legitimize this path to motherhood. Although ambivalent about whether they had actually chosen this family form, the participants in the current study were keen that others should know that they had considered all the implications, especially for the child, of their route to motherhood. The intentional and planned manner of their pursuit of parenthood, the support of others, as well as the love and time they

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<sup>14</sup> Surrogate motherhood is the process of keeping and giving birth to the child for the other person, based on a prior agreement between both parties: the holding women/surrogate mother and the legal parents/ordering couple. Surrogate motherhood is also defined as a "contract" by which a surrogate mother relinquishes parental rights, is artificially fertilized, carries and gives birth to the child for the other person and gives the child to "his legal parents" for a certain compensation (commercial surrogate motherhood), or without compensation (altruistic surrogate motherhood). In fact, surrogate motherhood enables married couples, who cannot have children biologically, but who, for medical reasons, cannot use any of the methods of artificial insemination, to have their own child, which they will carry and give birth another woman. Depending on the possibility of fertilization with the genetic material of the legal parents, the child born is genetically related to one, both parents or neither parent., See, Zendeli *et al.* (2020), p.104

<sup>15</sup> The 32-year-old mother suffers from Mayer-Rokitansky-Küster-Hauser syndrome and was born without a uterus. But in September 2016, surgeons at the University of São Paulo in Brazil conducted a 10-hour transplant operation to provide her with one taken from a dead donor. Seven months later, the team transferred an IVF-created embryo into the womb. The baby was delivered by caesarean section in December 2017. The donor, who was 45 when she died of a brain hemorrhage, had delivered three children. MIT Technology Review. The first baby has been born after a uterus transplant from a dead donor (2018).



felt they could give a child became incorporated into their ideals for family life” (Graham, 2012, p.107).

Related to this right of women, there are a considerable number of ethical, moral and legal dilemmas related to the principle of respecting the best interests of the child. Does this child have the right to genetic recognition of the donor; should be judged from the moment of his/her conception that he/she will spend his/her life with only one parent, having never had the opportunity to know the father. In this regard, two rights collide, the right of the child to live with both parents<sup>16</sup> and the right of a woman to exercise her reproductive right (CEDAW). In comparative law, no concrete answers have been given to the questions of which right should be given priority or how to balance these two rights. The next issue that brings into question this right of a woman is her age. Should this right be allowed to middle-aged women? In situations of use of artificial technology methods by a middle-aged woman, her psycho-physical health, the problem of childcare, the problem of time management with children if that woman is employed, the problem of overcoming situations with an eventual illness of the child, or hers may be problematic for the birth and upbringing of the child (See more at Weissenberg *et al.*,2007).

In addition to cases of artificial insemination with donated reproductive material, a woman may decide to become a mother even with frozen genetic material<sup>17</sup> of the married or extramarital spouse, and, in this way, to enable the establishment of a single-parent family. Posthumous reproduction is a biomedical method which enables the child not only to be born, but also to be

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<sup>16</sup> Starting from the principle of the best interest of the child, parenting should be based on respect for this interest which is the basic and most important imperative for which all international documents, modern family law and the instructions of the European Court of Human Rights advocate. The right of children to be cared and raised by their parents, whether living together or separately is of course guaranteed by the most prominent document on the rights of the child, the UNCRC (Article 9, para.1). See more at Velleman (2005)

<sup>17</sup> Benshushan and Schenker in their study provide detailed explanations regarding the cryopreservation of sperm. According to them, the idea of sperm banking originates from Mantegazza1 who in 1866 proposed the establishment of a sperm bank which might be useful in different ways; for instance, in the case of a 'soldier whose sperm could be preserved before going to war and could be used by his wife to have progeny, even after his death. The realisation of this idea had to wait almost a hundred years until Sherman originated the slow rate method of freezing human semen, which proved to be effective and has been in use ever since. It's important to note that cryopreservation of human spermatozoa achieved credibility in 1953 when Bunge and Sherman demonstrated that human spermatozoa, when frozen and thawed, could be used for insemination, with a resultant normal child. See at Benshushan and Schenker (1998), p.1407.

conceived postmortem - after the death of the parent/parents. In most cases this method is used by the woman, due to the fact that the application of this method in this instance is easier, because the surviving spouse for the fertilization of the frozen egg cell of the deceased spouse has to engage a supportive wife (gestational/surrogate). Professor Mickovik, in his study explains in detail this process, which is also regulated by the positive legislation of the RNM. According to him, by combining cryopreservation of sperm and the methods of artificial reproductive technologies (such as artificial insemination or in vitro fertilization) it is possible to achieve posthumous reproduction and for the child to be born after the death of one of the parents, and in the case of frozen embryos, even after the death of both parents. It should be noted that posthumous reproduction is possible when the man freezes the sperm during his life, but also in situations when the woman or a close family member asks to take the sperm after the death of the man because if a sperm sample is taken in within 24 hours of death, it can be frozen and used for posthumous insemination. The use of frozen sperm for fertilization is the most common type of posthumous reproduction, although with the advancement of cryopreservation methods, both pre-embryos and egg cells can be used for posthumous reproduction (Mickovik, 2011), p.523). As mentioned above, this method of establishing parenthood by a single woman is also regulated by the Legislation on Biomedical Assisted Fertilization of RNM. According to article 33 of this statute: *“A husband and wife who according to medical indications or experiences in medical science are at risk of infertility for health reasons, within an authorized health institution and with their written statement may preserve their sperm, egg cells, or tissue from the ovary or testicles, for personal use. In the event of the death of the husband, assisted posthumous biomedical fertilization is permitted with his prior written consent, not later than one year after his death.”*

The process of conceiving and giving birth to a child after the death of the partner/spouse will be undertaken by a woman both in terms of the social environment and in terms of exercising parenting responsibility as a single mother. Even on the occasion of the establishment of parenthood through posthuman reproduction, two interests collide, the interest of the woman to become a mother and the interest of the child not to be born and live without his/her father. As professor Mickovik mention on his research, the child's highest interest is to be born, come into this world, and exist (Benshushan and Schenker, 1998, p.1407). According to this interpretation, it follows that priority should be given to life thus giving birth to a child to live in mono-parent families as compared to not being born at all. Such a child is expected to be the product of the love of both partners who wish to establish a family, but for tragic reasons (death or illness) fail to realize their ideal. From the perspective of the right of the child not to be born and live without a father, the child after

birth might be able to use the analogy of “wrongful life” in order to sue his/her mother for deciding to give birth to him/her knowing *a priori* that the child will be raised without a father, who had already died before the conception.

The other controversy in this respect is related to the prohibition of posthumous insemination and permission of abortion as an undisputed right of a woman (made within the legal timeframe allowed). In this regard we have two absurd situations, on the one hand allowing the destruction of a potential human being, and on the other hand preventing the birth of a human being with the will of both parents for him/her to be born even after their death (Mickovik, 2011, p. 528).

Therefore, the establishment of parenthood after the death of the spouse/partner has its difficulties, such as preparing to face the social circle within which this woman will act as a single mother and facing the child who will have to justify that he does not have a father since his father died before he was born.

## **2. Woman, family, and parental responsibility**

### **2.1. Historical perspective of the evolution of the role of women in the family**

Historically, women have been formally subordinated to men, both legally and factually (Crompton *et al.*, 2007, p.230). From her birth the woman was under the power of the father, then that power was transformed to her husband. Until the civil revolutions in the nineteenth century, and especially until the beginning of the feminist movement, the domain of women was the privacy of her home, while her presence and activity in public life were dictated exclusively by men (Crompton, 2006, p.2). In addition to caring for the children and the family, the wife had to be faithful, obedient, and respectful of her husband. In traditional society, a woman’s business ability was not recognized, she had no right to take any legal action without her husband’s permission. As noted above, the woman was merely an object of childbirth and a responsible housewife for fulfilling of all family responsibilities and desires of her husband. The rights and responsibilities of mothers over their children were left to religion, customary rules, and a unified model of the functioning of society. Recently women have begun to achieve legal, economic, political, and social equality with men in modern society. In the twentieth century, women in many countries gradually gained political and civil rights, although employment rights in relation to gender discrimination and equal pay have often yet to be achieved (Ibidem, p.6). This is probably the most significant element that led to the abandonment of the former family model, because without the equality of women, other significant transformations in the family

could not have been imagined. In all European countries, after the Second World War, women gained full legal capacity, gained the right to vote in elections, and the dominant position of the man until the sixties was defined in many European family laws as the "head of the family". The biggest impact on the change in the position of women was the mass inclusion of women in the educational process and in economic activity (They, cited by Mickovik, 2014, p. 11).

In addition to the position of women in society, this historical development also marks her position as a parent. The sources for the role of the parent throughout history can be found in Roman law, customary law, and the history of law of many countries. In different historical periods, the role of the parent was not the same. According to this view, throughout history, the rights of father and mother over their children have been left to religion and customary rules. The father had the right to life and death over his children and his wife. As already mentioned, the woman was only an object for giving birth to children and was more respected if she gave birth to male children, otherwise the man would have the right to marry another woman in order to give birth to a male child. In the Roman legal order, parental rights were not recognized as a set of legal rules according to which the father and the mother were equally obliged to take care of the upbringing and educating their own children (Puhan and Polenak-Acimovska, 2001, p.121). In Roman family law the institute *Patria potestas* is known.<sup>18</sup> This set of legal rules that secured the power of the *pater familias* in the family over its other members, with the status of *alieni iuris*, constituted Roman paternal law and even to a lesser extent maternal law. In Justinian law, the mother was almost equated with the father in relations with the children. Paternal law in Roman law evolved into the first forms of parental law (Borkowski, Du Plessis, 2005, p.114). A similar parental relationship is shown in the Canon of Leke Dukagjini (Gjeçovi, 1998). According to this canon, only the father had full right to his sons and daughters, ie. the mother as a parent had no right. The rights of the father went to the extent that he decided on the death and life of his children and that action need not be justified. He had the right to beat, punish his children with imprisonment, to kill them if he thought it necessary and essential because of the actions of his children, to sell and buy them (Article 39) (Gjeçovi, 1998, p.71). The father also had an obligation to take care of the well-being, honor and property of their children, to buy them weapons when the time came, and to leave them an inheritance(Article 40, paragraph 1). The submission of women to the role of mother was the case until the enactment of the first laws which equalize man and woman in the role of

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<sup>18</sup> It is about lifelong and absolute power over all members *alieni iuris* (of the right of another) manifested as the power of the husband (manus) or as the power of the father (*patria potestas*).

parent. The position of women in the family in general and the role of women as mothers has undergone revolutionary changes in the contemporary family. In the contemporary family, husband and wife are equal in family rights and obligations, equal in terms of personal and property rights, as well as in terms of exercising parental responsibility during marriage and after its termination. Many international conventions<sup>19</sup> equalize the wife and husband in the exercising of parental responsibility. Therefore, in order to explain the "revolution" in the family and parental we must first reflect on the transformations that have taken place in the form and functions of the marriage. Whereas in the past, future spouses were married with the consent of older family members and that for the realization of family-economic or political interests, today we have the implementation of the concept of meeting individual needs in the relationship between spouses, a model of bonding of marriages by love, intimacy, and reciprocity. Among other things, the function of marriage oriented towards autonomy of the will, fulfillment of individual needs, pursuit of personal happiness, satisfaction, and self-fulfillment, has opened the way for society to liberalize the concept of divorce. Women's emancipation has increased the possibility of employment by gaining financial independence, the replacement of the idea of obligations with partnerships in marriage, all of which significantly influences the change of traditional norms of marriage and parenthood. Thus, the important position of women in society, and especially economic stability and its emancipation, enable her to raise and educate a child on her own.

## 2.2. Parenthood in Modern Society

In modern society, divorce is no longer only based on the fault of one or the other partners, but may happen through mutual agreement that their marriage can no longer function or that, for the good of both, the marriage should end. By changing the pattern of divorce, of course, the issue of custody and upbringing of children by the parents also arises. The role of the woman as a parent is of great importance here, as she decides, together with her spouse, how they will solve the issue of joint parenthood after divorce. The concept of joint parenthood in marriage is the right guaranteed by the basic international

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<sup>19</sup> Convention on children's right; Charter of fundamental rights of the EU (2012); European Convention on the Exercise of Children's Rights European Convention on the Exercise of Children's Rights (1996); Convention on contact concerning children (2003). Council of Europe on joint parental responsibility in case of divorce is "White Paper" On Principles Concerning the Establishment and Legal Consequences of Parentage; Resolution (1921) on Gender equality, reconciliation of private and working life and co-responsibility, etc

document on the rights of the child, the UNCRC. According to Convention, “a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child” (Article 9, paragraph 1, UNCRC). Such determination may be necessary in a particular case such as one abuse or neglect of the child by the parents, or where the parents are living separately, and a decision must be made as to the child's place of residence (Article 9 paragraph 1). Parents who live together (in marriage or in an extramarital union), perform their duties by agreement and, above all, in the interest of the children. Parents decide together on all the rights and responsibilities of their minor children. They are equally responsible for their upbringing, for ensuring a healthy and decent life in accordance with their capabilities. “The parents realize the exercising of the parental right in marriage or after the divorce through support of their children, schooling, representation, providing an environment for the development of a mentally and physically healthy person in order to enable them to continue their life independently” (Selmani-Bakiu, 2016, p. 150). So, above all, parents, according to the principle of equality, exercise their rights and responsibilities:...”*family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases*” (Article 5 paragraph 2, CEDAW). By prescribing the principle that the parents exercise the parental right jointly and by agreement, the equality of men and women in the regulation of family relations is expressed. This equality of parents is a result of the emancipation and economic activity and stability of women in society and the family. This equality is certainly emphasized in divorced families. Divorce is only a legal procedure that separates the joint life of the two partners, but in no aspect does it refer to the termination of parenthood. Introduced from the principle of the best interests of the child and the tendency towards full equality of the mother and the father in exercising of parenthood after divorce or separation, national reports from several European countries prepared for the European Commission on Family Law, provisions of family law and civil law, have concluded that most of the EU countries have reformed this part of the family legislation, i.e. parents have joint parenthood after divorce or separation, and this right and obligation is guaranteed by law as a basic principle and dominant concept. Joint exercise of parental rights after divorce or separation, joint custody, in no case changes the attribute of parenthood. Here, of course, it should be noted that the stable psycho-physical and material condition of the mother, who is able to take care of the child even after the divorce, has a big role. Therefore, a woman who makes the decision to terminate the marriage, needs to stay strong to face the challenge of being a

single parent. The cooperation of the ex-spouse in this case is very important, not only to separate the roles in the exercise of parental responsibility but also to not alienate the child from the father, always prioritizing the interest of the child to be raised by both parents. The increase in the number of divorces has also affected the increase in the percentage of separated families, according to the latest research by Eurostat - in 2020, there were 195.4 million households in the European Union (EU) (Eurostat, 2021). Almost one-third of these households (29%) had children living with them. Approximately 14% of households with children (7.8 million households) consisted of single parents, accounting for 4% of total households. The share of single parents varied considerably from one country to another. Looking at the share of single-parent households among all households with children, six countries recorded a share of over 20% of all households with children: Sweden (34%, see note below), Denmark (29%), Estonia (28%), Latvia and Lithuania (both 25%) and France (21%). In contrast, the lowest shares were registered in Croatia (5%), Romania (7%) and Finland (8%), while Greece, Slovakia, Malta, Poland, Spain and Slovenia all recorded 9% (Eurostat, 2021).

## **Conclusion**

In the modern society, the concept of family, parenthood, family planning is no longer equated with one singular and concrete notion. The concept of family and parenthood is no longer limited to the previously defined traditional and outdated notions of family and parenthood, as a result of new and contemporary role of women in marriage, the family and society.

It should be noted that even though women gained their rights through tremendous effort, despite the many barriers that they even currently face in overcoming the male domination, they still are the pillar of the family in the role of a wife, mother as well as an individual in society. Together with their spouse, they contribute to the upbringing and education of the children, taking equal care of the material well-being of the family in order to ensure a decent and stable life for their children. This gender equality has contributed to making the role of women in the family and society increasingly more important. Within the family itself, the woman has the role of the wife that she acquires by marriage as well as the role of the mother that she acquires with the birth of a child. Therefore, her main obligation is to deal with the education of the child into an independent personality, instructing him/her on the principles of values and qualities. The dynamics of modern life has proven that the income from the husband alone is not enough for the existence of a nuclear family, a reason that has forced the woman into the labor market. The emancipation and education of the women has enabled them to secure better jobs but with greater responsibility, which has influenced women to not only fulfill their career ambitions but also to bring financial stability to the family through her salary.

An employed woman is said to influence the empowerment and solidarity of society and the family. Her commitment and dedication to work, in most cases also leads to family conflicts because the woman cannot be present and available 24 hours for marital and parental needs. Therefore, many stereotypes have been born about the gender role of women in the family, the overcoming of which requires a lot of preparation and emotional power. But with much effort and sacrifice, today's contemporary woman who is involved in all spheres of life, has managed to balance family life, work challenges, as well as personal and professional responsibilities.

This paper speaks openly about the role that women have had in the development of the family in all historical stages. There are many attributes of women in the development of society that should be acknowledged, but the focus of the author in this paper has been to give special emphasis to the family role of women. The authoress, obviously, among other things highlights the role that women have played in creating the contemporary family as well as new family models through artificial reproduction technology. Also, the transformation of two-parent families into one-parent families, is a contribution of the role of the woman proving that she alone, divorced, and without the help of her husband/partner can take care of and educate her children into powerful personalities.



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