

CHAPTER III

CZECH REPUBLIC: THE CONTENT OF THE RIGHT TO PARENTAL RESPONSIBILITY



ZDEŇKA KRÁLÍČKOVÁ

1. Introduction

This chapter focuses on parental responsibility as a key concept of the Czech family law.¹ First of all, it must be stressed that the term parental responsibility (in Czech “*rodičovská zodpovědnost*”) was introduced into the Czech legal order in 1998.² It happened within the changes that have taken place after the fall of the previous political regime and its legal sources based on “Soviet model” and communist ideology in 1989.³ The international human rights conventions signed in the early 90s led to several changes in general. Not only cleansing from ideological sediment, but also a different attitude to the duties and rights of the child’s parents and emphasis on the rights of the child should be underlined.⁴ Thanks to the case law of both the European Court of Human Rights (ECHR) and the Constitutional Court of the Czech Republic, family law started to be understood, interpreted, and applied in harmony with generally shared European values.⁵

It was significant that the human rights dimension of family law was also taken into consideration when preparing the draft Civil Code after the year 2000,⁶ and

1 For a general introduction to the Czech family law, see Králíčková, 2021a, pp. 77 et seq.

2 See Hrušáková, 2002.

3 For a general historical point of view, see Bělovský, 2009.

4 See Haderka, 1996, pp. 181–197.

5 Regarding the human rights dimension of family law, see Králíčková, 2010.

6 See Eliáš and Zuklínová, 2001 and 2005.

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later on, within the general discussion prior to the passing the final version of the Civil Code. In addition, the main authors of the Civil Code reflected academic initiatives and their achievements as well, namely the Principles of European Family Law regarding Parental Responsibilities (hereinafter also “Principles regarding Parental Responsibilities”)⁷ by the Commission on European Family Law (hereinafter also “CEFL”)⁸ created and published during the time, and the Civil Code was gradually being prepared. That is why the Civil Code in its final version from 2012 not only followed up on its predecessor extensively amended in 1998, but it also took into account many innovations that were relevant and necessary in this matter.⁹ Regarding terminology, the experts’ team decided after a long discussion for almost the same term, namely “parental responsibility” (however, in Czech with a bit different spelling “*rodičovská odpovědnost*” in comparison with the previous wording “*rodičovská zodpovědnost*”). As a novelty, the Civil Code distinguishes between the “holding” and “exercise” of the duties and rights belonging to parental responsibility. The concept, or the scope of parental responsibility, is much broader than one according to the previous legal regulation, which brings more balance, protection, and security to the family ties. It is highly important that parental responsibility arises from—and belongs (only) to—both the legally established parents of the minor child, without any discrimination based on gender or sexual orientation and so on. The duties and rights of the child’s parents are equal regardless of whether they are married, divorced, or separated. The parents must exercise their duties and rights belonging to the parental responsibility jointly and in harmony with the child’s best interests and their welfare, well-being, and participations rights. If the child is at risk, for instance, the child’s parents cannot exercise their duties and rights properly because of objective reasons (they are minors or do not have full legal capacity or they are in coma) or event subjective ones (they are socially immature or inadaptable, drug addicted, violent, and so on), the Civil Code provides special rules for solving difficult life situations as well. Several provisions are applied by the operation of law (*ex lege*), and many articles give the state administrative authorities and the courts rights—but duties as well—to intervene to the family ties with a wide range of measures and remedies, or sanctions.

The legal provisions regarding parental responsibility anchored to the Civil Code protect not only minor children but their parents as well. Everybody can be in the position of a weaker party, especially a minor, not-fully-capable parents, a single mother, a putative father, a left behind parent in case of international child abduction or intercountry unlawful relocation of the child, and so on. That is why, vulnerability in the broadest sense is reflected by the Civil Code. The general protection of family and family life according to the wishes, choices, preferences, and also special needs of family members is guaranteed in relation to the constitutional law and human rights conventions.

7 Boele-Woelki, 2007.

8 For more, see <http://ceflonline.net/> (Accessed April 20, 2022).

9 For more, see Králíčková, 2009, 2014b.

Because of the abovementioned, the following lines are devoted not only to the description of current legal regulation of parental responsibility anchored into the Civil Code, its inspiration sources, terminology, concept and content of parental responsibility, exercise of duties and rights belonging to the parental responsibility, and to solving possible conflicts. The attention is also paid to the jurisprudence and to practice—mainly to the case law of the Constitutional Court of the Czech Republic. It is without a doubt that the constitutional courts are generally deemed to be “drivers” of family law reforms. The Constitutional Court of the Czech Republic has been playing a crucial role in this field.

The picture of the legal regulation of parental responsibility would not be complete without looking at historical legislation, although the protection of all forms of family and family members has not always been a matter. It is interesting to examine the legal development from the concept of the “power of the father” to the “parental power” or “parental “authority” or “parental rights and duties” or “parental care,” finally to the “parental responsibility” or “parental responsibilities.” Not only the emancipation of woman, but also gradually increasing the importance of the child’s autonomy and their participatory rights played a significant role in historical perspective. In addition, the paternalistic and collectivist state little by little lost its significance in favor of a state based on respect for human rights, freedom, and private autonomy in all spheres, including family law and family life.

2. Historical context

2.1. The General Civil Code and the Constitutional Charter

It is generally known that after the Second World War, the national legislation in many countries sought to redefine the child’s rights. The adoption of several declarations, mainly the Declarations of the Rights of the Child from 1924 and 1959 by the United Nations General Assembly, which defined the child’s rights to protection, education, health care, shelter, and good nutrition, “opened the eyes” of lawmakers in many countries and created the conditions for changes in this field of family law or in the whole legal order. Later, the parliaments of many states sought to eliminate discrimination against children born out of wedlock and better equalize the duties and rights of fathers and mothers toward their child and weaken the concept of the “power of the father” in favor of “parental power” or “parental authority.”

However, it must be stressed that even before, after establishing the Czechoslovak Republic in 1918, the rights of a child started to be taken more seriously, and the duties and rights of the child’s parents were more balanced thanks to the case law and jurisprudence. It is well known that the independent Czechoslovak Republic accepted the legal order of the former Austrian-Hungarian Empire, namely

the General Civil Code from 1811,¹⁰ which became the main source of civil law in the Czech lands.¹¹ In 1920, the new Constitution Charter of the Czechoslovak Republic was passed.¹² It was stated, at the outset, that laws contrary to the Constitutional Charter were invalid. Furthermore, under the heading “equality,” it was stipulated that “*the privileges of sex, ancestry and occupations are not recognized*”.

Thanks to the spirit of the Constitution Charter, the General Civil Code started to be interpreted differently, although the statutory law stated that “*the man is the head of a family*” under Art. 91, GCC. The authors of the famous and most appreciable and valuable commentary to the General Civil Code wrote that “*the power of a man over his wife*” must be interpreted in the light of the constitutional order; they even used the words “*responsibility for family in personal and property aspects*” in their commentary.¹³ The main aim of the statutory provision was seen to be the protection against the third parties and the provision of a material basis for the family. Regarding the common children of the spouses, the General Civil Code provided, in addition to provisions regulating affiliation under Art. 138, GCC, the rules of “parental power” under Art. 139 and mainly Art. 144, GCC. The authors of the commentary stated that the word “power” means the “right” as well, and introduced the concept of “joined vessels.” It was stressed that both the child’s parents are vested by such duties and rights toward the children and that the children’s upbringing must be done upon the consent of both parents.¹⁴ The upbringing of married children was to consist “*in taking care of their lives and health, decent maintenance; by developing their physical and mental strength and teaching religion and useful knowledge; the parents had a duty to lay the foundations for the future well-being of their children*” under Art. 139, GCC. Special provisions were devoted to religious education. It was stipulated that “*in which religion the child is to be brought up by parents, who are not of the same religion, is determined by political rules*” contained in Art. 140, GCC. A similar reference to special regulation was made to determine the age from which a child can confess to another religion.¹⁵

In addition to the abovementioned, the General Civil Code provided a special “power of the father” that belonged only to the father as “a head of the family” covered by Art. 147, GCC. This “power” included, especially, the right of the father to decide on the child’s profession, to manage their property, represent them, and state who will be a guardian in case of their death under Arts. 149 – 157, GCC. Such rather discriminative provisions were followed by the statement that children born out of wedlock did not have the same rights as children born to the marriage under Art. 155, GCC. This concept was fully abandoned thanks to the following legal changes.

10 The Act No. 946/1811 Sb. z. s., Allgemeines bürgerliches Gesetzbuch, hereinafter also “GCC.”

11 The Act No. 11/1918 Sb. z. a n., on the Establishment of the Independent Czechoslovak State, so-called reception norm.

12 The Act No. 121/1920 Sb., introducing the Constitutional Charter of the Czechoslovak Republic; hereinafter also “Constitutional Charter.”

13 For more, see Rouček and Sedláček, p. 463.

14 Ibid, p. 758.

15 The Act No. 96/1925 Sb. z. a n.

2.2. *The Act on the Family Law and the new Constitution*

The General Civil Code was replaced by the Act on the Family Law in 1949,¹⁶ which was passed beside the Civil Code in 1950.¹⁷ The separation of the Codes was the result of the conception of “artificial atomization of legal order” according to the “Soviet model.”¹⁸ The aim of creating a separate Family Law Act was seen in “purifying family law” from characteristics known in the bourgeois society and its law.¹⁹ That is why the Act on the Family Law followed the ideals embedded in the Constitution in 1948.²⁰ The family based on marriage was pronounced as a state’s basis. Because the society run by the Communist Party intended to eliminate the influence of the Church on social life, the form of obligatory civil marriage was stipulated as an exclusive one for many years, and no provisions were devoted to children’s religious education. The hate against the clergy escalated into the criminalization of priests.

Both the Constitution and the Act on the Family Law regulated the equality of a man and a woman in marriage and family and some *positives* regarding children. The lawmaker canceled distinguishing between the children born in wedlock and children born out of wedlock. For many reasons, the Act on the Family Law used to be said to be the “*Code of the Rights of the Child*.” The “power of the father” was replaced by “parental power” contained in Art. 55 AFL (in Czech “*rodičovská moc*”), which included “*the right to bring up the child, represent him or her and manage his or her property*,” and should be exercised jointly by both parents of the child. The protection and management of a child’s property was still well regulated under Arts. 58 and 59, AFL.

Regarding the *negatives*, the duty and right to decide on the child’s religion and education were missing entirely. Unfortunately, the Act on the Family Law did not regulate, because of political reasons, any family substitute care of children (such as foster care) that used to have a long traditional place in the land. The institutional care of children was favored and—owing to ideological reasons—overused.

However, in general, the passing of the Act on the Family Law in 1949 was highly important for the Czechoslovak Republic in many aspects, bringing many *positives*. The Act on the Family Law finally unified family law of the Czechoslovak Republic based on Austrian law in the Czech lands, Silesia, and Moravia and Hungarian law in Slovakia.²¹ Regarding the content, the Act on the Family Law was excellently conceived and processed. It was a result of broad professional cooperation among the experts of the Czechoslovak Republic and the Polish Republic.²²

16 The Act No. 265/1949 Sb., the Act on the Family Law, as amended; hereinafter also “AFL.”

17 The Act No. 141/1950 Sb., the Civil Code, as amended.

18 See Bělovský, 2009, pp. 463 et seq.

19 See Khazova, 2007, pp. 97 et seq.

20 The Act No. 150/1948 Sb., the Constitution of the Czechoslovak Republic.

21 Let us add that the former Compilation Commission on the Re-codification of Civil Code failed to create a new Civil Code that would cover family law matters as well. Draft No. 425 from 1937 was not passed.

22 For more, see Fiedorczyk, 2014.

2.3. *The Act on the Family and another new Constitution*

Owing to the passing of the other Constitution in 1960,²³ which proclaimed the victory of socialism in the Czechoslovak Republic, all the relevant codes from the previous period were substituted by the new acts, namely the Act on the Family²⁴ in 1963 and the Civil Code²⁵ in 1964. The Act on the Family and the Civil Code were said to be more simplified than the older ones, and some experts even spoke about a further vulgarization of legal culture.²⁶ In general, it can be agreed that the passing of the Act on the Family and the Civil Code in the 60s was a “*disaster*” when it came to the quality of legislative work. Furthermore, owing to political reasons, the ideological sediment was significant.²⁷

The politically engaged Preamble of the Act on the Family stressed that “*society strives to make the morality of socialist society the basis of all relationships within the family, marriage and the upbringing of children.*” The Preamble was followed by a list of general principles anchored at the beginning of the Act on the Family, which were intended to be the main rules for the interpretation and applications of the individual provisions. The role of the state and society was stressed to the detriment of the individual interests of the child’s parents and the child’s well-being. It ought to be mentioned that “*parents are responsible to society for the all-round mental and physical development of their children and especially for their proper upbringing so that the unity of family and society’s interests is strengthened*” and that “*the society takes care of the upbringing of children and the satisfaction of their material and cultural needs, cares for them and protects them through the state authorities, social organizations, schools, cultural, educational and medical facilities*”.

To follow the effort to build communism, key attention was paid to the upbringing of the child in harmony with political doctrine, and in addition, special provisions were headlined “*Participation of society in the exercise of the rights and duties of parents*”. It is generally known that communist lawmakers gave great power to the administrative bodies instead of the courts, and the national committees were allowed to take several actions toward the children, parents, and others. The Act on the Family provided *expressis verbis* that “*if urgently needed, the national committee is obliged to take such measures in advance, which only the court has the right to decide otherwise, to which it will immediately notify it; the court shall decide subsequently*” contained in Art. 46, AF. This provision also “allowed” the national committees to remove the child from the family and place them in institutional care, which used to be overused and abused in practice (sic). Thanks to the negative norm-setting of the Constitutional Court of the Czech Republic, the

23 The Act No. 100/1960 Sb., the Constitution of Czechoslovak Socialist Republic, as amended.

24 The Act No. 94/1963 Sb., the Act on the Family, as amended; hereinafter also “AF.”

25 The Act No. 40/1964 Sb., the Civil Code, as amended.

26 Eliáš, 1997, pp. 105 et seq.; for more, see Haderka, 1996, 2000.

27 See Bělovský, 2009, pp. 463 et seq.

relevant article was abolished soon after the fall of the communist regime (Pl. ÚS 20/94, No. 72/1995 Sb.).

From today's point of view, many *negatives* must be added in more detail. "Parental power" was replaced by the rather confusing concept of "rights and duties of the parents," which belonged only to parents with full legal capacity under Arts. 32 and 34, AF. Its scope was limited to "*the right to bring up the child, represent him or her and manage his or her matters*" contained in Art. 36, AF. As the property aspects of family life were neglected in the whole legal order owing to the prevailing ideology, the rules on the protection and management of a child's property were missing.

However, one *positive* aspect must be mentioned in this context: unlike its predecessor (the Act on the Family Law from 1949), the Act on the Family from 1963 re-introduced family substitute care of minor children who could not grow up with their parents. The doctrine of the exclusive placement of children in institutional care was abandoned. It must be added that thanks to the activities of many pediatricians, child psychologists and child psychiatrists, and other professionals, as well as the general public, a special law was passed in 1973²⁸ that re-established foster care, which had a tradition in the Czechoslovak Republic prior to 1948 or 1949.

2.4. International human rights conventions, the new Constitution, and the Charter of Fundamental Rights and Freedoms

After the fall of communism in 1989, and mainly thanks to the human rights conventions, the legal order in Czechoslovakia—and later in the Czech Republic established in 1992—underwent several changes. When speaking of individual international conventions relevant to the Czech family law and to those the Czech Republic has acceded, it is worth mentioning, especially, the Convention on the Rights of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the European Convention on the Exercise of Children's Rights; the European Convention on the Legal Status of Children Born out of Wedlock; the European Convention on Adoption of Children; the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption; the Hague Convention on the Civil Aspects of International Child Abduction; the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children; and the European Convention on Contact Concerning Children.

The acceptance of the abovementioned international conventions has led, among other effects, to a new perception of the Czech family law, its more cultural interpretation and application, and, last but not least, to the growing interest by the Constitutional Court of the Czech Republic in the conformity of the Czech family law with the European human rights standards. Its general authority and mainly "new" interpretation and applications of the "old" laws has meant the cancellation of an

28 The Act No. 50/1973 Sb., on Foster care, as amended.

unconstitutional provision of the Act on the Family, which has been already mentioned. Moreover, it is also necessary to underline the gradual wider consideration of the case law of the ECHR, especially in relation to the Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

It must be stressed that the “old” law from the 60s started to be newly interpreted and applied as well thanks to the new Constitution of the Czech Republic²⁹ and especially owing to the Charter of Fundamental Rights and Freedoms.³⁰ The Charter is fully in harmony with the wide concept of family life guaranteed by the international instruments and European human rights standards. It can be said that the Charter constitutes the “basic pillar” for the creation, interpretation, and application of individual family law norms. The Charter has a general value by wording “*Parenthood and the family are under the protection of the law. Special protection is guaranteed to children and adolescents*” contained in Art. 32, para. 2, Charter.

The Charter provides many articles devoted to children. It is especially stressed that “*children, whether born in or out of wedlock, enjoy equal rights*” without any discrimination under Art. 32, para. 3, Charter. The provision continues by stating that

it is the parents’ right to care for and bring up their children; children have the right to parental upbringing and care. Parental rights may be limited and minor children may be removed from their parents’ custody against the parents’ will only by the decision of a court on the basis of the law

contained in Article 32, para. 4, Charter.

It is followed by the statement that “*parents who are raising children have the right to assistance from the state*” covered by Art. 32, para. 5, Charter.

Regarding education, the Charter guarantees that

everyone has the right to education. School attendance shall be obligatory for the period specified by law ... Citizens have the right to free elementary and secondary school education, and, depending on particular citizens’ ability and the capability of society, also to university-level education ... Private schools may be established and instruction provided there only under conditions set by law

under Art. 33, para. 1-4, Charter.

In this relation, it is necessary to mention a special provision stating that “*the freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change his or her religion or faith or to have no religious conviction*” covered by Art. 15, para. 1, Charter.

²⁹ The Constitutional Act No. 1/1993 Sb., the Constitution of the Czech Republic, as amended.

³⁰ The Constitutional Act No. 23/1991 Coll., the Charter of Fundamental Rights and Freedoms, re-adopted under No. 2/1993 Coll., as amended; hereinafter also “Charter.”

As regards healthcare, the Charter provides that “*everyone has the right to the protection of his or her health. Citizens shall have the right, on the basis of public insurance, to free medical care and to medical aids under conditions provided for by law*” under Art. 31, Charter.

The aforementioned constitutional achievements had an important impact on the state’s legal development. The Parliament of the Czech Republic initiated many reforms of family law in harmony with human rights dimension and European standards. The Act on the Family was amended mainly in the year of 1992,³¹ when religious wedding was again established. However, the *purge* from ideological sediment, principles, and terminology was done rather late after the fall of the Berlin Wall, in 1998.³²

Finally, the passing of the so-called Children Act³³ in 1999 must be mentioned. Children started to be regarded not as passive objects of their parents’ will or of a paternalistic or totalitarian state, but as fully-fledged and active entities.³⁴ Last but not least, the protection of the families, weak family members, and persons at risk—minor children included—would not be complete without passing the so-called Act Against Domestic Violence.³⁵

The changes in substantial law, in this respect, were followed by the passing of amendments to the Civil Procedural Code from 1963³⁶ and the Act on Mediation in 2012.³⁷ Later on, in 2013, the Act on Special Civil Proceedings³⁸ was passed, introducing new family law proceedings.

It must be stressed that the favorable atmosphere of the post-revolution period of the early 90s provided the lawmaker with a great space for the recodification of basic codes, mainly the Act on the Family and the Civil Code from the 60s. Unfortunately, that advantage was missed, and the most important codes were amended many times, but partially and lacking any proper concept.

2.5. The Civil Code and its human rights values

The changes connected with passing of the Civil Code³⁹ as a fundamental source and “core of private law” were significant. The previous concept of “independent family codes” according to the “Soviet model” was abandoned, and family law was incorporated into “Book Two” of the Civil Code as it used to be a tradition before

31 The Act No. 234/1992 Sb.

32 The Act No. 91/1998 Coll.; for details see Haderka, 2000, pp. 119–130.

33 The Act No. 359/1999 Sb., on the Socio-Legal Protection of Children, the so-called Children Act, as amended; hereinafter “ChildA”; see Krausová and Novotná, 2006.

34 For details see Hrušáková, 2002; Hrušáková and Westphalová, 2011.

35 The Act No. 135/2006 Sb., so-called Act against Domestic Violence, as amended; see Králíčková et al., 2011.

36 The Act No. 99/1963 Sb., Civil Procedure Code, as amended.

37 The Act No. Act No. 202/2012 Sb., on Mediation, as amended.

38 The Act No. 292/2013 Coll., on Special Civil Proceedings, as amended.

39 The Act No. 89/2012 Sb., Civil Code, as amended; hereinafter “CC” or “Civil Code”; the Civil Code came into effect on January 1, 2014.

the year 1949 and as is common in many European countries. Not only the form but also the content of the Civil Code is of the utmost importance. Thanks to its main authors, the Civil Code respects the “traditional” values of the European Christian-Jewish culture and develops “new” ideas anchored into the Charter. The Civil Code also includes some important *novelties* that have been present in other European civil codes for a long time, mainly owing to the human rights conventions, the case law of the ECHR, and various academic activities originated especially in the Commission on European Family Law. It was the Principles regarding Parental Responsibilities that must be mainly emphasized when describing the sources of inspiration for the concept’s legal regulation and the content of parental responsibility anchored into the Civil Code,⁴⁰ in addition to the abovementioned conventions. As a contribution of the Principles regarding Parental Responsibilities to the discussion of the draft Civil Code should be primarily considered: the concept itself, the broader content of parental responsibility, and the distinction between the “holding” of parental responsibility and the “exercising” of duties and rights belonging to the scope of parental responsibility. It is also worth highlighting that the position of the parents of a child who are incapacitated or minors is strengthened, particularly in relation to personal care or contact with the child. It should also be stressed that the exercise of duties and rights arising from parental responsibility by the child’s parents after divorce or in the event of *de facto* separation have been thoroughly regulated and that explicit rules have been established for parents in conflict. Other provisions have been created for a child’s parents and prospective adoptive parents and the people involved in the child’s substitute family care in general, which will undoubtedly prevent difficulties. With regard to the suspension, limitation, and deprivation of parental responsibility, it is worth mentioning, in particular, the provisions according to which the court must deal with the parent’s contact with the child or may, simultaneously, deprive the parents of the right to consent to the adoption. However, these provisions must be seen as “measures” rather than “sanctions.”

In addition to the concept of parental responsibility, the Civil Code regulates the establishment of legal parentage, which should be (in principle) in harmony with biological and social parentage under Art. 771 ff, CC. The statutory norms regarding the child’s status relevant for kinship are followed by the rules governing the relationship between the parents and the child. The Civil Code provides for many duties and rights, such as status, personal, and property ones contained in Arts. 855 ff, CC. At this point, it should be foreshadowed that some duties and rights concern only newborns; some concern minor, not fully capable children, and others are duties and rights of lifelong importance.

The following lines are devoted to the most relevant aspects of parentage and parental responsibility according to the Civil Code and to critical amendments to this main source of family law that have already been passed.⁴¹

40 Regarding the impact of other Principles of European Family Law, see Králíčková, 2021b, pp. 85–95.

41 For more, see Králíčková and Hrušáková and Westphalová, 2020, 2022.

3. Establishment of legal parentage: a brief description

The Civil Code regulates the establishment of parentage and determines a child's parents by mandatory rules. A child's mother is the woman who gave birth to the child under Art. 775, CC. The child's father is a man whose fatherhood is based on one of the three legal presumptions of paternity contained in Arts. 776 ff, CC. The law also protects the so-called putative parents covered by Art. 783 and Art. 830, CC. Biological (or genetic) parentage and social parenthood (*de facto*) are critical, and it is necessary to respect the balance between all these categories.⁴²

Legal parentage (*de jure*) may be established by adoption as well under Arts. 794 ff, CC. Thanks to the international conventions, the Civil Code protects the family of origin of a child well and the child's right to live primarily with the parents or blood relatives. The right to consent to the child's adoption is not included in parental responsibility. However, when depriving the parents of their parental responsibility toward the child, the court can discharge the parents of the right to give consent to the adoption as mentioned above. On the other hand, adoptive parents will become holders of parental responsibility according to the doctrine of full adoption, or *adoption natura imitatur*.⁴³

It must be added that legal parentage is most important for the child. The establishment of parentage—or the determinations of kinship—has significance for the whole legal order as it is a base for creating the child's civil status.

4. The concept of a minor child

In contrast with the Convention on the Rights of the Child, the Civil Code does not define who the child is, although this can be inferred from the rules on the establishment of kinship. The law provides that it is a relationship based on blood ties or originated by adoption that is constructed as a status change under Art. 771, CC and Art. 794 ff, CC. Then, the child is a descendant in the direct line of the first stage covered by Art. 772 and Art. 773, CC. A minor child is to be understood as a child who has not reached the age of majority under Art. 30, Sub-Section 1, CC; a minor, fully non-capable child is a child who is under 18 years of age and has not yet reached full legal capacity by a court's decision contained in Art. 37, CC or by concluding a marriage under Art. 30, Sub-Section 2, CC; these last two options are only rarely used in practice.

It ought to be stressed that the law provides special protection to a minor, fully non-capable child, especially within the private law concept of parental responsibility.

⁴² For more, see Králíčková, 2008, pp. 275–282.

⁴³ Králíčková, 2003, pp. 125–142.

5. Mutual duties and rights of parents and a child: a general overview

The Civil Code pays significant attention to the mutual duties and rights of parents and the child contained in Arts. 855 ff, CC. The law emphasizes equality and reciprocity, or reciprocity of duties and rights. It stipulates that “*the parents and the child have duties and rights in relation to each other*” under Art. 855, CC. The rights of one always correspond to the duty of the other and *vice versa*. The same provision states that “*these mutual duties and rights cannot be waived; if they do so, it is disregarded.*” Neither the parents nor the children can “get rid” of any of their duties or rights regardless of being personal or property as these are established by law. Above all, the status relationship between the parents and the child cannot be canceled, neither unilaterally nor by an agreement. As it was already mentioned, there are only few legal exceptions: the parents have the right to give their consent to the adoption of the minor child or to “show non-interest” or even leave a newborn child at “baby-boxes” (not regulated at all).

The rules built on equality and reciprocity of duties and rights of parents and the child apply in principle, regardless of the age or the level of legal capacity of both the parents and the child. Many of the duties and rights form an integral part of the parents and the child’s entire lives. It must be stressed that some of the mutual duties and rights are permanent—albeit varying in detail with regard to the passage of time; for instance, the amount of the reciprocal maintenance duty between the parents and the child, the duty to respect each other’s dignity, or mutual assistance. Several duties and rights of parents in relation to their child concern only a newborn child; for instance, the duty and the right of parents to name their child. However, some duties and rights arise from parental responsibility as a special concept of family law and form the content of the legal relationship between the parents and a minor child who is not fully capable. Similarly, some of the duties and rights of a child in relation to their parents concern only a minor child.

As far as other conceptual issues are concerned, the Civil Code reflects its main inspiration source, the Principles regarding Parental Responsibilities, and in addition to defining the content of parental responsibility, it provides rules for the establishment and holding of parental responsibility and for the joint exercise of duties and rights belonging to parental responsibility in harmony with the best interests of the child and their welfare. It also provides details regarding the most important elements of parental responsibility as personal care for the child and their protection, the child’s upbringing and education, their residence and relocation, the parents’ personal contact with the child, the child’s representation, and the administration of the child’s property. The duties and rights belonging to parental responsibility vary in relation to the child’s gradual maturation and disappear as the child reaches adulthood or by the child’s acquisition of full legal capacity.

6. The term parental responsibility

As mentioned in the introduction, the Civil Code uses the term “parental responsibility” (in Czech “*rodičovská odpovědnost*”). However, this term appeared in the Czech legal order for the first time in 1998 owing to the passing of the amendment to the Act on the Family from 1963 (with different spelling “*rodičovská zodpovědnost*”).

Regarding the origin of the terms “parental responsibility” or “parental responsibilities,” it can be said that they are connected with the international conventions mentioned above and with the European instruments. Several organizations have used the term as singular (the Hague Conference on Private International Law and the European Commission) or plural (the Council of Europe). As foreshadowed in the introduction and within the historical context, all changes in the legal regulation of the relationship between parents and the child were simultaneously accompanied by a change of terminology and indicated the shift from the traditional concept of “parental power” and “parental authority” to “parental rights and duties” as well as “parental care,” and ultimately to “parental responsibility” or rather “parental responsibilities.”⁴⁴

7. The concept of parental responsibility

As stressed above, the concept of parental responsibility anchored into the Civil Code was inspired by the Principles regarding Parental Responsibilities, which is why it must be seen as a broad collection of duties and rights concerned with taking care of the minor child’s person and properties.⁴⁵

Under family law, every legal parent of the child is the “holder” of parental responsibility or the “holder” of duties and rights arising from it, unless they were deprived of it by the court under Art. 865, CC. Even the minor parents of a child or the parents limited in their legal capacity, in this respect, by the court because of a mental disease are the “holders” of the duties and rights arising from parental responsibility.⁴⁶ However, the Civil Code provides special rules for these parents as follows.

As far as a minor parent is concerned, it is said under Art. 868 para. 1, CC that

the exercise of parental responsibility of a minor parent who has not previously acquired full legal capacity by having been granted legal capacity or having entered into marriage, is suspended until such time as the minor parent acquires full legal

44 Boele-Woelki, 2007, p. 14.

45 Králíčková, 2021b, pp. 85–98.

46 Šínová and Westphalová and Králíčková, 2016.

capacity; this does not apply to the exercise of right and duty to care for the child, unless a court, having regard to the personality of the parent, decides that the exercise of this duty and right is also suspended until such time as the parent acquires full legal capacity.

Regarding parent limited in legal capacity owing to a mental illness, it is provided under Art. 868 para. 2, CC that

the exercise of parental responsibility of a parent, whose legal capacity has been limited in this area, is suspended for the duration of such limitation, unless a court decides that the exercise of the parent's rights and duties relating to the care for the child and personal contact with the child is to be retained with regard to his or her personality.

Such suspension of exercise of duties and rights by the operation of law must be distinguished from suspension by court decision and from other measures (see below).

In connection with the above-described concept of “holders” of parental responsibility, it must be stressed that parental responsibility as a whole cannot be transferred to another person as the law in general provides that parents and children cannot waive their mutual duties and rights. The law does not give such a privilege to a court, either. The holder of the duties and rights arising from the parental responsibility is neither a spouse, the so-called stepparent, or the partner of the child's parent, although the law allows them to “participate” in the child's upbringing covered by Art. 885, CC.

The holder of parental responsibility is not a guardian, although the law stipulates that a guardian has basically all the duties and rights as the child's parent in relation to the child; however, the law regulates that the court exceptionally provide a range of duties and rights otherwise contained in Art. 928, CC.

To sum up, any other third person different from the child's parents cannot be the holder of parental responsibility.

8. The content of parental responsibility

As explained above, the main authors of the Civil Code, when writing the final version of the concept of parental responsibility, took into consideration major part of the Principles regarding Parental Responsibilities—not only its terminology, but especially its broadly conceived collection of “rights and duties” aimed at “*promoting and safeguarding the welfare of the child*”; in particular (a) the child's care, protection, and education; (b) the maintenance of their personal relationships; (c)

the determination of their residence; (d) the administration of their property; and (e) legal representation.

However, according to the Civil Code, the content of parental responsibility is rather broader and more complex. The Civil Code provides that parental responsibility includes, in reverse order, the “duties and rights” of parents, which consist in (a) caring for the child, mainly including care for their health, their physical, emotional, intellectual and moral development; (b) protecting the child; (c) maintaining personal contact with the child; (d) ensuring their upbringing and education; (e) determining the place of their residence; (f) representing them; and (g) administering their assets and liabilities, or property contained in Art. 585, CC.

In addition, the Civil Code provides what issues, among the most important ones, require the consent of both parents. The list of a child’s significant matters is demonstrative and includes, in particular, (a) non-routine medical and similar interventions, (b) the determination of the child’s place of residence, and (c) the child’s choice of education and employment under Art. 877 para. 2, CC. It should be added that the duty and right to decide on these matters “extends” the content of parental responsibility.

9. The purpose of parental responsibility

As for the purpose of parental responsibility according to the Civil Code, it should be seen primarily as a package of legal and moral rules simultaneously. The essence and meaning of parental responsibility lie in the value of parentage itself, in conjunction with the value of the child’s welfare.

The private law concept of parental responsibility is a civil liability aiming to the future in an objective normative significance of an order to provide proper care: here it is a legal order for adequate childcare or for the best parental childcare in accordance with the best interests of the child. To act as a “responsible” parent means to act appropriately with regard to the welfare of the child as best as it can be objectively required from the parents according to their emotional, cognitive, and volitional properties or their best parenting skills. The terms “parentage” and “parental responsibility” have, as a legally recognized value, absolute legal importance with effects *erga omnes*. The purpose of parental responsibility is, on one hand, the implementation of parenting by the child’s parents and, on the other, the protection of the rights and legitimate interests of the child, their moral and material benefits, as well as their upbringing and education, personal care, protection (in the broadest sense of the word), determination of place of their residence, administration of their property, and their representation.

10. Origin and duration of parental responsibility

It follows from the nature of the case that parental responsibility arises by operation of law (*ex lege*) for each parent at the child's birth and is extinguished upon the child acquiring the age of majority (or full legal capacity). It means that the concept of parental responsibility protects only a minor child who is not fully capable, and it is not relevant whether the child's parents are married or not, whether they live together or not, and so on, although these factors can play a significant role, especially in the case of the exercise of individual duties and rights arising from parental responsibility. The duration and extent of parental responsibility may be changed only by the court (see below for details).

Parental responsibility of one of the parents does not end by placing the child into the individual (sole) custody of the other parent after the dissolution or annulment of marriage nor by *de facto* separation of the parents, or by placing the child into any form of substitute care, such as foster care, institutional care, and so on. This issue must be considered in light of its human rights dimension.⁴⁷ The child is an integral part of their family of origin; both parents have the right to exercise duties and rights connected with their parentage and parental responsibility—not only theoretically but also practically, jointly, and in harmony with the best interest of the child and their welfare and well-being and according to the following rules.

11. The exercise of duties and rights belonging to parental responsibility

11.1. On general rules

The exercise of duties and rights forming the scope of parental responsibility by both parents of a child, which is a common and desired state of affairs, assumes the parents' agreement that obliges them—albeit subject to changes in circumstances (*clausula rebus sic stantibus*)—for instance, with regard to the scope of personal contact with the child in relation to their age, maturity, and so on. The agreement and cooperation of both parents are the key words of the Civil Code regardless of whether they live together or are *de facto* separated or divorced. Regarding decision-making, special provisions exist for daily matters, important issues, and urgent decisions concerning the child. If the parents cannot come to an agreement on important matters concerning the child—for instance, on the child's residence, representation, property issues, education, health services, or regarding personal care (custody) and maintenance and contacts with the child in case of *de facto* separation

⁴⁷ See Králíčková, 2010.

in particular—the court decides.⁴⁸ Thanks to the Convention on the Rights of the Child, the child is not taken as an object of decision-making but as an active person. Their autonomy, participations rights, and and right to self-representation in legal proceedings concerning themselves are respected.

The following lines are devoted to the child's care, protection, upbringing, health, education, residence or relocation, representation, and property aspects in more details.

11.2. The child's care, protection, and upbringing in more detail

Childcare, in the broadest sense of the word, is a key part of parental responsibility. It includes, in particular, care of a child's health and their physical, emotional, intellectual, and moral development. It should be distinguished from “personal care” or “personal custody” within individual (sole) custody, alternating (serial) or joint custody after divorce or *de facto* separation of the child's parents. By definition, even the parent who is not the so-called primary caregiver has the duty and right to care for their child, their protection and upbringing, education, representation and management of property issues. The same applies even in the case of parentage legally established against the will of one of the parents.

The law provides for a series of partial duties and rights under Art. 880 to Art. 886, CC; in particular, it rules that parents exercise parental responsibility concerning the child in a manner and with respect to the level of the child's development. The parents have the duty and right to have a child by themselves and exercise supervision over the child. If they do not have a child by themselves, they have the duty and right to have personal contact with the child. Furthermore, they have the right to request their child back if another person unlawfully detains them.

Parents have the duty and right to protect their child from the outside world depending on the child's level of development, maturity, age, temperament, and so on. This is the traditional content of parenting or parental responsibility. Protection may be understood as anything that is in the best interests of the child, and it could be, for instance, protection against the negative effects of the Internet, against persons who are prone to committing pedophilia and violent crimes, and so on.

The law stipulates, in particular, that parents play a crucial role in the child's care, protection, and upbringing and that they are supposed to be all-round role models for their children, especially with respect to the way of life and behavior in the family covered by Art. 884, CC.

11.3. The child's healthcare, especially in special cases

When it comes to child's health care, the basic framework is given by constitutional act, the Charter (see above for details). The Civil Code enshrines not routine

⁴⁸ For more, see Králíčková and Hrušáková and Westphalová, 2020, 2022.

medical and similar interventions in the demonstrative list of important matters in which the consent of both parents of a child is required under Art. 877 para. 1 and 2, CC. It should be emphasized that this concept is relatively broad as it includes interventions affecting the mental and physical integrity of the child as any other person under the Civil Code covered by Arts. 91 ff, CC.

Other provisions of the Civil Code state that parents represent their minor child together in those legal actions for which the child is not eligible under Art. 31, CC; however, each of them may act independently covered by Art. 892 para. 2 and 3, CC. The law protects the good faith of third parties by a rebuttable presumption contained in Art. 876 para. 3, CC. It follows from the above that, in practice, the consent of one of the parents will normally be sufficient for a practicing doctor. However, if the parents have a different opinion, or if the other parent's disagreement is known to the doctor, the consent of one of the parents will not be sufficient. In case of danger of delay in deciding on the child's affairs, in general, one of the parents may decide on their own or grant separate consent, provided that they have an immediate notification obligation toward the other parent under Art. 876 para. 2, CC. When a disagreement between the parents arises in a substantial matter concerning the child's health (i.e., there is a collision in the sphere of non-routine medical and similar interventions), the court will decide.

In principle, the child's participatory rights must be respected in general; however, in this particular context, special rights are guaranteed under Art. 100, CC. It is stipulated that if a child who has reached the age of 14 has not become fully capable and seriously opposes the intervention, even if the legal representatives (the parents) agree to the intervention, the intervention cannot be conducted without the court's consent; if the legal representative does not agree with the interference with the child's integrity, even if the child so wishes, the intervention may be conducted at their request or at the request of a person close to them only with the consent of the court.⁴⁹

The Act on Health Services provides further rules.⁵⁰ In the field of healthcare, such as, for example, with regard to the hospitalization of a child without the consent of their parent, it is stipulated that "*a minor patient may also be hospitalized without the consent of a legal representative ... if abuse or neglect is suspected*" and "*urgent care may be provided to a minor patient ... without the consent of the legal representative if the patient is suspected of having been abuse or neglected*". It is followed by the rule that "*a minor patient ... may be provided by emergency care without consent*" in case of need of "*urgent or acute care to the child*" or "*health services necessary to save life or prevent serious damage to health*". The right of a minor patient to the continuous presence of their parent during the performance of health care or hospitalization is also explicitly enshrined.

49 For details, see Králíčková, 2016.

50 The Act No. 272/2011 Sb., on Health services, as amended.

Abortion is relatively liberally regulated in the Act on Abortion,⁵¹ and the girl's decisive age limit is 16 years. The law stipulates that “a woman who has not reached the age of sixteen may have her pregnancy aborted with the consent of the legal representative or the person to whom she has been entrusted” and “if a woman between the ages of sixteen and eighteen has aborted her pregnancy, the medical facility will inform her legal representative”. The issue of contraception is also related. It does not follow from the law that a woman under the age of 18 must apply for the consent of her legal representative in the case of means of preventing pregnancy. In the given case, it is necessary to proceed in accordance with the general regulation of partial autonomy of minor girls (see above). If the age limit of 14–15 years is considered to allow generally competent and independent decision-making in the provision of healthcare, if in the case of abortion the relevant age limit is 16 years, it must be concluded that a woman between the age of 16 and 18 does not need to be represented in these matters by her legal representative.

11.4. The child's education and parental conflicts connected with the child's residence or relocation

The right to education is guaranteed on a constitutional level, as outlined above. The Civil Code provides, in harmony with the Charter, that parents have the right to decide on their child's education or career paths within the exercise of parental responsibility. They must always consider the child's opinion in relation to their participatory rights, skills and talents, and so on. The choice of education or employment is an important matter that the child's parents must agree on, or they must go to court in case of disagreement explicitly covered by Art. 877 para. 2, CC. It is not only a matter of choosing a primary or secondary school but also of preschool education. Although special laws often use singular “legal representative” in the regulation of a child's registration for compulsory school attendance by the School Code under Art. 36 para. 4,⁵² it must be assumed that the child usually has two parents agree on this matter; otherwise, they will go to court.

In practice, in several cases, the child's parents disagree on their education, school choice, and so on. The case law in these matters is devoted not only to education as such but also to the place of education in relation to *de facto* separation of the child's parents and other connected problems. It often happens that one of the parents leaves the place of the family's usual residence, relocating the child to “the opposite end of the country,” and the child enrolls in school or kindergarten there. Judicial decisions in these cases are thus primarily related to the rights of the so-called left behind parent and to the decision-making on the personal care (custody) of the child and contact rights rather than to their education as an essential matter

51 The Act No. 66/1986 Sb., on Abortion, as amended.

52 The Act No. 561/2004, Sb., on Pre-school, primary, secondary, higher vocational, and other education, as amended; hereinafter “School Code.”

(see NSS 4 As 281/2015-32). The educational program of a school is in second place in importance and mostly irrelevant.

According to the School Code, the child can attend two primary schools, which can be used with alternating parental care arrangement. However, the question arises as to whether visiting two schools—for instance at weekly intervals—is always in the child's best interests.

11.5. Religion and the child

The child's right to freedom of religion or to not follow a religion is guaranteed in relation to human rights standards (for details see above). Parents may regulate the exercise of their child's rights in a manner appropriate to their developing abilities according to the Act on Freedom of Religion.⁵³ Details regarding teaching religion in schools are anchored in the School Code.

The Civil Code does not regulate this issue *expressis verbis*, but it can be concluded that this matter belongs to the child's upbringing and care for their emotional, intellectual, and moral development and that it is an essential matter concerning the child on which the parents should agree under Art. 858, 877 para. 2, CC.⁵⁴ However, unlike within the General Civil Code's period of validity, no related case law is available.

11.6. Legal representation of the child

Legal representation of the child by their parents is deemed to be a traditional right, but also a duty, of the child's parents. It follows from other provisions that parents have the duty and right to represent the child in legal actions for which the child lacks legal capacity contained in Art. 31, Arts. 892 to 895, CC. If the child is competent, they act alone, and legal representation by their parents does not apply.

Regarding the child who does not have full legal capacity, or who has partial legal capacity and "falls under parental responsibility," the law distinguishes

- a) a child who acts independently in relation to their intellectual and voluntary maturity under Arts. 31 and 32, CC and capacity to work under Arts. 34 and 35, CC;
- b) a child who is capable of acting independently, but the consequences of their legal acts may be made conditional on the consent of their legal representative, namely the parents covered by Art. 36 para. 2, CC;
- c) a child who acts with the consent of their legal representative, namely the parents under Art. 32, CC;

⁵³ The Act No. 3/2002 Sb., on Freedom of religion and the status of churches and religious societies, as amended.

⁵⁴ Moravčíková, 2013.

- d) a child who acts with the consent of the legal representative, the parents, and the court in the case of the operation of a commercial establishment contained in Art. 33, CC;
- e) a child for whom the legal representative—the parents—acts exclusively within the exercise of parental responsibility.

When the child has both parents, the parents represent the child jointly as legal representatives; however, either of them may act under Art. 892 para. 2, CC. Thus, it applies that if one parent acts alone in the child's affairs vis-à-vis a third party who is acting in good faith, they shall be deemed to act with the consent of the other parent.

The law emphasizes parental consent; however, it stipulates that if the parents do not agree on which parent will represent the child, the court shall decide, on the parent's motion, which parent will act on behalf of the child and how.

A special provision considers the threat of conflict of interest contained in Art. 892 para. 3, CC. Thus, a parent may not represent a child if there could be a conflict of interest between them and the child or between children of the same parents. In practice, this provision is applied, in particular, in proceedings regulating the relationship of the parents to the child for the period after *de facto* separation or divorce and in proceedings concerning the child's property issues. Guardian *ad litem* must therefore be appointed for the child or for each of the children.

11.7. Management of the child's property: on the increasing novelties

As mentioned above in the part devoted to historical context, the issue of the child's property was completely neglected by the predecessor of the Civil Code. The Act on the Family in its original version from 1963 did not have any article on the management of the child's property that was partially corrected only by an amendment from 1998 in connection with the purification from the ideological sediment.

According to the Civil Code, the protection and administration of the child's property belong to parental responsibility. The law in this matter contains many general and special provisions contained in Arts. 896 to 905, CC, which must always be interpreted and applied in accordance with the principle of the child's best interests and well-being. Child asset management should be rather conservative, and the parents should strive primarily to preserve the child's property rather than "*make a profit at all costs.*" The basic principle set out in the regulation of parental responsibility is that parents have the duty and right to take care of the child's property primarily as ordinary managers; they must dispose of funds that are not expected to be needed to cover the expenses related to the child's property. This also applies to the child's savings, whether generated on the basis of the parents' agreement within a functioning relationship or on the basis of a court decision.

When it comes to the relationship between the parents, the law emphasizes their mutual agreement; if the parents do not agree on essential matters in the care of the child's property, the court will decide on the parent's proposal. In addition, the Civil Code contains provisions regulating the need for the approval of parents' legal actions by a court contained in Art. 898, CC. In particular, the law stipulates that the parents need the consent of the court in order to take legal action that concerns the child's existing and future assets or individual components of these assets, unless these are ordinary matters or matters of exceptional but negligible property value. It is further stipulated that the consent of the court is always required for legal proceedings by which the child, for instance, acquires, alienates, or encumbers an immovable property or a share in it; concludes an agreement between the heirs on the amount of inheritance shares or division of the estate; rejects the inheritance or declares that they do not want a reference; and so on. Sanctions for non-compliance with the law are no longer apparent conduct as the law newly stipulates that if a parent acted on behalf of a child without the consent of the court, this legal action can be declared invalid only if it harms the child covered by Art. 898 para. 4, CC.

Other provisions regulate the issue of income or profit (returns of assets) from the child's property under Arts. 899 to 900, CC. The rule is that what the parents gain by using the child's property is acquired by the child. It is further stated that the income from the child's property, which the parents do not use for the proper administration of their property (profit), will first be used for the child's maintenance (even without the court's consent). If necessary, the parents can then use the remaining profit from the child's property as a contribution to the parents' own maintenance and the child's minor siblings if they live in the family household, unless it is necessary to keep them for the child after they reach maturity for important reasons.

A different regime is set for property substance. The law stipulates that the child's parents may, with the consent of the court, use it for the child's own needs and the child's siblings needs only if, without the fault of the persons having maintenance duty toward the child (parents or other direct relatives), a significant disparity arises between the child and parents.

The child's property also includes the alimony paid for them. Regarding the administration of individual amounts of maintenance, the general rules on the management of the child's property apply. The parent in whose hands the maintenance is to be paid has the right to dispose of the maintenance in ordinary or exceptional—but negligible—property values. As the child's property also includes savings that are saved from paid maintenance, both parents have the duty and right to manage the savings.

In legal proceedings concerning an individual part of the child's property, the parents act as their representatives. If the parents violate the obligation to take care of the child's property as a regular steward, they will compensate the child for the damage caused jointly and severally.

Other duties and rights are connected with the parents' obligation to hand over the child's property after completing their full legal capacity contained in Art. 902,

CC. The parents hand over parts of their property to the child or transfer their administration to them, and they submit to the child, at their request, a statement from the administration of property without undue delay but no later than six months from the day that the child became fully capable.

It must be stressed that the Civil Code underwent a significant change in 2021 in an effort to protect “*child debtors*” and “*correct bad practice*.” The amendment enshrined several new provisions.⁵⁵ In particular, the rule covered by Art. 899a para. 2, CC that regulates the parent’s liability for the child’s monetary debt should be mentioned. It is stipulated that the parent acting on behalf of the child or giving their consent to the legal action is liable for the child’s debt, which arose from the legal action taken before the acquisition of the child’s full autonomy. The Civil Code also establishes a new age limit of 13 years within the tort law and establishes special rules for damage compensation for both a child under the age of 13 or over this age and those who were to supervise the child.⁵⁶

12. Separation *de facto* and divorce of the child’s parents and individual, alternating, and joint custody

12.1. On general rules

As stressed many times above, parental responsibility belongs to each parent of the minor child by operation of law. If the child’s parents live in the same household and exercise their duties and rights in accordance with the principle of the child’s best interests and well-being, the state has no reason to interfere in their private sphere.

However, if the child’s parents are *de facto* separated or they are soon to be divorced, the court will determine how each of the parents will take care of the child and support them in the future, taking into account the best interests of the child contained in Art. 906 ff, CC. The law prefers the parents’ agreement, which must be approved by the court, especially in the case of divorce. The court may deviate from the agreement of the parents only if the best interest of the child so requires. The court decides authoritatively but always takes into account not only the child’s relationship to each of the parents but also their ties to siblings, grandparents, and other relatives as well as property aspects, the housing situation, and so on.

The law stipulates that the agreement or the court decision must contain

- a) always a statement about the personal care of the parents (custody; see below for details);

⁵⁵ The Act No. 192/2021 Sb.

⁵⁶ For details, see Psutka, 2021.

- b) always a statement on the determination of maintenance duty of the parents toward the child (although maintenance duty does not belong to parental responsibility);⁵⁷
- c) a statement on personal contact with a non-caring parent (non-primary caregiver) or grandparents or siblings, but only if no agreement is reached or if the best interests of the child and family circumstances so require; the court can establish rules, intervals, conditions, modifications, and so on; statutory law does not use the terms “standard contact” or “broad contact,” although this terminology is used by praxis⁵⁸ (see below for details).

12.2. The criteria in more details

The criteria for entrusting a child to personal care (custody) are established by law in very general terms contained in Art. 907, CC. In particular, the court decides in the best interests of the child and takes into account the following:

- a) the child’s personality, namely their talents and abilities in relation to the developmental opportunities and living conditions of the parents;
- b) the emotional orientation and background of the child;
- c) the educational abilities of each parent;
- d) the current and expected stability of the educational environment in which the child is to live in the future;
- e) the emotional ties of the child to their siblings, grandparents, and other relatives and close persons;
- f) the fact that one of the parents has so far taken proper care of the child and properly cared for their emotional, intellectual, and moral upbringing;
- g) which of the parents has better prospects for the healthy and successful development of the child;
- h) the child’s right to be cared by both parents and to maintain regular personal contact with them;
- i) the right of the other parent, to whom the child will not be entrusted, to regular information about the child;
- j) the parent’s ability to agree on the child’s upbringing with the other parent;
- k) good communication between parents is crucial for the child.

It should be added that the criteria mentioned above following from the Civil Code are accompanied by the case law of the Constitutional Court of the Czech

⁵⁷ As the maintenance duty does not belong to the scope of parental responsibility, only brief information is necessary. The concept or rules of maintenance duty are very general. The child has the right toward their parents for maintenance so far as they are not able to provide for their needs. There are no tables, percentages, or statutory limits, and the child has the right to follow the living standard of the parents, even if they are an adult under Arts. 910 et seq., CC. The related case law is abundant, especially that by the Constitutional Court of the Czech Republic.

⁵⁸ Kornel, 2008.

Republic, mainly by the statement that “*there are no models for family life*” (II. ÚS 363/03; I. ÚS 420/05). Thus, in each specific case, the court must consider the above-mentioned legal rules, the opinion and wishes of both parents, and especially the opinion and wishes of the child, and it assesses everything so that the post-separation and post-divorce arrangement is in the best interests of the child or in accordance with their well-being (I. ÚS 1506/13). If the attitudes of the child’s parents are irreconcilable, “*the state must not give up*” its positive obligation to protect the child. Among other attempts, it must make efforts to improve relations between the child’s parents and address the reasons for their negative attitudes (III. ÚS 1206/09; I. ÚS 2482/13). The whole spectrum of means must be used for this—for instance, family mediation, family therapy, meetings of parents and child with an expert in the field of child’s psychology, and others.

Every child is different, and this must be taken into account above all; the child also has the right to be cared by both parents—or at least the right for regular personal contact with them—for security, background, and the perspective of successful development and family life in general. According to the case law of the Constitutional Court of the Czech Republic, it is mainly about “*maintaining family ties and minimizing interference in them, as well as the whole spectrum of other aspects*” (I. ÚS 2482/13). Thanks to the case law of the Constitutional Court of the Czech Republic, there has been a gradual deviation from the “model” experienced and used for years such as “one primary caregiver and one weekend parent” in favor of alternating or even joint custody by both the child’s parents.

It must always be borne in mind that the child is not the passive object of the agreement or the court’s decision, but they must be taken as an active subject with all the rights of a party to the proceedings, who must be represented by guardian *ad litem* (I. ÚS 3304/13). Their views and wishes must be considered.

If the circumstances substantially change (*clausula rebus sic stantibus*), the court may change its decision in the case of a child or approve the parents’ agreement even without a proposal under Art. 909, CC. There is no obstacle (*res judicata*), and the best interest of the child is always the overriding principle or value to which other aspects must give way (see also I. ÚS 3216/13, IV. ÚS 106/15).

In harmony with the case law of the Constitutional Court of the Czech Republic and its leading idea that “*there are no models for family life*,” the personal care of a minor child (custody) by their parents can take many forms; however, regarding statutory law and terminology, the Civil Code provides as follows.⁵⁹

12.3. *The individual custody*

The individual personal care (custody) of one of the parents means that the child is entrusted to the custody of the mother or the father and that they should live in a family household with this primary caregiver. The other parent—the one

⁵⁹ Kornel, 2013.

to whom the child has not been entrusted to individual care (non-primary caregiver)—remains the “holder” of parental responsibility and is allowed to exercise the duties and rights arising from it. However, by the nature of things, this exercise changes. This parent exercises their parental responsibility mainly within the personal contact with the child. Regarding decision-making on important matters related to the child, the agreement with the primary caregiver must be concluded, or the case must be brought before a court. The non-primary caregiver must also fulfill their maintenance duty toward the child at the hands of the caring parent under Art. 910, CC and has the right to have regular contact with the child unless provided otherwise. If the best interests of the child so require, the court may modify the contact—for instance, it may stipulate that contact will take place at certain intervals, on “neutral” ground, or with the participation of a psychologist or other person covered by Art. 888, CC. In exceptional cases, the court may prohibit the contact of the non-primary caregiver with the child under Art. 891 para. 2, CC.

12.4. *Alternating custody*

In the case of alternating (serial) personal childcare (custody), both the mother and the father care at intervals that may or may not be the same length (for instance weekly or monthly; 2–3 days in case of very young children). Alternating care can take many arrangements.⁶⁰ Nothing in the law prevents a child from remaining in the family household and their parents coming to the former common dwelling or taking turns in personal child care. If parents agree on this form of care, they should also agree on their maintenance duty toward the child. The agreement may include agreeing on the child’s contact with the other parent during their primary care.

However, this form is not suitable for every child. One can agree with the statement of the Constitutional Court of the Czech Republic that “*alternating care is not always in the best interests of the child*” (II. ÚS 169/16, also IV. ÚS 4037/17). This is not and cannot be considered a universal arrangement because every child is different and has different needs and wishes. Especially for very young children or children with various health problems, some experts prefer stability (the so-called “nest”), namely the care by one primary caregiver.

It should be added that new case law by the Constitutional Court of the Czech Republic states that

the Constitutional Court acknowledges that there is no consensus among experts about the (dis)usefulness of alternating care, although the results of research from abroad ... are in the majority tends to be that, under well-set conditions,

60 For more, Trávníček, 2015.

alternating care for minors after parental separation is the most appropriate arrangement.⁶¹

It can only be concluded that in a child's parental care, it is the quality—not the quantity—of the time spent together with the child that must play a major role, in addition to the child's best interest.⁶²

12.5. The joint custody

The joint form of care (custody) of a child means that both parents personally care for the child jointly and together, or evenly when it comes to quality, and not necessarily the real half of the time. The law explicitly states under Art. 907 para. 1 *in fine*, CC that “*if a child is to be entrusted to joint care, the parents must agree to it*”. Joint personal care cannot be decided authoritatively, against the will of one of the parents. In practice, this form is not used very often. An example is the arrangement of a 17-year-old child studying and living in college and visiting their parents only on weekends. In the case of joint care, “*nothing would change for the child.*” The parents would fulfill the maintenance duty for the child as it was before *de facto* separation or their divorce and meet the child as they used to.

13. The court's interventions in parental responsibility

13.1. On general rules

In harmony with the “positive” role of the state, the Civil Code regulates the options, or the duty of the court, to modify parental responsibility authoritatively in the child's best interests. A legitimate aim must always be pursued, and the means must be proportionate as the state must respect that “*la vie privée doit être murée*” and try to balance its roles. The court has the duty to act within the limits of statutory law and respect both the rights of the child and those of their parents. However, all judicial interventions have in common that they must be made in the child's best interests. The individual types of interventions differ in reasons, intensity, and also purpose.⁶³ Following the court interventions introduced below, it is usually necessary to decide on other matters, in particular to appoint a guardian for the child (if there is no other parent, and so on).⁶⁴ They are as follows.

61 I. ÚS 3065/21

62 Kornel, 2013.

63 Králíčková, 2011, pp. 829–840.

64 For more, see Králíčková, 2014a, pp. 71–95.

13.2. Suspension of parental responsibility

This measure is determined in relation to objective obstacles on the part of the child's parent or both parents under Art. 869, CC and Arts. 868 and 825, CC. The law stipulates that if a parent is prevented from exercising their parental responsibility by a serious circumstance (for instance, coma), and if it is assumed that the measure is necessary in accordance with the child's best interests, the court may decide to suspend the parent's parental responsibility. The suspension concerns the exercise of all duties and rights arising from parental responsibility. However, the parent remains the holder of parental responsibility.

13.3. Limitation of parental responsibility or its exercise

Limitation of parental responsibility or its exercise is a milder measure linked to subjective problems on the part of the child's parent or both parents covered by Art. 870, CC. It follows from the nature of the case that the limitation may relate to individual duties and rights. It is thus stipulated that if the parent does not exercise their parental responsibility properly, and if the best interests of the child so require, the court will limit their parental responsibility or the exercise of that parental responsibility. It is therefore necessary for the decision to be specific and to restrict the parents only in detail (as opposed to the suspension or deprivation of parental responsibility, which is always *an bloc* decision). Whether the court restricts the parent in any duty or right as such—for instance regarding the administration of the child's property—the parent must not exercise such duty and right; this right will be performed by the other parent or by a guardian. Other duties and rights remain unaffected.

13.4. Deprivation of parental responsibility

This exceptional measure to a child's situation is applied when their parent abuses parental responsibility or its exercise or seriously neglects parental responsibility or its exercise under Art. 871 para. 1, CC. If the parent committed an intentional criminal offense against their child not only directly but also indirectly; if the parent used their child, who is not criminally liable, to commit a criminal offense; or if the parent has committed a criminal offense as an accomplice, guide, assistant, or organizer of a criminal offense committed by their child, the court shall assess whether there are grounds for depriving the parent of their parental responsibility under Art. 871 para. 2, CC (see NS 30 Cdo 1376/2012, I. ÚS 2643/13).

14. Extinction of parental responsibility

As already mentioned, parental responsibility and all the duties and rights belonging to the content of parental responsibility expire as a whole on the day when the child reaches the age of majority (or full autonomy). They also cease to exist when the child dies or is adopted. As of the effective date of the adoption decision, parental responsibility arises for the adopters of the child, as the adoption of a minor who is not fully capable is always a “full adoption” respecting the doctrine *adoption natura imitatur* covered by Art. 794, CC.

15. Conclusion

A long evolution in this specific field of family law described above shows that several changes in favor of a minor child were implemented by lawmakers, courts, international and European organizations and bodies. This entailed many issues, including a change in terminology or the abandonment of some obsolete terms such as “illegitimate child” and a shift from the concept of “power of the father,” “parental power,” or “parental rights and duties” to the concept of “parental responsibility,” which had already been established in the 90s in the Czech Republic in connection with the abovementioned international conventions and essentially adopted by the Civil Code in 2012.⁶⁵

The private law concept of parental responsibility should be seen as two sides of the same coin. First, it is through the concept of parental responsibility that parents realize their parentage, ideas, wishes, and so on. On the other hand, thanks to a broad content of parental responsibility, the parents protect their child. It is the parents of the minor child who take care of the child, direct their actions, manage their affairs (including property matters), decide on their education, religious, upbringing, future profession, medical treatments. There is more private autonomy anchored in the Civil Code and “*there are no models for family life*” in a court’s decision-making. The growth of shared parenting appears more in cases of alternating and joint personal custody of a minor child, well-elaborated family agreements, and widely respected voluntary arrangements and amicable solutions. The concept of paternalistic state was abandoned in favor of a state based on respect for human rights, freedom, and private autonomy in all spheres, including family law and family life. The state, lawmaker, and courts note that the parents usually know very well what is in the best interest for their child.⁶⁶ Moreover, the respect for the child’s right to express their

⁶⁵ For more, see Radvanová, 2015.

⁶⁶ Hrušáková, 1993.

opinion is growing.⁶⁷ The “negative” role of the state finds its application in relation to the saying “*la vie privée doit être murée.*”

Nevertheless, in special cases, the state must not resign itself to its “positive” role. The state authorities must protect the minor child because of their immaturity, sometimes even against their parents or the child’s own decisions. In addition to the private law concept of parental responsibility, public law to protect the child also exists. If the situation is serious and the child is at risk, the child’s health and life is in danger, the courts may—and, actually, must—modify the scope of the parents’ parental responsibility and their contacts with the child. In extreme cases, the courts shall deprive the parents of parental responsibility or remove the child from the family of origin and place them into substitute care. The courts sometimes may—or even must—apply criminal law sanctions; however, the measure and means must always be proportionate and pursue a legitimate aim, the best interest of the child, and their well-being and welfare. Last but not least, a long-awaited, pending draft at the Parliament of the Czech Republic on the Public Defender of Children’s Rights (“ombudsman for children”) is therefore to be welcomed in this context.⁶⁸

67 Šínová and Westphalová and Králíčková, 2016.

68 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. VIII., Draft No. 894.

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