Chapter VIII

Slovakia: Content of the Right to Parental Responsibility – Family Law at a Crossroads

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1. Introduction

That of the family is an interdisciplinary concept, which is studied and defined in sociology, anthropology, psychology and pedagogy. The concept of family has many definitions. It can be understood, for example, as the basic social group where a child enters into social relations and within which they become a social being; it can also be understood as a basic stratification factor, since the status of the family from which an individual has emerged constitutes, for them, a capital of the highest importance and an important indicator of their present and future position society.

A family is a community of close persons between whom there are close kinship, psychosocial, emotional, economic, and other ties. Although the concept of family is highly variable in terms of social reality, it cannot be overlooked that it is the biological bond of blood kinship between family members that has traditionally been the basis of family ties. The social reality of the family is undergoing gradual changes, and the traditional European concept of the family is being increasingly fragmented; moreover, the legal regulation of the family is necessarily subject to these changes.

A family bonded by affection, within which the ability to empathize and provide emotional support to one another plays a large role, is a source of happiness, psychological resilience, and mental health for the minor child. Each person remembers and carries with them the memory of how feelings were expressed in their primary family. Positive expression is the fulfillment of children's basic emotional needs and

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evidence of the importance of the immediate family environment for the minor child, especially in their early years.

Within the family, each of us experiences a significant period of time that shapes us as unique beings. A harmonious family should fulfill a variety of functions, including biological, emotional, educational, cultural, and economic. The consistent fulfillment of these functions is a reflection of the exercise of parental responsibilities in the best interests of the child.

Parenthood always involves a relationship of responsibility and parental rights are vested in the parents to enable those responsibilities to be met. The way we view parenthood has undergone significant changes in the past two centuries all over the world. The notion of parents enjoying individual rights over their children has faded and the new term of parental responsibility emerged, which exists in the best interest of the child and for the protection of the child. The term parental responsibility gained worldwide recognition by its use in the UN Convention on the Rights of the Child and this label is now used regularly in international instruments concerning children. The term parental responsibility gives children a position of persons, to whom duties are owed and not possessions over which power is wielded. We can see this shift to move away from the concept of parental power and expressions related to this like parental rights, parental authority, parental power, however many countries have opted to keep these terms and have not yet introduced the term parental responsibility into their domestic legislations.

Parental responsibility encapsulates two key ideas, first, the duty of the parents towards the children, and that the parents must behave dutifully towards their children, and second, the notion that the responsibility for childcare is vested with the parents, not the state. This shows a weakening of the supervisory role of the state over the relationship between parents and children and possible further practical implications of this development. While the term is gaining more and more recognition across the world as countries are changing their legislation, there are still a lot of examples of other terms being used.

The Slovak Family Act does not define the concept of parent nor that of child. However, the definition of these terms can be deduced from the provisions on the determination of parenthood (Section 82 of the Family Act states that "*the mother of the child is the woman who gave birth to the child*, and Section 84 of the Family Act regulates the three rebuttable presumptions of paternity). In defining the concept of child for the purpose of exercising parental rights and obligations, it is necessary to look for support in international treaties and the case law of the courts.

The sources of international law can be divided into three groups in this respect. The first group comprises sources of law that use the term "child" but do not define it, such as Regulation Brussels II *bis*.[1] The second group includes those sources that

1 Council Regulation (EC) No 2201/2003 of November 27, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

limit their application to children between birth and a certain age, such as the Convention on the Civil Aspects of Child Abduction.[2] The third group of sources consists of documents that, while defining who they mean by "child," define only an upper age limit, such as the Convention on the Rights of the Child, without defining the starting point.[3] The reason for the absence of a clear definition of the point at which protection is conferred on a child is the controversy surrounding the question of whether a child becomes a child at conception, at birth, or at some point of fetal development.

The Convention on the Rights of the Child, in Art. 1, defines the term "child" as any human being under the age of 18 years, unless, under the law applicable to the child, adulthood is reached earlier. It can be deduced from the established case law of the Slovak courts that a minor child means a person who has not reached the age of 18. The Civil Code of the Slovak Republic provides for the possibility of attaining the age of majority before a person reaches the age of 18.[4]

The mother and father have an irreplaceable role in the life of a minor child. The identity and uniqueness of the child is given by their mother and father, and the child needs to perceive and feel them in order to mirror, in some way, both the positive and negative qualities of the parents. In this process, the child learns their value and self-esteem, and different attitudes in life are shaped; in this way, their personality develops. The family environment undoubtedly has one of the strongest influences on a child's behavior. Each family has their certain specific features and is indispensable in the upbringing of children, shaping them from the time of birth. An orderly family considers the upbringing of the child as its primary duty.

The development of the family and family law relations has undergone many significant changes. The ancient concept of the family was characterized by polygamy and the dominance of the father, the so-called *pater familias*, while the medieval concept of the family preserved paternal power, the *patria potestas,* in which children were subordinated to the father. The social position of the man in the family was characterized by a set of rights and duties that flowed unidirectionally from the father to the child. The child was lawless, which was reflected in the fact that their survival was primarily decided by the father, who had the right over it over life and death—*ius vitae necisque*. The eighteenth century is sometimes referred to as the beginning of the family revolution, in which the child became the center of interest of the family and society.

It is important to note that, in the course of the family's historical development, the minor child went from being the object of a parent–child relationship—whether characterized by paternal power or, later, parental power—to becoming the subject of that relationship with equal status. The development of the legal regulation of the exercise of parental rights and obligations has, in this respect, had several significant milestones.

2 The Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction (1980 Hague Convention).

3 Convention on the Rights of the Child, 20 November 1989, United Nations.

4 Article 8 (2), Act No. 40/1964 Coll. Civil Code.

2. The codification of family law and the basic principles of family law in the Slovak Republic

Family law is one of the basic and oldest legal disciplines of private law. This is because, since time immemorial, it has applied to the interests of the most private nature of an individual, whether we talk about spouses, parents, children, or other persons holding family rights and responsibilities. The issue of children's rights is as old as humanity itself. The translation of these rights into law and their implementation has depended on specific historical conditions. The Slovak Republic has acceded to—and is therefore bound by—several international treaties and documents that may, to a certain extent, influence the standard-setting and application of law.

Family law relations in the Slovak legal system are regulated in our Act on the Family 36/2005 Coll.[5], which entered into force on April 1, 2005. Since 1950, family law relations have been set aside outside the scope of the Civil Code and are still regulated by a separate law. In the future, however, the regulation of family relations is to be returned to the Civil Code as a separate part of it in the framework of the forthcoming codification of general private law in Slovakia.

For the current relationship between family and civil law, the return to the dual structure of private and public law after 1989 means that the regulation of personal and property conditions in the family and marriage is closely linked to general civil law. The integration of both subsystems of private law is evident even now, especially in Art. 111 of the Family Act, which provides for the general subsidiarity of the Civil Code for legal relations regulated by the Family Act. Thus, unless the Family Act provides otherwise, the provisions of the Civil Code shall apply to family relationships.

Until 1949, family law was not uniformly regulated and codified in the territory of the Slovak Republic. Legal relations in the family were regulated by their nature by several civil law regulations. After the First World War, and after the establishment of the Czechoslovak Republic, Act no. 11/1918[6] reciprocated with some exceptions the then Austro-Hungarian law. In Slovakia, the reception standard took over Hungarian civil law, which was mostly an unwritten customary law. Of the written regulations concerning family law relations, the most important was the Marriage Act (Act No. XXXI/1894)[7], which regulated in detail the conditions for the formation and dissolution of marriage. The law was based on the contractual nature of the marriage, introduced an obligatory civil marriage, and allowed the separation of the marriage regardless of the confessional affiliation of the spouses. The content of the marital relationship and the rights and obligations of the spouses were, however, not regulated by

5 Act No. 36/2005 on Family and on amendment of some other acts.

6 Act No. 11/1918 Reception Act, Section 2 stipulated that "*all existing regional and imperial laws and regulations shall continue to be in force temporarily*" in order "*to avoid any confusion and to regulate an unobstructed transition to a new life of the State.*"

7 Marriage Act (Act XXXI/1894).

the Marriage Act and were therefore governed by customary law. Another important legal act that was reciprocated was Act no. XX/1877 on guardianship and custody. Many questions of family law, however, have remained in a gray area because of this legal dualism (sometimes even trialism of Austrian, Hungarian, and customary law, with further differences between customary laws of different regions of the newly formed state); thus, the newly established state set the unification of laws as a priority. Shortly after the reception of the Austro-Hungarian regulations, some questions of matrimonial law were unified in the 1919. The Amending Act on Marriage (Act No. 320/1919 Coll.)[8] was undoubtedly the most first important step on the path of an independent Czechoslovak legislation during the first republic, and it uniformly regulated the formation of marriage, marital obstacles, and the dissolution of marriage. The Amending Act on Marriage introduced an optional civil marriage in addition to a valid church marriage; in an exhaustive manner, it adjusted the reasons for the separation of marriage. This act was revolutionary in a sense, since it unified matrimonial law by being applicable to all citizens of the republic regardless of religion. The act broke the principle of the inseparability of Catholic marriage during the spouses' lifetime. Despite the unification tendencies discussed above, several issues remained fractured in the new legislation. For example, the issue of adjusting the joint property of the spouses remained different in Slovakia compared to the other territories of the country. While in Czechia, Moravia, and Silesia, the system of the separate property of spouses applied, with a wide range of contractual modifications, through so-called marriage contracts. In Slovakia, the institute of co-acquisition was applied, which represented a system of property community in case of marriage dissolution.

The fundamental political changes in Czechoslovakia after February 1948 were soon reflected in the entire legal order. The new communist government within the so-called biennial of legal proceedings launched a revision of legal regulations that also affected the area of family law. The first Act on Family Law No. 265/1949 Sb.[9], which entered into force on January 1, 1950, became, among other things, a legislative expression of the ideological principles of the new socialist law, which abandoned the classification of public and private law. The dominant paternal power was transformed, in light of equality, into parental power by the Family Law Act. The adoption of this Act was a significant milestone in the historical development of the family and the legal relationship between parents and children, and it also led to the equalization of children irrespective of their origin (i.e., irrespective of whether they were born into a marriage or out of wedlock), thereby giving effect to the principles of the Constitution of May 9 on the equal rights of women, the protection of men, the family, and motherhood. The Act on Family Law brought many important changes to the legal provisions on family relationships, and it featured the elaboration in terms of family law of the basic principles expressed in the 1948 May Constitution. Legal provisions on the family were separated from general civil law, and family law provisions were unified to the entire territory

8 Act No. 320/1919 Coll.
9 Act on Family Law No. 265/1949 Sb.

of the country. This Act featured obligatory civil wedding, full equality of the husband and the wife in their rights and obligations, the removal of discrimination of children whose parents did not enter marriage, and the reduction of impediments to marriage. The Act on Family Law undoubtedly represented the undertaking of the legislator to get the marriage and family life under the control of the state. The Act itself had the status of a separate legal regulation and did not contain any provision that would create its specialty in relation to the Civil Code as a general, applicable regulation; therefore, the act meant the complete separation of family law and civil law.

The Act on Family Law did not survive for very long. In 1960, a new socialist constitution was adopted in Czechoslovakia. Under this ideological influence, the victory of socialism and the subsequent social development were mistakenly anticipated. These misconceptions were legally expressed in the new constitution, and shortly thereafter, the basic branches of law were re-codified. Important changes in the legal order ensued, affecting all areas of law, including family law and matrimonial law. The result of the second wave of socialist codification of law was the new Family Act No. 94/1963 Coll.,[10] which entered into force on April 1, 1964 and was in force until April 1, 2005. The new Family Act followed the main principles of the regulation of individual institutes in the Family Law Act of 1949, with much greater emphasis on the paternalistic understanding of the relationship between the state and the family. The biggest changes affected the regulation of divorce and some basic principles of marriage; in particular, changes were made to the legal regulation of the relationship between parents and children. The new Family Act enshrined the principles of the upbringing of children not only by parents but also by the state and socialist organizations, which have the primary role in the upbringing of children. The opening provision of the Act stated that "*the morality of socialist society should become the basis for all relationships in family, for the marriage itself, and for raising children.*"[11] Therefore, the previously separate provisions on the legal protection of children and youth were incorporated into this Act, and the powers of national committees in terms of social control of raising children were substantially enlarged. Based on the Family Act, the family became the basic building block of society, where parents were responsible for the mental and physical development of their children, with the state and other social organizations being also ascribed some responsibilities in terms of raising children and fulfilling their material needs.

The dissolution of the Czechoslovak federation simultaneously meant the birth of new successor states – Slovakia and the Czech Republic – on January 1, 1993. After the establishment of the Slovak Republic, the Family Act of 1963, as amended, became the basis for the regulation of family law in Slovakia as stated in the reception norm contained in Article 152 of the Constitution of the Slovak Republic. The current statutory distinction in Slovak family law between "parental rights and obligations" and "other rights and obligations of parents and children" has no logical

10 Family Act No. 94/1963 Coll.
11 Family Act No. 94/1963 Coll.

justification. Moreover, a division which divides the whole into a part and another part without any apparent logical structure does not stand up to scrutiny.

In Slovakia, the Family Act of 1963 already stopped using the term parental authority and introduced the more fragmented parental rights and obligations. These contained all the rights and obligations of parents and children. Most of them were understood as mutual, i.e., where the rights and obligations of two subjects, parent and child, form the content of a legal relationship – e.g., a parent not only has a duty to bring up a child, but it is also his or her right. Conversely, the child has the right to parental upbringing and the obligation to submit to parental upbringing, as long as it complies with the legal requirements. Thus, the Family Act of 1963 fragmented the terminologically unified institute of parental authority into rights and obligations of parents and children, while only successively naming and regulating the individual rights and obligations, without any internal logical division.

In the mid-1990s, in the discussions on a new concept of legal regulation of relations under private law, expert opinions prevailed that understood the normative regulation of family law as an integral and natural part of the forthcoming recodification of the Civil Code. In other words, family law, together with other branches of private law, should be concentrated in the new Civil Code. As of today, this is still in the realm of the future evolution of family law.

The new Family Act No. 36/2005 Coll. was not originally included in the Plan of Legislative Tasks of the Slovak Republic. The plan required the Ministry of Justice of the Slovak Republic to prepare only an amendment to the Family Act No. 94/1963 Coll. as amended. However, the scope of the proposed changes exceeded the possibilities of direct amendment of the law and required not only a change in the system of the law, but also the adoption of a completely new legislation. The previous legislation was modern at the time and was in force for over 40 years. In the 21st century, however, it was not able to respond sufficiently to the dynamic development and fundamental changes that have taken place in society.

The new legislation from 2005 already reacted to the Convention on the Rights of the Child as well as to the legislative intention to recodify the Civil Code, which would also include the integration of family law into the Civil Code. In the preparation of the new Family Act, a comparison with foreign legal systems (Hungary, Germany, the Czech Republic, etc.) was also partially used.

According to the explanatory report of the new Family Act from 2005, the changes introduced by the new legislation effective from April 1, 2005 concern, in particular, the grounds for the invalidity and nonexistence of marriage in circumstances excluding marriage and the possibility of regulating the child's contact with close persons and distinguishing between guardianship and wardship institutes. Compared to the previous regulation, the rules for monitoring the method of performance and evaluation of the effectiveness of institutional education, educational measures, the evaluation of the guardian's performance, and the guardian for the administration of the child's property are tightened. The issue of foster care regulation was also included in the new law.

The core sources of Slovak Family Law are the Constitution of the Slovak Republic and the Family Act from 2005. Article 41 of the Constitution of the Slovak Republic, according to which marriage, parenthood, and the family are under the protection of the law, forms the basis of the national legislation. Simultaneously, special protection is guaranteed to children and adolescents. The protection and interest of minor children is a priority throughout the legislation. In the context of the exercise of parental rights and obligations, it is significant that the care and upbringing of children is the right of parents, but the fact that children have the right to parental education and care cannot be overlooked. The Constitution of the Slovak Republic also provides that these rights may be restricted and that minor children may be separated from their parents—even against their parents' wishes, but only by a court decision based on the law.

The legislation contained in the Civil Code cannot be omitted. In view of the fact that the Family Act does not have a general part, the place of the Civil Code is irreplaceable. Article 110 of the Family Act provides that unless this Act provides otherwise, the provisions of the Civil Code shall apply. It follows from the above that the relationship between the family law and the Civil Code is *lex specialis* and *lex generalis*. Other important sources of law are the Act 305/2005 Coll. on Social Protection of Children and Social Guardianship (in relation to interference with the exercise of parental rights and obligations and proceedings for the exercise of parental rights and obligations); the Act on Civil Registry 154/1994 Coll.; the Act on First and Last Name 300/1993 Coll.; and the Act on the Minimum Living Wage (in relation to the value of the minimum maintenance obligation of parents toward a child).

While a deeper dive into all the provisions of these acts would be impossible owing to the limitations of this publication, I believe that a look at the basic principles of Slovak family law is essential in understanding the state of family law in Slovakia in comparison with other EU countries. The Family Act from 2005 contains, in its first provision, a list of basic principles that, in essence, represent the pillars on which Slovak family law is built. These are the most important provisions of national family law, with the possible exception of Art. 41 of the Constitution of the Slovak Republic, which represents the framework of the entire family law regulation. The purpose of the basic principles lies mainly in the fact that they serve as common rules of interpretation of family law. These basic principles are enshrined in Articles 1–5 and represent the values and principles of family law in Slovakia.

> Marriage is a union of a man and a woman. The society comprehensively protects this unique union and helps its welfare. Husband and wife are equal in their rights and responsibilities. The main purpose of marriage is the establishment of a family and the proper upbringing of children (Art. 1).

Marriage under Slovak law is still a union of a man and a woman. This provision has even been incorporated into Art. 41 of the Constitution of the Slovak Republic, being the only legislative change that this article has undergone since

the Constitution has been in effect. To date, no legal alternative to marriage exists in the Slovak legal order (more on this in the following chapters). This is rooted in the traditional view of family law in the Slovak legal order and the emphasis on the biological-reproductive function of the family. In Art. 2, it is stated that the "*family founded by marriage is the basic cell of society. Society comprehensively protects all forms of the family.*" Based on this principle, a family is a group of at least one parent and at least one child. In principle, it is not possible to participate in any discrimination of other marriages (i.e., marriages that have remained childless) because these unions are also provided with protection in the sense of Art. 1 Basic principles. It can therefore be assumed that the protection provided under this article is a special type of protection that goes beyond the general principle of Art.1.

> Parenting is a mission of men and women recognized by society. The society recognizes that a stable family environment formed by the child's father and mother is the most suitable for the all-round and harmonious development of the child. Therefore, the society provides parents not only with its protection, but also with necessary care, especially with material support for parents and assistance in the exercise of parental rights and responsibilities. (Art. 2)

One of the most important functions of the family is its educational function. Being a parent means taking responsibility for a child's proper upbringing. Trends regulating the boundaries between family privacy and the state's interest are currently leaning toward the theory of responsibility for the exercise of parental rights and obligations. If the parent naturally performs this function properly, the state provides help and support, both in respect of privacy and social care. However, if the proper upbringing of a child is endangered or disrupted, the Family Act gives the court the right to take measures to remedy this situation without a proposal. For this reason, too, Art. 3 of the Basic Principles was supplemented in 2016 by a second sentence stating that the society recognizes that a stable family environment formed by the child's father and mother is the most suitable for the all-round and harmonious development of the child. This formulation clearly favors the traditional family union of a man and a woman and their children over other forms of cohabitation.

> All family members have a duty to help each other and, according to their abilities and possibilities, to ensure the increase of the material and cultural level of the family. Parents have the right to raise their children in accordance with their own religious and philosophical beliefs and the obligation to provide the family with a peaceful and safe environment. Parental rights and responsibilities belong to both parents (Art. 4).

Family solidarity is the basis for fulfilling the family's socioeconomic function. It concerns all members of the family without distinction, and its understanding reflects the morals of society. The moral and ethical principle of this provision is further detailed in the provisions of §18 and §19 of the Family Act, according to

which all family members (children included) are obliged to help each other according to their abilities and possibilities.

> Art. 5: The best interest of the minor shall be the primary consideration in all matters affecting them. In determining and assessing the best interests of the minor, particular account shall be taken of:
> a) the level of childcare,
> b) the safety of the child as well as the safety and stability of the environment in which the child resides,
> c) the protection of the dignity as well as of the child's mental, physical, and emotional development,
> d) the circumstances related to the child's state of health or disability,
> e) endangering the child's development by interfering with their dignity and endangering the child's development by interfering with the mental, physical, and emotional integrity of a person who is close to the child,
> f) the conditions for the preservation of the child's identity and for the development of the child's abilities and characteristics,
> g) the child's opinion and their possible exposure to a conflict of loyalty and subsequent guilt,
> h) the conditions for the establishment and development of relationships with both parents, siblings, and other close persons,
> i) the use of possible means to preserve the child's family environment if interference with parental rights and responsibilities is considered.

The principle of the best interest of the child is the guiding principle of all family law. Some authors even consider it to be the very basis of family law.[12] This is not only based on domestic law, but it also follows from sources of international law—in particular the Convention on the Rights of the Child,[13] in which it is mentioned repeatedly. Although several provisions of the normative part of the Family Act referred to the best interests of the child (e.g., Arts. 23, 24, 54, 59), as well as the provisions of special regulations (e.g., Act No. 305/2005 Coll. on the social legal protection of children and on guardianship, Act No. 176/2015 Coll., on the Commissioner for Children and the Commissioner for Persons with Disabilities, etc.), this term was not defined for a long time, and its determining criteria were never established. By supplementing Art. 5 in the Family Act by an amendment to Act no. 175/2015 Coll., this important principle of the Convention on the Rights of the Child has gained its appropriate place in Slovak family law, namely by establishing it as a basic principle of the Family Act.

12 Králičková, 2015, p. 22

13 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at https://www.refworld.org/docid/3ae6b38f0.html (Accessed: May 1, 2021)

The Slovak Republic has acceded to—and is therefore bound by—several international treaties and documents that may, to a certain extent, influence the standard-setting and application of law. First, the Universal Declaration of Human Rights of 1948 should be pointed out, which is associated with a new view of human rights despite being only recommendatory in nature. The UN Charter, which came into force in 1945, made it obligatory for the Commission on Human Rights (which was replaced in 1996 by the UN Human Rights Council) to draft something resembling an international human rights constitution, of which the Declaration is the first part. The second part includes the three major documents of 1966, namely the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Optional Protocol to the International Covenant on Civil and Political Rights.

The most important and indispensable document in this area is the 1989 Convention on the Rights of the Child emphasizing the best interests of the minor child. It is clear from the preamble that the Convention takes account of the special concern enshrined in the Geneva Declaration of the Rights of the Child in 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; and in the statutes and relevant documents of professional and international organizations concerned with the care of children.

The institutionalization of family law in Europe has long been resisted, and family law has maintained a national character. However, in 2001, the Commission for European Family Law (CEFL) was created with the aim of harmonizing family law. The effort to harmonize family law was reflected in the document Principles of European Family Law Regarding Parental Responsibilities.

While some developments in the internationalization of family law can certainly be observed, it clearly remains largely a domain of national legislation. In the following pages, we will explore the topic of parental responsibility and its place in the Slovak legal order, highlighting the unique features of this concept specific to the Slovak Republic.

3. Parental responsibility in Slovak family law

Under the Slovak Family Act and relevant case law, parental responsibility represents a relatively complex set of rights and obligations, which include, in particular,

a) the constant and consistent care for the upbringing, maintenance, and all-round development of the minor child,
b) the representation of the minor child,
c) the administration of the minor child's property.

It is important to note that the Slovak legislation does not use the term "parental responsibility," but it operates with the phrase "parental rights and obligations," which are primarily derived from Section 28 of the Family Act.[14] We conclude that despite the legislative inclusion of maintenance obligations in the content of parental rights and obligations in the Slovak Family Act, maintenance obligations do not and should not belong to parental rights and obligations owing to their specific characteristics, which is consistent with the legislator's intention to exclude these from parental rights and obligations. The specificity lies in the fact that, while the exercise of care for a young child is linked to the parent's full legal capacity, the maintenance obligation continues even if the parent lacks full legal capacity.[15] Similarly, the limitation, deprivation, and suspension of parental rights and obligations does not relieve a parent of the obligation to support their child.[16] Last, a specific feature of the maintenance obligation as opposed to parental rights and obligations is the moment of its termination. Parental rights and obligations with regard to the care and upbringing of the child, the representation of the child, and the administration of the child's property cease *ex lege* when the child reaches the age of majority. On the other hand, the maintenance obligation does not cease on reaching the age of majority but continues until the child can support themselves.[17]

It is noteworthy that the English term "responsibility" does not mean responsibility alone, but rather a burden of responsibility, a function, a duty, an obligation, a commitment and a task. The Slovak translation of this term has not been adopted in our family law. The unified institute has remained atomised into individual rights and obligations within Slovak family law. Most modern democratic legislations preserve this institute in its unity, unlike Slovak family law. Currently, Slovak family law operates with the term "Parental Rights and Obligations", which on the surface sounds like an acceptable alternative to parental authority or parental responsibility – if not for the fact, that the current Family Act divides rights that belong under "Parental Rights and Obligations" and rights that it labels "Other Rights and Obligations of Parents and Children" without any rhyme or reason for this distinction. This fragmentation of the parental responsibility has given rise to further legislative confusions, particularly with regard to the different categories of interference with parental rights and the distinction between the different nature of the rights previously understood as part of the parental authority as opposed to other rights that are outside it.[18]

Parents become the bearers of parental rights and obligations by the mere fact that a child is born to them and adoptive parents by the validity of the adoption judgment. Care must be taken to make a clear distinction between whether a person

14 Section 28, Act No. 36/2005 on Family and on the amendment of some other acts.
15 Section 62, Act No. 36/2005 on Family and on the amendment of some other acts.
16 Section 39, Act No. 36/2005 on Family and on the amendment of some other acts.
17 Section 62, Act No. 36/2005 on Family and on the amendment of some other acts.
18 Haderka, 1994, p. 516.

is entitled to exercise them or not. Parents may exercise parental responsibility only if they have full legal capacity.

A special provision is made for the status of a minor parent, a parent who is a child over 16 years of age and who may be granted parental rights and obligations by the court in respect of the personal care of a minor child if they satisfy the conditions by which they will ensure the exercise of that right in the interests of the minor child.

The legislation is based on the thesis that parental rights and obligations are exercised by both parents.[19] The exceptions, which break the principle of both parents exercising parental rights and obligations Simultaneously, are the following:

1) one of the parents is not living,
2) one of the parents is unknown (there has been no determination of parentage),
3) one of the parents lacks full legal capacity,
4) one of the parents has been deprived of parental responsibility,
5) one of the parents has been suspended from exercising parental rights and obligations.

3.1. Care of a minor child

The constitutional legal basis for the protection of the family and parenthood is contained in the Charter of Fundamental Rights and Freedoms. In particular, Art. 32 of the Charter of Fundamental Rights and Freedoms guarantees the parents the right to care for and raise the child and, conversely, guarantees the child the right to parental upbringing and care, as it states 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 latters' will only by the decision of a court on the basis of the law.[20]

The systematic inclusion of this right in the category of economic and social rights must then necessarily be reflected in the interpretation of this right, not only because the right of the parents and the child is not to be interfered with by the state but also because of the specific protection afforded to such care by the state.

The content of parental rights and obligations includes, among other things, constant and consistent care for the upbringing, maintenance, and all-round development of the minor child.[21] It cannot be disputed that caring for a child means assuming re-

19 Section 28, Act No. 36/2005 on Family and on the amendment of some other acts.

20 Article 32, Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Slovak Republic, Constitutional act No. 2/1993 Coll. as amended by constitutional act No. 162/1998 Coll.

21 Section 28, Act No. 36/2005 on Family and on the amendment of some other acts.

sponsibility for them in a very broad sense. Care and upbringing imply the provision of material and non-material (emotional, psychosocial, cultural) conditions, so that the child can develop all their personal abilities and capacities in a natural family environment, which will result in the child's adequate socialization.[22]

Although the legislator operates with the concepts of care and upbringing, it does not define them. Upbringing is to be interpreted in the broadest sense as care for the comprehensive development of the child's individual physical, physical, moral, emotional, health, and intellectual capacities.

The Explanatory Memorandum to the Family Act states that

> upbringing is understood in its broadest sense as care for the person of the child, in which substantial decisions are also made. It includes care for the education, for the development of the child's individual physical and mental faculties. In contrast to personal care, which can also be provided by persons who are not the child's legal representatives. Even if a child is placed in one of the forms of foster care, the parents or guardian remain responsible for the child's proper upbringing.[23]

The upbringing of a minor child remains with both parents, who remain the bearers of parental rights and obligations, even when the child is entrusted to the personal care of one of the parents. The concept of the upbringing of a minor child implies decision-making in respect of the minor child, to the extent that the minor child cannot make decisions for themselves.

Upbringing means the process of deliberate, systematic, and organized action on an individual, shaping his mental and—to a certain extent—physical development. Parents are entitled to raise their children in conformity with their own religious and philosophical convictions.[24] Section 30 of the Family Act explicitly states that "*parents have the right to raise their children in accordance with their own religious and philosophical beliefs.*"[25] This provision fully corresponds with the freedom of religion granted by the Constitution of the Slovak Republic ("*Freedom of thought, conscience, religion and belief shall be guaranteed. This right shall include the right to change religion or belief and the right to refrain from a religious affiliation.*")[26]

Therefore, care for the upbringing of a minor child in the Slovak legal order includes religious upbringing. Based on Art. 3 of the Act on the Freedom of Religious Faith and the Position of Churches and Religious Societies, the legal representatives (primarily the parents) of a minor child of up to 15 years of age decide on their religious education.[27] By comparison, the legislation in the Czech Republic is based

22 Finding of the Constitutional Court of the Czech Republic Case No. IV. ÚS 257/05 of 01.26.2006
23 Explanatory memorandum to Act No. 36/2005 Coll. on the Family.
24 Section 28, Act No. 36/2005 on Family and on the amendment of some other acts.
25 Section 30, Act No. 36/2005 on Family and on the amendment of some other acts.
26 Article 24 (1) Constitution of the Slovak Republic 460/1992 Coll.
27 Article 3, Act No. 308/1991 on the Freedom of Religious Faith and the Position of Churches and Religious Societies.

on guidance, taking into account the developing abilities of the minor child,[28] while in Slovakia, it is the legal representatives who absolutely decide on the religious upbringing of the minor child. Czech legislation, contrary to the Slovak provision highlighted above, states that

> the right of minor children to freedom of religion or to be free from religion is guaranteed. The legal representatives of minor children may direct the exercise of this right in a manner appropriate to the developing capacities of the minor children.[29]

The legislation of the Czech Republic is fully consistent with Article 14 of the Convention on the Rights of the Child, according to which

> States Parties shall respect the right of the child to freedom of thought, conscience and religion. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.[30]

The aims of education are expressed in Article 29 of the Convention on the Rights of the Child. This article is of far-reaching importance as the aims of education that it sets out, which have been agreed to by all states parties, promote, support, and protect the core value of the Convention: the human dignity innate in every child and their equal and inalienable rights. These aims, set out in the five subparagraphs of Art. 29, are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture that is infused by appropriate human rights values. The goal is to empower the child by developing their skills, learning, and other capacities, human dignity, self-esteem, and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes enabling children—individually and collectively—to develop their personalities, talents, and abilities and to live a full and satisfying life within society.[31]

> States Parties agree that the education of the child shall be directed to
> (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

28 Act No. 3/2002 Coll. on Freedom of Religion and the Status of Churches and Religious Societies and on Amendments to Certain Acts.

29 Ibid.

30 UN General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at https://www.refworld.org/docid/3ae6b38f0.html (Accessed: May 1, 2022)

31 OHCHR: General Comment No. 1: The Aims of Education (Article 29) (2001)

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, their own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which they may originate, and for civilizations different from their own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups, and persons of indigenous origin;
(e) The development of respect for the natural environment.[32]

Achieving this goal through the upbringing of the minor child and influencing them is the task of the parents. The state limits them, in this respect, only in terms of the prohibition to use educational means that would endanger the child's health, dignity, mental, physical, and emotional development.[33]

The violation of these rights (by using inadequate educational means) is sanctioned by family law norms in the form of interference with parental rights and obligations and *de facto* modification of their exercise (educational measures, interference in the exercise of parental rights and obligations, substitute care, restriction or prohibition of contact); civil law provisions (restriction or exclusion from the right of use of the dwelling); or even criminal law standards (the offense of abuse of a person close to or entrusted to a person, endangering the moral upbringing of young persons).[34]

The upbringing of a minor child is not only a private matter completely isolated from society outside the family; although society is obliged to respect the private nature of family relations, in certain circumstances regulated by law, it is the duty of the state to influence and interfere in these family relations (the so-called principle of minimizing interference in the family).

The statutory regulation does not preclude parents from entrusting another person with the right of personal care of a minor child or from handing over the care of the child to a specialized institution. The foregoing does not necessarily imply that the exercise of parental rights would be contrary to the interests of the minor child, particularly in the case of a disabled parent who cannot provide for the exercise of personal care but is interested in their child, is emotionally attached to them, and has contact with them and has an educational influence on them in the course of that contact.[35]

The right of custody of a minor child encompasses several sub-powers: the right to have the child with oneself; the right to determine the place of residence of the

32 Ibid.
33 Section 30, Act No. 36/2005 on Family and on the amendment of some other acts.
34 Act No. 300/2005 Criminal Code.
35 Rais, 1999, pp. 17–19.

minor child (including the transfer of the exercise of personal care to a third person or specialized institutions); the right to have contact with the minor child; the right to make decisions about the minor child and to exercise supervision over them within the limits of their intellectual and moral maturity, taking into account their age, intellectual maturity, temperament, and other psychological factors; and the right to determine the child's occupation in accordance with their best interests.[36]

The right to have a child with oneself includes, in particular, the provision of food, clothing, accommodation, hygiene, and medical care—activities that provide for the basic needs of the minor child.[37] The stepparent of a minor child is not granted parental rights or responsibilities by law; however, if they live in the same household with the parent of the minor child, they have the right and the obligation to participate in the minor child's upbringing. Section 30 of the Family Act states that "*the spouse who is not the child's parent also participates in the upbringing of the child if he or she lives in the household with the child's parent.*"[38]

The above is related to Sections 18 and 19 of the Family Act, according to which both spouses are obliged to provide for the needs of the family, which includes the care of the children and the household. In the event of negligence, the liability of the stepparent for damage caused to the minor child is not excluded.[39]

3.2. Representation of the minor child

Civil law theory and practice distinguish between direct and indirect representation. Both types of representation have a common feature, namely that the subject in the position of the representative makes an expression of will, which is a legal act. The difference between a direct and an indirect representative is that a direct representative makes an expression of will in the name and on behalf of the represented person, while an indirect representative makes a legal act—albeit on behalf of the represented person—but through themselves. This difference means that the rights and obligations arising from the direct representation arise directly for the represented person. The indirect representative acquires the rights and obligations themselves, and the indirect agency relationship subsequently gives rise to an obligation to transfer the acquired rights and obligations to the represented party (in the manner specified in the contract, such as by assignment of the claim).

In the conditions of the Slovak Republic, the Civil Code only regulates direct representation. Indirect representation is not excluded (e.g., a contract for the acquisition of the sale of a thing within the context of Article 733 of the Civil Code).

36 Vlček and Hrubešová, 2006, p, 254.
37 Lazar, 2018, p. 698.
38 Section 30, Act No. 36/2005 on Family and on the amendment of some other acts.
39 Opinion from the evaluation of the decision-making of the courts of the Slovak Socialist Republic discussed and approved by the plenum of the Supreme Court of the SSR 25.11.1976, Pls 2/76.

The legal relationship between the agent and the represented party may arise from various facts—either directly from the law, from a contract, or from a decision of a court or other public authority. According to the reason for its creation, legal theory then divides the representation into

1) statutory representation, arising by operation of law or by decision of a court or other state authority,
2) contractual representation, arising on the basis of a contract (the existence of this legal relationship can be proved against third parties by a power of attorney).[40]

The civil law regulation of representation allows for someone other than a representative to act on behalf of the represented person to pursue both the social interests of those who must be represented because they themselves are incapable of legal acts and the interests of persons who, although they have legal capacity, do not perform the legal act or acts themselves for certain reasons, but can be represented by a representative (attorney) chosen by them.[41]

Legal norms not only regulate rights and obligations within a certain legal relationship, but naturally, they also determine who can be their bearer (i.e., the subject of the legal relationship). A party to a legal relationship is a subject who is the bearer of subjective rights and obligations; thus, it is any person who is recognized by the law as a person in the legal sense of the word, and this recognition is linked to the attribution of legal characteristics, which we call both the capacity for rights and obligations and the capacity to perform legal acts.

Capacity to have rights and obligations is understood as the capacity to have rights and obligations in legal relations within the limits of the legal order. It follows from international law that "*everyone has the right to recognition everywhere as a person before the law.*"[42]

The capacity to have rights and obligations is constituted by the status of the natural person, which forms one part of it, namely the passive component. Another component of this passive status includes the fundamental rights and freedoms that are conferred on the person by the mere fact of their existence.[43]

The active component of the status of the natural person, on the other hand, is based on the concept of individual autonomy. It makes it possible to bring into being what is contained in the concept of the passive component of the natural person's status.

In regulating the legal representation of a minor child, the Civil Code refers to the special regulation of the family law, which defines who the legal representative of a minor child is. In particular, the legal representative of a minor child shall be

40 Lazar, 2018, p. 698.
41 Plank, 1996.
42 UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, 217 A (III), available at https://www.refworld.org/docid/3ae6b3712c.html (Accessed: May 2, 2022).
43 Švestka et al., 2009, pp. 97–98.

their parents, who have full legal capacity and who have not been deprived of their parental rights and obligations or had their exercise of parental rights and obligations suspended.[44]

The legal regulation of the legal capacity of minor children has never been something immutable; in any event, however, legal capacity always depended and depends on the minor's age and the attainment of a certain degree of intellectual and moral maturity.

The obligation to represent a minor child applies only to those legal acts that the minor child cannot perform independently. The current concept of legal capacity of a minor child is that the minor child either has legal capacity and then acts on their own behalf or does not have legal capacity and is represented by a legal representative.[45]

Under Art. 9 of the Civil Code, minors have legal capacity only for legal acts suitable in their nature to the maturity of mind and will appropriate to their age. Legal capacity is not assessed individually but corresponds to the generally recognized stage of individual development at a certain age.[46]

The exercise of parental responsibility for the representation of a minor child depends on the age of the minor child, since the exercise of that right depends on the degree of legal capacity of the minor child, which in turn depends on the minor child's overall maturity of mind and will appropriate to their age. The right and duty to represent a minor child is most intensely manifested at the earliest age of the minor child.[47]

As the minor child grows older and therefore more mature, the right and duty to represent them gradually loses its necessity. If, when all the circumstances of the case are considered, the maturity of mind and will appropriate to the age of the minor child is inadequate in relation to the particular legal act performed, the legal act is absolutely null and void. This fact cannot be altered even by the additional consent of the legal representative. This legal act cannot be validated in any way, since the Slovak legal system does not recognize the so-called *negotium claudicans*. The court may also not, in another proceeding, declare a legal act valid if the law establishes special conditions for its validity (e.g., court approval of the legal act).

When a minor child reaches a certain age, especially in matters of purely personal or labor law, they may act on their own behalf (e.g., the filing of a petition for marriage by a minor over 16 years of age, the making of a will in the form of a notarial deed by a minor over 15 years of age, and the capacity to acquire rights and assume obligations in labor law relations by their own legal acts, which arises on the date on which the natural person reaches the age of 15 years).

In principle, a minor child may be represented by either parent. Whether it is sufficient for a minor child to be represented by one or both parents in a legal act depends

44 Svoboda and Ficová, 2005, p. 728.
45 Ibid.
46 Act No. 40/1964 Coll. Civil Code.
47 Planková, 1964, p. 204.

on whether the matter is ordinary or not. In the case of ordinary matters, the minor child may be represented by either parent; however, if the proceedings for the representation of a parent go beyond ordinary matters, it is essential that the minor child be represented by both parents.[48] In practice, the above is reflected in the fact that, where one parent represents the minor child in ordinary matters, the other parent's statement is not necessary. In the case of a substantive matter, it is necessary to seek the other parent's opinion as to whether they agree with the other parent's representation. The power of attorney fulfills the character of a grant of such consent. In addition to the power of attorney, other types of documents can serve as proof of the parent's consent.

When representing a minor child, it is thus necessary to distinguish between representation in ordinary and substantive matters. The question of whether a matter is ordinary or substantial must be assessed according to the particular circumstances and the nature of the case. The legislator enumerates, in a demonstrative manner, which matters in the exercise of parental responsibility are substantial matters in the event of a disagreement between the parents, and the court decides to pursue the best interests of the minor child. The notion of ordinary matter and substantial matter is further developed by the instructive case law of the courts.[49]

If the court concludes that a petition for adjudication is filed in a case of parental disagreement in an ordinary matter, the court must stay the proceedings on the ground that there is an insurmountable obstacle to the conditions of the proceedings.[50] Commonly, an ordinary matter is defined as regular payments and receipts, such as payment of collections, taxes, and receipt of proceeds of property in the form of rents, dividends, interest.[51]

Contractual relationships represent a wide range of legal relationships to which a minor child may be a party. In many cases, the minor child must be represented by a legal representative, not only in the formation of separate contracts but also subsequently in the legal acts relating to them. The transfer of immovable property (and of an interest therein), whether in the form of acquisition or loss of ownership, must always be regarded as a material matter. Ownership of immovable property is regularly associated with a number of legal relationships, whether of a private law nature (e.g., related to its maintenance or use) or of a public law nature (e.g., taxes). The conclusion of a contract for the transfer of ownership of immovable property, therefore, concerns the administration of a minor child's property and cannot be regarded as an ordinary matter, since it does not concern the ordinary management of a minor child's property.

The same conclusion can be drawn in the case of rights relating to immovable property (e.g., liens, rights corresponding to easements[52]) or the dissolution and

48 Dvořáková Závodská et al., 2002, p. 104.
49 Judgment of the Supreme Court of the Czech Republic Case No. 33 Cdo 2912/2008 of 02.23.2011.
50 Pavelková, Kubíčková, and Čečotová, 2005.
51 Judgment of the Supreme Court of the Czech Republic Case No. 28 Cdo 1506/2006 of 06.4.2008.
52 Judgment of the District Court of Rimavska Sobota Case No 1P 284/2013 of 01.7.2014.

settlement of the joint ownership of immovable property. Legal acts relating to the lease of a dwelling also do not fall within the category of legal acts that could be performed by a minor child. The case law of the courts also considers the conclusion of a construction savings agreement by a minor child to be a substantial matter as well as a legal act aimed at the early termination of this legal relationship, the conclusion of a contract on the transfer of bonds, the assignment of a claim, or the recognition of a debt to be a substantial matter. However, in relation to gifts, the case law has held that if the minor child is capable of understanding the substance of the gift contract and if it also involves a financial benefit for them, they are competent to perform the act in question, even if it involves the acceptance of a gift of a higher value.[53] In other cases of gifts, the minor child must be represented by a legal representative. In the case of a gift of immovable property, the representation of the minor child by a legal representative is essential.

The court's case law also considers the conclusion of a future contract to be a substantial matter, stating that, although the property is not directly disposed of at the time of the conclusion of the future contract, the conclusion of such a contract gives rise to rights and obligations to which the parties to the contract are bound in the future disposition of the property.[54]

The case law is also extensive in matters of succession. The conclusion of a succession agreement, the refusal of inheritance, a declaration that a minor child will not plead the relative invalidity of a will for contravention, as well as the pleading of a will's invalidity are considered to be substantial matters.

The legal representative of a minor child may not perform all legal acts for which the minor child lacks capacity.

The limitation of the legal representative is twofold:

1. Under Article 28 of the Civil Code, if the legal representatives are also obliged to administer the property of those they represent and it is not an ordinary matter, the court's approval is required for the disposal of the property.[55]

The purpose of the legislation in question, which closely links the representation of a minor child to the administration of their property, is to protect the interests of the minor child. The court authoritatively confirms that the legal act performed on their behalf by their legal representative is in the interests of the minor child. The decision of the court approving a legal act on behalf of a minor child is not constitutive but declaratory in nature and operates *ex tunc*, (i.e., from the moment the legal act is performed by the legal representative).

In deciding whether to approve a legal transaction, the court shall consider, in particular, the interests of the minor child by examining the circumstances of the particular legal transaction. For example, in deciding whether the inheritance

53 Judgment of the Supreme Court of the Czech Republic Case No. 25 Cdo 1005/1999 of 09.13.2001.
54 Judgment of the County Court of Banska Bystrica Case No 16 Co 345/2011 of 03.1.2012.
55 Act No. 40/1964 Coll. Civil Code.

agreement is in the interests of the minor child, it is necessary to consider the possibility of using the things acquired in the inheritance and what the costs of maintaining them would be, if any, and whether it would be reasonable and socially desirable to create a co-ownership of the inheritance by way of a small share.[56] When it comes to the refusal of the inheritance, the court deciding whether authorizing that act has sufficient information as to the nature, type, and value of the testator's property and the amount of their debts and may then proceed to assess whether it is in the interests of the minor child.[57]

It is clear from the legislation that if a legal act that is clearly outside the scope of ordinary matters (and constitutes a substantial matter) in the administration of a minor child's property, it requires the court's approval for its validity. Without such approval, the legal act is absolutely void for being contrary to law, and as such, it cannot produce the intended legal consequences.[58]

A legal act (i.e., contract of sale) that has not been approved by the court does not give rise to an obligation to pay the purchase price or to a right to take over the purchase price, and the legal relationship, if the performance under an absolutely void contract is an unjust enrichment. Similarly, unless the legal act of concluding the agreement made by the legal representative of the minor heir has been validly approved by the court, the notary cannot proceed to approve the agreement of the heirs, much less to issue a certificate of the acquisition of the inheritance pursuant to the agreement of the heirs.[59] It is incorrect to conclude that the application for registration of the title must be rejected if the minor child is a party to the contract for the transfer of the title, and the act has not been approved by the court on the date on which the registration proceedings are opened. If the application for registration of the title is not accompanied by a court decision approving the deed, the registration procedure shall be suspended, and the parties shall be invited to submit the court decision on the registration of ownership. The *ex tunc* confirmation of the correctness of the disposal of the property already at the time of the legal transaction is decisive; therefore, it also applies to the filing of the application for registration. A condition for the registration of a property right concerning a minor child is that the legal act must be approved by the court; if the court did not approve the legal act, the conditions for rejecting the application for registration would be fulfilled.

The approval of a legal act for a minor child may occur in advance (before it is executed) or afterward (i.e., at the time when it had already been executed). However, it is always necessary that the act to be approved be identified in a sufficiently definite manner so that the court's decision leaves no doubt as to which act has been approved. There is no time limit on the subsequent approval of the act. However,

56 Judgment of the Supreme Court of the Czechoslovak Republic Case No. 4 Cz 71/1969 of 01.30.1970.
57 Judgment of the Supreme Court of the Czechoslovak Republic Case No. 1 Cz 12/1976 of 02.19.1976.
58 Judgment of the Supreme Court of the Czech Republic Case No. 33 Cdo 2912/2008 of 02.23.2011.
59 Judgment of the Supreme Court of the Czechoslovak Republic Case No. 4 Cz 71/1969 of 01.30.1970.

once the minor has reached the age of majority, it is up to them whether to approve the legal act performed.

A court decision approving a legal act on behalf of a minor child is not a means of resolving a conflict of interest between the parent and the minor child, nor is it a means of removing the conflict of interest or validating it.

Problematic concepts of opinion appear to be the approval by the juvenile court of the filing of an action by a guardian *ad litem* for a minor child and its consequences.

The first conception of opinion is based on the conclusion that the filing of an action is, in principle, a procedural act that requires the court's approval, with the exception of cases in which the approval of this procedural act will not be required, particularly in the case of disputes of minor value or over claims the merits of which are uncontested. That conclusion considers the consequences, in particular, of the obligation to pay costs in the event of unsuccessful proceedings.[60] The consequences of a failure to approve a procedural act may be reflected on two levels. The first view, in the absence of the court's approval of the procedural act, would constitute the absence of any legal consequence, which, in practice, would mean that the court should not take the claim into account. The second legal opinion is held by the case law of the Czech courts. The absence of approval of a procedural act is regarded as a remediable defect in the conditions under which the court may act (procedural condition).[61] It will therefore be necessary for the court to take appropriate measures to remedy the defect, namely by initiating proceedings for the approval of a legal, actionable claim on behalf of the minor child. Only if the order dismissing the petition becomes final, will it be possible to stay the proceedings.

The practice of the Slovak courts does not reflect the above decision-making practice of the Czech courts or the opinion of legal science. General courts hear actions brought by the parents as legal representatives on behalf of a minor child (e.g., actions for protection of personality, for damages in the form of pain and suffering, and other damages) without requiring the court's approval for the filing of the action. The court hears the case on the finding that all the conditions under which it may act are met. The concept that the bringing of an action by a legal representative on behalf of a minor child arises directly from the exercise of their parental rights and obligations is followed. We are in full agreement with this approach. The legal representatives of a minor child are obliged to administer the minor child's property with due care.[62] Proper care is care that protects the property interests of the minor child to the greatest extent possible, reflected in action aimed at preserving existing values and their possible reproduction.[63]

Failure to manage the property of a minor child in a proper manner is also a failure to bring an apparently unsuccessful action on their behalf. In the case of

60 Kerecman, 2008, pp. 3–28.
61 Judgment of the Supreme Court of the Czech Republic Case No. 21 Cdo 856/2011 of 12.15.2011.
62 Section 32, Act No. 36/2005 on Family and on the amendment of some other acts.
63 Pavelková, 2011.

disregard of the above obligation, the parents, as legal representatives, are liable to their minor child for the damage caused by their actions.[64] The aforementioned may also apply to damages in the form of compensation for the costs of legal proceedings.

Arguments about the necessity of the court's approval of the procedural act of filing a lawsuit for minors are primarily justified by the lawsuit's possible failure and the necessity of bearing its costs. If the court is required to examine the minor's interests, it will be incumbent on the juvenile court to express a legal conclusion as to whether the procedural act in question will adversely affect the minor child's financial situation. Thus, at the time of the court's decision on whether to approve the bringing of the action, it should take into account the minor child's possible obligation to pay the costs of the proceedings and thereby prejudge the court's decision on the merits (i.e., on the action whose bringing should be subject to the court's approval) or at least conclude that the bringing of the action does not constitute an obvious failure to exercise a right. The examination of the minor child's interest in the bringing of the action by the legal representative should, therefore, with reference to the possible obligation to pay the costs of the successful defendant, include, in the margin, a conclusion relating to the substance of the case.

There is no justification for the requirement to approve the procedural act of conciliation in proceedings in which a minor child represented by a legal representative is a party. The court hearing the merits of the case is required, when approving a court settlement, to examine whether the court settlement is in accordance with the law. Therefore, it also has the task of assessing whether the interests of the minor child justify the approval of the court settlement. Under Art. 3(1) of the Convention on the Rights of the Child, "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"[65] Approval of a judicial settlement by the juvenile court and, consequently, by the court hearing the case itself would entail duplication of decision-making, which would be contrary to the statutory requirement of judicial efficiency.

A special feature is the capacity of the minor child to be represented by a lawyer in the proceedings. The courts approach this by first examining the minor's maturity of mind and will; to that end, they shall question the minor child and ascertain what has led them to be represented by a lawyer in the proceedings and from what means the costs of legal representation are paid. As a general rule, a minor child, after reaching the age of 15 years, shall have the maturity of mind and will rendering them competent for the legal act in question, in which case the court shall admit the minor to be represented by a lawyer in the proceedings.

64 Article 420, Act No. 40/1964 Coll. Civil Code.

65 UN General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at https://www.refworld.org/docid/3ae6b38f0.html (Accessed: May 1, 2022).

2. Pursuant to Article 22 of the Civil Code, owing to the conflict of interest of the attorney with the represented, which is supplemented by the provision of Section 31 of the Family Act, in the event of a conflict of interest between the parents and the minor child, the representation of the child by the parents is excluded pursuant to Section 31(2) of the Family Act.

This second limitation of the minor child's representation is based on the conflict of interests between parents and a minor child. It is not limited to cases when a conflict of interests between the representative and the represented person exists and is established in the proceedings, but the Family Act extends the protection of the minor child to cases where a conflict of interests is only imminent (it has not yet occurred). From the point of view of the conclusion of a conflict of interest, it is sufficient only that a conflict of interest is likely to arise, which is always the case when a parent of a minor child asserts claims, in civil court proceedings, the mutually contingent basis or amount.

Judicial practice has concluded that parents may not represent a minor child in any proceedings against the other parent (e.g., proceedings to modify the exercise of parental rights and responsibilities,[66] proceedings for the denial of parenthood,[67] and proceedings for the determination of the name[68]).

There is no conflict of interests where a donation is made, and the donors are the parents exercising parental rights and obligations and the recipient is a minor child incapable of assessing the content of the act. Parents as donors are Simultaneously the legal representatives who are entitled to accept the gift on behalf of the minor child. This is the case if there is no conflict of interests between the parents and the minor child in the representation.

A conflict of interests between the legal representative and the minor child precludes representation to the extent of the conflicting interests of the parties to the legal proceeding. The interests of the person who is to be appointed as a conflict guardian must not conflict with those of the minor child, and as a rule, the conflict guardian is the authority for the social protection of children and social guardianship.

The court is always obliged to define the scope of the rights and obligations of the conflict guardian according to the purpose for which the guardian has been appointed. To the extent established by the court, the guardian *ad litem* becomes the legal representative of the minor child instead of the parent and may, therefore, *inter alia*, authorize another person to represent the minor child to the extent that they are authorize to act for the minor child.

Legal acts performed by a parent on behalf of a minor child, if a conflict of interest between their interests is given or threatened, are absolutely null and void legal acts, and procedural acts are ineffective or are considered to be pleadings filed by unauthorized persons.

66 Judgment of the Supreme Court of the Slovak Republic Case No. 5 Cdo 92/2009 of 05.19.2009.
67 Judgment of the Supreme Court of the Slovak Republic Case No. 3 Cdo 96/2008 of 02.04.2009.
68 Judgment of the Supreme Court of the Czechoslovak Republic Case No. Cz 498/1953 of 02.04.1954.

3.3. Administration of the minor child's property

In most cases, a minor child has no possessions of their own apart from personal items that they receive from their parents (e.g., school supplies). It is not uncommon for a minor child to acquire property during their lifetime. In situations where a minor child has personal property acquired, such as by inheritance, by gift, or through employment (e.g., acting job in a commercial) or sporting activities, the issue of the management of that property must be addressed. It is the parents' duty and right to administer the property of a minor child only to the extent that the minor child is incapable of acquiring rights and assuming obligations by their own legal acts, depending on the mental and volitional maturity appropriate for their age. Article 9 of the Civil Code states that "*Minors shall have capacity only to perform legal acts which by their nature are appropriate to the maturity of mind and will appropriate to their age*."[69]

The Explanatory Memorandum to the Family Act, in relation to the regulation of the administration of a minor child's property, indicates the legislator's intention:

> Following the legislative intention of the Civil Code and the changes in the economic system of society, a specific legal regulation of the administration of the property of a minor child appears necessary to fill the existing gap. The current legislation only contains the obligation of parents to manage the child's property. However, it does not speak of any rules for such management, unlike the Act on Family Law No. 265/1949 Sb, which also addressed the management of the child's property. Thus, the proposed provision is a certain reminiscence of the provisions of the Act on Family Law from 1949. So far, legal theory and jurisprudence have relied only on Article 28 of the Civil Code.[70]

The legislator has also regulated the rules in relation to the administration of a minor child's property. First, it has explicitly stated that parents are obliged to manage the property of a minor child with due care[71]; this is an objective measure of the manner in which the property is managed. We share the view of legal scholarship that such care must be exercised by a proper steward, not only to preserve property values but also, where possible, to increase those values. Ultimately, the aim of asset management is not only to preserve already acquired assets but also to reproduce them and increase their value.

One can distinguish due care for objects (use of the object, its maintenance and repair, insurance, provision of services procured and provided in this connection), property rights, and other property values. Due diligence should also be understood to include not entering into unnecessary loans and credits, contracts for the transfer

69 Article 9, Act No. 40/1964 Coll. Civil Code.
70 Explanatory memorandum to Act No. 36/2005 Coll. on the Family.
71 Section 32, Act No. 36/2005 on Family and on the amendment of some other acts.

of property (purchase, gift), as well as the conclusion of disadvantageous lease or pledge contracts.

A careful distinction must be made between the minor child's property and the proceeds thereof. The proceeds of the minor child's property may be dealt with under different conditions. As the Explanatory Memorandum to the Family Law shows, "*The proposed provision is based on the principle that a child's basic property may not be touched*."[72]

The parents' maintenance obligation toward the minor child is not extinguished even if the minor child's property generates income (e.g., in the form of dividends, interest, rent payments)[73]; however, the parents of a solvent minor child may use such proceeds. In the first instance, the use of the proceeds of the property should be directed toward the preservation of the minor's assets and then also be used to meet the family's needs. In this case, the legislator also regulates another legal requirement, namely the use of the proceeds to a reasonable extent (in relation to the amount of the proceeds, the proportion of assets of the minor child, the proportion of assets of the family as a whole, considering the family's overall economic and social situation).

As mentioned above, in principle, the assets cannot be diminished. In the parents' no-fault state, a gross disproportion between their assets and those of the minor child may arise, in which case that part of the assets may also be called upon to meet the needs of the minor child and the family. This is the case where the parents have become disabled or have been granted a partial disablement benefits or pension; where they have reached retirement age, which has caused a loss of income; and also where they have lost their jobs through no fault of their own and, despite their best efforts, have not been able to find employment and are registered with the employment office.[74]

The provision of Article 28 of the Civil Code limits the parent who manages the property of a minor child in the sense that, if it is not an ordinary matter, the court's approval is required to dispose of the property. Nor can situations where a conflict of interest arises between the parents and the minor children in the administration of their property be overlooked—for example, in the situation of a transfer of ownership from the parents to the minor child. In such a conflict, it is necessary to appoint a conflict guardian for the minor child.

The exercise of parental rights and obligations in relation to the administration of the minor child's property ends when the child reaches the age of majority and the parents are obliged to hand over the property they have administered as well as the documents relating thereto within 30 days.

The legislator has introduced another obligation toward the child, namely, to submit a statement concerning the management of the property. The obligation to

72 Explanatory memorandum to Act No. 36/2005 Coll. on the Family.

73 Section 32, Act No. 36/2005 on Family and on the amendment of some other acts.

74 Hrušková, 2005, p. 436.

provide accounting is not imposed on the parents by mandatory provisions but is bound to the child's request within a statutory period of 3 years after the end of the property's administration. It is interesting to note that owing to incorrect wording, the Family Act states that

> a minor child shall have the right to request an account of the administration of his or her property from his or her parents or the persons administering his or her property; this right shall be extinguished if it has not been invoked before the court within three years after the administration of the property has ended.[75]

The provision uses the term "minor child" when this right clearly pertains to a child after reaching adulthood. Irrespective of whether the child requests the provision of the accounting in question, they retain the right to claim liability against the parent for damages or unjust enrichment.

The family law also provides for the institute of a property guardian, which the court may appoint for a minor child if their interests in the management of their property are endangered and the parents themselves have not taken or are unable to take appropriate measures to protect the child's property.

The law cannot be so casuistic as to cover all the circumstances that may arise in a family's life. The cases that would justify the conclusion that the property interests of a minor child are at risk may be varied—for example, where both parents or the sole surviving parent are unable, for objective reasons (illness, ignorance, inability to manage a particular type of property), to provide for the management of the minor child's property in relation to the extent of that property.

4. Exercising parental rights and obligations

4.1. Exercising parental responsibility by parents who are married

In relation to the exercise of parental responsibility, the ideal situation is a complete intact family. In such a case, it is presumed that parental responsibility is exercised by the parents of the minor child by mutual agreement, protecting the latter's interests.[76]

We conclude that the need to involve both parents in these activities stems from the irreplaceability of the mother and father's roles in the minor child's life. Each of the parents, by their personal approach—and consequently, the aforementioned approaches in their interaction with each other—completes the unique and inimitable

75 Section 32, Act No. 36/2005 on Family and on the amendment of some other acts.
76 Section 28, Act No. 36/2005 on Family and on the amendment of some other acts.

personality of the minor child. This provides the optimum conditions for the child's healthy development and rest, which requires a cooperative, loving relationship between their parents. The fluid parental environment contributes to the best biopsychosocial nourishment, inner stability, integrity, and self-confidence of the minor child. This is not to say, however, that there are no disagreements to be resolved between the spouses or parents of a minor child who live together.

The parents of a minor child who are married are a mother and father who have entered into a marriage together. The law does not establish the conditions under which the parents of a minor child may be found to be living together. In view of the above, it is necessary to refer to case law that gives real meaning to the expression "parents of a minor child." First, it should be borne in mind that cohabitation and shared household are not identical concepts, and that shared household does not preclude the application of Section 36 of the Family Act. Factual separation as a result of work (occupation) outside the family's area of residence is not in itself sufficient to conclude that the parents of a minor child do not live together; in particular, the degree and extent of personal care of the child corresponding to that circumstance, the manner in which household and family expenses are paid, and the overall functionality of the family during the course of the parents' living situation (mutual visits, spending personal time, holidays, vacations, and so on) must be assessed here.[77]

According to the Slovak case law, parents live together if they share a personal, intimate, and property union that includes, *inter alia*, personally caring for the other spouse, managing finances jointly, sharing of joys and problems, and spending leisure time together.[78]

Parents who are married or live together are presumed to exercise parental rights and obligations in unison, or the very least, to cooperate with each other in the exercise of respective rights, thereby creating the conditions for the minor child's favorable development. They shall jointly take care of the upbringing and all-round development of the minor child, jointly represent them in essential matters, and jointly manage their property.

If there is a disagreement on an essential matter in the exercise of parental rights and obligations and the parents are unable to agree on it, the court shall decide on the matter at the request of one of the parents. Under Section 35 of the Family Act, the substantial matter is, in particular, the question of the minor child's emigration abroad, the administration of the minor child's property, the minor child's nationality, the consent to the provision of healthcare, and the preparation for a future profession (the choice of the school where the minor child will attend compulsory education).

The determination of the child's place of residence is part of parental rights and obligations but only as a partial entitlement arising from the right to care for and raise the child. That right is also given great weight in European Union law and sufficient

77 Judgment of the Supreme Court of the Slovak Republic Case No. 2 Cz 3/1992 of 01.31.1992.
78 Judgment of the Constitutional Court of the Slovak Republic Case No. II ÚS 433/06 of 12.14.2006.

space in the regulation, given the far-reaching consequences for family relations that the free movement of persons within the European Union necessarily entails. Emphasizing, also through an explicit statement of the right to determine residence as a fundamental parental right, would help to raise awareness of its importance.

The change of residence of a minor child by moving within Slovakia (especially in terms of greater education) with a parent and the associated separation from the other parent may affect the life of the broken-up family in a wider context in the future, such as by making it impossible to order alternate custody (owing to the distance of the parents' homes). It is the responsibility of the parents to consider this serious intervention with the best interests of the minor child as the primary consideration, bearing in mind that the role of both parents in the life of the minor child is irreplaceable. Where the change of residence of the minor child was motivated by the other parent's interruption of contact with the minor child (e.g., a form of revenge), such a parent does not meet the moral prerequisites for the minor child to be entrusted to their personal care. Of course, we assume that if no agreement has been reached on the determination of the minor child's residence, an agreement on the exercise of parental rights and obligations is unlikely to be possible.

The abovementioned conclusion on the importance of this right would be matched by explicit legislation, which, in the context of the substantive matters on which a court decision is required for the proposal of one of the parents should an agreement not be reached within the context of Section 35 of the Family Act, would provide for the determination of the place of residence of the minor child, instead of the narrowed heading "on the relocation of the minor child abroad." Since essential—or substantive—matters are defined in the provision in question in a demonstrative manner, it is not excluded to subsume the determination of the place of residence under an essential matter even under the current legislation, and this interpretation is considered to be correct, taking into account the need to ensure the widest possible range of time spent together by a parent and a minor child.

4.2. Exercising parental responsibility by parents after divorce or by spouses who do not live together

The divorce or separation of the parents of a minor child affects the lives of all those involved and necessarily entails a new arrangement of family relationships (Sections 24 and 36 of the Family Act). When we speak of the separation of parents, we refer to those who have never married and are not living together (have not started living together at all or have stopped living together).

When a couple decides to divorce (and eventually also to separate), they have several decisions to make. The most important—and often most painful—ones involve minor children: where should the minor child live? Who will be responsible for them? Which parent will be given custody of the minor child?

This newly created situation in the family (new arrangement of relations) is not a restriction or deprivation of parental rights and obligations of the parent who is

not entrusted with personal custody of the minor child. The *de facto* limitation of the exercise of the rights and obligations of the parents and of the minor child's corresponding rights and obligations results from the plurality of the subjects who are their bearers and, consequently, from the competition between the two parents of the minor child in the exercise of those rights and obligations.[79]

Regarding the issue of exercising the parental rights and obligations of parents after divorce (similarly applies to parents of a minor child who do not live together), we consider it important to point out the ruling of the Constitutional Court of the Slovak Republic, Case No. PL ÚS 26/05, which did not grant the petition of the Brezno District Court to declare the incompatibility of Sections 24 and 25 of the Family Act with Article 41 of the Constitution of the Slovak Republic. The applicant's main argument for the alleged incompatibility is the fact that the court, in the decision dissolving the marriage, without deciding on the suspension, limitation, or deprivation of parental rights, determines who will represent the child and administer their property after the divorce, thereby effectively depriving one of the parents of their parental rights, which belong to both parents. The petitioner believed that such legislation deprives one of the parents of these parental rights without fulfilling the conditions established by the Family Act. However, in the opinion of the Constitutional Court, the legislator did not intend to restrict parental rights, although the way it is worded indicates the possibility of interpreting the application of this provision as a restriction of the parental rights of one of the parents, which must actually occur after the parents' divorce.[80]

One of the most serious issues that partners deal with after the end of the relationship and, if no agreement is reached, shift the burden of decision-making in this area to the guardianship courts is what happens to the child after the divorce. It is important to remember that even though the parents of a minor child have ceased to be life partners, their parenthood has been preserved; the importance of both parents in a minor child's life does not diminish, and they should both be aware of their parental responsibilities. The minor child needs to feel and be aware of their presence, and divorce or separation does not change this situation.

Many emotionally charged forces are associated with divorce, such as love and hate, constructiveness, destructiveness, unbalance, and indifference, and children are forced to take on a certain role in such emotional tension. The most appropriate and prioritized solution for regulating the exercise of parental rights and obligations in cases of divorce is parental agreement.

By consensus, the parents of a minor child may conclude that the best arrangement of the relationship would entail entrusting the minor child to the exclusive custody of one parent or to the alternate personal custody of both parents. A mere agreement without proper specification should be considered insufficient so

79 Dubovský, 2010, pp. 449–466.

80 Judgment of the Constitutional Court of the Slovak Republic Case No. PL ÚS 26/05 of 07.06.2006.

as not to constitute a means of experimentation by the parents on the minor child. Parental agreement cannot be confused with judicial conciliation.

To be enforceable, the parents' agreement on the exercise of parental responsibility must be approved by the court,[81] whose primary consideration in approving the parents' agreement on the exercise of parental responsibility is the best interests of the minor child. It is also necessary for the court to examine the parents' agreement from the point of view that the court would also take into account in its own decision-making. Parents who agree on personal custody of a minor child start their post-divorce life with a distinct advantage, which is also an advantage for their minor child. These parents are more likely to support each other in decisions concerning the minor child, and by reaching a mutual agreement, the parents provide the minor child with a cultivated role model for dealing with conflict situations in the future. Another advantage of such an agreement is that the minor child is relieved of the burden of deciding (expressing an opinion on) which parent they would prefer.

If the parents fail to reach an agreement, or if the conditions for the court to approve the agreement are not met, it is the court's task to authoritatively regulate the exercise of their parental rights and obligations—in particular, to determine to whom the minor child will be entrusted, who will represent them and administer their property.

Opinions on post-divorce family arrangements have changed over time. Influenced by the eminent psychologist René Spitz, who pioneered the psychoanalytic theory ascribing primary importance to the mother–child relationship as a force that can accelerate the development of a child's innate abilities and whose absence leads to the onset of depression, minor children were entrusted to the personal care of the mother. From the mid-1970s onward, the notion that a minor child should be entrusted to the mother's personal care came to be regarded as obsolete. The concept of "what is best for the child," which emphasized the parent's ability to care for the child, began to be promoted; consequently, the popularity of joint parental care of a minor child grew.

A post-divorce family arrangement may look like the following under Section 24 of the Family Act:

1) exclusive personal care of the mother,
2) exclusive personal care of the father,
3) alternate personal care of both parents.

In some countries, such as the Czech Republic, the court may also decide to entrust the minor to the joint custody of the divorced spouses. The Slovak legislation does not provide for such a possibility.

The family life of parents and their child does not end with the parents' divorce; however, where the parents' life together has been practically interrupted or does

81 Section 24, Act No. 36/2005 on Family and on the amendment of some other acts.

not exist, it is necessary for the relationship between the parents and the minor child to be governed by legal rules different from those normally applied in a situation where the family as a whole is functioning properly, with the proviso that neither national nor international legislation gives one or the other parent priority in the custody of a minor child.

In accordance with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the rights granted by the Convention must be guaranteed without discrimination on any ground such as gender, race, color, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth, or other status.[82] Parents are equal before the law, and a difference in treatment is discriminatory unless it pursues a legitimate aim. Accordingly, no preference shall be given to a parent based on gender or on the filing of a petition for custody, nor can preference for the mother be inferred from the maternity protection provisions, the purpose of which is to ensure, as far as possible, that the child's mother is not harmed because she exercises maternity. Nor is it possible to give preference to a parent because of their sexual orientation as entrusting a minor child to the personal care of one parent based on sexual orientation would lead to discriminatory treatment.

The national legislation regulates the criteria to be considered by the courts when deciding on the exercise of parental responsibility in a relatively strict manner. They are, however, developed by constructive case law.

The reference to the case law of the Czech courts is justified by the common legal culture and the proximity of the legislation, which is based on historical reciprocity.

The criteria for assessing the quality of the parent's ability to raise a minor child cannot be exhaustively listed. The most important criteria, in the opinion of several authors based on Slovak case law, include the following:

- personality of the parent: indicators are a well-functioning personality, emotional maturity, psychosocial maturity, and productive orientation. The quality of one's personality and their maturity are the parent's guarantee of the quality upbringing of the minor child. A parent's well-functioning personality is linked to the ability to provide adequate care for a minor child,
- the parent's relationship with the minor child: it is one of the main pillars in assessing to whom the child will be entrusted for personal care. In this context, it is necessary to recognize a healthy love focused on the child's development and happiness,
- the character, morality, and structure of the parent's moral standards,
- respect for the right to have contact with the other parent,
- the relationship of the minor child to the parent,
- the continuity of the child's environment,

82 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, November 4, 1950, ETS 5, available at https://www.refworld.org/docid/3ae6b3b04.html (Accessed: May 31, 2022).

- the level of education and intelligence of the parent and the capacity for social and occupational adaptation, and
- the extended family background.

The arrangement of family relationships must always be in the interests of the minor child and never primarily in the interests of their parents.[83] A fair balance must be struck between the interests of the minor child and those of their parents. The European Court of Human Rights (ECHR) has attached particular importance to the sovereign interest of the minor child, which, by its nature and gravity, may, in accordance with the foregoing, outweigh that of the parent.[84]

The concept of the child's best interests must be understood in the strongest possible terms. It is in the child's best interests, in particular, that they should grow up in an atmosphere of happiness, love, understanding, stability, tolerance, and harmony, that their upbringing be directed toward the positive development of their personality, talents, intellectual and physical abilities, moral, and spiritual and social development, and that their rights as set out in the Convention on the Rights of the Child and other legislation be respected.[85]

5. Conclusion

At last, I believe that it is important to explore the future of parental responsibility in Slovak legislation. Our legislation has not fully developed this concept, and several gaps remain; however, since Slovak family law is at a crossroads, this might change. The forthcoming recodification of the Civil Code is expected: in other words, family law, together with other branches of private law, should be concentrated in the new Civil Code in the near future, and with that, the hope is that the concept of parental responsibility will be emphasized further. As of today, this is still in the realm of the future evolution of Slovak family law.

A major shortcoming of Slovak family law is the terminology used, primarily the division of parental rights into "Parental Rights and Obligations" and labels "Other Rights and Obligations of Parents and Children" without much logic behind the distinction between these two categories. The upcoming recodification of Family law into the new Civil Code would provide a great opportunity to rectify this situation and to come to a sounder terminology. From a linguistic perspective the direct translation of the term parental responsibility might be a little cumbersome, due to the limitations of the Slovak language when it comes to this term. A unified label is

83 Olsson and Olsson v. Sweden, Council of Europe: European Court of Human Rights, March 24, 1988.
84 Johansen v. Norway, Council of Europe: European Court of Human Rights, June 27, 1996.
85 Judgment of the County Court of Prešov, Case No 18 CoP 15/2012 of 03.15.2012.

however definitely needed. If the concept of parental responsibility was introduced into Slovak law under a unified name it would better reflect the current reality of being a parent and emphasise the responsibility of all who are in that position. Reformulating the parents' position in law as one of responsibility rather than rights and obligations would bring Slovak legislation in line with modern family law trends and the with the Recommendations on Parental Responsibility by the Committee of Ministers of the Council of Europe adopted in 1984.

One of the main criticisms of Slovak family law is that it has not kept up with societal changes, that it does not even entertain the idea of new technologies, and that it is inherently traditional; thus, it is still anyone's guess whether the new Civil Code will expand on the current family law concepts or whether it will keep family law in its current state.

Currently, the Slovak Family Act does not define the concepts of parent and child. However, the definition of these terms can be deduced from the provisions on the determination of parenthood (Section 82 of the Family Act states that "*the mother of the child is the woman who gave birth to the child, and there are no exceptions*," and Section 84 of the Family Act regulates the three rebuttable presumptions of paternity). In defining the concept of child for the purpose of exercising parental rights and obligations, it is necessary to look for support in international treaties and the case law of the courts. This is an area where we are anticipating changes in the near future.

Unlike the legislation of most European countries, the Slovak legislation on parental obligations is based on the trichotomy of parental rights and obligations—constant and consistent care for the upbringing and all-round development of the minor child, representation of the minor child, and management of the minor child's property. The constant and consistent care for the upbringing and all-round development of the minor child and the resulting authority over them are not entrusted to the parents for their own benefit but for the benefit of the minor child and their upbringing into a full-fledged member of society. The representation and management of the minor child's property, as well as other components of parental rights and obligations, are regulated in in a framework of the Family Act and Civil Code and are given real form by the case law of the courts and by legal science out of the need to find an equitable solution.

Society has evolved in recent years, and significant changes have also affected the issue of family law relations. The number of divorces and separations of unmarried couples is not negligible. The legislation gives wide scope for parents to exercise their parental rights and obligations at their joint discretion in a situation where they form a family together and also when the family has broken up through divorce. The current legislation reminds parents to pursue the best interests of the minor child in all circumstances. Prioritizing the parents' agreement and, only afterwards, the court's intervention is correct. The parents, knowing the family circumstances and the child's character, are in the best position to find an optimal way to adjust the situation.

From the statistics of the Ministry of Justice of the Slovak Republic, it appears that the number of children entrusted to alternate personal care is slightly increasing. Most cases in which a minor child is entrusted to the alternate personal custody of the parents are approved by the court by the parents' agreement. However, still less than 10% of children in Slovakia are entrusted to the alternate personal care of both parents, which is why the contact between a parent and a minor child should be regulated more thoroughly. Appropriate and reasonably chosen contact arrangements require a deep knowledge of the minor child's personality, their regime, and the working arrangements of both parents. Again, it is the parents who know all the relevant facts and, in cooperation with each other, can use them to the advantage of their minor child so that both parents, in their own particular way, contribute as much as possible to the best development of the minor child. If they are unable to do so, the court must find a solution that does not restrict the right guaranteed by Art. 32(4) of the Charter of Fundamental Rights and Freedoms and Art. 41(4) of the Constitution of the Slovak Republic.

Undoubtedly, the best interests of the minor child require that not only one of the parents should participate in their upbringing. The right of contact is a reciprocal right; just as parents have the right to have contact with a minor child, so does a minor child have the right to be cared for by both parents. The above is to be reflected in an agreement between the parents on the modification of the parent's contact with the minor child or a court decision. It is the court's task to regulate the parent's contact with the minor child and not to restrict or even exclude it.

It also seems desirable to regulate assisted contact, which is currently sorely lacking in our legislation. Parent–child contact is such an important factor in the healthy development of a minor child that it requires sensitive regulation. It is precisely the form of assisted contact—or contact subject to the imposition of conditions—that can facilitate this right, also with reference to its subsequent real reflection in the life of the minor child. If the need for assisted contact has already arisen in the main proceedings, the involvement of a third party, such as the Office of Labor, Social Affairs, and the Family, could prevent the enforcement proceeding itself precisely through the active approach of social workers. This would eliminate the problem of contact on a wider scale. It is often difficult to reverse an unfavorable situation in the context of enforcement proceedings, especially if a long period of time has elapsed since the court decision and the minor child vehemently refuses contact with one of the parents.

Equally interesting is the possibility of legislative improvement of the post-divorce arrangement of family relations by means of a probationary period of custody. We see this as a preferable alternative to subsequent proceedings for a change in the child-rearing environment if it becomes apparent that, for whatever reason, alternating personal care has failed after a certain period.

In terms of process, new legislation might incentivize parents to agree on the exercise of parental rights and responsibilities, and I would suggest that expert evidence be prepared by two independent expert witnesses (a man and a woman),

which would inevitably involve a higher cost. However, this would remove any doubt of gender bias against the person of the expert witness, which is currently a very common complaint. Avoiding the incurrence of considerable costs that might otherwise be invested in another sphere could provide an incentive to try to improve communication between the parents with a view to reaching an agreement, which would be in the best interests of the minor child.

The Slovak legal order currently lacks the determination of the goal of proper upbringing of a minor. I think it is important that the aims of education are clearly defined, which would help simplify the text of the law as well as the courts in their application by unifying their positions. However, it would also help parents navigate society's expectations of the mission of parenting. Positive results could be achieved by strictly defining the roles of parents in upbringing—at least in as much detail as, for example, the Czech legislator has done in Article 884 of the Civil Code: "*Parents have a decisive role in the upbringing of a child. Parents are to be all-round role models for their children, especially when it comes to the way of life and behavior in the family.*"

A further positive step would clearly be a substantive definition of the concept of "upbringing of a minor" to provide a clear legal framework for the rights and obligations of parents. Under the current law, Slovak parents do not have a strict legal obligation to consistently protect the child's interests, nor do they have an obligation to guide the child's actions or supervise the child. Consequently, no link exists to the provisions of the Civil Code governing liability for damage caused by those who are unable to assess the consequences of their actions. Inspiration could again be taken from the Czech regulation, which, in the new Civil Code in Art. 858, defines parental responsibility as

> parental responsibility includes the duties and rights of parents, which consist in taking care of the child, including in particular taking care of the child's health, physical, emotional, intellectual and moral development, protecting the child, maintaining personal contact with the child, ensuring the child's upbringing and education, determining the child's place of residence, representing the child and managing the child's property; it arises from the birth of the child and ceases when the child acquires full legal capacity. The duration and extent of parental responsibility may be changed only by the court.

The Slovak legislation lacks a more detailed enumeration, and even the draft of the new legislation includes, in the framework of care for the person of the child, only that the parents have the right to have the child with them, to take care of them personally, and to protect them. However, this wording is not exhaustive and should be changed to include "*to have the child with them, to determine his/her place of residence, to care for him/her personally, to protect the child's interests, to direct and guide his/her actions and to supervise him/her.*"

The remarkable growth of reproductive technology is steadily unhinging a Pandora's box of questions and difficulties regarding the essential nature of human

procreation. Moral and legal dilemmas regarding parental rights and regarding defining who is the bearer of these rights and responsibilities are increasingly common; this area is another one for potential changes in the upcoming recodification.

Every culture has certain assumptions about what parents can or cannot do with their progeny. In our own culture, these ideas are given constitutional protection. As discussed above, parents have several rights and responsibilities with regards to their child, which we can derive from our legislation and case law. However, are these laws immutable or unchanging? No. As guidelines on parental responsibility are ever evolving with the changing dynamics of family structures, it is paramount that legislation reflects these changes. Slovak family law is on the threshold of some very exciting changes; it is our responsibility as lawyers and researchers to ensure that these changes preserve the best interest of the child and the protection of human dignity and consider societal changes, all the while remaining true to our cultural and legal heritage and respecting our national specifics.

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