Chapter 13

Hungary: Hungaricums of the Family Law Policy

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Abstract

It is now considered a fact that Europe, including Central Europe, is facing an ageing society. One of the main indicators of this issue is the decrease in the number of births and the increase in the number of older adults. Several countries are attempting to implement related measures to encourage an increase in the number of births. This chapter reviews and summarises these comprehensive family policy measures. In addition, it presents the specific legal institutions and legal provisions in the Family Law Book of Hungary's Civil Code that may affect the safety of family life.

Keywords: Hungarian family policy, ageing society, Central Europe, birth rate, demographic challenge, legal response

1. Introduction

'Declining fertility is a general problem in the developed world'.[1] In the last few years, studies have been published on certain elements of Hungarian family policy and their demographic correlations and effects.[2] The so-called 'demographic

1 Lentner and Hürbülák, 2022, p. 43.

2 See, for example: Barzó, 2023, pp. 23–41; Sági, 2023, pp. 113–130. Bördős and Szabó-Morvai, 2021, pp. 33–66; Kapitány and Murinkó, 2020, pp. 146–170; Pátkainé Bende, 2022, pp. 235–249; Demény, 2016.

Edit Sápi (2024) 'Hungary: Hungaricums of the Family Law Policy'. In: Tímea Barzó (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response,* pp. 429–475. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.tbdecce_13

winter', which we are currently witnessing in Europe in particular, has attracted the attention of demographers, economists, sociologists, and lawyers. Demographic indicators, including the age composition of the population, have a major impact on the economy, working capacity, and, ultimately, competitiveness of a country, region, or continent. An important adverse effect of population decline is, therefore, a reduction in economic performance as the European Union is now playing an ever smaller role in an increasingly competitive global economy.[3] Population decline also brings forth issues for the sustainability of national social security[4] and pension systems.[5] Studies suggest that the demographic outlook for Europe as a whole is largely negative[6] as the decline in the number of Europeans is expected to accelerate after 2030, in line with the ageing of the continent.[7]

Given that Europe's age structure fits the description of an ageing society, the question arises as to whether an increase in the number of births can be influenced by the family policy and family protection measures of each state or by the substantive legal rules that seek to protect the institution of the family and the child through civil and family law. The 'popularity' of this subject is unsurprising given the statistics and figures we have seen in Europe over the last half-century or so. The global proportion of Europeans is falling: while in 1960, 20% of the world's population was European, today it is barely 10%, and by 2070 it is expected to be just 6%.[8] The age composition of an ageing society is, of course, affected by the development of childbearing and birth rates.[9] It is also true that fertility in the European Union is overwhelmingly below the level needed for simple population survival.[10]

However, the causes of the demographic crisis are complex. Barzó points out that the transformation and development of traditional societies in themselves contribute to the phenomena of a demographic crisis. In the traditional societies typical of the preindustrial era, childbearing was a necessity: owing to the higher infant mortality rate, the new generation ensured the future of the family. The extended family was also a prerequisite for the functioning of family farms at that time and ensured the livelihood and, if necessary, care of older or incapacitated parents and grandparents. In modern societies, the situation has been reversed: having children and caring for older parents and grandparents has become more of an obstacle to a successful career and a solid lifestyle, creating the false impression that both starting a family

3 Fűrész and Molnár, 2020, pp. 3–4.
4 Molnár, Szarvas, and Gellérné, 2022, p. 84.
5 Banyár and Németh, 2020.
6 Pári, Rövid, and Fűrész, 2023, pp. 5–9.
7 KSH, 2020.
8 Barzó, 2023, p. 23.
9 On the complex issues of fertility rates and childbearing, see, for example: Verebes, 2021, pp. 199–220; Kapitány and Murinkó, 2020, pp. 28–38.
10 Pári, Rövid, and Fűrész, 2023, pp. 11–13.

and having children are a threat not only to individuals' careers and well-being but also to the success of the community.[11]

In the context of demographic objectives and family policy development in Hungary, the Mária Kopp Institute for Demography and Families (KINCS) should be mentioned. Population policy aims to create the legal, economic, and social environment to influence population processes and structures. According to the objective to be achieved, a distinction is made between expansionary and restrictive population policies, with restrictive objectives being more desirable in the case of overpopulation and expansionary objectives being more desirable in the case of depopulation. However, one objective is common to both approaches: to establish and maintain a stable population, both in terms of numbers and age composition. This would require coordinating birth and death rates, to which population policy can contribute through a variety of direct and indirect instruments. A direct instrument could be the tightening of legislation legalising abortion, whereas an indirect instrument could be family policy to encourage childbearing.[12] The extent to which the rules of civil law, including family law, protect property, personal relationships, and the existence and security of families, couples, children, and large families also has an indirect impact on population trends. In the following, an attempt is made to present these issues.

2. Family law instruments to support families, parents, and children in Central Europe

2.1. The importance of family law principles

Principles are generally understood to be the guiding ideas of a field of law, which not only characterise the content of the legislation covered by that field (branch of law) but also define its basic features. According to Pap, principles 'create the atmosphere in which the law is to be interpreted [and] the spirit in which the law is to be applied'.[13] Thus, given that they are rooted in changing social conditions, principles determine the institutions of the branch of law in question, as well as the content of these institutions, according to society's stage of development.[14] The incorporation of the rules of family law into Act V of 2013 of Hungary's Civil Code (hereinafter, the 'Civil Code') made it necessary to formulate certain principles at the beginning

11 Barzó, 2023, p. 24. Similarly, see: Gyorgyovich and Pári, 2023, pp. 15–19.
12 Cseporán et al., 2014, p. 141; Milténvi, 2014, p. 243.
13 Pap, 1982, pp. 22–24.
14 For a detailed discussion, see: Barzó, 2017a, pp. 49–50; Kriston, 2020, pp. 358–374.

of the Family Law Book of the Civil Code that express the characteristics of family relationships and their differences from business relationships.[15] The Hungarian legislator lays down four basic principles in family law: the principle of the protection of marriage and the family, the principle of the protection of the best interests of the child, the principle of equal rights of spouses, and the principle of fairness and the protection of the weaker party. The main features of each of these principles are highlighted below.

2.1.1. The principle of the protection of marriage and the family

The *Fundamental Law* of Hungary protects the institution of marriage as the union of one man and one woman established by voluntary decision and that of the family, as the basis of the survival of the nation.[16] According to the Fundamental Law, *marriage* and the parent-child relationship are the foundation of the family. Consequently, in line with the provisions of the Fundamental Law, *marriage enjoys special protection* compared to other forms of cohabitation. As the institution of marriage is specifically protected by the Fundamental Law and, according to its generally recognised legal concept, is the union of a man and a woman, it *does not include the legal possibility of same-sex marriage*.[17] *Act CCXI of 2011 on the Protection of Families (Family Protection Act)* also establishes at a fundamental level that the state protects the institution of family and marriage.[18]

It follows from the principle of the protection of marriage that the *legislator favours marriage,* conferring upon it rights and obligations that are not created by registered partnerships, *de facto* partnerships, or other forms of cohabitation. However, registered partnerships are governed by a separate piece of legislation, *Act XXIX of 2009 (Registered Partnerships Act).* Nevertheless, it should be noted that there is no provision on registered partners in the Civil Code, including the Family Law Book, so much so that the law does not mention registered partners as 'relatives'[19] or as obstacles to marriage. Such partners are only mentioned among the circumstances that exclude the existence of a *de facto* partnership if one partner has already a registered partnership with another person.[20] The legal institution of registered partnerships is created in the same way as marriage and has the same property and succession effects,[21] with the *Civil Code* acting *as the underlying law of the rules governing registered partnerships*.[22] It is also true, however, that registered partners do not have

15 Szeibert, 2024.
16 Fundamental Law of Hungary, *Article L.*
17 Decision No 14/1995 (III.13.) AB of the Constitutional Court.
18 Family Protection Act, Art. 1(1).
19 Art. 8:1, paragraph 1(2) of the Civil Code.
20 Art. 6:514(1) of the Civil Code.
21 Art. 3(1) of the Registered Partnerships Act.
22 Kőrös, 2013a, p. 7.

the same rights as spouses in all areas.[23] The concept of *de facto partnership* is not included in the Family Law Book either but is placed in 'Book Six – Law of Obligations of the Civil Code',[24] which weakens the family law character of this legal institution. Inexplicably, partnership is listed after the various types of contract, which suggests it is a 'contractual obligation', the effects of which in family law are only valid in two areas and only if the partners' community of life has lasted for *at least one year* and they have *a child*. These two-family law effects represent the special provisions on *maintenance* and *residence for* cohabiting partners, which are, in turn, contained in the Family Law Book. A contractual relationship, therefore, has effects in family law; however, it is not the parties' intention or the way they live together that makes their partnership a family law relationship, rather it is whether *or not* they *have children*. In addition to the privileged status of marriage, the *legal status of de facto partners* is, in many respects, more disadvantageous than that of registered partners.[25] The Supreme Court's ruling that one of the parties living in a community of life and property as husband and wife excludes the possibility of a partnership is of precedent.[26]

By regulating the protection of the family at the level of principles, the *Family Law Book of* the Civil Code expresses that family law rules primarily *protect* the *family as a community* (the relationships between individual family members). This includes both *family relationships established by law* (e.g. marriage, filiation, adoption, guardianship) and *other forms of cohabitation* governed by law, in line with the case law of the European Court of Human Rights.[27]

2.1.2. Protecting the best interests of the child

The *Fundamental Law* itself states that every child shall have the right to the protection and care necessary for his or her proper physical, mental, and moral development. Parents have the right to choose the upbringing their children will receive. Parents are obliged to care for their minor children; this obligation includes the provision of schooling (Art. XVI). The Fourth Amendment to the Fundamental Law carries a significant legal policy message in terms of children's rights and interests. This amendment supplemented the original Article L of the Fundamental Law, which declared the protection of marriage and the family, by expressing that marriage and

23 For example, registered partners cannot adopt a child together, nor can one of them adopt their partner's child. Registered partners are also not subject to the same rules on naming that apply to spouses. Registered partnerships do not give rise to a presumption of paternity, nor is it possible for registered partners to have a child together through a reproductive procedure. Finally, unlike marriage, a registered partnership can be dissolved by a notary public in certain cases provided for by law. Art. 3(2)–(5) of the Registered Partnerships Act.

24 Art. 6:514 of the Civil Code.

25 For more, see: Barzó, 2017b; Sápi, 2021, pp, 113–118; Kriston, 2023, pp. 13–19.

26 Court Decision BH2004. 504.

27 For more on this, see: Barzó, 2017b, pp. 34–38; Hegedűs, 2014, p. 28.

the parent-child relationship *are the basis of the family relationship*. Thereby, the Fundamental Law also took a stand on the issue that a *de facto* partnership is not recognised as a family even if it results in the birth of a child. However, it should be remembered that it is also a requirement of the Fundamental Law that the *obligation to protect the institutions of marriage and the family must not result in any direct or indirect discrimination against children* on the grounds that their parents are bringing them up in a marriage or other type of community of life.[28]

As a response to the New York Convention on the Rights of the Child, the Hungarian Parliament passed the *Child Protection Act* (Act XXXI of 1997) in August 1997. *Chapter II* of this Act sets out the rights and obligations of the child and the parent. Under the *Family Protection Act*, which came into force on 1 January 2012, *growing up in a family* is safer than any other option. An important part of the law is the declaration of the rights and obligations of parents and children.[29]

Art. 3 of the UN Convention on the Rights of the Child sets out the fundamental approach to what is in the *child's best interests* that underpins the whole document. Of course, the best interests of the child are often not the only overriding factor as there may be competing or conflicting human rights interests, whether between individual children or groups of children, or between children and adults.[30] However, the child's best interests must always be a real consideration: it must be shown that the child's best interests have been examined and taken into account as a primary consideration. The principle of family law enshrined in Hungarian family law *does not*, therefore, formulate the '*best interests of the child*', but rather provides for increased protection of the child's interests and rights.[31]

The principle of the protection of the child also includes the requirement for *equal rights for children born out of wedlock*. This internationally valid principle was first introduced in Hungarian law in *Act XXIX of 1946*, which included the possibility of enforcing unwanted paternity by judicial means. This date is also important because the Universal Declaration of Human Rights only adopted the right to equal social protection for children born in and out of wedlock on 10 December 1948. The principle of the protection of the child may also be applied directly where a decision based on the sole application of a detailed rule for the resolution of a dispute would lead to a result contrary to the best interests of the child.[32] An important part of the principle emphasising the protection of the best interests of the child is the *right of the child to be brought up in his or her own family,* which is reflected in the provisions of both the Family Protection Act and the Child Protection Act. However, these rules are (also) matters of principle in private law. Therefore, the law considers it necessary to lay down at the beginning of the Family Law Book the right of the child to

28 Decision 43/2012 (XII. 20.) AB of the Constitutional Court.
29 Barzó, 2017b, pp. 42–44.
30 Somfai, 2010, p. 358.
31 Kőrös, 2013b, p. 28.
32 Court Decision BH2013. 17.

be brought up in his or her own family or, if this is not possible, to grow up in a *family environment*, and, in this case, *to maintain his or her previous relations*. In addition, to ensure that this principle is fully respected, the guardianship authorities may only remove a child from the family and take him or her into care if very strict conditions are met.[33] The rules of Hungarian family law also lay down as a fundamental principle *the right* of the child *to maintain his or her previous family relationships*, which may be restricted only in cases specified by law, in the best interests of the child and exceptionally.[34]

2.1.3. The principle of equal rights for spouses

The principle of equal rights for spouses is closely in line with Article XV(3) of *the Fundamental Law*, which expresses the principle of equality between women and men. The *Family Protection Act* emphasises the equal rights of parents by stating that the *mother and the father have the same obligations and rights* in the family on the basis of parental responsibility, barring a special statutory exception.[35] Judicial practice has formulated that the equality of rights that ensures the coexistence of spouses is *guaranteed in two directions*: in the conjugal relationship, on the one hand, and in family life, on the other. The basic content is that *neither spouse has any power* over the person or property of the other, and neither *spouse may enjoy any prerogatives* of parental custody over the other, either during the marriage or at the time of its dissolution.[36] *In the personal relations between* spouses, *two requirements* must be present at the same time: first, the autonomy of the spouses and, second, mutual accommodation and support.[37]

2.1.4. The principles of fairness and the protection of the weaker party

The principles of fairness and the protection of the weaker party, which are closely linked, are intended to express the fact that the legal practitioner should seek to resolve family law disputes in a civilised manner, preferably in a way that is conciliatory to all parties concerned.[38] Prominent representatives of Hungarian legal literature have also repeatedly pointed out that legal regulation is often unable to cope with the diversity of concrete life situations and that, in such cases, it is necessary to adapt to the fundamental principle of fairness, the balancing of interests, and individualisation.[39]

33 Art. 78(1) of the Child Protection Act.
34 Barzó, 2017, pp. 47–48.
35 Art. 9(1) of the Family Protection Act; Barzó, 2017b, pp. 48–50.
36 Court Decision BH 2012. 39.
37 Art. 4:24 and Art. 4:25 of the Civil Code; for more, see: Barzó, 2017b, p. 50.
38 Barzó, 2017b, pp. 50–53.
39 Szladits, 1937. pp. 42–44; Lábady, 2014, Art. 4:4 of the Civil Code; Barzó, 2017b, pp. 50–55.

Looking at the Hungarian Civil Code as a whole – not only with regard to family law – there are several points where it is possible to apply fairness. However, as the legal literature indicates, the application of fairness in family law has its limits[40] as it can only ever be an exception to the application of 'strict' specific legal provisions, and only on the basis of a specific authorisation by the law. In addition, the application of fairness requires an assessment of *all the individual circumstances of the case* so that both parties benefit equally from fairness. Moreover, where there is a contractual relationship between the parties, the fairness aspects must also serve the performance of the contract.[41] However, the principle of fair settlement must apply *to all family law relationships* under the Family Law Book because it is in the settlement of family relationships that strict adherence to the letter of the law can most often lead to unfairness.[42]

Closely related to fairness is the *protection of the weaker party*, which serves to correct social inequalities, even though private law has relatively few instruments to do so. Another difficulty is the imprecise and highly relative legal definition of the weaker party; thus, case law must be even more careful in this respect.[43] In family law, this expectation means taking due account of the situation of the vulnerable party who needs help because of his or her age, health, or means.[44]

2.2. Management of children's property

Under Hungarian family law, one of the most important aspects of parental custody is the management of the property of minor children. In recent decades, the focus on the responsibilities of parents in this regard has become even more pronounced as family wealth has become more complex and sophisticated.[45]

2.2.1. Object of property management

Hungarian family law rules give parents exercising joint parental custody full autonomy over the management of their child's property. Thus, the parents' fiduciary rights and duties extend to all the child's property that is not excluded from their custody under the Family Law Book. The *following are not covered by parental property management*:

(a) Income that the child has earned through work. In Hungary, a minor of limited capacity over the age of 16 may also establish an employment relationship. In addition, during school holidays, children as young as 15 years old who are studying full-time can work with the consent of their statutory representative. Persons under

40 Kőrös, 1999, pp. 13–14.
41 Kőrös, 1999, pp. 16–17.
42 Sebestény, 2003, pp. 30–31.
43 Vékás, 2007.
44 Barzó, 2017b, p. 54–55.
45 Barzó, 2022, p. 119.

the age of 16 may be employed in the framework of cultural, artistic, sporting, or advertising activities as defined by law, provided that they have notified the guardianship authority at least 15 days prior to the employment.[46]

Earned income can also be the child's *wages, salary, bonus*, or *royalties*. However, the income earned by a minor through work is not considered to include the earnings distributed by a business company in which he or she is a member if the child does not personally participate in the company. Disposing of the income, which can be free or in return for a contribution, does not require the consent or subsequent approval of the parent. In fact, a minor of limited capacity who has reached the age of 14 *may even undertake obligations up to the amount of his or her earned income*.[47] For example, he or she can make gifts, go shopping, or be a surety. Nevertheless, limited liability means that the commitment cannot exceed the limit set by law, that is, the amount of the minor's earnings.

If the child lives in the household of his or her parents, he or she *must* also contribute to the *household expenses* from his or her own disposable earnings.[48] A child who is able to work is expected to share, even if only partially, in the household expenses if he or she is self-sufficient but not yet self-supporting. This provision can be enforced if necessary, but such cases are, of course, rarely brought before the courts. Income from non-personal employment (e.g. interest on a deposit of money that is due to the minor, or the net benefit from the use of property owned by the minor) is not subject to the child's disposition, and the provisions described above do not apply *to children under the age of 14*.

(b) Property that the child has received with the proviso that his or her parents may not manage it. There may be cases where a child's assets need to be saved from the parent who is holding them. Grandparents may designate their grandchildren as heirs or donees, for example, if their child or son-in-law/daughter-in-law is suffering from an addiction and cannot fulfil their parental responsibility. The title of acquisition is irrelevant in this respect. If such property is later replaced by other property, the parents' property management right does not extend to it either. Since the parents cannot act in respect of such property given to a minor child, the *guardianship authority* must appoint *a guardian for managing property* to administer the property. If only one parent is excluded from the management of the property by the third party who has transferred the property, the property is managed by the other parent who would otherwise be entitled to administer the property. Therefore, if the parent with parental custody is excluded from the management of the property, the appointment of a guardian for managing property is subject to the condition that the *other parent is also not entitled to manage the property for whatever reason* or that the

46 Section 34(2)–(3) of the Labour Code.
47 Art. 2:12(2)(c) of the Civil Code.
48 Art. 4:157(3) of the Civil Code.

other parent's management of the property is contrary to the best interests of the child.[49]

(c) Property in respect of which the guardianship authority has imposed a penal restriction on the parents' right to manage the property.[50]

2.2.2. Use of the child's property and income

Income here does not refer to the minor's earnings – as these are taken out of the parent's management – but to *the return on his or her assets* (e.g. the rent on a property, the annuity on a bond, interest on cash). However, the law only provides for the child's income that *remains net* after the payment of the charges on his or her property (object). For example, the rent of a property owned by the child should be reduced by the tax and any other contributions on the rent and the costs of maintaining the property, keeping it in good condition, etc. It is also important to stress that the child's net income can only be used *for the child's reasonable needs*.[51] Of course, the use of the net income is not under the direct and regular supervision of the guardianship authority.

Although the law requires a parent to maintain a minor child by limiting his or her own necessary maintenance, this provision does not apply if the child's reasonable needs are *covered by his or her earned income* or *property income*.[52] Therefore, if the parent can provide for the child without endangering his or her own support, he or she cannot use the net income from the child's assets.[53] Unfortunately, however, there may be cases where the child's maintenance cannot be secured even through the use of his or her net income. In such cases, the parents can*, with the permission of* the *guardianship authorities,* use the *child's assets* in specified instalments to cover the cost of maintenance. However, even in that case, an important condition is that the parents are not able to care for the child without endangering their own support.[54]

2.2.3. Parents with property management rights and their responsibilities

2.2.3.1. Parents entitled to manage the child's property

In the case of *parents exercising joint parental custody*, the rights and duties of property management *must be exercised jointly by both parents*. However, it may be difficult to implement a continuous joint procedure. In such cases, the parents can

49 Art. 26/A of Government Decree 149/1997 (IX. 10.) on guardianship authorities and child protection and guardianship procedure (Guardianship Decree).

50 Art. 4:159 of the Civil Code.

51 This includes, reasonably, costs for subsistence, food, adequate clothing, utility bills, and attending educational institutions.

52 Art. 4:215(1)–(2) of the Civil Code.

53 For a detailed discussion, see: Barzó, 2022, pp. 119–121.

54 Art. 4:215(2) of the Civil Code.

give each other a power of attorney, either mutually or separately, in a notarial deed or a private document with full probative value. The power of attorney can cover the management of all the child's assets, but it can also be granted only for a specific part of the child's assets, such as company shares, securities, or various investments. However, the power of attorney can *only be used in matters concerning the child's property*; in matters concerning the child's person, the parents must act jointly.[55] In matters that occur frequently in everyday life, a parent acting on behalf of a child may be rightly regarded by *bona fide* third parties as acting also as an agent of the other parent. This could be, for example, when a parent buys sports equipment or medical aids with the child's assets.

In the case of parents who are separated and do not have joint parental custody, the rights and duties of property management are, as a rule, *exercised by the parent who has sole parental custody.* However, the Family Law Book allows *the court* to exceptionally *authorise* the parent who is separated from the child to exercise full or partial statutory representation in the *management* of the child's *property* and assets.[56] In particular, such a decision may be justified if the management of the child's property or certain assets requires special expertise.

For the same reason – in the best interests of the child – *the guardianship authority* may *appoint only one parent to manage the child's property during joint parental custody.* In this case, the other parent's property management rights are suspended, for example, if one parent is unavailable, is permanently ill, or works abroad.

2.2.3.2 Parents' responsibility for the management of their children's property

As a rule, parents manage their children's assets without any obligation to provide security, surrender them, or account for them. These limits can only be applied on a punitive basis and only if the parents exercising parental custody fail to discharge their obligation in terms of managing their child's property, seriously violating the child's interests. Parents are *required to act* in their fiduciary capacity in *accordance with the rules of ordinary fiduciary* duty, exercising the same degree of care as they exercise in their own affairs. This degree of care must be judged according to the circumstances of the case, so that a parent is not expected to take a more demanding approach to property matters that, in view of his or her personal capacities and circumstances, he or she is not even taking in his or her own property matters. This standard of care does not, however, exempt a parent *from liability for damage caused to his or her child intentionally or through gross negligence*. In the latter case, the parent will be liable for damages under the rules on liability for extra-contractual damages.[57]

If the parents exercising parental custody *fail to discharge* their obligation in terms of managing their child's property, *seriously violating the child's interests,* the

55 Art. 4:156 of the Civil Code.
56 Art. 4:168(2) of the Civil Code.
57 Art. 6:519 of the Civil Code.

guardianship authority may, in justified cases, *restrict* or, in the last resort, even *withdraw* the parents' right to manage the child's property by applying the means provided for by law.[58]

2.2.4 Limitation of parents' property management rights

2.2.4.2. Limitation of parents' property management rights by the guardianship authority[59]

The guardianship office may, *on application* or *ex officio* in the interests of the child, restrict the parents' rights of property management and may restrict or withdraw the right of representation in property matters in respect of certain property matters or a specified class of matters.[60] In practice, it is usually the Family and Child Welfare Service, the Family and Child Welfare Centre, or a relative or other person who reports to the guardianship authority that parents exercising parental authority are failing to fulfil their obligations to manage their child's property in a way that seriously violates the child's interests. In these cases, the guardianship authority will, *from the following measures,*[61] take the one that offers the most secure way to protect the child's assets:[62] (a) It may order the transfer of the child's funds and valuables to the guardianship authority. A more serious case of this is when the guardianship authority places the entire management of the child's property under its supervision. (b) It may order the parents to provide security. In doing so, it accepts the property or asset as security based on a valuation. (c) It may order the parents to give an account of the property management like a guardian. (d) It may restrict or withdraw the parents' right of property management and their right of representation in property matters with respect to certain property matters or a certain group of matters. At the same time, a guardian that manages the property is appointed for the child.

The guardianship authority may apply more than one of these measures at the same time.

2.2.4.2 Statutory restrictions on parents' property management rights

While the guardianship authority may only restrict the right of the parent as a statutory representative to act as a property manager in the event of serious misconduct on the parent's part, the provisions of the Civil Code *provide for stricter rules* to protect the child's property *in the event of the exercise of the parent's general property management rights*. A minor who is incapacitated (under 14) is represented

58 Art 4:159 of the Civil Code.
59 Art. 26/A (4)–(6) of Guardianship Decree.
60 Art. 4:159 of the Civil Code.
61 Barzó, 2022, p. 120.
62 Art. 4:159(a)–(e) of the Civil Code; Art. 26/A (6) of the Guardianship Decree.

by his or her statutory representative, whereas a minor over 14 with limited capacity can make legal declarations on his or her own, but, as a rule, only with the consent of his or her statutory representative. There are, however, cases where the law requires the *minor with limited capacity to make a personal declaration* (e.g. a public will); the statutory representative may also not dispose of the earnings of a minor with limited capacity to act that have been earned through work. In addition, as the statutory representative, the parent must consider the opinion of the minor, if he or she is of sound mind, when making a legal statement concerning the minor's person and property.[63]

In addition to the above, the Civil Code also mentions several cases where the declaration of the parent as the statutory representative of a minor (under 18 years of age) requires the approval of the guardianship authority:[64]

Waiver of child maintenance to which a minor is entitled. In this case, the parent who is liable for maintenance and the parent who is the actual carer of the child agree that the debtor *will give the creditor an appropriate amount of property (money)* in settlement of the maintenance obligation.[65] Such an agreement can be made in a court settlement, or it can be made out of court. If the agreement is concluded out of court, it must be approved by the guardianship authority to be valid.

If the declaration *concerns the rights or obligations acquired by a minor through an inheritance relationship.*[66] For example, the validity of an inheritance contract concluded by a minor with limited capacity to act as heir also requires the approval of the guardianship authority.

A minor's acquisition of not unencumbered real estate or the transfer of ownership or encumbrance of his or her own real estate.[67] This includes any declaration whereby the minor's property becomes the property of another person, either in whole or in part, or where any restriction is placed on any of the rights arising from the minor's ownership, for example, a pledge of the property or a right of usufruct. However, in the latter case, the approval of the guardianship authority shall not be required if the minor's real estate is, at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.[68]

Disposal of a minor's property transferred to the guardianship authority.[69] The Family Law Book removes the general obligation to transfer a child's property, intending to recognise that parents should, as a general rule, manage their children's property to the best of their ability and with due care and diligence. As such, the law *only* provides for the surrender of the child's money and valuables ordered by

63 Art. 2:12(1)–(4); Section 2:14(1) and (3) of the Civil Code.
64 Art. 2:15(1) of the Civil Code.
65 Art. 4:217(2) of the Civil Code.
66 Art. 2:15(1)(b) of the Civil Code.
67 Art. 2:15(1)(c) of the Civil Code.
68 Art. 2:15(2) of the Civil Code.
69 Art. 2:15(1)(d) of the Civil Code.

the guardianship authority as *a sanction*. The law requires the consent of the guardianship authority for the disposition of the transferred property.

Disposal of a minor's assets that have a value exceeding an amount specified by law.[70] A parental legal declaration concerning the disposition of a minor's property that is not transferred to the guardianship authority requires the guardianship authority's approval if the value of the property concerned by the parental disposition exceeds 45 times the social projection base (the minimum old age pension, which is HUF 28,500), which currently amounts to HUF 1,282,500.[71] This includes transactions involving the child's personal property, movable property, cash, or rights of pecuniary value (e.g. securities, shares, stocks, etc.) that exceed the above-mentioned threshold.[72]

Upon request, the guardianship authority decides whether to approve the above legal declarations of the parent, provided that it is in the *best interests of the* child to make a declaration about the child's property.[73]

Finally, there are also some parental legal declarations that *will not be valid even if they have been approved by the guardianship authorities*:[74]

A minor child may not make gifts, in other words, he or she may not give a free pecuniary benefit to someone else at the expense of his or her own property. However, *gifts of modest value* are *exceptions* to this rule. In assessing modest value, the value of the gift, the object of the gift, the financial situation of the gifter, the purpose of the gift, and, in the case of gifts between relatives, the prevailing perception in the family must be taken into account.[75]

A *minor child should not assume responsibility for a third-party obligation without appropriate consideration.* Such an agreement is also a free contract and is, therefore, not valid even with the approval of the guardianship authority. However, an exception is when a minor with limited capacity to act is has an obligation to the extent of his or her earnings from work because the law allows it.

A minor child may not waive a right without consideration. The provision of Section 6:8(3) of the Civil Code applies to the assessment of the waiver or release of rights without consideration. Accordingly, the legal declaration cannot be interpreted in an expansive manner, and the waiver or release of rights without consideration must be definite and express. If the waiver was made for consideration, the extent to which the statutory representative's waiver requires the guardianship authority's approval depends on the content of the waiver.[76]

70 Art. 2:15(1)(e) of the Civil Code.
71 Art. 26/B (3) of the Guardianship Decree.
72 Court Decision BH2000. 22.
73 For more detail, see Section 26/B of the Guardianship Decree.
74 Art. 2:16 of the Civil Code.
75 Court Decision BH2011. 230.
76 Barzó, 2022, pp. 119–122.

2.3. Privileged status of the family home property in the family (matrimonial) property law

The family is the smallest basic unit of society and its constituent element. Consequently, for a country to build a strong and healthy nation and society, it is necessary to protect and strengthen families in all areas of law, in addition to family and child-friendly family policies. One of the most important pillars of encouraging family formation and childbearing is family property law that also focuses on preserving the family's existential security, both during the couple's life and after separation. In addition to establishing the security of the family home, it is also important to ensure that a minor or adult child in further education can use the family home, regardless of whether his or her parents live together or not. The development of family law legislation in this area should be continuous, as indicated by judicial practice.[77]

2.3.1. Protection of the family home in matrimonial property law

One of the most important features of Hungarian matrimonial property law is the matrimonial community of property, which is a statutory property regime.[78] This means that assets acquired jointly or separately by the spouses while the community of property applies shall belong to the matrimonial common property. The burdens of the shared assets belong to the matrimonial common property, and, as a rule, the spouses shall jointly bear the debts arising from obligations undertaken by either of them while the community of property applies. The spouses shall be entitled to the matrimonial common property undivided and in equal shares. Assets, burdens, and debts qualifying as separate property do not belong to the common property.[79] A reciprocal contract regarding common property concluded by a spouse while the community of property applies is considered a contract concluded with the consent of the other spouse, unless the third party concluding the contract, typically a creditor, knew or should have known of the absence of the other spouse's consent to that contract. The security of commercial transactions, the safety of trade, and confidence in contracts also require that a person who concludes a contract with a natural person should not have to check whether the person is married or whether the contract has the consent of the contracting party's spouse.

As such, the Family Law Book provides for the *presumption of consent*[80] in relation to contracts for pecuniary interest concluded during the period of the community of property.[81] Of course, a spouse who did not take part in the conclusion of the contract can rebut the presumption of consent, but this requires double proof: he

77 Barzó, 2017b, pp. 144–146, 219–222.
78 Art. 4:34(2) of the Civil Code.
79 Art. 4:37(1)–(4) of the Civil Code.
80 Barzó, 2017b, pp. 142–144.
81 Art. 4:46 of the Civil Code.

or she must prove beyond reasonable doubt not only that he or she did not consent to the contract concluded by his or her spouse but also that the third party who concluded the contract knew or should have known of his or her lack of consent.[82] However, the Family Law Book completely excludes the applicability of the presumption in two cases. One of these is a contract for *real estate property co-owned by the spouses containing their matrimonial home,* and the other is the use of *common property*, forming part of the spouses' matrimonial community of property, *as an in-kind contribution* made available to individual firms, companies, and cooperatives.[83] In both cases, the transaction can only be concluded with the participation or express consent of both spouses, in other words, there is no presumption of consent in these cases.[84]

The restriction was justified, on the one hand, to *protect* the *family home* and, on the other, to prevent the 'extraction' or 'hiding away' of the matrimonial property in business entities, in particular in companies. This is because if the common property becomes part of the assets of a business company or enterprise as a result of a unilateral decision by one of the spouses, it can only be removed from the company or enterprise and disposed of on the basis of the law applicable to the business company in question – within the framework of the exercise of membership rights – in which the non-member spouse no longer has any say.[85] There have been cases where one spouse has diverted the basis of the other's claim to common property by making a non-monetary contribution (contribution in kind) to a business company of a major asset belonging to the common property (e.g. the common dwelling itself) after the dissolution of the community of life. The rules contained in this Section are designed to prevent such and similar cases.[86]

Due to the different legal property regime for *de facto* relationships, there is no legal provision protecting the family home of *de facto* partners.

2.3.2. Right of a minor child to use the home

The need for specific rules on the use and disposal of the matrimonial home and on the regulation of the use of the home has been made necessary by the fact that the matrimonial home is, in *most cases*, *the family home,* which is also the place where family life and the upbringing of children take place. Similar to international examples, the law, thus, protects the right of spouses and their children to use the dwelling regardless of who owns, has usufruct for, or rents the dwelling as 'property'. In the context of the rights to use the residential premises, the Family Law Book provides for a number of settlement options to ensure that divorcing spouses are

82 Court Decision BH1996. 98.
83 Barzó, 2017b, p. 144.
84 Art. 4:48 of the Civil Code.
85 Csűri, 2016, pp. 163–167.
86 Kőrös, 2005, p. 9.

not forced to live together after their divorce and to encourage spouses to settle the issue of using the dwelling together with the division of the matrimonial common property, where possible.[87] However, it should also be noted that the settlement of the use of the dwelling is closely linked to the right of the common child to have his or her own independent right to use the home.

The Family Law Book defines the *concept of the matrimonial home* in accordance with the case law, taking for granted that it can only be a matter of settling the use of a home that the spouses do not use in connection with the title of another person, as an ancillary use (as a favour, as subtenants, or as family members) but in their own right, independently of the right of use of another person. There is no possibility of court settlement of the use of so-called 'ancillary' dwellings based on the rules of the Family Law Book.[88]

The Family Law Book sets out three conjunctive conditions for *the concept of a matrimonial home*: (a) the existence of a valid (or invalid between *bona fide* parties) *matrimonial bond*; (b) *cohabitation*, which means that the spouses have moved, either jointly or separately, into the dwelling for the purpose of living there. The existence of a marital community of life is, therefore, not a prerequisite for the existence of a common home; and (c) the home is used on the basis of the *ownership*, *usufruct (use)*, or *tenancy of* one or both spouses.[89]

In addition to property relations, the primary way to settle both spousal and *de facto* cohabitation is by agreement between the parties. Couples planning to marry, spouses, or *de facto* partners *can arrange* the use of the common home by means of a *prior contract* in the event of the dissolution of marriage or termination of their community of life. In the context of a preliminary agreement on using the home, in order to protect the right of the minor child to use the home, parents have the possibility to decide between themselves how to ensure the child's accommodation in the event of the termination of their community of life or divorce, which is their obligation in any case, in accordance with the way in which parental custody is to be arranged. If, however, the spouses (or *de facto* partners) have a new child after the conclusion of the contract, the preliminary agreement on the use of the home will, by operation of the law, also apply to the new child, unless the content of the contract is amended. There are two cases in which the Family Law Book gives the court the power to determine, *in* the best *interests of the child*, a *use of the matrimonial home that differs from the contract* upon the dissolution of marriage or termination of the community of life. One of these cases is where the *contract does not contain any provision* on the right of a minor child to occupy the home, either because the parties did not have a child when the contract was concluded (and may not have planned to) or simply because they did not think about it. The other is where the parties have entered into a contract for the prior arrangement of the use

87 Explanation of Chapter VIII of Title VI of Part Two of Book Four of Act V of 2013 on the Civil Code.
88 Barzó, 2017b, p. 220.
89 Barzó, 2017b, pp. 219–222.

of the dwelling but the terms of the contract *seriously infringe the right of the minor child to adequate housing.*[90]

The common minor child of a spouse or *de facto* partner *must be provided with accommodation in the common home of the spouses (partners)*. This is closely related to the provisions of Section 4:152(1)–(2) of the Family Law Book, which states that parents have the right and duty to care for the child and to provide the conditions necessary for the child's subsistence and upbringing. Parents are obliged to provide accommodation for their children in their own household. Unless otherwise ordered by the court or the guardianship authority, the *child's place of residence* is the *parents' home*, even if the child is temporarily staying elsewhere. This means that the *child has a substantive right* vis-à-vis his or her parents to *be accommodated* in their shared home, or in one of their homes after the community of life has ended. On the other hand, the minor child's right to use the home as a family member *is ancillary*: it is linked to the right to use the home of his or her parents or the parent who has been granted sole parental custody over the minor child by the court. It also follows that, *from the perspective of the settlement of the use of the home, it is decisive* whether the court grants parental custody of the common minor child to one or both parents because the court does not grant exclusive use of the common home to a parent who does not exercise any parental custody over the common minor child following a divorce.[91] It is also a legal requirement that a spouse that exercises parental custody over a child and who has voluntarily moved out of a formerly shared home without the intention of returning must ensure the minor child's right to use the home in an appropriate manner. The court must examine this issue in the proceedings for the settlement of the use of the home.[92]

It is noteworthy that the Hungarian legislation also allows – although only in exceptionally justified cases – for the court to entitle the other spouse or partner to the exclusive use of the dwelling occupied by *a spouse or de facto partner* on the basis of *exclusive title* (e.g. separate property, sole beneficial interest), if the exercise of *parental custody over the minor child* entitled to use the dwelling is vested in the spouse or partner and the *minor child's residence cannot be ensured otherwise*. In the case of *de facto* partners, another condition, in addition to the common minor child, is that there has been a community of life between the *de facto* partners for at least 1 year.[93] Apart from the interests of the minor child, there are no other grounds on which the court may terminate the right of a spouse or partner who has exclusive title to the dwelling, even if the spouse or partner is guilty of grossly imputable (rude, abusive, aggressive) behaviour toward the other spouse or partner.[94]

90 Court Decision BH1997. 291.
91 Art. 4:83(2)–(3) and Section 4:94(3) of the Civil Code.
92 Art. 4:81(3)(b) of the Civil Code; Court Decision BH2016. 175.
93 Art. 4:94(1) of the Civil Code.
94 Barzó, 2017b, p. 235.

The principle of the primacy of the best interests of the child is, therefore, of particular importance in the settlement of the question of the use of the home, in the case of both spouses and *de facto* partners,[95] as all settlement methods must take into account *the independent right* of the common minor *children* of the parties concerned to *use the home*.[96] For the purposes of applying the rules on the settlement of the use of the dwelling, the *common minor child* has an individual right of use.[97]

The right to use a dwelling has a pecuniary value; therefore, the recognition of a claim for the consideration for the right to use a dwelling aims to reduce the pecuniary disadvantage of the spouse who leaves the dwelling, as well as the pecuniary disproportion between the spouses in terms of their housing situations. In terms of calculating the leaving spouse's right to use the dwelling, the Family Law Book stipulates only that the spouse who is obliged to leave the home may claim reimbursement corresponding to the financial value of the former right to use. However, when determining the amount of reimbursement, the *value of the child's right to use the home* shall be taken into account to the benefit of the spouse who, upon exercising parental custody right, ensures the use of the residential premises for the child. While this reduces the payment obligation of the spouse who stays in the dwelling, although, it may increase the amount of the reimbursement in favour of the spouse who leaves the former matrimonial home, taking the child with him or her.[98]

A *child who has reached the age of 16* may leave his or her parents' place of residence or another place of residence designated by the parents without the parents' consent, subject to the approval of the guardianship authority, provided that this is not contrary to the child's best interests. Leaving the parents' place of residence or another place of residence designated by the parents does not, in itself, affect parental custody, except for personal care and education.[99]

It should be stressed that, although the provisions of the Family Law Book primarily regulate the use of the home by the spouses' minor child, this does not mean that *reaching the age of majority* automatically results in the termination of the right to use the home. For the most part, parents are still obliged to provide *for an adult child* who is dependent or continues to study in a way that establishes dependency,[100]

95 BH2021. 11. I-II.

96 Unlike the concept of *de facto* partnership and its property consequences, the rules on the judicial settlement of the partners' use of the home have been placed among the family law effects of partnership. Szeibert, 2013a, pp. 147–158.

97 A child has the right to be accommodated in the shared home in accordance with his or her living conditions only in relation to his or her own parents. This entitlement cannot be extended to a non-parent spouse who has made the child's residence possible only incidentally through marriage to the other parent, not even if it is in the best interests of the child. Family protection considerations can, therefore, only be considered in the relationship between the parents responsible for the care of the child. Court Decision BH1992. 764. For more, see: Barzó, 2017b, pp. 224–225.

98 Art. 4:84(3) of the Civil Code.

99 Art, 4:152(4) of the Civil Code.

100 Art. 4:220 of the Civil Code.

primarily through in-kind care in the home.[101] Even if a child who has reached the age of majority does not continue to study, his or her right to use the property does not automatically end until his or her parents withdraw it.

2.3.3. Additional provisions protecting the family and the child in family property law

As already mentioned, one of the most important features of Hungarian matrimonial property law is the matrimonial community of property, which functions as a statutory property regime.[102] *De facto* partners are independent acquirers of property during cohabitation, although either partner can claim from the other the division of the property gains made during cohabitation in the event of the termination of their community of life.[103] The settling principle in the division of property is the *parties' contribution to the acquisition*. However, the principle of fair property settlement and the protection of the interests of the weaker party can be seen in the legal provision stipulating that *work in the household, child-rearing*, and *work in the other partner's business* are considered contributions to the acquisition of property. If it is not possible to determine the proportion of contribution between the parties, this proportion is deemed to be *equal* unless equality would be to the unfair pecuniary prejudice of either party.

However, both spouses and partners can deviate from the statutory property regime *by means of a marriage or partnership contract* and agree on *a full separation of property*. The essence of separate property regimes is that the spouses retain their property independence with regard to the property they acquired both before and during the marital community of life, that each of them remains the independent owner of the property they have acquired, and that each of them has the right to dispose of and manage his or her own property and is not liable for the debts of the other. Expenses closely related to the common way of life, in other words, the *costs* of the common *household* and the necessary expenses for the maintenance, upbringing, and education of *the spouses' child* or, with the consent of one spouse, the child of the other spouse *in the common household*, *are borne jointly* by the spouses, even if they opt for a full property separation regime, and cannot be derogated from by contract. Any clause that exempts either spouse from bearing all or most of these costs and expenses is void. Work done in the common household and child-rearing for the benefit of the family can be counted as participation in the cost-bearing.

The *division of the common property* acquired during the community of life is a relevant issue arising after the dissolution of a marriage or the termination of a *de facto* partnership. However, when drawing up the balance of assets and determining the value per person, as well as when distributing assets, family protection must be considered in order to strengthen the financial position of parents raising children

101 Art. 4:216(1) of the Civil Code.
102 Art. 4:34(2) of the Civil Code.
103 Art. 6:516(1) of the Civil Code.

or, at least, prevent possible injustices to the children. The *direct or indirect taking into account of the best interests of a minor child* in such a judgement is a particularly important fairness consideration. This includes the possibility that objects and furniture purchased for the child or for the child's personal use should be excluded or disregarded from the property inventory when dividing the property. With regard to other assets that are necessary for the proper upbringing and maintenance of the child, the application of fairness is particularly necessary.[104] It is also appropriate that in the event of the termination of the common ownership of a former common dwelling, when determining the redemption price, the effect of a reduction in the dwelling's market value due to the occupation of the dwelling should not be exclusively assessed to the detriment of the former spouse who remains in the dwelling with a common minor child.[105]

2.4. Family law issues relating to the establishment of family status

In addition to the need for nations to create the social, legal, and economic conditions that enable young people to have the children they plan and desire, it is also important to ensure that the children born and their parents have *the right to an orderly family life*.[106] To make this possible, the child's family status must be regularised, that is, the child must live in a legally recognised family relationship. This regularisation is *legally complete* if both the paternal and maternal status in the child-parent relationship is fulfilled. Nevertheless, the regularisation is only complete from a social perspective if the persons from whom the child is actually descended are established as the father and mother of the child and are registered in the birth register.[107] However, as we know, this is not always the case.

2.4.1. The origin of paternity

The Civil Code specifically lists the legal facts giving rise to paternity in the order in which they apply: a) the mother's matrimonial bond, b) a special procedure for human reproduction in the case of *de facto* partners, d) declaration of paternity, and e) the establishment of paternity by court order.

If paternity can be established on the basis of a presumption of paternity that comes first in the order, a presumption of paternity that comes later in the order

104 The court must disregard items for the personal use of the spouses' minor child when dividing the common property of the spouses and must apply a broad equitable test when valuing assets of greater value for the child. Courts will consider the fact that these assets are deteriorating in the child's best interests as a result of their use by the child, and, therefore, the parent caring for the child would be unfairly burdened if such assets were to be accounted for at their value at the time of the termination of the community of life. Court Decision BH1982. 290.

105 Kőrös, 2007, pp. 303–307.

106 Barzó, 2017b, p. 283.

107 Csiky, 1973, p. 13.

cannot be applied.[108] An exception to this order of precedence is where the presumed period of conception (i.e. 300 days) has not yet elapsed between the termination of the mother's previous marriage and the birth of a child born during the reproductive procedure between the partners. In this case, the *de facto* partner of the mother is considered to be the father of the child, rather than the spouse who is first in the order. This is also the case if, after a successful reproductive procedure between the mother and her partner, the mother and her partner separate and the mother marries another man before the child is born. This marriage also does not create a presumption of paternity for the husband.[109] The system of presumptions of paternity is *uniform*, in other words, *they have the same legal consequences* regardless of whether the child is born in or out of wedlock.

2.4.1.1. Presumption of paternity based on matrimonial bond

The presumption of paternity is *automatically* created on the basis of marriage. The man who lived in matrimonial bond with the mother during the whole or a part of the period between the child's conception and birth (i.e. 300 days counted backward from the birth) shall be considered the child's father.[110] For the purposes of the presumption of paternity based on marriage, the law gives legal effect to the *conclusion of the marriage* and *does not attach any importance* to whether or not the spouses actually cohabited or whether or not the mother had sexual relations only with the husband. Thus, the mother's husband should be considered the father of the child even if the mother is already living with another man, without the dissolution of marriage, and the child is in fact the result of a sexual relationship with this other man. The *ipso iure* establishment of paternity of the already 'abandoned' husband puts the biological father in a difficult position as his acknowledgement of paternity is legally precluded by the existence of paternity. The Civil Code, however, already allows the court, on the joint application of the putative father, the mother, and the man who wishes to acknowledge the child by a declaration of paternity with full effect, to establish in a non-contentious procedure that the child's father is not the mother's husband or former husband.[111] However, the question of paternity must be settled in the same procedure by a declaration of paternity with full effect.[112]

The law also provides a solution to *conflicting presumptions of paternity based on two marriages* between the presumed time of conception and the birth of the child. The presumption of paternity attaches to the conclusion of a new marriage, and only an *underlying presumption of paternity* can arise on the basis of a previous

108 Szeibert, 2013b, p. 30.
109 Art. 4:100(2)–(3) of the Civil Code.
110 Art. 4:99 of the Civil Code.
111 Kun, 2018, pp. 38–40.
112 Art. 4:114 of the Civil Code.

valid or invalid marriage. If the presumption of paternity against the new husband is rebutted, the presumption of paternity against the previous husband is revived.

2.4.1.2. Presumption of paternity arising from a special procedure for human reproduction

A special procedure for human reproduction may be carried out for persons in a *spousal relationship* or *de facto partnership between persons of different sexes* if, due to a health condition (infertility) of either party, the relationship is unlikely to result in a healthy child by natural means. Given that, under the law, the reproductive procedure can be carried out at the joint request of the partners in a private document with full probative value, the applicants accept that the family status of a child born in this way is identical to that of a biological child.[113] However, in the case of partners, a reproductive procedure can only be carried out if *neither of the partners is in a spousal relationship*. The reason for this is that the paternity of a child born in a reproductive procedure between spouses is based on the mother's marriage; thus, the reproductive procedure in itself only creates paternity in the case of partners. This is why *Act CLIV of 1997 on Healthcare (Healthcare Act)* emphasises that no partner in a reproductive procedure may be in a spousal relationship.[114] However, there may be cases where the *marriage of the parties is terminated during the reproductive procedure after the fertilisation of the female gametes*, for example, by the death of the husband. An embryo created outside the body has the status of a foetus from the day of implantation.[115] Taking all this into account, the determination of paternity is not always clear. *In the case of a single woman*, a reproductive procedure can be carried out if the woman's age or health condition (infertility) means that she is unlikely to have a child naturally.[116]

2.4.1.3. Presumption of paternity based on a declaration of paternity

If a mother neither lived in a matrimonial bond during the whole period or part of the period between the conception and birth of a child nor took part in a reproductive procedure giving rise to the presumption of paternity, or if the presumption of paternity was rebutted, the man *who acknowledges the child as his own in a declaration of paternity with full effect* is considered the father of the child. A declaration of paternity can be made by a man at least 16 years older than the child from the time of the child's conception. For a declaration of paternity to be of full effect, the consent of the mother, the statutory representative of the minor child and, if they are aged 14 years or older, the child themselves is required. The declarations

113 Somfai, 2006, p. 11.
114 Art. 167(1) of the Healthcare Act.
115 Art. 179(3) of the Healthcare Act.
116 Art. 167(4) of the Healthcare Act.

and consents shall be recorded at the civil registrar, the court, the guardianship authority, or the career consular officer, or they shall be drawn up in a notarial deed.[117] The declaration of paternity may not be revoked after the record or deed is signed.[118]

2.4.1.4. Presumption of paternity based on a court decision

The law treats a judicial finding of paternity as an irrebuttable presumption. It even *rejects* the possibility that, after the court has 'upon the thorough consideration of all circumstances' reasonably concluded paternity, a new trial should be launched to prove that it is 'impossible' that the child is descended from the putative father. An action to establish paternity can only be brought if the father of the child cannot be established on the basis of the mother's marriage, a reproductive procedure, or a declaration of paternity with full effect. No judicial determination of paternity is given to the so-called '*donor man*' who donated gametes or embryos if the mother became pregnant through a reproductive procedure.

In practice, paternity is typically established by a court when it is necessary to establish the paternity of a man who has fathered a child but does not wish to become the father, or when the mother for some reason objects to the settlement of paternity and does not consent to the father's declaration with full effect. In addition, paternity can be established only by a court if there is no age difference of at least 16 years between the child and the man who is the father, which is required for a declaration of paternity.

A judicial finding of paternity requires *double proof*: first, proof that there was sexual intercourse between the man designated as the father and the mother at the presumed time of conception and, second, if this is the case, other evidence, in particular physiological tests, to show that the origin of the child can be reasonably inferred from that relationship.[119]

The law still allows the man who is a party to a paternity *suit* to acknowledge the child as his *own by a declaration of paternity with full effect*.[120] He must be advised of this at the first hearing and after the evidentiary procedure. In paternity and other parentage proceedings, there is a significant individual and social interest in the child having a legal parent-child relationship with the biological father. Accordingly, the case law attaches great importance to the fact that the establishment of parentage (paternity) must be based on duly proven facts, not least on the results of *natural scientific investigations*.[121]

117 Varga, 2020, p. 29.
118 Art. 4:101–4:102 of the Civil Code.
119 Art. 4:103 of the Civil Code.
120 Art. 468 of the Code of Civil Procedure.
121 Mécsné Bujdosó, 2000, pp. 425–429.

2.4.2. The fact of motherhood

For a long time, the status of motherhood was not a matter of dispute: going back to Roman times (‘*mater semper certa est*’), the law treated motherhood as a fact and not a presumption. The reassessment of parental status and the bloodline of the child means that genetic and adoptive (parental) parenthood are separated in many cases during reproductive procedures, such as the use of donor gametes or embryo donation.[122] In accordance with international practice, the Civil Code decides the choice between the birth mother and genetic mother by *considering the woman who gave birth to the child as the mother.* This new rule is not only important for the reproductive procedures that are allowed under current law but is also decisive for *so-called* ‘*surrogacy*’ because it means that a woman who has asked another woman to carry an embryo from her egg cannot be considered a mother.[123] In Hungary, surrogacy is not allowed, whether in exchange for payment or as a favour.[124]

2.4.3. The relationship of descendants by adoption

Adoption and adoption-related procedures in Hungary are governed by several laws.[125] However, given that adoption has no real impact on childbearing or, therefore, on demographic targets, only the most basic and fundamental rules are described here.

Looking back at the history of humanity, we can see that adoption has taken many different forms, purposes, and conditions. If we trace its legal history, we can see that the various purposes of adoption have been characteristic of the particular period.[126] For example, adoption was a special form of slave emancipation in Roman law, and at that time, only adults could be adopted, mainly because of inheritance rights. Feudal society was based on blood relations, meaning that adoption lost its importance in the Middle Ages. In the modern era, the adoption of minors and adults became accepted and could serve to legalise children born out of wedlock.[127]

The current purpose of adoption is two-fold: first, to establish a *family relationship* between the adopter(s) and their relatives, and between the adoptee and his or her descendants;[128] and second, to ensure that the *minor* is *brought up in a family* where

122 Herczog, 2020, p. 46.
123 Navratyil, 2012, pp. 142–145; Szabó-Tasi, 2012, p. 14.
124 Barzó, 2017b. pp. 318–321.
125 In addition to the Civil Code, see the Child Protection Act (Act XXXI of 1997), Guardianship Decree (Government Decree 149/1997 (IX. 10.)), Government Decree No. 72/2014 (III. 13.) on the activities and licencing of public benefit organisations promoting adoption and conducting post-adoption activities, and ESZCSM Decree No. 29/2003 (V. 20.) on pre-adoption counselling and preparation courses.
126 Sápi, 2022, pp. 178–179.
127 Hegedűs, 2020, p. 288.
128 Section 4:97(1) and (2).

his or her proper physical, moral, and intellectual development is guaranteed.[129] Of course, the purpose of adoption in the case of adoption by spouses and relatives differs from that of other forms of adoption, where the child is adopted by a person who is not a family member.[130] The Civil Code states that a lineal kin relationship between parent and child shall arise from *bloodline* or *adoption*.[131]

Adoption requires a unanimous application by the person intending to adopt and the child's statutory representative, as well as the consent of the child's parents and the spouse of the adoptive spouse. A minor of limited capacity who has reached the age of 14 may be adopted with his or her consent. The opinion of a minor under the age of 14 who is of sound mind shall be given due weight in the adoption decision. Adoption should aim to ensure continuity in the child's upbringing, with particular attention to the child's family *ties, nationality, religion, mother tongue, and cultural roots*. In Hungary, adoption is allowed by the guardianship authority if, in addition to the legal requirements, it can be established that it is in the best interests of the minor child.[132]

As a general rule, *only spouses can adopt* a child, except for adoption by relatives and a parent's spouse. Registered partners and *de facto* partners are not eligible. It follows that same-sex couples are not allowed to jointly adopt a child. This provision fundamentally changed the range of possible adoptive parents with effect from 1 March 2021. Previously, only spouses could jointly adopt a child, although the adoption route was essentially the same for spouse adopters and single or sole adopters. The latter can only adopt a child with the permission of the Minister for Family Policy.[133]

In addition, an adopter must be a person with the capacity to act who is at least 25 years old, is at *least 16 years* but *not more than 45 years older than* the child, and is considered *suitable* for adopting the child based on his or her personality and circumstances.[134] In the case of an application for the adoption of a child over 3 years old, the adoption may also be authorised in the best interests of the child if the age difference between the adoptive parent and the child is no more than 50 years. In the case of adoption by a relative or spouse, the age difference may be waived. Further, in the case of adoption as a common child, the legal age and age difference must apply to one of the adopters. If siblings are adopted, the age of the older child should be taken as the basis of the authorisation. Persons subject to a final and binding court judgement that withdraws parental custody or excludes them from participating in public affairs and persons whose child has been taken into care are not allowed to adopt. Exceptionally, in an event specified by an Act and deserving special consideration, and in accordance with a procedure laid down in a government decree, the

129 Kőrös, 2008, pp. 2–3.
130 Katonáné Pehr, 2007, pp. 447–450.
131 Barzó, 2017b, p. 279.
132 Art. 4:120(1)–(5) of the Civil Code.
133 Sápi, 2021, pp. 138–139.
134 Katonáné Pehr, 2020, pp. 1–8.

suitability for adoption of a *person who wishes to solely adopt* as determined therein may also be established.[135]

2.5. Maintenance of relatives

The Family Law Book has developed *common rules on the maintenance of blood relatives* by placing *several generalisable provisions on child maintenance* (dependency, fault, capacity, unworthiness) among the general rules and by adding *specific cases of maintenance*, including the maintenance of a minor, the maintenance of an adult child, spousal maintenance, and the maintenance of a partner.

2.5.1. Conditions for blood relatives' entitlement to maintenance

According to the Family Law Book, a relative's maintenance obligation *can be established if the following conditions are met*: (a) the indigence of the maintenance creditor; (b) the absence of fault on the part of the maintenance creditor; (c) the absence of a spouse, former spouse, or former partner who is liable for maintenance; (d) the maintenance creditor, who is an adult, is not unworthy of maintenance; and (e) the maintenance debtor has the capacity to pay.

(a) The *concept of indigence* has been developed by the case law.[136] The conditions for a minor child's entitlement to maintenance are substantially different from the general rules. The age of a minor child usually means that he or she is not able to support him or herself and usually does not have the means to do so; therefore, in most cases, minor children need their parents to provide for them. Consequently, the Family Law Book establishes a rebuttable *presumption* in *favour of the minor child's indigence for maintenance*. The possibility of applying the presumption of indigence *extends beyond the age of majority.* A significant proportion of children today do not finish secondary education when they reach the age of majority, partly because they start school at the age of seven, and partly because of possible illness or repeating a school year. It is, therefore, justified that they should be entitled to maintenance under the rules governing the maintenance of minor children. The law solves this issue by stating that the presumption of indigence continues to apply after the child reaches the age of majority until *his or her 20th birthday* if he or she is in secondary education.

An adult child of working age in further education who is capable of working is also entitled to maintenance outside the presumption of indigence if *he or she needs it to continue his or her studies within a reasonable period of time*. The child must inform the parent of his or her intention to continue his or her education without delay. Training or courses required to gain a professional qualification for a specific career path, bachelor- and master-level studies that culminate in a tertiary qualification,

135 Art. 4:121(1)–(4) of the Civil Code; Barzó, 2017b, p. 329.
136 Barzó, 2017b, p. 498.

and studies in tertiary vocational training, if pursued continuously, qualify as necessary studies. The continuity of studies is not affected by interruptions for which the entitled person is not at fault. The parent is not required to provide maintenance to an adult child who is engaged in further studies if the child is unworthy of maintenance, if the child fails to discharge his or her study and examination obligations through his or her own fault, or if the parent would thereby jeopardise his or her own necessary maintenance or the maintenance of his or her minor child(ren). A parent may be obliged to provide maintenance for a child over the age of 25 who is in further education in particularly justified cases.[137]

A beneficiary who is an adult is considered to be indigent if he or she has no income, earnings, or other means of subsistence that would enable him or her to support himself or herself in whole or in part.[138] The most common cause of indigence is *sickness* resulting in total or partial incapacity for work. The case law is unanimous that *reaching retirement age alone does not establish entitlement to maintenance*. In any case, the right decision requires careful consideration of the health, family, and living conditions of the person who requires maintenance. *Unemployment* can also be a basis for indigence. The *test of fault* becomes more relevant here if the claimant does not establish an employment relationship when he or she is able to do so. The lawsuit must provide details of the claimant's income and assets.

(b) *Absence of fault.* The normative text of the Family Law Book stipulates as a clear condition that indigence must exist without the fault of the person claiming maintenance; therefore, self-inflicted fault must be examined as a *subjective factor* in the context of indigence. Fault is a degree of liability below the level of imputability: it lies between lawful and unlawful conduct. In the case of fault, the law takes the passive position that the person who has committed the fault bears the burden of the harm thus caused.[139]

(c) *Absence of a spouse/former spouse, registered partner/ former registered partner, or partner/former partner who is liable for maintenance.*[140] The maintenance obligation applies if the claimant has no spouse/former spouse, registered partner/former registered partner, or partner/former partner, or if he or she does, is unable to support the claimant because this would jeopardise his or her own maintenance and that of the person who precedes the claimant in the order of maintenance. If the maintenance creditor becomes entitled to maintenance only 5 years after the dissolution of the marriage or registered partnership, or 1 year after the termination of the partnership in the case of a *de facto* partnership, he or she may apply for maintenance only if he or she can prove special and fair circumstances.

(d) Unworthiness for maintenance. The definition of the uniform concept of unworthiness is a framework definition, as follows: conduct toward *the maintenance*

137 Art. 4:220(1)–(3) and (5) of the Civil Code.
138 Barzó, 2017b, 498–501, Bencze, 2007, p. 94.
139 Bencze, 2007, p. 104., Barzó, 2017b, p. 500.
140 Barzó, 2017b, pp. 500–502.

debtor or *a relative living* of the debtor, which may be specific *reprehensible conduct* (such as assault) or the *maintenance creditor's lifestyle* (e.g. they are an alcoholic or gambling addict), which gives grounds for *not expecting* the creditor to be dependent, even partially, *according to the common social understanding*. However, a child who has reached the age of majority is also unworthy of maintenance if he or she does not have contact with the maintenance debtor without due reason.[141] A child of full age may be expected to behave not only in a way that is demanding from the parent who pays maintenance but also in a way that is consistent with the family and family relationship upon which the maintenance is based because a person of full age already has the discernment to assess the rightness or wrongness of his or her conduct and its consequences.[142] The child cannot rely on the parent's unworthiness if the parent has fulfilled his or her maintenance, care, and education obligations. This will not be enough, of course, if the parent's behaviour toward the child is *so flagrantly serious* that he or she alone is unworthy of support, despite having otherwise maintained the child in his or her own household for a long period of time.[143]

(e) *Capacity to provide maintenance (perform)*. Those who, by providing maintenance, would jeopardise their own necessary maintenance or that of an individual preceding the maintenance creditor concerned in the order of maintenance shall not be required to maintain other people. The debtor's *capacity to perform* is an essential condition for the maintenance of a relative.[144]

2.5.2. Order of the maintenance obligation

The Family Law Book sets out a different order for the maintenance obligation and the entitlement to maintenance.[145] The maintenance creditor can claim maintenance primarily *from his or her lineal relatives*. An exception to this is the different provision of the law regarding the maintenance of a stepchild[146] and the maintenance of a stepparent and foster parent.[147] The most common types of maintenance of relatives are maintenance owed by a parent to a child *(child maintenance)* or by a child to his or her parent *(parental maintenance)*.

Among the lineal relatives, the maintenance obligation is mainly imposed on *descendants* (children, grandchildren, great-grandchildren, etc.). However, *grandchildren's* maintenance obligation only arises if there are no children who can be required to provide maintenance; for example, if both children of the parent have such low incomes that they cannot support their parent without risking their own or their minor children's support. If there are no descendants who are liable for

141 Art. 4:220(4) of the Civil Code.
142 Barzó, 2017b, pp. 501–503.
143 Bencze, 2007, p. 570.
144 Barzó, 2017b, pp. 502–503.
145 Art. 4:196 of the Civil Code.
146 Art. 4:198 of the Civil Code.
147 Art. 4:199 of the Civil Code.

maintenance, maintenance can be claimed *from ascendants* (parents, grandparents, great-grandparents, etc.). The ascending relative who is nearer in the order of descent to the individual entitled to maintenance precedes the more distant individual in the maintenance obligation.[148]

In the case law, *parental maintenance* is of particular importance in the context of a descendant's maintenance obligation toward an ascendant. The maintenance obligation of adult children toward their parents is constitutional[149] and takes precedence over other family maintenance obligations. However, the law also introduces a new possibility to claim reimbursement if the needs of a parent who is indigent and requires maintenance through no fault of his or her own are provided for by a person who would not be obliged to do so by law or contract, instead of the child who is obliged to provide maintenance. The person providing such *reasonable care* may claim *reimbursement* from the child subject to maintenance within a limitation period of 1 year from the date on which the care was provided. Thus, according to the law, in the case of older adults whose social care is provided by state or church-run institutions that are not free of charge and who cannot or can only partially finance the cost of this care, the unpaid fee can be claimed from the adult child who can be required to provide maintenance to the parent.[150]

2.5.3. Order of maintenance entitlement

If someone is required to provide maintenance to more than one maintenance creditor and is unable to provide to all, in the order of entitlement, (a) the *minor* child shall prevail over the adult child; (b) the *child* shall prevail over the spouse, the former spouse, and the former partner or former registered partner; (c) the *spouse, the former spouse, the former registered partner and the former partner*, all four with the same rank, shall prevail over the parent; (d) the *parents*, both with the same rank, shall prevail over other blood relatives; and regarding other blood relatives, (e) the descendant shall prevail over the ascendant; and (f) the blood relative closer in the order of lineage shall prevail over the more remote one.[151] In this way, the Family Law Book sets out the order in which a person who has a maintenance obligation toward more than one creditor must fulfil it. The idea behind the *order* is that those further down will only receive maintenance if those ahead of them do not use up the debtor's available income or assets (i.e. their ability to pay).

Parents are required to provide maintenance to their minor children *even if it results in the restriction of their own necessary maintenance.* This provision does not

148 Barzó, 2017b, pp. 503–510.
149 Art. XVI (4) of the Fundamental Law.
150 Art. 4:208(1a) of the Civil Code.
151 Art. 4:202 of the Civil Code.

apply if the justified needs of the child are covered by his or her earnings from work or income from his or her property, or if the child has another lineal relative who can be required to provide maintenance.[152]

A biological child and a *child* who is not a biological child but has a real family relationship *are entitled to maintenance in the same line*.[153] An adopted child is, of course, entitled to the same status as a biological child. However, it should be stressed that the maintenance obligation of a stepparent is preceded by that of a natural parent; thus, a minor's maintenance claim against a stepparent *is only secondary* and is limited to maintenance in kind.

The rigid application of the order set out in the Family Law Book can lead to unfair results in some cases. Consequently, the law allows the *court* to *derogate from the order of entitlement to or obligation of maintenance* in justified cases and at the request of the creditor.[154] In examining the justification of the case, the principles of fairness and the protection of the weaker party in family law may come to the fore, according to which family legal relationships shall be settled in an equitable manner and by taking in account the protection of the party that is weaker in terms of asserting interests.[155]

3. The importance of assisted reproductive technologies in solving demographic problems

The exact causes of infertility can be traced back to a variety of diseases and disorders. Studies note that infertility can occur in both men and women and that the number of infertile individuals and couples may increase in the future.[156] The reasons for and approaches to infertility are also significant. On the one hand, there is somatic infertility, which can be detected by organ examination; on the other hand, there is also the notion of idiopathic infertility, which is of unknown origin and cannot be detected by diagnostic means. Infertility is compounded by trends resulting from changes in modern lifestyles and family planning,[157] with marriages taking place later and people seeking to take advantage of their independence and achieve financial security before having children.[158]

152 Art. 4:215(1) of the Civil Code.
153 The term 'stepchild' is defined in Section 4:198(1) of the Civil Code as a minor child of a spouse by blood whom the spouses raise in the common household by common agreement.
154 Art. 4:203 of the Civil Code.
155 Art. 4:4 of the Civil Code.
156 Navratyil, 2011b, p. 110.
157 Lenkovics, 2022, pp. 16–28.
158 Navratyil, 2005b.

3.1. Types of assisted reproduction techniques acknowledged in the Hungarian legal system

The assisted reproduction procedures that are acknowledged and authorised in Hungary are mainly regulated by the Healthcare Act.[159] As a general condition, assisted reproduction procedures may only be performed by a healthcare service provider, which means that such healthcare activities are conducted by providers in possession of an operating licence issued by the government healthcare administration body or upon registration with the government healthcare administration body.[160] The Act also adds, as a professional and institutional requirement, that assisted reproduction may only be performed by duly licenced state-maintained healthcare service providers and clinical centres provided for in the Act on Public-benefit Trusts Carrying Out Public Service Functions, which comprise a part of the integrated public healthcare system.[161] If a doctor conducts an assisted reproduction intervention without a licence, it can lead to serious sanctions, including criminal proceedings. Assisted reproduction may be performed on a couple of the opposite sex in a marital relationship or a *de facto* cohabitation relationship if their relationship is unlikely to produce a healthy child naturally owing to the health issues (infertility) of either party.[162] In the case of unmarried couples, assisted reproduction procedures may only be performed if neither of them is married.[163]

The Hungarian legal system permits the following assisted reproduction procedures: a) artificial insemination with the gametes of the spouse or partner or with donated gametes, b) *in vitro* fertilisation and embryo implantation, c) *in vitro* fertilisation and embryo implantation with donated gametes, d) embryo implantation using donated embryos, e) other methods promoting the fertilisation and fecundability of the female gamete, as well as the binding and development of the fertilised gamete.

This list is an exclusive specification and, consequently, other types of assisted reproduction procedures cannot be performed. The legal literature emphasises that this exhaustive classification can be rooted in the ethical and moral aspects of reproduction itself. As the technological development in this field is extremely rapid, new procedures could be introduced in practice; however, such new procedures – in addition to the existing ones – may raise moral and ethical inconsistencies and issues. As such, a new procedure can only be accepted if it is morally acceptable and explicitly declared by the legislator.[164] The last category in the above list (point (e)) encompasses, for example, hormonal preparation prior to an assisted reproduction procedure and genetic testing, which comprise the preparatory phase for the listed procedures.

159 Healthcare Act. For a detailed introduction to the assisted reproduction procedures that are authorised in Hungary, see: Fráter-Bihari, 2023.
160 Healthcare Act, Art. 3. § (e).
161 Healthcare Act, Art. 169. § (2).
162 For details, see: Barzó, 2017b, pp. 286–289.
163 Healthcare Act, Art. 167. § (1).
164 Dósa, 2023.

3.2. Sectoral legislation of specific issues

As for sectoral legislation, the following legal sources are of importance: a) Government Decree No 96/2003 (VII. 15.) on the general conditions for the provision of health services and the procedure for the granting of operating licences; b) ESzCsM Decree No 60/2003 (X. 20.) on the minimum professional requirements for the provision of health services; c) NM Decree No 30/1998 (VI. 24.) on the detailed rules for the performance of specific procedures for human reproduction and for the disposal and frozen storage of gametes and embryos; d) NM Decree 49/1997 (XII. 17.) on infertility treatment procedures available under compulsory health insurance; e) Government Decree No. 339/2008 (XII. 30.) on the scope, manner, and place of publication, and the monitoring of the mandatory publication of performance data and statistics on human reproductive procedures; f) Government Decision No 1729/2019 (XII. 19.) on the National Human Reproduction Programme.

3.3. Institutional and financial framework

In 2019, the Hungarian government enacted the 1729/2019 (XII. 19.) Government Decision on the National Human Reproduction Programme, under which the deadline for establishing the framework for the National Human Reproduction Programme was July 2020. In the next year, the 1011/2020. (I. 31.) Government Decision on the Execution of the National Human Reproduction Programme was enacted. According to the objects of both of these Government Decisions, the legislator set achieving demographic stability in Hungary and equal access to human reproductive procedures as priority goals, which has led to the enactment of the related laws.

As for the institutional background, the *National Laboratory for Human Reproduction*, located in Pécs, is a key research centre for assisted reproduction in Hungary. In 2020, when the National Laboratory for Human Reproduction was established, it was reported that approximately 100,000 to 150,000 couples in the country were infertile, which would represent a lack of 300,000 children considering the average family size.[165] The Directorate of Human Reproduction was established on 1 January 2022 with the objective to develop treatment systems for fertility and reproductive disorders.[166] As of 1 July 2022, couples who could not have a child naturally were no longer able to register privately in hospitals: in a Government Decree in 2022, the government nationalised all private hospitals for reproductive procedures. The previously privately run providers were bought out by the state, which cited the need to effectively halt population decline and make infertility treatment widely available as the aims of this measure.

Artificial reproduction techniques are expensive procedures. The associated hormone treatments and medicines are also costly. Infertility centres in Hungary

165 Kovács, 2020.
166 See: https://vagyottgyermekekert.hu/bemutatkozunk (Accessed: 05 November 2023).

offer the treatment methods considered medically necessary or compulsory, from the simplest to the most specialised. The interventions are financed by the Health Insurance Fund. In parallel with the nationalisation of infertility clinics, full treatment and care are free of charge; thus, under the current regulation, only state-run centres provide assisted reproduction procedures, but these procedures are free of charge.

In 2023, the BM Decree 34/2023 (VIII. 24.) on the amendment of certain ministerial decrees on health insurance amended Decree No 30/1998 (VI. 24.) and the NM Decree 49/1997 (XII. 17.) on the infertility treatment procedures available under compulsory health insurance. As a consequence, the currently effective text of the NM Decree 49/1997 declares that special procedures for human reproduction may be provided free of charge only on medical indication by a healthcare provider financed for that purpose by the Health Insurance Fund. In practice, this means that, according to the 2. § of the NM Decree, the medicine stimulation for egg retrieval may be carried out in up to five procedures and insemination may be conducted in up to six procedures. Within the framework of public care, up to the age of 45, five implantations are free of charge. If at least one child is born, a further four implantations are funded by social security. Another element of the new regulation is the plan to establish a National Registry of Obstetric, Perinatal, and Human Reproduction, which will include real-time data on stimulation, implantation, live births, and, later, the health of children born from *in vitro* fertilisation.[167] This registry will be essential for ensuring transparency in the field given that there has been almost no real data available on the number and success rate of assisted reproductive procedures in the last few years.

4. Family policy response to demographic challenges in Hungary

As previously mentioned, most countries in Europe face the same demographic challenges as Hungary, including the transformation of the family institution, a declining birth rate, and an ageing population. Hungary is making attempts to improve the demographic situation through family policy incentives. As a legal background, it is worth pointing out that Hungary's Fundamental Law specifically states that the country supports childbearing and that families are entitled to protection and support, which are regulated by a cardinal Act.[168] The wording of the Fundamental Law expresses that the child and the family comprise the resource that, although private, is the most important public matter.[169]

167 16. § of the BM Decree No 70/2023. (XII. 23.) on the amendment of certain ministerial decrees on healthcare and health insurance relating to human reproduction procedures.
168 Art. L (2) and (3) of the Fundamental Law.
169 Barzó, 2023, p. 28.

'Family-friendly measures' were launched in Hungary in 2010. In the more than 10 years since, these measures have changed considerably and have been modified in several ways. Family-friendly measures and family policy incentives[170] are basically motivated by the fight against low birth rates as the trend has long been that fewer children are actually born than their parents plan for.[171] To bridge the gap between the number of children desired and the number of children parents commit to have, a system had to be created that could strengthen the desire to have children and the financial background to facilitate it. The average planned age for childbearing in Hungary is 32.3 years.[172] Nevertheless, despite the lower birth rates, research[173] shows that young Hungarians prefer the two-child family model and see having children as an incremental factor in individual happiness.

To place family policy since 2010 in a historical context, it must be considered holistically. Since the change of regime, each successive government has introduced social policy provisions, including support for families, which typically offer a wide range of financial benefits, and changes have generally been ad hoc.[174] Therefore, in many cases, there has been little discernible link between the theoretical purpose of some benefits and the real social impact they have had.[175] Several studies outline a development curve, pointing out that in 2010, Hungary's economic situation was unstable, with high unemployment and a correspondingly low propensity to have children.[176] However, since 2010, a new process in family policy has started: there is a separation between social policy, which is based on means-testing and benefit-based policies, and family policy, which supports the internal stability of families, protects their autonomy and security, and encourages childbearing and intergenerational cooperation.[177]

The below list presents a selection of specific family policy measures. As noted in an analysis by KINCS, seven targeted measures have been introduced, and the results have already had a positive impact on demographic indicators in the first period.[178] These measures, which, together with the 2019 Family Protection Action Plan,[179] can

170 Pátkainé Bende, 2022.
171 Pári and Rövid, 2023, pp. 24–25.
172 Barzó, 2023, p. 27.
173 Engler and Pári, 2021, pp. 87–112; Engler, Markos, and Major, 2022, pp. 51–68.
174 Barzó, 2023, p. 28.
175 Ignits and Kapitány, 2006, p. 398.
176 Molnár, Szarvas, and Gellérné, 2022, p. 89; Barzó, 2023, p. 27.
177 Barzó, 2023, p. 27.
178 Pári, Varga, and Balogh, 2019, pp. 17–18.
179 Elements: 1. The public financing of part of the burden of raising children through family benefits and child welfare measures; 2. More flexible childcare benefits; 3. Reconciling work and family life; 4. The family should not be at risk of poverty; 5. Supporting family housing, helping families in settling down; 6. Since 2010, Hungarian national politics has been thinking in terms of world 'Hungarianness'; 7. Rather than focusing on the family in the narrow sense, it thinks across generations; 8. Restoring family taxation; 9. Despite the subsidies, parents are not exempt from basic parenting responsibilities; 10. Preventing childbearing from being postponed or delayed. For a detailed analysis and presentation, see Barzó, 2023, pp. 28–40.

now be considered 'Hungaricum',[180] include: a) Family support benefits (family allowance, maternity benefits, childcare benefits, childcare allowances, etc.); b) Other tax and contribution benefits (child tax credits or other allowances); c) Home creation; d) Family and work allowances (maternity leave, childcare leave, paternity leave, daycare services, etc.); e) Generational policy (youth policy, support for older adults and pensioners)

4.1. Family support benefits

Reducing child poverty is an important objective of family policy in Hungary. To this end, *free textbooks* were introduced in an ascending system starting from the 2013/2014 school year. From the 2020/2021 school year, unlike in previous years, all students in full-time primary and secondary education and vocational training received free textbooks, not just children of families and large families that are in need due to social or other circumstances.[181] In addition, healthy and, for many families, *free meals* are available *for children*.[182] From a financial point of view, the so-called *'baby bond'* is also worth mentioning, which offered a fixed amount (HUF 42,000 in 2023) as a start-up allowance for young people of full age. The state deposits this fixed amount for the benefit of the child, and parents, grandparents, relatives, and friends can supplement it with additional payments. The grant is compounded at a rate of 3% above inflation and a state support of 10% (max. HUF 6,000 per year; from 2022, HUF 12,000 per year[183]). The earliest the child can withdraw the amount is when they reach 18 years.[184]

The following childcare benefits should be noted[185]*:* a) *Maternity allowance*: a one-off benefit if the mother has had at least four antenatal visits during her pregnancy, or at least one in the case of premature birth. This benefit amounted to HUF 64,125 (HUF 85,500 for twins) in 2023.[186] b) *Infant care allowance*: an insurance-linked benefit (i.e. not by individual right) for maternity leave (168 days), amounting to 100% of the mother's salary from the previous year. This allowance aims to ensure that new mothers are not financially disadvantaged compared to other workers. c) *Childcare allowance*: after the expiry of the infant care allowance, this benefit is paid until the child reaches the age of two and is linked to insurance. It is important to note that the ceiling for this allowance in 2023 was HUF 324,800 gross per month.[187]

180 Barzó, 2023, p. 29.
181 Novák and Fűrész, 2021, p. 145.
182 Barzó, 2023, p. 29.
183 See: Hungarian State Treasury (MÁK), available at: https://www.allamkincstar.gov.hu/csaladoktamogatasa/gyermekvallalas-tamogatasa/eletkezdesi-tamogatas-es-start-szamla-babakotveny (Accessed: 13 December 2023).
184 For more details, see Act CLXXIV of 2005 on support for young people starting their lives. Novák and Fűrész, 2022, p. 123.
185 For details, see: Barzó, 2023, pp. 30–31.
186 Art. 29 of Act LXXXIV of 1998 on Family Support (hereinafter, the 'Family Support Act').
187 Art. 42/A–42/G of the Health Insurance Act.

d) *Additional childcare allowance*: a benefit payable by individual right up to the age of 3 years, regardless of whether the parent stays at home with the child or is already working. The amount is, therefore, much lower than the childcare allowance (HUF 25,650 per child per month in 2023). e) *Child-raising allowance*: a benefit for large families, available to working parents or guardians who have three or more minor children in their household. Child-raising allowance is paid from when the youngest child turns 3 years old until they reach the age of eight. A person in receipt of the child-raising allowance may engage in gainful activity for a period not exceeding 30 hours a week, or without any time limit if the work is done exclusively in the home.[188]

However, the general principle holds that 'the fact that a benefit is payable by individual right does *not exempt parents from their basic parental responsibilities*'. To ensure parents meet these responsibilities, from 2010, payment of the family allowance, which is an entitlement by individual right, has been conditional on the child's schooling and, over the age of three, on compulsory kindergarten attendance. If a child has missed the statutory number of days of schooling without an excuse, payment of the family allowance is suspended until the child resumes attending kindergarten or school regularly. This measure has significantly reduced the number of children who are regularly absent from kindergarten or school.[189]

The Family Protection Action Plan stipulates that families should not be at risk of poverty. In this context, a car purchase subsidy of up to HUF 2.5 million was established in 2019 for large families (with at least three children). This subsidy can be used to purchase vehicles with at least seven seats.[190]

The HUF 10 million *Baby Grant,* launched in 2019, which is an interest-free, untied loan to support young married couples to have children, is also worth mentioning. Loan repayments are suspended for 3 years, and the loan becomes interest-free when the first child is born. In addition, a third of the principal is waived upon the birth of a second child. In the event of the birth of a third child, the outstanding part of the loan is waived.[191] From 1 January 2024, the amount of the *Baby Grant* rose from HUF 10 million to HUF 11 million, but as a rule, only women under 30 and their partners can now claim it.

Since 2010, other measures include the cross-border 'Umbilical Cord' programme, *which supports Hungarian families living beyond the national border* and enables the Hungarian state to pay maternity allowance for every baby with a Hungarian birth certificate or Hungarian identity card. The Baby Bond is also available for Hungarian families living beyond the country's borders.[192]

188 Art. 23–24 of the Family Support Act.
189 Novák and Fűrész, 2021, p. 107; Barzó, 2023, p. 37.
190 For more detail, see: Government Decree 45/2019 (III. 12.) on the car purchase subsidy for large families.
191 Government Decree No 44/2019 (III.12.) on the Baby Grant.
192 Barzó, 2023, pp. 35–36.

Finally, measures to prevent the postponement of childbearing are manifested as part of family benefits. For example, the *graduate GYED* is awarded to mothers (or, exceptionally, fathers) who have been active students for at least two semesters in full-time education at a state-recognised higher education institution within the 2 years before the birth of their child.[193]

4.2. Other tax and contribution benefits – child tax credits and other allowances

An important step in family-friendly reform measures was the *reintroduction of family taxation* in 2010, based on French family and tax policy, which had remained fundamentally unchanged since World War II. One of the aims of family-friendly taxation is to ensure that families of different compositions but similar incomes do not have different living standards after taxation; in other words, families with more children (large families) are taxed less on the same income than families with fewer children or no children. Another important aim of family-friendly taxation is to encourage young people to have at least three children as this is when the tax relief is the greatest.[194] Since 2014, lower-income earners have benefited from an amendment that allows them to claim tax relief on pension and health insurance contributions if their personal income tax is less than the tax relief.[195] Mention should also be made of the tax credit for first-time married couples, to which newlyweds have been entitled since 2017. The net monthly benefit of HUF 5,000 can be claimed by the husband or wife for 2 years. The benefit reduces the consolidated tax base, can be claimed concurrently in the case of childbearing, and reduces the amount of tax payable by HUF 5,000 per month.[196] Crucially, under the Family Protection Action Plan introduced in 2019, mothers with four or more children have benefited from a full personal income tax exemption since 1 January 2020.[197]

4.3. Home creation

Given that a stable relationship, a secure job, and adequate property ownership are key to having children, the state launched a major *home creation programme* in 2015. To this end, foreign currency mortgages have been phased out. The *family home creation allowance* (CSOK) was launched in 2014 with two main objectives: to increase the propensity to have children by supporting families in creating a home (demographic objective) and to boost the economy by strengthening the construction industry and the real estate market (national economic objective). The CSOK is a

193 Art. 42/E of the Health Insurance Act.
194 Molnár, Szarvas, and Gellérné, 2022, pp. 91–92.
195 In total, 46% of family tax credit claimants are parents of one child, 35% are parents of two children, and 19% are parents of three or more children. Novák and Fűrész, 2021, p. 105.
196 Art. 29/C of the PIT Act. For more detail, see: Barzó, 2023, pp. 36–37.
197 Barzó, 2023, p. 31.

complex housing support scheme with four main components: a subsidy scheme for new housing, subsidies for second-hand housing, village CSOK, and interest on loans, the amount of which depends on the number of existing and planned children. The CSOK was made available from 1 July 2015. The benefit was later extended to families with one child and became available for the purchase of second-hand housing and extensions to existing housing, in addition to housing construction and the purchase of new housing. Since 2016, the support scheme has been significantly expanded and its administration has been simplified. The subsidy amount for building or buying a new home is up to HUF 10 million if a couple already has or has committed to having three or more children. Barzó[198] provides an overview table of the amount and evolution of this benefit, as follows.

Table 1. CSOK amounts in 2023[199]

Number of dependent children	Building/purchasing a new home		Purchase/expansion of a second-hand dwelling	
	Minimum useful floor area of the dwelling (apartment/ family house)	Grant amount	Minimum useful floor area of the dwelling	Grant amount
1	40/70 m^2	HUF 600,000	40 m^2	HUF 600,000
2	50/80 m^2	HUF 2,600,000	50 m^2	HUF 1,430,000
3	60/90 m^2	HUF 10,000,000	60 m^2	HUF 2,200,000
4+	60/90 m^2	HUF 10,000,000	70 m^2	HUF 2,750,000

The extension of the home creation programme also allows couples with a child to take out a CSOK *loan* in addition to the CSOK grant. The CSOK housing loan, which has an interest rate of up to 3%, can be used to purchase both new and second-hand apartments and houses of up to HUF 10 million for families with two children and HUF 15 million for large families. The previous threshold of HUF 35 million for second-hand properties has been abolished.[200] In addition, the *village CSOK* was introduced on 1 July 2019 and provides favourable conditions for the purchase and renovation of housing in disadvantaged settlements with a population of less than 5,000.[201] Given that the village CSOK also contributes to

198 Barzó, 2023.

199 Source: Barzó, 2023, p. 33.

200 For more detail, see: Government Decree 17/2016 (II. 10.) on the family home creation allowance for the purchase and extension of second-hand dwellings.

201 For more detail, see: Sections 19/A-19/I of Government Decree 17/2016 (II. 10.) on the family home creation allowance for the purchase and extension of second-hand dwellings.

the realisation of families' housing plans, the amount increased by 50% from 1 January 2024.[202]

On 1 January 2024, the new legislation on CSOK Plus loans also entered into force. This means that only married couples who are planning to have another child/children and where the mother is under 41 years of age can now apply for the *CSOK Plus loan*. The loan amount can be HUF 15, 30, or 50 million, depending on the number of existing and planned children, as shown in the table below.

Table 2. CSOK Plus loan[203]

Number of existing children	One planned/existing child	Two planned/existing children	Three planned/existing children
0	HUF 15 million loan and a one-year moratorium on the arrival of the child	HUF 30 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
1	HUF 30 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
2	HUF 50 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
3 or more	HUF 50 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	

202 Uhljár, Pári, and Papházi, 2023, p. 42.
203 Source: Barzó, 2023, pp. 34–35.

With the birth of the first child, loan repayments are suspended for up to 1 year, while the birth of a second child and subsequent children reduces the principal of the loan by HUF 10 million for each child. An important change is that the loan is now only available for children the couple commits to have (not for existing children). Although existing children are also counted when determining the loan amount, only newborn children reduce the principal amount of the loan by HUF 10 million per child. Couples can use CSOK Plus loans to buy their first home in common; move from their existing home to a more valuable, comfortable home; or extend their home.[204] A new support scheme is expected to replace the CSOK in 2024.

4.4. Family and work allowances — maternity leave, childcare leave, paternity leave, and daycare services

One of the key objectives of the new family policy launched in 2010 was to reconcile work and family life. Consequently, family policy measures have sought solutions that encourage people to work, be active, and thus, contribute to public spending. This has been accompanied by job creation.[205] *GYED Extra*, which allows mothers to work full-time from when their child is 6 months onwards, was introduced in 2014, aiming to make it easier for mothers to start work after giving birth. The allowances also include family-type taxation, additional leave, sick pay that is extended to both parents, and changes to labour law that ensure workplace protection for parents with young children, thus creating opportunities to reconcile work and family life. Tax benefits for employers and the development of childcare and nursery provisions also aim to encourage both childbearing and work.[206]

Importantly, from 2012 onwards, additional leave for children under 16 (2 days per child, up to a maximum of 7 days per year) can now be taken by both parents, not just one. After the birth of a child, fathers are entitled to 10 extra days of paid leave, which the state reimburses to the employer. As regards sick pay, from 2016, both parents have been able to claim childcare sick pay for children over 3 years old, so the number of sick days in a family can double. This type of sickness benefit is paid if the parent is otherwise gainfully employed and needs to replace the income lost due to the illness of a child under 12. Further, a nursery must be maintained in each municipality where there are more than 40 children under 3 years of age, according to Sections 34–35 of NM Decree No. 15/1998 (IV. 30.) on the professional tasks and conditions of operation of child welfare and child protection institutions and persons providing personal care. The number of places in nurseries has increased significantly due to the restructuring.

204 Applications for CSOK Plus support of up to HUF 80 million can made for the acquisition of the first home in common, and up to HUF 150 million for moving to another property or expansion. For more details, see the provisions of Government Decree No. 518/2023 (XI. 30.) on the preferential CSOK Plus loan programme to support families in creating a home.

205 Molnár, Szarvas and Gellérné, 2022, p. 90.

206 Barzó, 2023, pp. 31–32.

4.5. Generational policy — youth policy and support for older adults and pensioners

The *aim of family policy is not just to focus on the nuclear family but to think in a multi-generational* way, thereby strengthening intergenerational cooperation. For example, the introduction of the grandmother's pension, known as WOMEN 40, in 2011 has made it possible for women to retire with a full pension, without any deduction, after 40 years of eligibility (minimum 32 years of employment plus a maximum of 8 years of childcare), regardless of their actual age.[207] Since 2020, it has also been possible for grandmothers to engage in unlimited gainful employment in addition to drawing a pension. This has allowed women aged 60 and over to be actively involved in caring for their grandchildren or older relatives in need of care.[208] Another important measure of domestic family policy has been the introduction of the *grandparent childcare allowance* (GYED). To be eligible, the grandparent must have been insured for at least 1 year before the grandchild's birth, both parents must be gainfully employed, and the child must be cared for in the parents' household. The allowance amount is 70% of the grandparent's income, and it lasts until the child reaches the age of two.[209]

5. Concluding thoughts

Hungary has taken decisive action to halt population decline over the past 10 years. Some of these measures were intended to serve demographic objectives directly, others indirectly. Among these, it should be emphasised that with the creation of the new Civil Code, family law has been placed in its rightful position in a completely separate book – in the most important code of private law relations. The new family law legislation introduced in the Civil Code has further strengthened the legal framework for families based on marriage and lineal relationships, as well as for regulated partnerships (marriage, registered partnerships, and *de facto* partnerships). The following aspects of this framework are worth highlighting.

Family law principles focus on the protection of families, the equality of spouses, and the interests of the weaker party. The primacy of children's interests is reflected not only in principle but also in the fact that Hungarian family property law pays special attention to the child's property and property relations, security, housing, and maintenance. Meanwhile, the Civil Code also contains clear provisions on the family status, care, and custody of children. From a family law perspective, it can,

207 Art. 18(2a)–(2d) of Act LXXXI of 1997 on Social Security Pension Benefits.
208 Novák and Fűrész, 2021, p. 123.
209 Barzó, 2023, p. 36.

therefore, be concluded that there is a secure private legal framework for families to have children.

In view of the rapidly increasing infertility rates in recent decades, the number of people using human reproductive techniques in Hungary is also on the rise. Many of these techniques are legally available, the only exceptions being surrogacy (either as a favour or for compensation). The related provisions were aimed at raising the number of babies born through infertility treatment procedures, which increased the number of publicly funded health interventions and the public funding for infertility treatment drugs compared to the previous legislation. Consequently, the number of state-funded human reproductive interventions and the number of children born as a result have both increased in Hungary in recent years.

Over the past 10 years, Hungarian family policy has already produced some significant results. Hungary has seen the highest increase in childbearing and relationship stability in Europe (Figure 3): the fertility rate, which is an indicator of the desire to have children, has increased by 27%; the number of marriages has doubled; and the number of divorces and abortions have fallen by 40% in more than a decade. The number of children born in wedlock in Hungary has been increasing since 2015,[210] with an average of 7 out of 10 children now being born in wedlock.[211]

All these data confirm the effectiveness of, and justification for, comprehensive family-friendly measures. Based on the above, it can be concluded that through the gradual, systemic, and conscious application of family policy measures and targeted support, the propensity to have children can be significantly improved.[212] Moreover, at the societal level, it is critical to encourage family-oriented values and support family-friendly workplaces.

The data also indicate that young adults are committed to family life. The main barriers to having children are the lack of adequate housing and material assets, which the continuously renewed and targeted domestic family support system has, and will continue to, play a major role in addressing.

210 KSH, n.d.
211 Molnár, Szarvas and Gellérné, 2022, p. 85.
212 Novák and Fűrész, 2021, pp. 240–245.

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