

Child-Friendly Justice – Slovakian Perspective

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ABSTRACT

The chapter offers a comprehensive analysis of the rights and participation of minor children in civil, criminal, and administrative court proceedings in the Slovak Republic, from a child-friendly justice perspective. The Slovak legal system does not currently contain a dedicated procedural code for minors. Relevant provisions are dispersed across multiple legal statutes, including the Civil Litigation Code, the Civil Non-Contentious Procedure Code, the Administrative Court Code, and the Criminal Procedure Code. Particular attention is paid to the Family Act and its influence on interpreting the best interests of the child in both judicial and administrative decision-making. The chapter focuses on assessing how these legal statutes address the procedural capacity, representation, and participatory rights of minors, including the right to be informed and to express their opinion.

KEYWORDS

the best interests of the child, Court, civil proceedings, criminal proceedings, administrative proceedings

1. Introduction to the Issues and Fundamental Sources of Domestic Procedural Legal Regulation in the Slovak Republic

The right to judicial and other legal protection is guaranteed to every individual by the Constitution of the Slovak Republic. Article 46 of the Constitution of the Slovak Republic stipulates that every individual may seek redress for their rights before an independent and impartial court or, in cases specially provided by law, before another body of the Slovak Republic. Within the declared approach to judicial protection, the Constitution of the Slovak Republic specifically emphasises that all participants are equal in proceedings before courts, other state bodies, or public administration bodies. The Constitution of the Slovak Republic thereby recognises these fundamental rights for every individual, without distinction based on age or any other differentiating criteria. Notably, according to the second chapter, seventh section, regulating the

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right to judicial and other legal protection does not regulate the status of the minor child and does not grant special rights.

The only specific reference to a minor child is found in section 5, chapter 2 of the Constitution of the Slovak Republic, which regulates economic, social, and cultural rights. This particular article of the Constitution of the Slovak Republic recognises this right for every individual, again without distinction of age, where we discuss rights and freedoms from the category of political rights, which are not specifically and exclusively connected with the right to judicial protection and the course of the judicial process. Article 41, incorporated in this part of the Constitution, expressly states that special protection of children and young people is guaranteed, with details of these rights to be established by law.

Thus, it can be summarised that the Constitution of the Slovak Republic does not contain an explicit mention of the right of a minor child to access to judicial protection or a specific mention of the right to express one's opinion in proceedings before a court, or to be informed about the progress of judicial proceedings, which also concern the rights relating to a minor child. These rights are found specifically regulated in legal statutes of lower legal force, both in laws regulating the legal regulation of family relationships from the perspective of substantive law and the procedural rules for conducting judicial proceedings. There is no specific codified procedural legal regulation that exclusively governs the conduct of judicial or other proceedings involving a minor child. These rules are incorporated into individual procedural statutes, thereby ensuring the special protection of children and young people, declared by the Constitution of the Slovak Republic in this area of life as well. We are of the opinion that the presented concept of legal regulation is adequate from the perspective of protecting the rights and interests of a minor child. We do not consider the adoption of a separate procedural code regulating proceedings involving a minor child to be necessary, taking into account the comprehensive procedural legislation in the Slovak Republic.

In 2015, the Slovak Republic completed a major recodification of civil procedural law, resulting in the adoption of three procedural codes, Act No. 160/2015 Coll. Civil Litigation Order (hereinafter "Civil Litigation Code"), Act No. 161/2015 Coll. Civil Non-Contentious Procedure Code (hereinafter "Civil Non-Contentious Procedure Code,"), and Act No. 162/2015 Coll. Administrative Court Order (hereinafter "Administrative Court Code"), which systematically and by their existence also bring about differentiation of the judicial process (typology of the judiciary as such), taking into account the subject of the court proceedings.¹The numbering and ordering of these legal statutes are not coincidental. The legislator conceived these legal statutes in such a way that the Civil Litigation Code represents *lex generalis* in relation to the regulation of the Civil Non-Contentious Procedure Code and the Administrative Court Code, as these expressly refer, in some parts, to the regulation of the Civil Litigation Code. The Civil Litigation Code primarily regulates the resolution of private law disputes, while

1 Čollák et al., 2024, p. 134.

the Civil Non-Contentious Procedure Code regulates the hearing and adjudication of matters outside contentious cases.² The Civil Litigation Code initially enumerates fundamental principles, which are correspondingly applicable in proceedings according to the Administrative Court Code, while it supplements them with fundamental principles defined in § 5 of the Administrative Court Code. The Civil Non-Contentious Procedure Code separately enumerates fundamental principles applicable in non-litigation proceedings, justified by the uniqueness of proceedings conducted according to the Civil Non-Contentious Procedure Code. However, the Civil Non-Contentious Procedure Code in Art. 2 para. 1 emphasises that the provisions of the Civil Litigation Code are also applicable to proceedings conducted according to this law unless expressly excluded by law. Thus, when analysing these procedural legal statutes, it is essential to interpret them in a mutual context and respect that the provisions of the Civil Litigation Code are, in some cases, also applicable to proceedings according to the Civil Non-Contentious Procedure Code and the Administrative Court Code.

The conduct of criminal proceedings is regulated by previously issued legal statutes compared to the legal regulation of civil procedural law. The procedure of bodies active in criminal proceedings and courts is regulated by Act No. 301/2005 Coll. Criminal Procedure Code (hereinafter “Criminal Procedure Code”), which is connected to the substantive law regulation of Act No. 300/2005 Coll. Criminal Code (hereinafter “Criminal Code”). Both of these legal statutes contain provisions specifically addressing the rights of young persons.

In analysing the aforementioned procedural legal statutes from the perspective of the position and protection of a minor child as a participant in judicial proceedings, it will be necessary to assess and interpret the position and rights of a minor child in accordance with the provisions of Act No. 36/2005 Coll. on Family (hereinafter “Family Act”). This legal statute provides a codified substantive law regulation of family relationships while specifically reflecting the obligations of the Slovak Republic arising from its commitments in international treaties and documents, to which it has pledged to ensure enhanced protection of the rights of minor children, into domestic legal regulation. However, given its content, especially the regulation of the fundamental principles of family law, this substantive law regulation also influences the concept of procedural legal regulation.

2. The Opinion of a Minor Child and Its Significance in Decisions Concerning the Minor Child (Not Only in Judicial Proceedings)

The most crucial provision, from the perspective of the analysed issue, is Article 5 of the Family Act, which addresses one of the main principles of family law – the interest of the minor child, which must be the primary consideration in all matters concerning the minor child. It is possible to agree with Pavelkova’s view that this is a

2 Števíček et al., 2022, p. 73.

kind of guiding principle of the whole of family law.³ This principle not only highlights the need to evaluate the interest of the minor child but also demonstratively lists the circumstances that must always be taken into account when assessing what is in the best interest of the minor child. According to this principle, when determining and assessing the best interest of the minor child, it is necessary, among other things, to always consider the child's own opinion, as well as their possible exposure to a conflict of loyalty and subsequent feelings of guilt. Given that this principle essentially reflects the international legal obligations of the Slovak Republic into its domestic legal regulation, it is necessary to always take into account the need to consider the best interest of the minor child, even in judicial proceedings that concern questions directly or indirectly related to minor children. The courts in the Slovak Republic repeatedly emphasise the need to assess the best interests of the minor child when making decisions in proceedings that concern the child.⁴ Moreover, the Constitutional Court of the Slovak Republic has repeatedly stated that the evaluation of the best interests of the minor must always be considered by the courts with regard to the specific circumstances of the particular case. Among other things, the Constitutional Court of the Slovak Republic has noted that an objectively and explicitly established statutory criterion for decisions concerning the regulation of parental rights in relation to minors is "the best interests of the child," which the general court must evaluate and justify not merely mechanically and formally, but specifically, taking into account the circumstances of the case under consideration.⁵ In this context, we particularly emphasise that the aforementioned principle fundamentally contributes to the protection of human values within the legal environment of the Slovak Republic.⁶

This principle is further elaborated by specific provisions of the Family Act, which particularly emphasise that when making decisions about a minor child and matters concerning them, it is always necessary to take into account the child's opinion. It is necessary to emphasise that a minor child is not merely a passive object of the parental responsibility of their parents, or other persons and the state; rather, the child also has participatory rights, which are guaranteed by the legal provisions of the Family Act.⁷ Specifically, Article 43 of the Family Act expressly states that a minor child has the right to express their opinion independently and freely on all matters concerning them. This right belongs to the minor child regardless of whether the matters concerning them are being decided in proceedings before a court or another institution or are part of the routine, everyday decision-making by parents within the

3 Pavelková, 2019, p. 6.

4 On this see, for example: the decision on the Supreme Court of the Slovak Republic of 22 June 2016, No. 5Cdo/492/2015; the Decision of the Supreme Court of the Slovak Republic of 31 October 2017, No. 6 Cdo 224/2016 published in the Collection of Opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic under R68/2018; the Ruling of the Constitutional Court of the Slovak Republic of 2 July 2019, No. I. ÚS 298/2018, and the Ruling of the Constitutional Court of the Slovak Republic under I. ÚS 298/2018.

5 Ruling of the Constitutional Court of the Slovak Republic No. II. ÚS 101/2022 of 10 May 2022.

6 On this see: Bačárová et al., 2023, pp. 10 and 144.

7 Králičková et al., 2022, p. 27.

exercise of their parental rights and responsibilities. This concept is confirmed by the wording of Article 43 of the Family Act, which, in its second sentence, specifies the generally formulated right of the child to express their views on matters concerning them by talking about the right of the minor child to be heard in proceedings deciding on matters concerning them.

However, Article 43 para. 1 of the Family Act goes even further when, in the last sentence, it formulates a fundamental rule for considering the opinion of the minor child. According to this provision, due attention must be given to the opinion of the minor child, which, however, must be appropriate to their age and mental maturity. The legislator, by this provision, points to the need to evaluate the opinion of the minor child in accordance with their age and mental maturity, implying that not every decision, whether by the parents or the court, has to align with the opinion presented by the minor child. This provision essentially assumes that with the increasing age of the minor child, an increase in their mental maturity can be observed, as a result of which it can be presumed that the child is increasingly better able to evaluate what is in their best interest as they grow older. Of course, this does not apply unconditionally. It is always the task of parents, guardians, or the court to evaluate a matter concerning the minor child by considering their opinion but also considering what is in the best interest of the child given all the circumstances of the case. The legal regulation of the Slovak Republic does not provide any specific age threshold for minor children, from the attainment of which it would generally be possible or obligatory to decide exclusively in accordance with the opinions of minor children. We evaluate this positively because we are of the opinion that such a concept of legal regulation corresponds to the need to consider the individuality and specific characteristics of each minor child. It is noted here that the Family Act does not explicitly define up to what age a child is considered a minor. However, based on the spirit of the law and the legal regulation that emphasises the need to consider the best interest of the minor child, and thus their opinion, it is to be understood that a child is considered a minor until they attain full legal capacity.

According to Act No. 40/1964 Coll. Civil Code (hereinafter “Civil Code”), full legal capacity is acquired upon reaching the age of majority. In the Slovak Republic, majority can be attained in two ways: either by reaching the age of eighteen or by entering into marriage (if the person is older than sixteen years and with the consent of the court). If the minor was under the age of 16 at the time of the marriage’s formalisation, it can only be a so-called sham marriage, in which case the minor cannot attain the age of majority.⁸

The Family Act regulates the age threshold of the minor child, from which their express consent is required for specific actions, only in one provision. This is Article 40 para. 3 of the Family Act, according to which changing the name or surname of a minor child older than fifteen years can only be done with the child’s consent. Thus, in Slovakia, the legislator deemed it necessary to establish a fifteen-year age threshold

8 Vojčík et al., 2021, p. 128.

for decisions made by parents regarding a change of name and/or surname of a child, beyond which such a change cannot occur against the child's will. Setting the age limit at 15 years in this single instance appears to be conceptually inconsistent within the context of the overall legal framework. Moreover, we agree with Pavelková that the current legal regulation completely denies the participatory right of a child under the age of 15 and reduces the child to merely an object of parental upbringing.⁹

The Family Act further elaborates on two specific provisions that, while not setting a specific age threshold requiring the consent of the minor child in proceedings affecting them, explicitly mention the need to obtain the minor child's consent. The first is Article 52 para. 5 of the Family Act, which allows for the possibility of extending foster care for up to one year after reaching adulthood, but only if both the foster parent and the minor child in their care consent. Although the law does not specify the age from which the minor child's consent is required, logically, decisions regarding the extension of foster care into adulthood would be made as the child approaches adulthood, and their decision would affect them even after they become of age. Hence, the legislator did not set a specific age threshold for the minor child's consent in this case and formulated the provision in such a way that obtaining consent is a mandatory condition for extending the duration of foster care. The second provision, Article 101 para. 4 of the Family Act, relates to the process of adopting a minor child. This provision is the most vaguely formulated; it neither specifies a particular age threshold of the minor child whose consent is necessary for adoption nor does it require obtaining consent under all circumstances. This is notable because, according to this provision of the Family Act, the consent of the minor child to their adoption is required if the child is capable of assessing the impact of adoption. Thus, this represents a specification of the general rule that the opinion of the minor child should be given due attention appropriate to their age and mental maturity. In the case of adoption, it is necessary not only to consider their opinion but also to obtain their consent to the adoption, provided they are capable of assessing the legal consequences of adoption due to their age or health condition. In our opinion, the presented concept of legal regulation places particularly high demands on the courts and their decision-making activities when ruling on adoption cases. However, respecting the uniqueness of each individual case, we believe that the current concept of legal regulation in this matter is correct and corresponds to the protection of the best interests of the minor. We agree with Löwy's view that the term "best interests of the child" is flexible and adaptable, and as such, it must always be defined according to the specific situation of the affected child, taking into account the child's personal context, circumstances, and needs.¹⁰ This is all the more applicable in adoption proceedings.

It is also worth mentioning the legal regulation of healthcare provision, which also touches upon the rights of minor children to information and their right to express their own opinions in matters directly concerning them. Except for

9 Pavelková, 2013, pp. 67–85.

10 Löwy, 2022, p. 117.

emergency healthcare and some other specific cases prescribed by law, any provision of healthcare must be preceded by patient education and subsequent granting of informed consent. When the patient is a minor child, the legal regulation of Act No. 576/2004 Coll. on Healthcare, Healthcare-related Services, and on Amendments and Supplements to Certain Acts (hereinafter “Healthcare Act”) grants the right to receive instruction and give subsequent informed consent to the child’s legal representative, the person providing alternative personal care for such a minor child, or their guardian or custodial guardian.¹¹ However, Art. 6 para. 1 point b) of the Healthcare Act also considers the right of the minor child to be informed about matters concerning them. Thus, it is the duty of the treating healthcare professional to inform such a minor patient in an appropriate manner about the purpose, nature, consequences, and risks of the provided healthcare. The content of the information should also include information about the options for the proposed procedures and the risks of refusing healthcare provision.

Distinct from the general legal regulation concerning the provision of healthcare and the acquisition of informed consent, the matter of legal regulation of informed consent in the case of confidential childbirth and abortion is specifically legislated. In instances of instruction and informed consent regarding confidential childbirth, the Healthcare Act in Article 6a explicitly states that instruction is provided to the woman who has requested the confidentiality of her identity and the informed consent is also given by the woman who has requested in writing the confidentiality of her identity in relation to childbirth. Although the statutory provision does not expressly state whether this applies if the woman requesting confidentiality in connection with childbirth is a minor, the law explicitly enumerates those general provisions of the Health Care Act that are to be applied in such a case. Absent from this enumeration is precisely Article 6 para. 1 of the Healthcare Act, which regulates the obligation to instruct the legal representative in the case of a minor patient. Given this, it is considered that in the case of a pregnant minor requesting confidentiality of her identity in relation to childbirth, her opinion should be respected without the legal representative having the opportunity to make a relevant statement. A similar conclusion is reached by Humeník, who, however, points out that the analysed legal regulation is not formulated unambiguously.¹² This statement can be agreed with and, therefore, it would be appropriate for the legislator to consider amending this part of the legal regulation in the future so that a clear conclusion can be reached when applying the grammatical interpretation of the law. Thus, this legal regulation in the Health Care Act, from the perspective of respecting the opinion of a minor child, represents a significant deviation from the generally applied concept under the Family Act. This deviation can be justified by the effort to provide increased protection to the underage pregnant patient as well as her unborn child.

¹¹ Humeník, 2011, p. 69.

¹² Humeník, 2023, p. 266.

In the case of abortion involving a woman who is concurrently a minor, the legal regulation within the Health Care Act is specific, as Article 6b para. 4 of the Health Care Act explicitly stipulates that, besides the informed consent of the minor's legal representative, the informed consent of the minor patient herself is also required for the performance of such a procedure. In this context, it is pertinent to refer to the still valid specific legal regulation of Act No. 73/1986 Coll. on Abortion, as amended (hereinafter "Abortion Act"). According to this Act, the age limit is set at sixteen years, with the requirement that for patients younger than sixteen years, the consent of the legal representative is necessary for the performance of an abortion. If an abortion is to be performed on a patient older than sixteen years and younger than eighteen years, the Abortion Act does not require the prior consent of the legal guardian, only their subsequent notification about the fact by the healthcare facility. Thus, the legal regulation of the Health Care Act and the Abortion Act are mutually contradictory on this issue. Although the Health Care Act discusses informed consent while the Abortion Act mentions consent in general, it is considered that these two forms of consent can be regarded as similar in their significance. Respecting the fact that the regulation of informed consent in the Health Care Act regarding abortion is special alongside the general regulation of informed consent in said Act, it is believed that the aforementioned contradiction between the two laws can be resolved by applying the principle *lex posterior derogat legi priori* (later law repeals the earlier law). For this reason, the legal conclusion is drawn that in the case of abortion involving a minor patient, it is always necessary to obtain her consent as well as the consent of her legal representative, even if the patient is older than sixteen years. At the same time, however, we add that, for the sake of legal certainty, it would be appropriate for the legislator to amend the Act on Artificial Termination of Pregnancy from 1986 and align its wording with the subsequently adopted Act on Health Care.

To conclude this section, we once again refer to the Family Act, specifically Article 31, which indicates that in the case of representing minor children by their parents in actions where there could be a conflict of interest between the parents and the minor children, it is necessary for the court to appoint a conflict guardian by decision, who will represent the minor child either in a specific proceeding or in a particular legal act. The provision for a conflict guardian thus comes into consideration also in those cases where the opinion of the minor child differs from that of their legal representative, which may result from a diversity of their interests.

3. The Rights of a Minor Child in Civil Proceedings

3.1. Civil Litigation Code

As initially mentioned, the primary source of procedural civil law in the Slovak Republic is the Civil Litigation Code. This legal statute regulates the procedural legal framework for disputes arising from the threat or violation of subjective rights adjudicated before an impartial and independent court. The Civil Litigation Code resolves

disputes that commence upon the petition of a disputing party alleging a violation or threat to their subjective rights. The parties to the dispute are the plaintiff and the defendant, with their procedural standing contingent upon their procedural subjectivity. Procedural subjectivity of a party typically correlates with their substantive legal capacity for rights and obligations. This is not absent for a minor child; hence, the minor can be a party in litigation.

In the case of a minor child, it is always necessary to address whether, due to their age, they possess the procedural capacity to act in proceedings or not. Article 67 of the Civil Litigation Code stipulates that anyone may independently act in court to the extent of their legal capacity for acts. From a substantive legal perspective, it is established that full legal capacity for acts, and thus procedural capacity, is acquired upon reaching the age of majority. Until this point, every individual possesses limited legal capacity for acts corresponding to their mental and volitional maturity. The decisive moment for acquiring full legal capacity for acts, and hence procedural capacity, is the attainment of majority. We have previously mentioned the conditions under which majority is achieved according to Slovak legal regulation. It can be attained either by reaching the age of eighteen or by entering into marriage for persons older than sixteen years with the court's approval. Therefore, a minor child may lack procedural capacity due to insufficient legal capacity for acts, consequently being unable to act independently in court. This assessment depends on the evaluation of the minor's legal capacity for acts, i.e. the assessment of the mental and volitional maturity of the minor corresponding to their age. This may vary among individuals of the same age; thus, it should be individually assessed by the court in each case. However, some opinions suggest that this question should be objectively assessed to maintain a degree of predictability in judicial decisions.

The limited legal capacity for acts of a minor child and the associated lack of procedural capacity are not direct impediments to conducting litigation. This is justified by the fact that the lack of procedural capacity is a removable procedural deficiency that can be eliminated either by the court appointing a guardian for such a party or by summoning their legal representative to represent them in the litigation.¹³ Article 69 of the Civil Litigation Code expressly anticipates court action in cases where it is found that an individual cannot act independently before the court. According to this provision, if such an individual does not have a legal representative or their legal representative cannot act for them or is inactive, the court is obliged to appoint a procedural guardian for such an individual.¹⁴ This provision connects to the previously analysed substantive legal regulation, which also considered the emergence of a situation where the interests of the legal representative are in conflict with the interests of the minor they represent. Simultaneously, this provision of the Civil Litigation Code also provides a solution for when the legal representative is inactive upon the

13 For more details on the procedural capacity of a minor in civil proceedings, see: Kušnířková, 2022, pp. 78–88.

14 On this see: Löwy, 2022, p. 264.

court's request to represent the minor in litigation. Naturally, this legal regulation is not exclusively applicable to minors, as a party may suffer from a lack of capacity not only due to young age but perhaps also due to their health condition and the associated limitation on legal capacity for acts. Nonetheless, this legal provision of the Civil Litigation Code ensures access for a minor child to court in civil litigation and concurrently contributes to the real protection of their rights in litigation. Therefore, in our opinion, it can be perceived positively from the perspective of protecting the minor.

Please note that if the acting court refuses to proceed based on a lawsuit filed by a minor child on the grounds that such a child lacks the procedural capacity to file a lawsuit, it would constitute a violation of the law. In such cases, the court is obligated to appoint a procedural guardian for the minor child or to summon the legal representative to represent them in the proceedings.¹⁵ Failure to do so would burden the respective litigation with a defect that can be challenged through ordinary or extraordinary legal remedies, seeking the annulment or alteration of such a court decision.

The Civil Litigation Code details the process of appointing a procedural guardian for individuals lacking procedural capacity. Preferably, a close individual or another person from the family environment who has full legal capacity and agrees to be appointed as a procedural guardian should be appointed for such a person. This individual must also meet the expectation of acting in the interests of the represented party during the proceedings. Exceptionally, a legal entity, such as the municipality where the party had their last permanent residence, may also be appointed as a procedural guardian. The representation of a procedural guardian, as well as a party lacking procedural capacity by a lawyer, is not mandated by the Civil Litigation Code.

Regarding the protection of the rights of a minor child as a party to a dispute, Article 95 of the Civil Litigation Code specifically addresses the court's ability to join a public authority responsible for the protection of fundamental human rights and freedoms or a legal entity whose activity is the protection of rights under a special regulation, to safeguard the rights of a party to the dispute. The court can do so even without a request from the concerned disputing party. If this occurs, the entity designated and joined by the court is entitled to all actions that the disputing party itself could perform, except for those actions that can only be carried out by the subject of a specific legal relationship. In the case of a minor as a party to proceedings, the inclusion of the Commissioner for Children could be considered. According to Act No. 176/2015 Coll. on the Commissioner for Children and the Commissioner for Persons with Disabilities and on amendments to certain acts, participating in the protection of children's rights is precisely what can ensure active involvement in litigation. In our opinion, this right can be actively exercised, for example, by entering litigation proceedings based on a court decision on their inclusion.

15 Ibid., p. 265.

A minor child may also appear in other capacities during litigation, not only as a party to the proceedings. Theoretically, a minor child can be a witness required to be heard in the proceedings. However, the Civil Litigation Code does not specify any special procedure for such cases. Generally, the court conducts evidence at a hearing; however, according to the Civil Litigation Code, evidence can also be taken outside of a hearing if it is possible and appropriate.¹⁶ Therefore, theoretically, the hearing of a minor witness as evidence could be conducted outside of a hearing and even outside court premises. This, however, depends on the assessment of the acting court, and such a procedure for a minor witness in litigation is not specifically anticipated in the Civil Litigation Code. The only special protection anticipated by the Civil Litigation Code concerning a minor child is regulated in the provision regarding the presentation of a person at a hearing. This provision outlines the court's procedure if a summoned person fails to appear at a hearing, interrogation, or expert examination without justification. In such cases, the court may request the presentation of the person by the relevant Police Corps unit or municipal police. According to Article 101 para. 2 of the Civil Litigation Code, however, if it concerns a minor child, the court may proceed in this manner only exceptionally and under the condition that the presence of such a person cannot be ensured otherwise. We believe it is necessary for courts to assess such matters with particular sensitivity in the interest of protecting minor children.

3.2. Administrative Judicial Order

In accordance with Article 2 para. 2 of the Administrative Judicial Order, anyone who claims that their rights have been violated by a decision of a public administration body, an action of such a body, its inaction, or another intervention may seek protection under this law at an administrative court. The originality and specificity of administrative judiciary lie in the fact that an administrative court (with certain exceptions – for example, the prosecutor general's action for the dissolution of a political party under Art. 384 et seq. or some proceedings concerning local self-government under Arts. 313–336) deals with a matter that has already been addressed, or should have been addressed, by a public administration authority, resulting in the issuance of an administrative act, or, in cases of inaction, by reviewing the reason for the inaction of the public administration authority.¹⁷ The provisions of the first and second parts of the Civil Litigation Code, i.e. the general provisions of the Civil Litigation Code and the provisions on proceedings at first instance, apply to proceedings under the Administrative Judicial Order unless explicitly excluded by this Order. The Administrative Judicial Order regulates procedural capacity in Articles 35 and 36, similarly linking it to the legal act capacity of the proceeding participant as the Civil Litigation Code. According to the Administrative Judicial Order, to the extent that an individual does not have the capacity to act independently before the administrative court, they

16 On this see: Grešková, 2022, p. 779; Čollák et al., 2024, p. 267 and subsequent pages.

17 Baricová, 2018, p. 21.

are represented by a legal representative or a procedural guardian appointed by the administrative court. The legal regulation for administrative judicial proceedings involving a minor child is the same as that in the Civil Litigation Code.

The most significant difference in proceedings before the administrative court, compared to proceedings under the Civil Litigation Code, is that participants must be represented by a lawyer regardless of their age. This obligation applies to all participants, not only minor children. The Administrative Judicial Order does not provide any special protection for the rights of minor children as participants in the proceedings or as individuals otherwise involved in administrative proceedings before the court.

Proceedings before the administrative court are typically preceded by administrative proceedings in accordance with Act No. 71/1967 Coll. on Administrative Procedure, as amended (hereinafter: “Administrative Order”). Similarly, the Administrative Order does not exclude the participation of minor children in such proceedings, but in these cases, their capacity for legal acts must also be assessed. If the administrative body concludes that a minor participant in the proceedings cannot act independently due to limited legal capacity, it will require that they be represented by their legal representative or appoint a guardian for such a minor child. This contributes to the protection of the minor.

3.3. Civil Non-Contentious Code

The highest degree of protection, in our opinion, is afforded to a minor child when they are a participant in proceedings according to the Civil Non-Contentious Code. This is, among other reasons, because proceedings conducted under the Civil Non-Contentious Code specifically consider the public interest and good morals, justified by the nature of non-contentious proceedings.¹⁸ Such proceedings may be initiated upon the proposal of a participant in the proceedings or the prosecutor, as well as without a proposal. In certain cases anticipated by the Civil Non-Contentious Code, proceedings under this law may commence by the court *ex officio*, justified by the public interest, within which the interest of the minor child is specially protected. The special degree of protection provided to a minor child in proceedings under the Civil Non-Contentious Order arises from the basic principles of these proceedings, which are defined at the beginning of the statute.

According to Article 4 of the Civil Non-Contentious Code, if a minor child is a participant in the proceedings, the court is obliged to act in their best interest. This rule differs from the proceedings under the Civil Litigation Code and the Administrative Judicial Code, justified by the nature of each type of proceeding. While in proceedings under the Civil Litigation Code and the Administrative Judicial Order, there is no specific public interest in their outcome, as they are about the protection of the subjective rights of the dispute parties or participants depending on their personal activity, in proceedings under the Civil Non-Contentious Code, although the subjective rights of

18 See more: Števček, 2024, p. 2.

the participant are also protected, they are in cases where there is also a public interest in their protection.

The Civil Non-Contentious Code, in the first chapter of its second part, regulates proceedings in some family law matters. These proceedings include, for example, proceedings for permission to marry (in the case of a person younger than eighteen years), proceedings in matters of determining parentage, proceedings regarding the return of a minor abroad in cases of wrongful removal or retention, proceedings in matters of adoption, and proceedings concerning court guardianship of minors.

The last group of proceedings is more specifically defined in Article 111 of the Civil Non-Contentious Code, according to which the court in proceedings concerning court guardianship of minors decides on: the name and surname of the minor, arrangements for the exercise of parental rights and obligations, maintenance for the minor, contact with the minor, guardianship, custodianship of the minor, handing over the minor, matters concerning the minor which the parents cannot agree on, approval of the legal act of the minor, representation of the minor, management of the minor's property, institutional care, educational measures, protective measures, foster care, entrusting the child to alternative personal care, and other matters if arising from a special regulation.

The Civil Non-Contentious Procedure Code, unlike the Civil Litigation Code and the Administrative Judicial Order, imposes a specific duty on the court to inform the child about all essential matters relating to the proceedings and the subject matter itself, assuming the minor child is a participant in the proceedings. Importantly, a minor child can be a participant in proceedings under the Civil Non-Contentious Procedure Code not only if they themselves file a motion to initiate proceedings but also if their rights and obligations are the subject of proceedings that can begin without a motion or in proceedings initiated at the request of someone other than the minor child. In this context, Article 115 of the Civil Non-Contentious Procedure Code is significant, stating that the court addresses suggestions and warnings from individuals and legal entities and takes measures to ensure proper care for minor children. For this purpose, the court can, for example, even before the commencement of proceedings, carry out necessary procedural actions, including hearing the parents or inspecting the residence.

Specifically, beyond the adjustment of the basic principles of non-contentious proceedings, the right of the minor child to be informed about the course of proceedings is regulated in the part of the Civil Non-Contentious Procedure Code dealing with certain matters concerning court care for minors. From Article 116 of the Civil Non-Contentious Procedure Code, it follows that the court is obliged to inform the minor child about the course of the proceedings, provided it does not contradict the purpose of the proceedings and assuming the minor child is capable, considering their mental and volitional maturity, of understanding the significance of the proceedings. The court must also explain to the minor child the implications of the court's decision on the matter itself.

The Civil Non-Contentious Procedure Code also addresses the question of procedural capacity differently by regulating situations where a participant in the proceedings could act independently regarding the subject matter and the extent of their legal capacity for acts but, given the circumstances of the case, it is reasonable for the court to appoint a procedural guardian for them or require their representation by a legal representative. Specifically, this rule is adjusted in Article 9 of the Civil Non-Contentious Procedure Code, according to which, if circumstances require, the court may decide that one who does not have full legal capacity must be represented in the proceedings by their legal representative or a procedural guardian, even if it concerns a matter in which they could act independently. The purpose of this provision is to provide an enhanced degree of procedural protection, especially to minor children as participants in proceedings under the Civil Non-Contentious Procedure Code.¹⁹ Specifically, the procedural capacity to act independently before the court in proceedings concerning the adoptability of a child and its placement in pre-adoption care is regulated. In this proceeding, the minor parent of the child has the procedural capacity to act independently from the age of sixteen years. Notably, Slovak law does not recognise the institution of a child advocate or mandate legal representation in proceedings conducted under the Civil Non-Contentious Procedure Code.

Regarding the appointment of a procedural guardian, the court is obligated, upon request, to appoint a close person as guardian for the minor child, assuming that this person will act in the minor's interest. If such a request is not made or cannot be accommodated, the court appoints the child social protection and social guardianship authority, which is the Office of Labor, Social Affairs, and Family, as the guardian.

The access of minor children as participants in proceedings to the court is also ensured by the rule of special local jurisdiction of the court for the above-identified matters concerning court care for minors. In such proceedings, the locally competent court is the one in whose district the minor child has residence determined by the agreement of the parents or by another legal method. Additionally, Article 6a of the Civil Non-Contentious Procedure Code is meant to ensure the protection of the minor child by stipulating that in proceedings under the first head, third part, and fourth part of this law concerning the same minor child or their siblings having the same parents, the same judge assigned the first motion to initiate proceedings concerning the affected minor child shall decide. This provision aims to maintain continuity in the court's decision-making on matters concerning the minor child and ensure the necessary speed of proceedings since the family circumstances are already known to the given judge or judges from previous proceedings, and these are subsequently only verified from the perspective of whether there have been any significant changes in the meantime. The adopted legal regulation, to the extent mentioned, in our opinion, definitely contributes to the protection of the minor child.

Another provision of the Civil Non-Contentious Procedure Code supporting the access of minor children to judicial protection of their rights is Article 13, according

19 Smyčková, 2024, p. 93.

to which the prosecutor may enter into commenced proceedings (with the exception of proceedings concerning the divorce of a childless marriage). Similarly, the prosecutor may file a motion with the court to initiate proceedings under the Civil Non-Contentious Procedure Code if it concerns proceedings that can also be initiated without a motion, and the law expressly allows this. Such proceedings may include, for example, some proceedings concerning court care for a minor child. In this context, judicial practice has previously been divided on the issue of whether a prosecutor can file a motion to initiate proceedings only if specifically authorised by law or in any case where the court may initiate proceedings *ex officio*. This question appears to have been resolved following a decision published in the Collection of Opinions of the Supreme Court and Court Decisions of the Slovak Republic under R 64/2024. According to the published decision, a prosecutor may file a motion to initiate proceedings even in cases concerning legal capacity, which can be initiated *ex officio*, despite the fact that the Civil Non-Contentious Procedure Code does not explicitly regulate the prosecutor's right to submit a motion in such proceedings.²⁰ In light of the above, we agree with the opinion of Smyčková, who argues that Art. 14 of the Civil Non-Contentious Procedure Code is an incorrect legislative expression of the scope of the prosecutor's authority to initiate proceedings. The provision wrongly cumulatively ties the prosecutor's right to submit a motion in proceedings that can be initiated *ex officio* to an additional condition that this right must be explicitly provided for in this law or another regulation.²¹ Given the aforementioned, and respecting the case law of the Supreme Court of the Slovak Republic, we believe that it would be appropriate to adopt an amendment to the cited provision of the Civil Non-Contentious Procedure Code to correct this inaccuracy.

The participation of the Commissioner for Children might also be considered in proceedings conducted according to the provisions of the Civil Non-Contentious Procedure Code, despite the fact that their participation, unlike the Commissioner for Persons with Disabilities, is not specifically anticipated in the provisions of this law. This statement holds because, according to Article 2, the provisions of the Civil Litigation Code are also applicable to proceedings under the Civil Non-Contentious Procedure Order unless expressly excluded by the Civil Non-Contentious Procedure Code.

Certain proceedings under the Civil Non-Contentious Code are specifically addressed, in which the law mandates their consolidation with proceedings concerning the adjustment of parental rights and obligations to minor children. This ensures the protection of the rights of minor children, in our opinion, and essentially their access to legal protection, as it is not necessary for them to initiate the proceedings themselves. The law necessitates action on matters directly concerning them. This applies in the case of divorce, which is linked to proceedings adjusting the conditions

20 Decision of the Supreme Court of the Slovak Republic of 10 July 2024, No. 3CdoR/2/2024, published in the Collection of Opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic under R 64/2024.

21 Smyčková, 2024, p. 109.

between spouses and their minor children post-divorce. Within this context, the question of exercising parental rights and obligations towards a minor child is addressed. Furthermore, proceedings determining paternity relate to proceedings adjusting the exercise of parental rights and obligations and the maintenance of a minor child.

The Civil Non-Contentious Code also specifically regulates the evidence process in proceedings where a minor child is a participant. In such cases, the court is obliged to consider the opinion of the minor child as a participant in the proceedings if they are capable of expressing their opinion independently. This rule, set forth in Article 38 of the Civil Non-Contentious Code, builds on the previously analysed legal regulation of the Family Act. However, this procedural legal regulation of non-contentious proceedings is even more detailed when it also outlines how the opinion of the minor child should be ascertained. The court is to ascertain the minor child's opinion in a manner corresponding to their age and maturity, with the stipulation that, depending on the nature of the matter, the court is to ascertain the minor child's opinion without the presence of other persons. The law does not further specify how the minor child's opinion should be ascertained by the court, nor does it establish any age limit from which the court is obliged to consider the minor child's opinion or to hear them directly at the hearing. From the provisions of the Civil Non-Contentious Code, as well as the Family Act and the purpose and meaning of the relevant legal regulation, it can be concluded, in our opinion, that the hearing of the minor child should be carried out in a suitable and appropriate manner so as not to cause undue stress to the minor child. Slovak legal regulation does not exclude the indirect ascertainment of the minor child's opinion, i.e. without the child being heard by the judge. Čipková states that indirect (mediated) ascertainment of the opinion of a minor child is still preferred in current application practice, despite the legal preference for direct ascertainment.²² This view can be agreed with. We also perceive negatively the courts' efforts to use the indirect form of determining the opinion of minors even in cases where it is not justified by their age and the protection of their interests. This occurs mainly based on the submission of a report from the Office of Labor, Social Affairs, and Family as the authority for social and legal protection and social guardianship, the request for which is anticipated by the court under the provisions of Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Guardianship, as amended. Of course, the child's opinion can also be ascertained directly by the court, where, depending on the age of the minor child, their hearing in an informal manner and ideally in a specially designated and equipped room of the court, adapted for minor children, is preferred. However, such court equipment is not mandatorily required by law and, therefore, is not available in all courts in the Slovak Republic. We perceive this negatively and are of the opinion that it is necessary for this situation to be changed in the future and for the equipment of the courts to be improved.

Regarding the ascertainment of the minor child's opinion, the jurisprudence of the Supreme Court of the Slovak Republic confirmed that ascertaining their opinion

22 Čipková, 2024, p. 199.

without the presence of the parent's legal representative does not result in depriving the parent of the opportunity to act before the court; thus, this procedure is in accordance with the law. In the collection of opinions of the Supreme Court and decisions of Slovak courts, a judgment identified as R 34/2014 was published as follows: "The procedural approach of the court, in which it ascertains the opinion of the minor (§ 100 para. 3 OSP [author's note – now § 38 CMP]) without the presence of the parent's legal representative, does not result in depriving the parent of the possibility to act before the court."

4. Rights of a Minor Child in Criminal Proceedings

4.1. Criminal Code

The criminal policy of the Slovak Republic, as codified in the Criminal Code and its accompanying procedural legislation, reflects the need for special protection of minor children and considers their age when assessing their criminal liability. The Criminal Code includes specific provisions for the prosecution of juvenile offenders. The application of general provisions in relation to a juvenile is only possible when the special provisions on the prosecution of juveniles do not establish a specific regulation.²³

For the purposes of the Criminal Code, a juvenile person is considered to be someone who, at the time of committing a criminal act, has reached the age of fourteen but has not yet reached eighteen. In the case of persons younger than fourteen years, it is not possible to consider their criminal liability.

All provisions of the Criminal Code apply to juvenile offenders, except for those differently adjusted in the special part about the prosecution of juveniles in the fourth head of the Criminal Code. Special emphasis is placed on the intellectual and moral maturity of juveniles. This is taken into account in Article 95 of the Criminal Code, which stipulates that for persons older than fourteen but younger than fifteen years, the assessment of the unlawfulness of their actions must consider whether, at the time of committing the act, they had reached a level of intellectual and moral maturity that allowed them to recognise the unlawfulness of their actions or to control this behaviour. If not, the person will not be criminally liable for the act committed.

A material corrective is also specifically regulated in the case of criminal activity committed by juveniles, requiring the seriousness of the act committed by the juvenile to be at least minor for the act to be considered a criminal offense. Otherwise, the act will not constitute a criminal offense. However, it applies that the mentioned criterion for assessing criminal liability can only be taken into account in the case of misdemeanours, i.e. in the case of criminal offenses committed through negligence or in the case of intentional criminal offenses for which the Criminal Code prescribes a prison sentence with an upper limit of the penalty of a maximum of 5 years. The criteria used to determine the seriousness of a misdemeanour relates to the conduct

23 Záhora, 2010, p. 754.

and its consequence (the test of the objective aspect) and the degree of culpability in terms of motive (i.e. the subjective aspect). These criteria are so diverse and variable that they allow, in a specific case, for a sufficiently clear distinction of the degree of seriousness of the committed misdemeanour or an act displaying the characteristics of a misdemeanour.²⁴

In the case of juvenile persons, the Criminal Code specifically regulates the imposition of sanctions and educational measures, prioritising educational measures and other types of punishments over criminal imprisonment. Regarding the actual sentence of imprisonment for a juvenile offender, the sentence is imposed at the rates provided by the Criminal Code after being reduced by half. We view the presented concept of legal regulation positively because, in our opinion, it contributes to ensuring that the imposed sentences truly fulfil their educational function. It also supports the idea that juvenile offenders, after serving their sentence, have a real chance of reintegration into society without being excluded from it due to serving a disproportionately long prison term. We also positively assess the fact that a prison sentence for individuals who are not older than 18 is served in a correctional facility specifically for juveniles. The court may even decide that the prison sentence will be served in such a special facility in the case of a convicted person who has already exceeded the age of 18. Similarly, the Criminal Code differently adjusts the length of limitation periods for crimes committed by juveniles compared to general provisions. As a general rule, in most cases, the statute of limitations for criminal prosecution in relation to an offense committed by a juvenile offender expires sooner than the statute of limitations for criminal prosecution in the case of an offense committed by an offender who is not a juvenile.

4.2. Criminal Procedure Code

The Criminal Procedure Code distinguishes between the terms child and juvenile. A child is a person younger than 18 years of age. A juvenile is a person who, at the time of committing a criminal offense, had not reached the age of 18. The Criminal Procedure Code specifically regulates the conduct of criminal proceedings against a juvenile who, upon being charged, must always have a defender. If the juvenile does not choose a defender, one must be appointed by the court from among the attorneys, as this constitutes a case of mandatory defence pursuant to Article 37 para. 1 point d) of the Criminal Procedure Code.

The provisions regarding proceedings against a juvenile apply if the criminal act was committed by the juvenile exclusively before reaching eighteen years of age, provided that the charge is made before the juvenile offender turns nineteen years old. Therefore, if an act was committed by a person who was a juvenile (14 to 18 years old) at the time, the act will always be assessed according to the provisions of the Criminal Code concerning juvenile offenders. However, if charges are brought against

24 Resolution of the Supreme Court of the Slovak Republic of 21 September 2021, No. 3Tdo/25/2021.

such a person only after they have reached the age of nineteen, the provisions of the Criminal Procedure Code regarding proceedings against a juvenile will no longer apply to them. We consider the given legal regulation to be justified. In our opinion, there is no reason for proceedings to be conducted according to procedural provisions specifically formulated for the protection of juveniles at a time when these persons have already reached adulthood.

The Criminal Procedure Code specifically regulates the criminal liability of a person younger than 15 years of age. If such a person, at the time of committing the act, had not reached the level of intellectual and moral maturity necessary to recognise the unlawfulness of the act or control their conduct, they would not be held criminally liable for the act. This legal regulation conceptually builds upon the principle that a person is criminally liable only if, at the time of committing the act, they were at least 14 years old.

Further, Article 337 of the Criminal Procedure Code specifically mandates the obligation of criminal justice authorities and the court to thoroughly examine the level of intellectual and moral development of the juvenile, their character, circumstances, and the environment in which they lived and were raised, their behaviour before and after committing the criminal act, as well as other circumstances important for choosing the appropriate means for their rehabilitation. The investigation of these facts about the juvenile accused or defendant is imposed, in accordance with the Criminal Procedure Code, also on the body of social and legal protection of children and social guardianship, i.e. the Office of Labor, Social Affairs, and Family, as well as the municipality. In the case of a juvenile, their character reference from the educational institution they attend is also typically secured for the investigative and court files. All facts discovered about the juvenile based on these actions subsequently form the basis for imposing an appropriate penalty on the juvenile offender.

For proceedings against a juvenile according to the special provisions of the Criminal Procedure Code, there is also an obligation to include the body of social and legal protection of children and social guardianship, whose representative has the right to make procedural proposals in the proceedings, ask questions to the persons being interrogated, as well as deliver the closing speech at the main trial. They are included in the proceedings from the pre-trial stage of the criminal proceedings. In addition to the Office of Labor, Social Affairs, and Family, the legal representative of the juvenile must also be informed about all actions in the criminal proceedings conducted against the juvenile. During the interrogation of the juvenile accused, besides their defender, a representative of the body of social and legal protection of children and youth must always be present.

The Criminal Procedure Code also specifically regulates the obligations of criminal justice authorities in case of detention or arrest of a juvenile person, where it is necessary that the juvenile's legal representative and the body of social and legal protection of children and social guardianship be informed. This also aims to fulfil the purpose of the law, which is to provide an increased level of protection for juvenile persons, even if they are reasonably suspected of committing a criminal act.

A special entitlement is granted to the body of social protection of children and social guardianship regarding the use of legal remedies. These can be utilised and applied in criminal proceedings even against the will of the juvenile accused or defendant, provided the legal remedy is filed in their interest. The same entitlement belongs to the juvenile's legal representative, their guardian, and even the prosecutor.

Protection of the juvenile accused or defendant is further ensured by the Criminal Procedure Code in such a way that the court may decide to exclude the public from the proceedings if necessary to protect the interests of the juvenile. Furthermore, this can occur not only in proceedings against a juvenile accused but also in proceedings in which, although the accused is not a juvenile, a minor person is a victim or a participant. In the case of proceedings against a juvenile accused, it is even possible, in accordance with the Criminal Procedure Code, for the presiding judge to order the juvenile to leave the courtroom during certain parts of the main trial if such a part of the proceedings could adversely affect their moral development. Upon the juvenile's return to the courtroom, however, they must be informed of the essential content of the proceedings conducted in their absence.

Protection of juvenile persons is further specifically ensured by the Criminal Procedure Code in Article 6, which mandates that criminal justice authorities and the court, when informing the public about criminal proceedings, must act in a manner that considers the interests of the juvenile accused, whose personal data are not to be disclosed. Although criminal proceedings are governed by the principle of publicity, this can be restricted during the main trial by the court denying access to the main trial to juveniles. This procedure should be justified either to prevent disruption of the dignified course of the main trial or to protect the interests of juvenile persons. The fact that such a person is being heard should also be reflected in their instruction, which should be provided in a manner appropriate to their age and mental level.²⁵

The Criminal Procedure Code does not explicitly regulate the age requirements for a witness's legal capacity, nor does it limit the range of potential witnesses.²⁶ During criminal proceedings, a juvenile person can also be interrogated. The Criminal Procedure Code specifically regulates the rules and procedures for questioning a witness who is a child. The questioning of such a person should be conducted in a way that avoids the need for it to be repeated later. For this reason, such questioning can be recorded, and the recorded evidence can be presented during the main trial by playing it back. This is intended to prevent the secondary victimisation of the witness. It is also mandatory to ensure the presence of a psychologist during the questioning of a minor witness. The psychologist's role is to supervise the questioning process and contribute to its conduct in a manner that will not adversely affect the mental state of the witness. We positively evaluate the fact that the legal regulation has been amended so that these special rules for questioning apply in the case of a child and

25 Ivor et al., 2010, p. 476.

26 Polák, 2011, p. 176.

not only in the case of a person younger than 15 years, as was the case under the legal regulation effective until mid-2013.

Provided that the examination of a minor witness takes place during the main trial, Article 261 para. 4 of the Criminal Procedure Code provides the presiding judge the authority to decide that they will conduct the witness interrogation themselves, especially if the witness is under fifteen years of age. This procedure can also apply to witnesses older than fifteen, but in such cases, another reason stipulated by the law must be present for this approach. For instance, if the witness being interrogated is a victim of a crime against human dignity.

The Criminal Procedure Code specifically addresses the representation of an injured party in criminal proceedings by a legal representative or guardian. This must occur, among other scenarios, if the injured party has limited capacity for legal acts. This premise is also fulfilled in the case of an injured party who is a juvenile, as, according to the legal regulations of the Civil Code, they do not have full capacity for legal acts.

In conclusion, the criminal law regulations of the Slovak Republic do not prescribe the establishment of a special court division specialised in conducting proceedings against juveniles accused. It is also noted that such specialisation is not present in civil procedural law, at least in terms of proceedings at the district or municipal court level as the court of first instance. However, it is a fact that most civil courts in the Slovak Republic have specialised departments where judges dedicate themselves specifically to family law matters. Furthermore, regarding the legal regulation of appellate proceedings, according to the legal regulations of non-contentious proceedings, selected regional courts are competent to decide on appeals in cases concerning certain family law matters, which should contribute to a higher degree of court specialisation and, thus, to enhanced protection of minors' interests.

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