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| Chapter 1 |

Introduction – Broad Concept of Child Protection

Nóra Jakab, Márta Benyusz

1. Introduction

Social rights are one of the most controversial areas of human rights and some of the most variably regulated rights in different states. According to some legal scholars, social rights are as important a factor in a person becoming a citizen as are classical fundamental rights.[1] The declaration of social rights, or some form of regulation of social rights, always presents a faithful picture of a particular state's values, its vision of a man and its own role; such a declaration is generally linked to prevailing political views and, of course, the more narrowly defined conceptions of constitutional law.

Economic, social and cultural rights, as second-generation rights, contrast in many ways with civil and political rights as first-generation rights. One difference lies in the state obligation they entail.[2] According to Gábor Kardos, a behavioural obligation exists in relation to second-generation rights. To effectively guarantee a significant group of rights, the state must engage in well-defined conduct in accordance with the rules of the relevant constitution or international treaty.[3] The United Nations (UN) body, the Committee on Economic, Social and Cultural Rights sets out three types of state obligations: respect, fulfilment and satisfaction.[4]

Note that, similar to Hajdú, we believe that the generational division of human rights can be misleading. Human rights are indivisible, interdependent and

1 Sári, 1997, p. 217.
2 The question of whether the state's conduct is a positive or negative sign has been raised in two cases: the Marckx case, judgment of 13 June 1979, ECHR, Series A, No 31, and the McCann and Others case, judgment of 27 September 1995, ECHR, Series A, No 324.
3 Kardos, 2003, p. 27. For example, to ensure the right to health, a social security system must be in place.
4 See: Committee on Economic, Social and Cultural Rights, General Comment No. 12. (1999), UN doc, E/2000/22.

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interrelated. The quality of human existence is determined by second-generation rights. Social security is an integral part of a life worth living. While there is a difference between the nature of each generation, the following can be said with certainty: All human beings have an indivisible right to human rights; the quality of human life is largely determined by the opportunities offered by these social rights; and the state is present in all generational rights, differing only in the extent and intensity of its presence.[5]

The difference between the two groups of human rights lies the direct nature of the state obligation in the case of civil and political rights as well as its gradual nature in the case of social rights. The temporal dimension can thus be contrasted.[6]

From the point of view of enforceability, the accountability of economic, social and cultural rights depends on supporting norms, that is, lower-level legislation. It is possible to sue for the substantive elements laid down in lower-level legislation. In the case of civil and political rights, the court will repair the violation of the mother law on merits.[7]

Economic, social and cultural rights, as well as human rights in general, place the state under pressure to justify any regulation by its impact on those it regulates. Moreover, human rights place the burden of proof on the state. The consequence is that human rights are reduced to the logical premise of the right to subsistence.[8] The right to subsistence must be interpreted broadly, including the need to satisfy all human needs.[9] The need for economic, social and cultural rights can be justified by not only basic human needs but also the avoidance of human suffering closely related to them.

There is a great need for integrated protection of human rights. The exercise of civil and political rights is hardly conceivable without at least minimum *social empowerment*. The former presupposes the latter. Further, the enjoyment of human dignity requires at least a minimum level of social entitlement. The guarantee of this entitlement can also be underpinned by solidarity within a community of citizens and national, ethnic or religious communities. The idea of equality can also be raised as a basis for social entitlements.[10]

5 See: Hajdú, 2021, p. 31; Halmai and Tóth, 2008, pp. 81–107. See also: the Ministerial Conference on Human Rights held in Rome on 5 November 1990, which stressed the need to preserve the indivisible nature of all human rights (whether civil, political, economic, social or cultural) and to give new impetus to the European Social Charter. Therefore, at the Ministerial Conference held in Turin on 21 and 22 October 1991, it was decided to modernise the European Convention on Human Rights and amend it to consider the fundamental social changes that had taken place in the 30 years since the text was adopted. See: Hajdú, 2021, p. 33.

6 Ibid., p. 29.

7 Ibid., p. 30.

8 Ibid., p. 32.

9 These include survival needs, needs arising from social participation and self-actualisation needs. For more details, see: Jayakumar Nayar, 1996, pp. 171–194.

10 Kardos, 2003, pp. 33–34.

Social rights provide distributive entitlements and guarantee services to people who are on the weaker side of a struggle against organised interests. Political debates also often raise the idea of protection of the weaker, but these do not comprise absolute arguments, and economic and social rights do not lose their legitimacy because of them.[11]

International legal sources rarely define social security. In most cases, it is assumed that social security represents an umbrella concept, that is, the basic goal of the science of social law, which is achieved through various subsystems such as social insurance and social protection systems. Consequently, social security can be a goal the society strives for to ensure decent living conditions and an existential minimum for as many residents as possible; this goal will be achieved through the developed social insurance and social protection systems, which will enable individuals to exercise their basic rights and receive appropriate protection if certain social risk appears. Therefore, it is the state's obligation to create a valid normative framework that will regulate the procedure and conditions for exercising social security rights and providing social protection measures. Without developed legal and sub-legal legislation, a clear constitutional framework or appropriate measures for supervising implementation of the law, ensuring social security for citizens will be a difficult task for every state.[12]

Ravnić wonders what social security would encompass – individual subjective rights or something broader – while analysing German law, according to which social benefits and services include only those recognised by the public authorities responsible for public social benefits and services. Namely, social law regulated by state public law norms establishes a relationship between the individual and state, in which individuals are granted benefits and services regulated by public authorities. According to Ravnić, social content regulated by a contract – unilaterally on a voluntary basis by a charitable institution or even compulsorily by public authorities – would be part of the *content of social protection law* as a gender concept consisting of different forms of insurance and assistance for individuals and, to a lesser extent, for groups. Social protection in this sense is only part of the social law and is by no means the law's sole task. However, Ravnić clearly emphasises that the concept of *social security* has displaced the concept of *social protection*, and social security, seen as a system, encompasses social areas based on insured risks, social needs and other insured cases, overlapping with the concept of social law or the right to social security. In an objective sense, social law is actually

> 'a set of norms, regulations and rules that regulate legal and social relationships, and in a subjective sense, it is a set of powers conferred by law to individuals, and less frequently to groups, to demand certain social benefits (provisions or actions) in a state of social need, provided that they meet certain conditions.'[13]

11 Ibid., p. 36.
12 Bojić, 2023, pp. 155–156.
13 Vinković, 2023, pp. 76–77; see also: Ravnić, 2004, pp. 226–228.

One of the greatest Croatian labour law theorists, Nikola Tintić, criticises the ambiguity of the attribute "social" and its usage because of various meanings of the term. The term "social" can be considered as the totality of protective legislation *in favorem* workers; limitation of the employer's contractual dictate, particularly in relation to vulnerable groups of workers (minors and women); and a system of social assistance and protection in the broadest sense, in relation to members of the society in a state of social need, or as provisions elevated in such cases to the level of *specific social rights of individuals*. Moreover, he clearly states that social law and social security *in different periods of history or the social, political and economic systems are based on different conditions, social relations, interests, possibilities, goals and concepts*. Based on such reflections on social law by Tintić, social policies generally become a very important instrument. This is because, unlike static social or social security law, they have a more dynamic nature and are able to adapt to different social challenges, needs and even programmes of political elites.[14]

Legal scholarship offers several definitions of social security law, especially in college textbooks. Koldinsky sees social security law as a set of legal norms that implement the rights formulated primarily in Arts. 30 to 32 of the Charter of Fundamental Rights and Freedoms, respond to legally recognised social situations and, as a whole, constitute a system of social protection. Matlák stresses that social security law acts as a separate legal branch, but at the same time, it is the subject of both pedagogical and scientific approach and constitutes both a scientific and pedagogical discipline. He further states that social security law constitutes a set of legal norms regulating social, collective and individual relations arising in social security as well as in the application or implementation of social policy and social partnership of individual subjects of the social sphere. Galvas and Gregorova consider social security law to be a set of legal norms that regulate the behaviour of subjects in social relations arising in the provision of material security or other assistance to citizens who, as a result of social events accepted by law, need such benefits or assistance.[15]

Vieriu explains that social security is not only an activity or concern of states. Rather, it is a set of legal rules governing this activity – the protective measures, their specifics and their beneficiaries. The legal rules governing social relations make up the branch of law known as social law. Just as labour law has separated from its parent discipline – civil law – social law has also separated from labour law to become an autonomous discipline and a new branch of law.[16]

As regards the integration of social security law into the legal system, one can agree with the views that it is, by its nature, primarily a public law branch, with administrative law being the closest (especially in procedural norms), and similarities can also be found with financial law (the nature of insurance premiums in the social insurance system is similar to that of the tax system). At the same time,

14 Vinković, 2023, p. 72; Tintić, 1969, p. 29.
15 Dolobáč, 2023, pp. 179–180; Koldinská et al., 2022, p. 13; Matlák et al., 2012, p. 42.
16 Vieriu, 2016, p. 113.

however, many private law elements can be found in social security law (e.g. private law contracts concluded between the provider and recipient of certain social or health services). We would add to these considerations that social security law has a special relationship with labour law, and we find several overlaps. There is a particular correlation in the protection of employees caring for children. The basic code of labour law provides these employees (and other groups) with special care and legal protection (interruptions at work, maternity leave, paternity leave, etc.), which is supplemented by financial security provided by the standards of social security law.[17]

Modern constitutions have overwhelmingly taken the view that there is a need for some level and type of regulation of social rights in general. *The exercise of classical freedoms and social (existential) security are parts of human quality that are mutually dependent. In a society, as a kind of moral community, solidarity must be expressed in some form*. The modern state must protect the individual against social impossibility. It is true, of course, that the extent of social rights depends on the capacity of the state to deliver, but this should not mean that constitutions do not enshrine some realistic system of support for the vulnerable. Indeed, where the line is drawn between economic policy decisions and constitutional decisions depends on the constitutionalisation of social rights and quality of the regulation. If provision of the necessary means of subsistence follows directly from the constitution (human dignity), then it is not an economic policy decision whether to provide the necessary means of subsistence to the citizens but rather a matter of fundamental rights.[18]

According to the UN Convention on the Rights of the Child (CRC), a child who is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, shall be entitled to special protection and assistance provided by the state. States are obliged to provide alternative care to these children. The system of protection the states provide varies from one country to another. The aim of this book is to provide a detailed understanding of the meaning of the right to alternative care and the characteristics of an effective and caring system. The book uses the Central European comparative perspective to consider, as widely as possible, the good practices as well as obstacles in the system to reveal and demonstrate the best methods to care for this particularly vulnerable group of children.

2. Integrated Child Protection System

Every community creating an organism, such as the state, is composed of a range of different people. Such a community comprises adults, including senior citizens, as well as children. The state as invoked here is a common good,[19] that is, an entity

17 Dolobáč, 2023.
18 Téglási, 2019, p. 337.
19 For the common good, see: Trzciński, 2018, p. 23.

responsible for providing its citizens with conditions in which they can function and satisfy their needs. This means that the state is also obliged to ascertain that children are guaranteed the conditions allowing them to live in their natural families, and if, for various reasons, this is not possible, the state will take measures to create conditions in which the children can live and grow up peacefully.[20]

Responsibility for the development, growth, upbringing and protection of the child lies primarily with the parents, as prescribed by Art. 18 para. 1 of the CRC.[21] This range of care options should exist 'with priority to family and community based solutions'. Importantly, the UN Guidelines for the Alternative Care of Children acknowledge that family-based settings and good quality residential care facilities form part of a range of appropriate responses, provided that such residential care facilities conform to certain specifications and are used only for "positive" reasons – that is, when they are the most appropriate response to the situation and the needs of the child. In other words, the lack of other options, of time or of resources in finding a more appropriate setting needs to be addressed in its own right, and it does not constitute a sufficient reason for providing a child with a residential living situation.[22]

The competent state authority intervenes to protect children when parent(s) cannot take care of the child independently or satisfactorily. Therefore, it is the task of state authorities to intervene with the goal of protecting children if their rights and welfare are threatened by unlawful actions of the parent(s), family member(s) or third unrelated person(s). Procedures and measures that state authorities undertake are a form of assistance to the child, parents and the family, as prescribed by Art. 18 Para. 2 in accordance with Art. 9 of the CRC.

> The UN Children's Fund defines a child protection system as
> 'the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it .... Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems.'[23]

20 For the state obligations, see: Florczak-Wątor, 2018, p. 119.

21 The CRC (Official Journal of the SFRY, No. 15/90, Official Gazette – International treaties, No. 12/93, 20/97, 4/98 and 13/98) is an international global legal source that represents a component of the domestic legal order of the Republic of Croatia and has primacy over domestic legal sources but not over the Constitution (Art. 134 Constitution).

22 Davidson, 2015, p. 384; see also: Davidson et al., 2016, pp. 754–769; Van Breda et al., 2020.

23 European Union Agency for Fundamental Rights, 2024.

Child protection has historically focused on particular issues or specific groups of vulnerable children. This approach can serve the needs of a targeted group. However, it is also subject to important limitations.

Children may have multiple protection problems. Fragmented child protection interventions deal with a single problem, and they fail to provide a comprehensive solution to children's diverse needs. Focusing on selected issues alone, or on particular groups of children, is neither sustainable nor effective.

An integrated child protection system places the child at the centre and endorses and promotes the provisions of the CRC. The system bases its work on the rights and obligations enshrined in the CRC. It aims to ensure that all essential actors and systems – education, health, welfare, justice, civil society, community and family – work together to prevent abuse, exploitation, neglect and other forms of violence against children. It also aims to protect and assist children in these situations.

The 2006 UN Secretary General's study on violence against children[24] recommends that 'all States develop a multifaceted and systematic framework to respond to violence against children which is integrated into national planning processes'. An integrated, systemic approach to child protection benefits all children. It can respond to various situations a child might encounter.

An integrated child protection system places the child at the system's centre and endorses and promotes the CRC. It ensures that all essential actors and systems – education, health, welfare, justice, civil society, community and family – work in concert to prevent abuse, exploitation, neglect and other forms of violence against children as well as protect and assist children in these situations. [25]

The following are the 10 principles for integrated child protection systems:

1. Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.
2. No child is discriminated against.
3. Child protection systems include effective prevention measures.
4. Families are supported in their role as primary caregivers.
5. Societies are aware and supportive of the child's right to freedom from all forms of violence.
6. Child protection systems ensure adequate care.
7. Child protection systems have transnational and cross-border mechanisms in place.
8. The child has support and protection at any time from a legal guardian or other recognised responsible adult or competent public body.
9. Training on identification of risks for children in potentially vulnerable situations is available for a wide range of professionals and practitioners.

24 United Nations, 2007.
25 European Commission, 2015; Desai, 2020, pp. 29–61.

10. There are safe, well-publicised, confidential and accessible reporting mechanisms in place, including helplines and hotlines.26

In its Conclusions on the EU Strategy on the Rights of the Child (2022), the Council of the European Union called on the Member States to strengthen cooperation and coordination between all relevant authorities and stakeholders. The council called on them to increase their efforts to prevent and combat all forms of violence against children, in particular by: a) promoting cooperation among support services, and supporting a holistic response to violence; b) developing integrated and targeted specialist support services for child victims, in addition to or as part of general victim support services and investing in preventing secondary victimisation; c) strengthening the development, evaluation and promotion of integrated child protection systems where all relevant services cooperate according to a coordinated and multidisciplinary approach, in the best interests of the child, for example the Children's Houses (Barnahus) or any other equivalent children's rights ... friendly model; d) banning corporal punishment in all settings, and strengthening integrated support services for children and families. [27]

3. Guidelines for the Alternative Care of Children

The Guidelines for the Alternative Care of Children are intended to enhance the implementation of the CRC and relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or are at risk of being so. The guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care. In particular, they seek to support efforts to keep children in, or return them to, the care of their family or, failing this, find another appropriate and permanent solution, including adoption and kafala of Islamic law; ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development; assist and encourage governments to better implement their responsibilities and obligations in these respects, considering the economic, social and cultural conditions prevailing in each state; and guide policies, decisions and activities of all those concerned with social protection and child welfare in both the public and private sectors, including the civil society.[28]

The guidelines were created to ensure that the two basic principles of alternative care for children are respected, which require that such care is genuinely needed (the

26 European Commission, 2015.
27 European Union Agency for Fundamental Rights, 2024.
28 United Nations General Assembly, 2010, p. 1.

"necessity principle") and, when this is so, care is provided in an appropriate manner (the "suitability principle").

Acting on the necessity principle first involves preventing situations and conditions that can lead to alternative care being foreseen or required. The range of issues to be tackled is considerable: from material poverty, stigmatisation and discrimination to reproductive health awareness, parent education and other family support measures such as provision of day-care facilities. It is worth noting that, as the guidelines' drafting process progressed, government delegates increasingly expressed an interest in ensuring that preventive responses were given the most comprehensive coverage possible. The second action point for the necessity principle concerns the establishment of a robust "gatekeeping" mechanism capable of ensuring that children are admitted to the alternative care system only if all possible means of keeping them with their parents or the wider (extended) family have been examined. The implications here are twofold: they require adequate services or community structures to which referrals can be made and a gatekeeping system that can operate effectively regardless of whether the potential formal care provider is public or private. Furthermore, the necessity of placement must be regularly reviewed. These are clearly significant challenges for many countries, but experience shows that they need to be confronted if unwarranted placements are to be avoided.[29]

Regarding the suitability principle, if it is determined that a child does indeed require alternative care, it must be provided in an appropriate way. This means that all care settings must meet the general minimum standards in terms of, for example, conditions, staffing, regime, financing, protection and access to basic services (notably, education and health). To ensure this, a mechanism and process must be put in place for authorising care providers based on established criteria and for carrying out subsequent inspections over time to monitor compliance. The second aspect of suitability relates to matching the care setting with the individual child concerned. This means selecting a setting that will, in principle, best meet the child's needs at the time. This also implies that a range of family-based and other care settings are in place, so that a real choice exists, and there is a recognised and systematic procedure for determining which is most appropriate ("gatekeeping"). In developing this range of options, priority should clearly be given to 'family and community-based solutions'[30]. At the same time, the guidelines recognise family-based settings and residential facilities as complementary responses[31], provided that the latter conform to certain specifications[32] and are used only for "positive" reasons (i.e. when they constitute the most appropriate response to the situation and the needs of the child concerned[33]. For example, a child taken into care because of a negative family experience may be unable to cope with immediate placement in another "family-based" setting and

29 Cantwell et al., 2012, pp. 379–387.
30 Art. 53 of the Guidelines for the Alternative Care of Children
31 Ibid., Art. 23.
32 Ibid., Arts. 123 and 126.
33 Ibid., Art. 21.

may, therefore, first need a less intimate or less emotionally demanding environment. Equally, if foster care is envisaged as the most favourable solution, the foster family will need to be selected according to its potential willingness and ability to respond positively to the characteristics of the child in question. Again, suitability of a placement must be subject to regular review – when and how often being dependent on the purpose, duration and nature of the placement – and consider all pertinent developments that may have occurred since the original decision was made.[34]

The Guidelines for the Alternative Care of Children frequently reference the 'best interests of the child'. However, much confusion surrounds the meaning and implications of this concept in the context of promoting and protecting children's rights. Misinterpreting the aims and scope of the "best interests principle" can lead in practice to highly inappropriate and harmful responses to children who are, or are at risk of being, without parental care. The child has the right to have his or her "best interests" taken into account as "a primary consideration" when decisions affecting the child are made by 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'[35]. These decisions can have far-reaching consequences. So, it is all the more important to be clear about the way the "best interests" are to be approached when implementing the guidelines. Essentially, three interdependent requirements emerge from Art. 3.1 CRC: (1) Whenever the entities mentioned above are involved, they must determine the best interests of the child. This means deciding based on all the information requested and/or made available. This responsibility for determining best interests is particularly important where there is a conflict of opinion or there is no primary caregiver. (2) In making a decision that affects the child, these entities should also consider the rights and legitimate interests of any other party (e.g. parents, other individuals, bodies or the state itself) as well as other pertinent factors. Thus, although prioritising the child's best interests is seen as the guiding rule in practice, decision-makers are not actually bound to follow this in every instance. Requirement (2) should be balanced with requirements (1) and (3) and should not be interpreted outside the context of these three CRC requirements. (3) When a "best interests" decision must be made between various appropriate and viable options for a child, it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. At the same time, any final decision should thoroughly comply with all other rights of the child. Importantly, from a rights perspective, "best interests" do not transcend or justify ignoring or violating one or more other right – if that were so, the concept could never have been included in the CRC. The "right" in the CRC simply seeks to ensure that the child's best interests are duly considered when decisions are made about the most effective way to safeguard his or her overall rights. The responsibility for that decision-making clearly lies with the bodies specified; it cannot be taken over arbitrarily by others. In a field such as alternative care – both in practice

34 Cantwell, 2012, p. 23; Davidson, 2015, p. 384.
35 Art. 3.1 CRC

and from a policy perspective – it is reasonable to expect that in most situations, the child's duly determined best interests should be followed. If and when this is not the case, it must be demonstrated that doing so would seriously compromise the rights and interests of others. One example of this, provided in the UN High Commissioner for Refugees (UNHCR) Guidelines on Determining the Best Interests of the Child (see below), is the decision to not place a child having an infectious disease in a foster family before treatment, even if family-based care has been determined as being in his or her best interests. Similarly, it is possible that the physical security of foster carers looking after a particular child is threatened by third parties, resulting in the need to relocate that child to a group setting where staff protection can be better assured. It follows that situations where the child's initially determined best interests cannot be prioritised are truly exceptional. Furthermore, the "best interests of the child" are the determining factors in two situations that are directly relevant to alternative care: examining the need to separate a child from his or her parents (Arts. 9.1 and 20.1 CRC) and exploring adoption as an option for a child who has been taken into alternative care (Art. 21 CRC). In these cases, the child's best interests should clearly take automatic precedence, but it is still vital to remember that the two other core elements of Art. 3.1 CRC (decision-making responsibility and the rights-compliant nature of the chosen solution) remain intact.[36]

What information, factors and criteria should constitute the basis for that decision? In other words, how are the best interests to be determined? To date, the most comprehensive attempt to respond to this question at the international level is undoubtedly the Guidelines on Determining the Best Interests of the Child drawn up by the UNHCR (2008). Although the best interests determination (BID) model that these guidelines propose was largely designed for unaccompanied and separated refugee children, it is a prime source of inspiration when any significant decisions are to be made about a child and his or her future. For children for whom alternative care is, or may be, a reality, BID should be grounded in an assessment undertaken by qualified professionals. Moreover, it should cover at least the following issues:

1. The child's own freely expressed opinions and wishes (based on the fullest possible information), considering the child's maturity and ability to evaluate the possible consequences of each option presented
2. The situation, attitudes, capacities, opinions and wishes of the child's family members (parents, siblings, adult relatives and close "others"), as well as the nature of their emotional relationship with the child
3. Level of stability and security provided by the child's day-to-day living environment (whether with parents, in kinship or other informal care, or in a formal care setting):
    a. Currently (immediate risk assessment)
    b. Previously in that same environment (overall risk assessment)

36 Cantwell, 2015, p. 24.

   c. Potentially in that same environment (e.g. with any necessary support and/or supervision)
   d. Potentially in any of the other care settings that could be considered
4. Where relevant, the likely effects of separation and the potential for family reintegration
5. The child's special developmental needs:
   a. Related to a physical or mental disability
   b. Related to other particular characteristics or circumstances
6. Other issues as appropriate, such as
   a. The child's ethnic, religious, cultural and/or linguistic background, so that efforts can be made, as far as possible, to ensure continuity in upbringing and, in principle, maintenance of links with the child's community
   b. Preparation for transition to independent living.
7. A review of the suitability of each possible care option for meeting the child's needs, considering all the above

The results of such an assessment should form the basis of the BID by competent bodies, who will also consider all other factors (including the availability of options in practice and the interests and rights of others) before making a decision. The reason for their decision should be explained to the child, especially if it does not correspond to the opinion that child expressed. A BID assessment should also be carried out each time a placement comes up for review (see Art. 25 CRC and § 67 of the UNHCR Guidelines on Determining the Best Interests of the Child). In certain egregious situations, the danger a child faces will require immediate protective action. Here, it is vital to ensure that the full BID process is launched as soon as practicable after the initial emergency response – ideally with an agreed protocol for doing so. In particular, no definitive and durable solution must be arranged before the assessment process has been completed and its findings have been considered by a competent authority.[37]

3. Closing Remarks

This is the theoretical background against which the chapters of this book have been written. We thought it important to emphasise that social rights are one of the most controversial areas of human rights and one of the most variably regulated rights in different states. *The exercise of classical freedoms and social (existential) security are parts of human quality that are mutually dependent. In a society, as a kind of moral community, solidarity must be expressed in some form*. The modern state must protect the individual against social impossibility. It is true, of course, that the extent of social rights depends on the capacity of the state to deliver them, but this should not mean that constitutions do not enshrine some realistic system of support for the vulnerable.

37 Cantwell, 2012, p. 25.

According to the CRC, a child who is temporarily or permanently deprived of his or her family environment, or who cannot be allowed to remain in that environment in his or her own best interests, shall be entitled to special protection and assistance provided by the state. States are obliged to provide alternative care to these children. The UN Children's Fund defines a child protection system as

> 'the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it.'

The Guidelines for the Alternative Care of Children are intended to enhance the implementation of the CRC and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or are at risk of being so. The guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care.

Bibliography

Bojić, F. (2023) 'Sustainability of the social security system – demographic challenges and answers in Romania' in Jakab, N. (ed.) *Sustainability of the Social Security System – Demographic Challenges and Answers in Central-Europe*. Miskolc–Budapest: Central European Academic Publishing, pp. 155–178; https://doi.org/10.54171/2023.nj.sotsss_8.

Cantwell, N., et al. (2012) *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children*. Glasgow: Centre for Excellence for Looked After Children in Scotland.

Davidson, J. (2015) 'Closing the implementation gap: moving forward with the United Nations guidelines for the alternative care of children', *International Journal of Child, Youth and Family Studies*, 6(3), pp. 379–387; https://doi.org/10.18357/ijcyfs.63201513561.

Davidson, J., et al. (2016) 'Developing family-based care: complexities in implementing the UN Guidelines for the Alternative Care of Children', *European Journal of Social Work*, 20(5), pp. 754–769; https://doi.org/10.1080/13691457.2016.1255591.

Desai, M. (2020) 'Towards rights-based integrated child protection service delivery systems' in Desai, M. (ed.) *Rights-Based Integrated Child Protection Service Delivery Systems: Secondary and Tertiary Prevention*. Singapore: Springer, pp. 29–61; https://doi.org/10.1007/978-981-13-8534-6_2.

Dolobáč, M. (2023) 'Sustainability of the social security system – demographic challenges and answers in Slovakia' in Jakab, N. (ed.) *Sustainability of the Social Security System – Demographic Challenges and Answers in Central-Europe*. Miskolc–Budapest: Central European Academic Publishing, pp. 179–198; https://doi.org/10.54171/2023.nj.sotsss_9.

European Commission (2015) '10 principles for integrated child protection systems' [Online]. Available at: https://commission.europa.eu/system/files/2022-12/10_principles_for_integrated_child_protection_systems_en.pdf (Accessed: 30 April 2025).

European Union Agency for Fundamental Rights (2024) 'Mapping child protection systems in the EU – update 2023' [Online]. Available at: https://fra.europa.eu/en/publication/2024/mapping-child-protection-systems-eu-update-2023?page=0#read-online (Accessed: 4 April 2024).

Florczak-Wątor, M. (2018) 'Constitution as a source of state obligations in relation to the citizen', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 80(1), pp. 119–131; https://doi.org/10.14746/rpeis.2018.80.1.11.

Galvas, M., Gregorová, Z. (2000) *Sociální zabezpečení.* Brno: Masarykova univerzita.

Hajdú, J. (2021) 'A 60 éves Európai Szociális Karta néhány proaktív dilemmája', *Pro Futuro,* 11(2), pp. 29–42; https://doi.org/10.26521/profuturo/2021/2/10245.

Halmai, G., Tóth, G.A. (2008) 'Az emberi jogok rendszere' in Halmai, G., Tóth, G. A. (eds.) *Emberi jogok.* Budapest: Osiris, pp. 81–107.

Jayakumar Nayar, R. (1996) 'Not another theory of human rights' in Gearty, C., Tonkins, A. (eds.) *Understanding Human Rights*. London: Pinter, pp. 171–194.

Kardos, G. (2003) *Üres kagylóhéj? A szociális jogok nemzetközi védelmének egyes kérdései*. Budapest: Gondolat.

Koldinská, K., et al. (2022) *Právo sociálního zabezpečení.* 1st edn. Praha: C. H. Beck.

Matlák, J., et al. (2012) *Právo sociálneho zabezpečenia.* 2nd edn. Plzeň: Aleš Čěňek.

Munro, E. (2019) *Effective Child Protection*. London: Sage.

Ravnić, A. (2004) *Osnove radnog prava – domaćeg, usporednog i međunarodnog*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, Manualia Facultatis iuridicae.

United Nations (2007) 'United Nations Study on Violence against Children' [Online]. Available at: https://www.ohchr.org/en/treaty-bodies/crc/united-nations-study-violence-against-children (Accessed: 30 April 2025).

United Nations (2010) *Guidelines for the Alternative Care of Children: resolution – adopted by the General Assembly*, A/RES/64/142, 24 February 2010 [Online]. Available at: https://www.refworld.org/legal/resolution/unga/2010/en/73661 (Accessed: 30 April 2025).

Sári, J. (1997) 'A szociális jogok és a szociális állam', *Jogtudományi Közlöny,* 52(5), pp. 217–220.

Téglási, A. (2019) *The constitutional protection of social rights - with particular reference to the fundamental protection of social security.* Budapest: Dialóg Campus.

Trzciński (2018) 'The Republic of Poland – the common good of all citizens', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 80(1), pp. 23–31.

Van Breda, A.D., et al. (2020) 'Extended care: global dialogue on policy, practice and research', *Children and Youth Services Review*, 2020/119, 105596; https://doi.org/10.1016/j.childyouth.2020.105596.

Vieriu, E. (2016) *Dreptul securității sociale*. București: Pro Universitaria.

Vinković, M. (2023) 'Social law and social security in Croatia' in Jakab, N. (ed.) *Sustainability of the Social Security System – Demographic Challenges and Answers in Central-Europe*. Miskolc–Budapest: Central European Academic Publishing, pp. 71–92; https://doi.org/10.54171/2023.nj.sotsss_4.

| Chapter 2 |

Child-Protection Systems – Croatian Perspective

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ABSTRACT

The child protection system in the Republic of Croatia reflects the spirit and letter of the fundamental principles prescribed in global and regional legal sources that represent a component of the national legal order. These sources include the CRC, ECHR, ECECR, Charter, etc. Such high standards of child protection require adjustment of the legal, educational, public finance, healthcare and social welfare systems to form an inherent, functional and effective framework of the child protection system. The goal of this report is to present a comprehensive analysis of all relevant instruments the Croatian legislator has used in the context of realisation of the national child protection system.

KEYWORDS

child protection, child at risk, authority measures, child's participation rights, parental responsibility

1. What Is the Core Aim of the National Child Protection System?

The Constitution of the Republic of Croatia (hereinafter, Constitution) guarantees the protection of children.[1] Thus, according to Art. 62 of the Constitution 'The state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life'. Special protection is guaranteed to particularly vulnerable groups of children, and thus according to Art. 63 of the Constitution, 'Physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare. The state shall devote special care to orphans and minors neglected by their parents'.

1 Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14 [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: 15 December 2023).

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Responsibility for the development, growth, upbringing and protection of the child lies primarily with the parents, as prescribed by Art. 18 para. 1 of the United Nations Convention on the Rights of the Child (CRC).[2,3] However, sometimes parents do not have sufficient parental competencies to protect children from inappropriate actions of third persons, and sometimes they themselves do not comply with the requirement of their primary responsibility for the child's upbringing and development, even though the best interests of the child must be their basic concern.[4] The competent state authority intervenes to protect children when parent(s) cannot take care of the child independently or satisfactorily. Therefore, it is the task of state authorities to intervene to protect children if the latter's rights and welfare are threatened by the unlawful actions of parent(s), family member(s) or third unrelated person(s). Procedures and measures undertaken by the state authorities are a form of assistance to the child, parents and the family, as prescribed by Art. 18 para. 2 in accordance with Art. 9 of the CRC.[5,6] Understandably, this is one of the most important concepts within the Croatian child protection system, but it is also one of the most difficult concepts to apply in practice.[7]

When it comes to children without (adequate) parental care, the institute of guardianship, regulated by the FA, is intended for their protection and care. The goal of guardianship is to replace parental care in circumstances in which the child is without parents or the parents have legal or factual reasons that prevent them from taking care of the child[8]. In cases wherein the child's rights in the family are endangered or violated, it is possible to impose several preventive or repressive measures

2 CRC (Official journal of the SFRY, No. 15/90, Official Gazette – International treaties, No. 12/93, 20/97, 4/98, 13/98) is an international global legal source that represents a component of the domestic legal order of the Republic of Croatia, and it has primacy over domestic legal sources but not over the Constitution (Art. 134 Constitution).

3 See Art. 6 of the Family Act (Official Gazette, No. 103/15, 98/19, 47/20, 49/23; hereinafter: FA) that stipulates that "Parents above all have the right, duty and responsibility to live with their child and to take care of the child, and help is provided and intervened only in case of need".

4 Hrabar, 2021, p. 239.

5 Ibid.

6 Although it is not explicitly prescribed in Art. 6 of the FA, help and intervention in such sensitive family relations is expected from state authorities. Therefore, it is primarily the right and duty of parents to take care of their children, while state authorities, in case of need, have a duty to help parents in the exercise of their fundamental right and duty. State authorities also have the competence to supervise parents in exercising parental care; in case they do not fulfil their duties towards the child for either physical or moral reasons and thus endanger the welfare of the child, the state is obliged to intervene in the family life of parents and children.

7 A confirmation of such a thesis can be found within the jurisprudence of the European Court of Human Rights (ECtHR). In this regard, in several cases, the ECtHR criticised the conduct of the national authorities that have not made any attempt to provide the family with additional social and economic support to meet the family's basic needs and, in failing to do so, prevent further intervention in their family life; see: Wallová and Walla *v.* the Czech Republic, No. 23848/04, 2006 (paras. 73–74); *Saviny v. Ukraine*, No. 39948/06, 2008 (para. 57); *R.M.S. v. Spain*, No. 28775/12, 2013 (para. 85–86); Soares de *Melo v. Portugal*, No. 72850, 2016 (para. 106).

8 Art. 219 para. 1, Arts. 224–225, Arts. 227–228 and Art. 230 of FA.

to protect his or her rights and welfare. The measures imposed must correspond to a degree of endangerment of the child's rights established in each individual case.[9] Namely, one fundamental principle that must be respected when determining the child protection measures is the principle of proportionality, meaning that state authorities are required to intervene by proportionate means, as provided by law[10], in only exceptional cases wherein parents or other family members endanger the welfare of the child by their actions or omissions. By acting in accordance with the above principle, the state ensures that interference in the sphere of family life is reasonable, proportionate and necessary for the protection of the welfare of children.[11]

Imposing the aforementioned measures constricts parental rights as subjective civil rights to a greater or lesser extent, and certain measures limit the right of the child to live with his or her parent(s) and the right to respect for family life,[12] which is guaranteed by Art. 35 of the Constitution as well as Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms or the European Convention on Human Rights (ECHR).[13,14] These measures aim to protect personal or property rights and the welfare of the child and not to punish the parents. If there are more serious cases of child endangerment and the child's life, health and development are at risk, the child will be separated from the family. During separation from the family, it is necessary to provide adequate care for the child, create conditions for the child's return to the family if possible and, otherwise, take steps for other forms of permanent care for the child.[15]

An integral part of the court's decision on separating the child from the family is the placement of the child, as well as contact with the parents and/or other family members[16]. Namely, contact is an integral element of family life that remains between the child and his or her parents and/or other family members in cases wherein the

9 Hrabar, 2021, p. 242.

10 Art. 7, Art. 128 and Art. 485 para. 3 of FA.

11 This is in line with the provision of Art. 16 of the Constitution, which prescribes that freedoms and rights may only be restricted by law to protect the freedoms and rights of others. Furthermore, it sets a condition that any restriction of freedoms and rights must be proportionate to the nature of the need for such restriction in each individual case. In this regard, it should be noted that the ECtHR "also requires Contracting States to evaluate proportionality of interfering in private and family life". See Büchler and Keller, 2016, p. 536.

12 The concept of family life in the European legal and social framework is often depicted as a '*right of members of the family to enjoy each other's company*'. See the Guide on Art. 8 of the ECHR, Para. 295. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_8_eng (Accessed: 15 December 2023); Mandija, 2020, p. 101. See also the jurisprudence of the ECtHR, such as in the following cases: *X v. Croatia*, No. 11223/04, 2008 (para. 36); *Ribić v. Croatia*, No. 27148/12, 2015 (para. 88) and *Gluhaković v. Croatia*, No. 21188/09, 2011 (para. 54).

13 ECHR, Official Gazette – International Treaties, No. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10.

14 Hrabar, 2021, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.

15 See: Hrabar, 2021, p. 245; Radina, 2017, pp. 96. and 98; Sladović Franz, 2016, pp. 235–236 and 238; Vejmelka and Sabolić, 2015, pp. 72–98. See also jurisprudence of the ECtHR, such as in the following cases: *Levin v. Sweden*, No. 35141/06, 2012 (paras. 61–64), *K. and T. v. Finland*, No. 25702/94, 2001 (para. 179), *Saviny v. Ukraine*, No. 39948/06, 2008 (para. 52).

16 Arts. 119–120 of FA.

child is separated from the family. Such contact can be limited, exercised under supervision or completely prohibited by a court decision, provided that such a decision is necessary for the child's welfare[17]. In addition, separation should not last longer than is needed to protect the rights and welfare of the child, and parents have the right to assistance and support to try to eliminate the causes of separation and return the child to the family in accordance with the child's welfare.[18,19]

In addition, the social welfare system governed by special regulations aims to provide material conditions and various forms of assistance to children and families in need. This is done through activities, measures and programmes intended to prevent, detect and solve problems that occurred due to disturbed relationships, parental difficulties in care for the children or other unfavourable circumstances. Some examples include different forms of benefits in social welfare and social services, including foster care.[20] Moreover, if the child is at risk as the parent does not fulfil his or her maintenance obligation, a temporary maintenance institute is provided, the aim of which is to ensure the child's right to a standard of living in circumstances when parents and other maintenance debtors do not fulfil their obligation in whole or in part.[21,22]

2. What Are the Guiding Principles of the National Child Protection System?

The guiding principles of the Croatian child protection system include the following: Primary protection of the best interests of the child, as a supreme legal standard set by the CRC[23], represents one of the fundamental principles incorporated into the FA. Namely, according to Art. 5 para. 1 of the FA, courts and public authorities conducting proceedings that directly or indirectly decide on the rights of the child must, above all, protect the rights and welfare of the child.[24]

Protection of the best interests and indeed the welfare of the child is the duty of all – the parents being the first responsible for their children, followed by family members, the community in general and the state. The most important role in protecting the child's welfare lies with the family. In general, parents raise their children in accordance with the needs of the children, hence protecting and safeguarding

17 Arts. 123–124 of FA.
18 Čulo Margaletić, 2014, pp. 13–21; Hrabar, 2022, pp. 101–102.
19 Art. 129 Paras 4–5 of FA.
20 Social Welfare Act, Official Gazette, No. 18/22, 46/22, 119/22, 71/23; Foster Care Act, Official Gazette, No. 115/18, 18/22.
21 Temporary Maintenance Act, Official Gazette, No. 92/14.
22 Art. 7 of the Temporary Maintenance Act.
23 Art. 3 of the CRC.
24 *Amplius Šeparović*, 2014, pp. 29–58; Zermatten, 2010, pp. 483–499. General comment No. 14 (2013) [Online]. Available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf (Accessed: 15 December 2023).

their rights and best interests. Sometimes, parents need assistance to raise their children properly, which is perhaps more often recognised than before. It is then the state's responsibility to support parental efforts through complementary measures and activities[25] to enable parents to provide adequate care and upbringing in line with the best interests of their children.[26]

Child participation, that is, the child's right to be heard,[27] is one of the basic principles of the CRC[28], and it is also implemented in the basic national family law regulation in the provisions of Art. 86 of the FA:

> '(1) Parents and other persons who take care of the child are obliged to respect the views of the child in accordance with his/her age and maturity.
> (2) In all proceedings involving decisions on the child's right or interest, the child is entitled to be informed in an appropriate way of the relevant circumstances of the case, obtain advice and express his/her views and to be informed of the possible consequences of respecting those views. The child's views shall be given due weight in accordance with his/her age and maturity.'

By giving due weight to the children's views in all matters affecting them, their legal subjectivity and autonomy of will is respected. Consequently, this contributes significantly to the children's more active role in the society in general and especially within the family.

Therefore, the child is a party to all judicial and administrative proceedings in which his or her rights and interests are decided[29] and has the right to be informed and express his or her opinion[30], always following the principle of primary protection of his or her best interests[31]. If the court does not give the child the opportunity to be heard in these proceedings, and there are no particularly justified reasons for this, this would represent a substantial violation of civil procedure rules[32] as well as a violation of the constitutional right to a fair trial.[33,34] This confirms that compliance

25 Art. 3 para. 2 of the CRC obliges the states to take all appropriate legislative and administrative measures to ensure the child has such protection and care as is necessary for his or her welfare.
26 Hrabar, 2021, p. 241.
27 *Amplius* Majstorović, 2017a, pp. 55–71.
28 Art. 12 of the CRC.
29 Art. 358 of the FA.
30 Ibid., Arts. 86 and 360.
31 Ibid., Art. 5.
32 Art. 346 of the FA, in connection with Art. 354 para. 2 Subpara. 6 of the Civil Procedure Act – violation of the principle of hearing the parties. Civil Procedure Act, Official Gazette, No. 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 148/11 – official consolidated text, 25/13, 89/14, 70/19, 80/22, 114/22.
33 Aras, 2014, p. 63; Aras Kramar, 2022, p. 122; Šimović, 2011, p. 1642.
34 Art. 29 para. 1 of the Constitution.

with the child's right to be informed and express his or her opinion is of essential importance within the Croatian child protection system.[35]

Additionally, it needs to be emphasised that guidelines regarding this right of the child exist at the international level,[36] and this right is guaranteed in other international documents besides the CRC (e.g. European Convention on the Exercise of Children's Rights [ECECR], Convention on Contact Concerning Children and Charter of Fundamental Rights of the European Union [Charter]).[37,38]

According to the non-discrimination principle, which is derived from the Constitution[39]

> 'All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics.'[40]

The principle of the primary right of parents to take care of the child and the duty of the state to provide them with assistance[41] indicates that

> 'Parents above all have the right, duty and responsibility to live with their child and take care of him/her. Assistance is provided and interventions are made only when necessary.'[42]

Moreover, the principle of proportionate and mildest intervention into family life[43] indicates that

35 Proper exercise of the child's right to be informed and heard is considered a precondition for the correct assessment and protection of the best interest of the child. See: Constitutional Court of the Republic of Croatia (CCRC), U-III/1008/2015, 1 July 2015, para. 8.1 and 11.2; CCRC, U-III/4069/2013, 10 September 2014, paras. 2 and 4.2.

36 General comment No. 12 (2009) [Online]. Available at: https://www.refworld.org/docid/4ae562c52.html (Accessed: 15 December 2023); See: Korać Graovac, 2012, pp. 117–137.

37 Hrabar, 2021, p. 224.

38 Although the ECHR does not contain a separate article on children's participation rights, it nevertheless represents an important source for these rights, thanks to the unique position of the ECtHR and its interpretations of procedural requirements deriving from Arts. 6 and 8 through its case law: Case *C v. Croatia*, No. 80117/17, 2020 (paras. 73, 76–78 and 81–82); Case *M. and M. v. Croatia*, No. 10161/13, 2015 (paras. 129, 171, 181 and 184–187).

39 Art. 14 para. 1 of the Constitution.

40 A similar provision stipulating the prohibition of discrimination against children is provided by Art. 2 of the CRC.

41 Art. 6 of the FA.

42 A similar provision stipulating the indispensable role of the parents for the upbringing and development of the child is provided by Art 18 para. 1 of the CRC.

43 Art. 7 of the FA.

> 'Measures affecting family life are acceptable as long as they are necessary and their purpose cannot be successfully met by undertaking more lenient measures, including preventive assistance, i.e. family support.'

The principle of proportionality is especially emphasised in relation to measures for the protection of the rights and welfare of the child in Art. 128 of the FA, according to which the authority that conducts the proceeding when choosing a measure suitable for the protection of the rights and welfare of the child is obliged to determine the measure that least restricts the right of the parents to take care of the child, if it is possible to protect the rights and welfare of the child with such a measure.

For the most part, compliance with the subject principle is accomplished in legal practice through the application of a pragmatic procedural mechanism that obliges the courts to state the reasons for applying the least restrictive measure in the reasoning of the decision entailing the separation of children from their parents and their placement in public care[44]. Thus, the Croatian legislator confirmed that national legal solutions, as well as majority of the judicial practice, reflect the position of the ECtHR:

Any order related to the public care of a child should, firstly, be capable of convincing an objective observer that the measure is based on a careful and unprejudiced assessment of all evidence on file, with the distinct reasons for the care measure being stated explicitly.[45]

According to the principle of guardianship protection[46], 'Guardianship protection of a child without parental care must be proportionate to the need of protection, with the obligation of respecting the fundamental human rights and the rights and welfare of the child'.

The principle of urgency in resolving family law matters related to the child[47] states that 'In all family-law proceedings regarding the child, competent authorities must proceed with urgency, while protecting the welfare of the child at the same time'. However, if the decision-making procedures are not completed swiftly enough, this would pose a risk of the so-called de facto decision-making, namely codification of the status quo.[48]

As regards the duty of notification and cooperation with the goal of child protection, according to Art. 132 paras. 1–2 of the FA, there is a legal duty of all to report a potential violation of the child's personal and property rights to the Croatian Institute

44 Art. 485 Para. 3 of the FA.

45 *K.A. v. Finland*, No. 27751/95, 2004 (Para. 103). See also CCRC, U-III/34/2020 of 15 July 2020, Para. 11; General comment No. 14 (2013), para. 61.

46 Art. 8 of the FA.

47 Ibid., Art. 10.

48 Šimović and Majstorović, 2017, p. 7. See Guide on Article 8 of the ECHR, para. 44. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_8_eng (Accessed: 15 December 2023). See also significant cases before the ECtHR: *Ribić v. Croatia*, No. 27148/12, 2015 (Para. 92), *K. B. and others v. Croatia*, No. 36216/13, 2017 (para. 142), *Begović v. Croatia*, No. 35810/14, 2019 (Para. 62) and *Adžić v. Croatia*, No. 22643/14, 2015 (para. 93).

for Social Work (CISW); then, it is the CISW's duty to investigate the case and take measures to protect the rights of the child. The court, CISW, parents and other persons or social welfare institutions entrusted with the care of the child (e.g. police administration, public health institutions and educational institutions) are obliged to mutually cooperate and inform each other about the actions they have undertaken[49]. The court before which the misdemeanour or criminal proceedings are conducted, the state attorney and the police are obliged to notify the CISW within 24 hours of the initiation of proceedings in connection with violation of a child's rights or night outings of a child aged under 16 years.[50,51] This provision prescribes an obligation as a part of the holistic cooperation of state authorities. This opens the possibility, and probably the need, to impose some preventive or repressive family law measures towards parents with the goal of timely protection of the child, regardless of the outcome of the misdemeanour or criminal proceedings.[52] The CISW is obliged to investigate the case and take measures to protect the child's rights immediately upon receiving the notification and to inform the person who submitted the notification[53].

The duty of cooperation between authorities and persons in matters of guardianship is specifically regulated in Art. 276 of the FA. This refers to the CISW's obligation to cooperate with state administration bodies, local governments, legal entities and persons, while the social welfare, educational, health and other institutions, as well as other providers of social or health services (i.e. the family in which the ward is placed), must inform the guardian and the CISW about all important circumstances concerning the ward.

3. Who Is Responsible for Maintaining the Child Protection System and In What Percentage? How Is the System Financed?

The child protection system is conceptually based on the strategy of investing public (state) funds in the social welfare, healthcare, educational and justice systems with the goal of ensuring security, development and well-being of all individuals and their families (including children), based on equal participation and access to the benefits of economic, legal and social development. There is no precise scientific research that confirms the percentage or share of state funds in financing the child protection system. However, this percentage is roughly estimated at 65%, while the rest – around 35% – comes from the funds of cities, counties and municipalities. Some of these local self-government units usually bear a considerable part of the costs of preschool upbringing and education of children (nursery and kindergarten), day

49 Art. 132 para. 3 of the FA.
50 *Amplius* Majstorović, 2017b, pp. 103–107.
51 Art. 132 para. 4 of the FA.
52 Hrabar, 2021, p. 243; Herceg and Salitrežić, 2014, pp. 76–81.
53 Art 132 para. 5 of the FA.

care in elementary schools, free textbooks for children in elementary and secondary schools, etc.[54] The Catholic Church in Croatia has no financial obligation to bear the costs of the child protection system, but it partially participates in the organisation of preschool as well as primary and secondary school education, thus helping to meet the needs of parents and children (free of charge).

4. Who Is a Child at Risk?

A child at risk is any child whose rights, welfare and development are endangered or whose rights and welfare have been violated.

The rights of a child are considered as endangered if that child's care is inadequate; if the child has psychosocial difficulties that are manifested through behavioural, emotional, educational and other problems in the child's upbringing; or if there is a likelihood that this will occur[55]. In the process of decision-making regarding the necessity and scope of state authority intervention, useful instruments are provided in the Bylaw on the Measures of Protection of Personal Rights and Welfare of the Child, passed by the Ministry of Labour, Pension System, Family and Social Policy.[56] The two instruments assisting professionals in the process of decision-making regarding the risk assessment and need of intervention are the Child Developmental Risk Assessment List and Safety of the Child Assessment List, both of which form an integral part of the bylaw.[57]

Additionally, a child at risk is one who has certain developmental difficulties, that is, a child who has some form of disability. According to the Constitution, the state is obliged to provide special care and protection to such children.[58]

A child who is without adequate parental care because of certain factual or legal circumstances[59] on the part of the parents that prevent them from taking care of the child is also considered at risk. Furthermore, a child who does not receive

54 *Amplius* Šimović and Deskar-Škrbić, 2020, pp. 79–204, 323–350; Babić, 2020, pp. 56–64.

55 Art. 131 of the FA.

56 Pravilnik o mjerama zaštite osobnih prava i dobrobiti djeteta (Bylaw on the measures of protection of personal rights and welfare of the child), Official Gazette, No. 123/15.

57 The lists in question are of great importance in the process of making a court decision in proceedings regarding the separation of children from the parents. This is because they are used by courts as a tool to confirm the existence of a legal basis for imposing a repressive measure for the protection of the welfare of children. This is best illustrated in the judgement of the CCRC, U-III/2901/2020 of 18 February 2021, para. 24.

58 Art. 63 para. 3.

59 A child will be placed under guardianship if his or her parents (a) are dead, disappeared, unknown or have been of unknown temporary residence for at least one month; (b) are deprived of the right to parental care; (c) deprived of legal capacity in the part that prevents them from exercising parental care; (d) are minors who have not acquired legal capacity by getting married; (e) are absent or unable to take care of their child and have not entrusted the exercise of parental care to a person who meets the requirements for a guardian; (f) have given their consent for the adoption of a child (Art. 224 of the FA).

maintenance from the parents who are primarily obliged to support the child, or from other maintenance debtors such as grandparent(s) or stepparent(s), should also be considered as a child at risk because his or her right to an adequate standard of living is endangered.[60,61] If the child lives in poverty in a family that does not have enough resources to meet basic life needs, that child is also at risk, as a result of being in a family in need.

5. Children With Disabilities in the Child Protection System – Are There Any Special Measures to Integrate Them and Provide Them With the Same Rights?

According to the Constitution, children with physical and mental disabilities and socially neglected children shall be entitled to special care, education and welfare[62].

Increased material needs that may exist on the part of the child because of some form of disability will be considered when determining the amount of child maintenance in court proceedings.[63]

In the social welfare system, in accordance with the Social Welfare Act (SWA), certain allowances and social services are provided especially for this vulnerable category of children: personal disability allowance, allowance for help and care and allowance for the status of the parent-caregiver. Moreover, social services of special importance for these children include psychosocial support, early development support and assistance with inclusion in education and regular education programmes.[64] Children with disabilities can be beneficiaries of other compensations and social services in the social welfare system[65], but we emphasised those that we consider particularly important for this group of children.[66]

60 Serious endangerment of the child, due to non-payment of maintenance by the maintenance debtor, is confirmed by the fact that the Criminal Act (Official Gazette, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23) regulates the criminal offense of failure to provide maintenance in the provision of Art. 172.

61 Art. 27 paras. 1–2 CRC in connection with Art. 288 of the FA.

62 Art. 64 para. 3 of the Constitution.

63 A child may have increased material needs if he or she needs constant enhanced care related to the child's health condition, which must be considered when determining maintenance in civil proceedings (Art. 312 of the FA).

64 *Amplius* Milić Babić et al., 2023, pp. 43–96; Sladović Franz, 2018, pp. 543–544.

65 e.g. residence, Art. 104; organised housing, Art. 106; and accommodation, Art. 109 of the SWA.

66 In statistical reports of the competent ministry, it is possible to see how many children with disabilities were beneficiaries of certain rights from the social welfare system. The last report for the year 2022: Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike, 2022, pp. 74–75; pp. 77–78.

The pre-school Education Act (PEA)[67] and Primary and Secondary School Education Act (PSSEA)[68] regulate the status and certain benefits of children with disabilities within the national education system (e.g. provision of a teaching assistant and professional communication mediator). Thus, they elaborate certain mechanisms for the protection of their right to upbringing and education, as prescribed by Art. 94 of the FA in connection with Art. 64 para. 3 of the Constitution.

Several national legal sources (e.g. the Health Protection Act,[69] Mandatory Health Insurance Act[70] and Maternity and Parental Subventions Act[71]) regulate the status and certain benefits of children with disabilities and their parents as primary caregivers within the national health care system, thus elaborating certain mechanisms for the protection of the right to health, development, care and protection of the aforementioned category of children, as prescribed by Art. 93 of the FA in connection with Art. 64 para. 3 of the Constitution.

6. What Is the Definition of Necessary Intervention?

Interventions in the family life of parents and children are allowed if they are necessary. This means that the aim – protection of the rights and welfare of the child – could not be achieved with any less restrictive, that is preventive, measure. Therefore, necessity indicates that the intervention responds to an essential social need and is proportional to a certain legitimate aim – protection of the rights and welfare of the child.[72] Proportionality means the imposition of a measure that is appropriate to the degree of threat to the child's rights, as derived from the expert assessment of a competent body.[73] Proportionality in deciding on measures to protect the rights and welfare of the child is a core principle and is in accordance with the requirements of the ECHR when it comes to the right to respect for family life, as derived from Art. 8.[74]

In accordance with the aforementioned principle, the court or the CISW, as the competent authority that conducts the proceeding to choose a measure suitable for the protection of the rights and welfare of the child, is obliged to determine the measure that least restricts the right of parents to take care of the child, if it is possible

67 PEA, Official Gazette, No. 10/97, 107/07, 94/13, 98/19, 57/22, 101/23, 145/23; Arts. 17 and 24a.
68 PSSEA, Official Gazette, No. 87/08, 86/09, 92/10, 105/10, 90/11, 5/12, 16/12, 86/12, 126/12, 94/13, 152/14, 7/17, 68/18, 98/19, 64/20, 133/20, 151/22.
69 Health Protection Act, Official Gazette, No. 100/18, 125/19, 133/20, 147/20, 136/21, 119/22, 156/22, 33/23.
70 Mandatory Health Insurance Act, Official Gazette, No. 80/13, 137/13, 98/19, 33/23.
71 Maternity and Parental Subventions Act, Official Gazette, No. 152/22.
72 Hrabar, 2021, p. 242; *Amplius* Omejec, 2021, pp. 1–26.
73 Such a proportionate intervention should be based on an expert interdisciplinary assessment of the family situation. See: Khazova, 2016, p. 30; Sladović Franz, 2016, pp. 227–228; Hrabar, 2021, p. 242.
74 *Amplius* Čulo Margaletić, 2014, pp. 13–21; Radina, 2017, pp. 93–116.

to protect the rights and welfare of the child with such a measure. Acting contrary to this principle would represent a violation of the rights of the child and parents guaranteed in Art. 8 of the ECHR.[75]

7. Structure of the Child Protection System

7.1. Monetary and In-Kind Benefits

Regarding monetary and in-kind benefits as part of the child protection system, the Croatian legislator uses several instruments to form an inherent monetary child protection framework. Thus, the Value Added Tax (VAT) Act[76] prescribes tax benefits for certain groups of products and services that are primarily intended to meet the needs of children and their families. For instance, VAT is calculated and paid at a reduced rate of 5% on bread, milk, meat, fish, fruit and vegetables, medication, medical equipment, textbooks for primary and secondary education and baby food[77] and 13% on water, electricity and gas supply, baby diapers and children's car seats.[78][79]

The VAT Act also prescribes a complete tax exemption for services and goods related to medical protection provided by hospitals and other public or regional medical institutions and bodies with public authority; protection of children and youth provided by institutions and bodies with public authority; social care; and education of children and youth, school or university education and professional training and retraining, which are provided by institutions and bodies with public authority[80].

Another instrument the Croatian legislator used is the government subsidy housing loan programme prescribed by the Act on Subsidising Housing Loans.[81] This measure has been implemented since 2017 for subsidising housing loans for citizens residing on the territory of the Republic of Croatia who are not older than 45 years and will use funds obtained from the loan for the purchase or (re)construction of a house or flat to meet the basic living needs for themselves and members of their (newly formed) families. This measure also has a demographic dimension, as the subsidised loan term is additionally extended by two years for each child born or adopted during

75 See the jurisprudence of the ECtHR, such as in Case *C v. Croatia*, No. 80117/17, 2020 (paras. 73, 76–78 and 81–82); Case *M. and M. v. Croatia*, No. 10161/13, 2015 (paras. 129, 171, 181 and 184–187); and Case *S. H. v. Italy*, No. 52557/14, 2015 (paras. 43–58). See also jurisprudence of the CCRC, such as in U-III/1411/2021, 14 October 2021, paras. 2.2, 2.5, 2.10, 12 and 15; U-III/1359/2019, 19 June 2019, Paras. 4.1, 4.3, 4.5, 16 and 19.

76 Value Added Tax Act, Official Gazette, No. 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, 121/19, 138/20, 39/22, 113/22, 33/23.

77 Art. 38 para.2 of the VAT.

78 The regular VAT rate in Croatia is 25%.

79 Art. 38 para. 3 of the VAT.

80 Art. 39 para. 1 of the VAT.

81 Act on Subsidizing Housing Loans Official Gazette, No. 65/17, 61/18, 66/19, 146/20.

the subsidised loan period. The subsidised loan term is also extended by one year per child or member of the applicant's household who is not aged over 18 years.[82]

The child maintenance system is also used as an instrument of the monetary child protection framework. This instrument is prescribed by the FA for protecting the child's constitutional and conventional right to an adequate standard of living[83]. This means that the Croatian legislator has the difficult task of foreseeing measures that would ensure the child's right to receive maintenance from parents or other persons who are materially responsible for him or her, no matter if they live within the Republic of Croatia or abroad.[84] Thus, the Croatian legislator prescribes three categories of child maintenance debtors: the parent(s) as primary debtor(s); grandparent(s) as first subsidiary debtor(s) and stepparent(s) as second subsidiary debtor(s).[85,86]

Child maintenance is determined as the total amount of money the court has estimated, considering the needs of the child as the maintenance creditor and abilities of the parent with whom the child does not live as the maintenance debtor[87]. It is important to emphasise that child maintenance is privileged within the enforcement proceedings in relation to the claims of other creditors of the maintenance debtor. For instance, child maintenance is privileged because enforcement of the salary and other permanent income of the parents or any other maintenance debtor can be carried out before the enforcement of any other claims on these incomes, regardless of the time these claims incurred. To realise the principle of the primary protection of the best interests of the child[88], other creditors must wait until the child, as the maintenance creditor, is first settled, and only then can they be settled in accordance with the rules of enforcement law.[89] Moreover, if the child is at risk because the maintenance debtor does not fulfil his or her maintenance obligation, a temporary maintenance institute is provided[90]. The aim of such an institute is to ensure the child's right to a standard of living in circumstances wherein parents and other maintenance debtors do not fulfil their obligation in whole or in part.

The FA also provides for special protection of the family home as a yet another instrument of the monetary child protection framework. In this regard, the court may determine that the right to live in the family home, which represents a part of the parents' matrimonial property, is exercised by only one parent with whom joint minor children live based on the court's decision, following the end of marriage or

82 *Amplius*, see: https://apn.hr/subvencionirani-stambeni-krediti/put-do-kredita (Accessed: 30 November 2023).
83 Art. 63 of the Constitution and Art. 27 paras. 1–2 of the CRC.
84 Korać Graovac, 2021, p. 401; Korać Graovac, 2016, pp. 83–98; Čulo, 2009, pp. 157–173; Rešetar, 2022, pp. 989–1078.
85 Korać Graovac, 2021, pp. 417, 419.
86 Art. 288 of the FA.
87 Ibid., Arts. 307, 309 and 311–317.
88 Art. 3 of the CRC and Art. 5 para. 1 of the FA.
89 Korać Graovac, 2021, p. 407.
90 Art. 7 of the Temporary Maintenance Act.

extramarital union of the parents[91]. However, this instrument is rarely used in practice due to strict legal preconditions that must be met for such legal protection to be provided to children as indirect beneficiaries.[92]

Finally, the child allowance system is also used as an instrument of the monetary child protection framework. The right to child allowance is acquired depending on the total income of the members of the beneficiary's household.[93,94] Therefore, children's allowance is a monetary income used by a parent or other person to whom the upbringing and care of the child has been entrusted (e.g. adoptive parent, guardian, stepparent and grandparent), with the goal of supporting the maintenance and upbringing of that child.[95,96]

7.2. Basic Child Welfare Services Within the Framework of Personal Care

The availability of preschool programmes such as nurseries and kindergartens is of crucial importance for the early development and upbringing of preschool children, as well as for helping parents balance their family and employment obligations. Local and regional self-government units organise, implement and co-finance preschool education programmes within their territorial areas[97]. However, one part of the funds needed to finance this system is realised by kindergartens charging the parents for their services, except for the preschool programme, which is free for the parents[98]. The remaining part of funds for programmes related to public needs in the field of preschool education is provided in the state budget[99].

Compulsory education in the Republic of Croatia is free of charge, as prescribed by the Constitution[100]. The same does not apply to secondary education, but most students attend secondary schools that are predominantly organised within the network of public schools whose programmes are free of charge for enrolled students.[101]

Textbooks for all primary school students in the Republic of Croatia are free and provided by the state budget. In addition, the government may, in accordance with available funds, (co-)finance the purchase of textbooks for secondary school students. Accordingly, it provides compulsory textbooks for secondary school students who are

91 Art. 46 in connection with Art. 491 of the FA.
92 *Amplius* Šimović, 2016, pp. 141–163; Šimović, 2015, pp. 33–45.
93 Child Allowance Act, Official Gazette, No. 94/01, 138/06, 107/07, 37/08, 61/11, 112/12, 82/15, 58/18.
94 Arts. 2 para. 1 and Arts. 16–22 of the Child Allowance Act.
95 For a more detailed exposition on the issue of interdependence and interconnection of child maintenance and children's allowance as instruments of the monetary child protection framework, see Supreme Court of the Republic of Croatia, Rev 5403/2016, decision from 9 March 2016; Supreme Court of the Republic of Croatia, Rev 1577/2015, decision from 31 August 2015.
96 Art. 1 in connection with Art. 6 para. 1 of the Child Allowance Act.
97 Art. 2 of the PEA.
98 Ibid., Art. 48 Paras. 4–5.
99 Ibid., Arts. 50 and 50a.
100 Art. 65 of the Constitution.
101 UNICEF, 2022, p. 34.

members of a household that receives guaranteed minimum benefit—a social welfare benefit prescribed by Art. 21 SWA.[102]

Involvement of children in after-school activities such as the extended stay service in primary schools is available in 43% of cities and 10% of municipalities in the Republic of Croatia. Most often, it covers only the first two grades of primary school, and older children are covered less often. Extended stay programmes are most often attended by children of employed parents and are financed partly by local and regional self-government units[103] and partly by parents of children attending these programmes.[104]

Regarding transportation costs in the education system, the primary school founder provides student transportation for children attending the programme in this school: for children from the first to fourth grades, the distance from the residential address to the school should be at least three kilometres, and for children from the fifth to eight grades, it should be five kilometres[105]. For children with developmental disabilities, the founder is obliged to provide transportation regardless of the distance of the residential address to the school.[106] The transportation of secondary school students is regulated by the Decision on the Criteria and Method of Financing the Costs of Public Transport of Regular Secondary School Students, which is adopted for each school year. According to this decision, organised transport of students is subsidised by the Ministry of Science and Education in the amount of 75% or 100% of the costs of public transport, depending on the prescribed criteria.[107]

Regarding access to quality nutrition, which is essential for the optimal development of children, the Government of the Republic of Croatia has decided in 2023 to finance the programme of one free meal for all children in elementary schools using the state budget. Unfortunately, there is no system of organised or subsidised school nutrition for secondary school children.[108]

Access to healthcare and health services are means of achieving the child's right to the highest possible level of health guaranteed by the Constitution[109] and CRC[110]. Free access to regular health checks and availability of child health protection programmes until the age of majority ensures early detection of physical and mental health problems, as well as prevention and preservation of future health. In

102 Ibid.
103 Art. 143 para. 8 of the PSSEA.
104 UNICEF, 2022, pp. 34–35.
105 Art. 69 PSSEA.
106 UNICEF, 2022, pp. 38–39.
The Decision on the Criteria and Method of Financing the Costs of Public Transport of Regular Secondary School Students [Online]. Available at: https://mzo.gov.hr/UserDocsImages/dokumenti/Obrazovanje/SrednjeObrazovanje/Prijevoz-srednje/Prijevoz-SS-2023-2024/Odluka-o-kriterijima-i-nacinu-financiranja-troskova-javnog-prijevoza-redovitih-u%C4%8Denika-srednjih-skola-2023-2024.pdf (Accessed: 30 November 2023).
108 UNICEF, 2022, p. 57.
109 Art. 69 of the Constitution.
110 Art. 24 of the CRC.

this regard, the healthcare system of the Republic of Croatia is based on compulsory health insurance, thanks to which all children aged under 18 years, and older if they are included in the regular education system, have free access to health services and healthcare. Although there is a model of participation in the costs of health services and medicines (so-called participation), children aged up to 18 years and those older in the regular education system do not pay for participation and have free access to hospitals and specialist examinations.[111]

7.3. Special Child Welfare Services Within the Framework of Personal Care

For a more detailed exposition on this issue, see chapter 5, Children with Disabilities in the Child Protection System.

7.4. Authority Measures

7.4.1. Taking Under Protection

When parents do not have sufficient parental competencies to protect the child from inappropriate actions of third persons or they themselves endanger the upbringing, development and welfare of the child, the intervention of competent state authorities is needed.[112] Procedures and measures undertaken by the state authorities are a form of assistance to children, parents and the family[113]. Therefore, state authorities have the competence to supervise parents in exercising parental care; if parents do not fulfil their duties towards the child for either physical or moral reasons and thus endanger the welfare of the child, state authorities are obliged to intervene in the family life of parents and children. Understandably, while this is one of the most important concepts within the Croatian child protection system, it is also one of the most difficult to apply in practice.

In cases wherein the child's rights in the family are endangered or violated, it is possible to impose several preventive or repressive measures to protect the rights and welfare of the child. The measures imposed must correspond with the principle of proportionality, meaning the state authorities are required to intervene by proportionate means, as provided by law[114]. In this regard, the Croatian legislation defines a plethora of measures, starting from the warning issued to parents regarding errors

111 UNICEF, 2022, pp. 67–68.
112 Hrabar, 2021, p. 239; Sladović Franz, 2016, pp. 228–230.
113 Art. 18 para. 2 in accordance with Art. 9 of the CRC, and Art. 6 and Art 129 paras. 3–5 of the FA.
114 Art. 7, Art 128 and Art. 485 para. 3 of the FA.

and omissions related to the care and raising of the child[115], up to very serious measures that entail the separation of the child from his or her parents.[116,117]

Imposing the aforementioned measures constricts parental rights to a greater or lesser extent, and certain measures limit the right of the child to live with his or her parent(s) and the right to respect for family life.[118,119] The aim of these measures is to protect personal or property rights and the welfare of the child and not to punish the parents. If there are more serious cases of child endangerment wherein the child's life, health and development are at risk, the child will be separated from the family. The strictest measure within the Croatian child protection system is the deprivation of the right to parental care, which is imposed by the court in a non-contentious proceeding when it establishes that the parent abuses or gravely infringes parental responsibilities, duties and rights.[120] When deprived of the right to parental care, the parent loses all rights pertaining to the institute of parental care, with some possible exceptions provided by law.[121] If both parents are deprived of parental care the institute of guardianship is provided for the protection and care of their children[122].

7.4.2. Welcoming by a Family That Is Named by Blood Parents and Ordering Under Supervision

Parents as holders of the right to parental care are authorised to decide to whom they will temporarily entrust the care of the child if they are prevented from taking care of the child due to justified reasons (e.g. hospital treatment, surgery, rehabilitation, seasonal work, unresolved housing issues and a prison sentence). In this regard, the parents usually place their trust in family members and friends. The FA prescribes that both parents (if exercising parental care jointly) or one parent (if exercising parental care solely) may temporarily entrust the everyday care and upbringing of the child, including accommodation, to a person who meets the requirements stipulated for a guardian[123]. For doing this, the parent(s) do not need to acquire the approval or

115 Art. 134 of the FA.
116 The CISW has jurisdiction over emergency measures such as separating and placing a child outside the family, warning of errors and omissions in childcare provision, professional assistance and support in childcare provision, intensive professional assistance, and supervision over childcare provision (Arts. 134–148 of the FA). The court's jurisdiction includes measures in response to parents' serious failure in the care and upbringing of the child, such as temporary entrustment of the child to another person, foster family or social welfare institution; banning of access to the child; deprivation of the right to live with the child; entrustment of the child's daily care to another person, foster family or social welfare institution; entrustment of a child with behavioural problems to a foster family or social welfare institution for help in his or her upbringing; and deprivation of the right to parental care (Arts. 149–177 of the FA).
117 Art. 149 of the FA.
118 Hrabar, 2021, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.
119 Art. 35 of the Constitution and Art. 8 of the ECHR.
120 Art. 170 of the FA.
121 Ibid., Art 175 paras. 1–2.
122 Ibid., Art. 219 para. 1, Arts. 224-225, Arts. 227-228 and Art. 230.
123 Ibid., Art. 102 para. 1.

decision of the CSWI. However, if the parent(s) is/are entrusting everyday care and upbringing of the child for a period longer than 30 days, their signature on the statement must be certified by a notary public[124].

The FA prescribes that both parents (if exercising parental care jointly) or one parent (if exercising parental care solely) may temporarily entrust the everyday care and upbringing of the child, including accommodation, to a foster family or another social services provider. For doing this, the parent(s) need(s) to acquire a prior decision of the CSWI as the state covers the costs of accommodation and various services provided by the foster family or social welfare institution.[125] However, if such accommodation of the child lasts for a period longer than six months, the CSWI will, within a period of 30 days, assess the justification for extending such accommodation or file a request to the court for the imposition of an appropriate judicial measure for protecting the rights and welfare of the child, together with an individual plan and professional assessment of the family.[126,127]

If the parent(s) is/are unable to take care of the child and has/have failed to entrust everyday care and upbringing of the child to a foster family, social welfare institution or person that meets the requirements stipulated for a guardian, the child will be appointed a guardian.[128]

7.4.3. Placing Under Temporary Placement or Foster Care

In the Croatian legal order, special attention is provided to the integration of the spirit and letter of relevant provisions of the CRC[129] into the provisions of the FA regulating the institution of the separation of the child from the family[130]. Therefore, separation of a child from the family is understood as any judicial or administrative measure based on which the child is separated from the family and placed with another person who meets the requirements stipulated for a guardian, in a foster family, in a social welfare institution or with another individual or legal entity that performs social services within the social welfare system.[131] The only measure within the competence of the CISW that separates the child from the family is the emergency measure of separation and placement of the child outside the family[132]. Other measures by which the child is separated from the family are within the competence of the court: temporary entrustment of the child to another person, foster family or social welfare institution[133]; deprivation of the right to live with the child and entrustment of the child's

124 Ibid., para. 2.
125 Art. 103 para. 1 of the FA in connection with Art. 112 para. 2 of the SWA.
126 See: Hrabar, 2021, pp. 221–222; Rešetar, 2022, pp. 432–436; Sladović Franz, 2016, pp. 230–234; Sovar, 2015, p. 312.
127 Art. 103 para. 2 of the FA in connection with Art. 113 para. 2 of the SWA.
128 Art. 224 of the FA.
129 Art. 9 para. 1 and Arts. 20 and 25 of the CRC.
130 Art. 129 of the FA.
131 Ibid., Art. 129 para. 2.
132 Ibid., Arts. 135–138.
133 Ibid., Arts. 150–153.

daily care to another person, foster family a social welfare institution[134]; entrustment of the child with behavioural problems to a foster family or social welfare institution for help in his or her upbringing[135]; and deprivation of the right to parental care[136].

Measures imposing separation of the child from the family necessarily lead to the need to find adequate placement for the child. Within the social welfare system, accommodation represents a social service outside one's family that is provided as institutional care in a social welfare home, with other social service providers or as non-institutional service in a foster family[137]. Accommodation is a social service that provides the child, as a beneficiary, with intensive care and satisfaction of basic life needs when their provision is not possible in the family or by providing other social services[138]. Accommodation may also encompass preparing the child for the return to his or his family or for accommodation in a foster family, as well as preparing him or her for independent life or adoption[139]. The CISW may grant a child, particularly a child younger than seven years, the right to accommodation primarily in a foster family. Only when accommodation for the child cannot be ensured within a foster family, the CISW may exceptionally grant a child the right to accommodation in a social welfare home or at another social service provider, and such accommodation shall last up to a maximum of one year[140]. Placing a child in a social welfare home or with other social service providers should be the last option, when all other options have been exhausted.[141]

In the Croatian legal order, foster care is a form of social service, whereby a child or adult is provided accommodation in a foster family or by a single foster parent[142]. The FCA prescribes conditions that a foster family or a single foster parent must fulfil, the manner of performing foster care and its termination and other issues regarding foster care. Thus, a foster family or single foster parent must have special knowledge and skills to provide care for beneficiaries and is required to complete additional training.[143]

7.4.4. Aftercare

For a more detailed exposition on this issue, see Chapter 8 – Aftercare.

134 Ibid., Arts. 155–163.
135 Ibid., Arts. 164–169.
136 Ibid., Arts. 170–177.
137 Art. 74 para. 4 of the SWA.
138 Ibid., Art. 109 para. 2.
139 Ibid., Art. 109 para. 3.
140 Ibid., Art. 111 paras. 2–3.
141 *Amplius* Hrabar, 2021, p. 222; Sladović Franz, 2016, pp. 228–234; Rešetar, 2022, pp. 569–573; Sladović Franz, 2018, pp. 543–545.
142 Art. 9 para. 1 of the Foster Care Act [FCA] in connection with Art. 236 of the SWA.
143 Art. 14 if the FCA.

7.4.5. Ordering Preventive Measures

The Croatian legal order is, above all, based on the state's constitutional obligation to provide special protection to the family.[144] In doing so, it offers a wide range of preventive measures and programmes, focused mainly in two areas: the social welfare and family law frameworks.

As regards the social welfare system in general, protection of the welfare of the family is one of the primary goals of the activities undertaken. The SWA foresees the so-called social services, which encompass activities, measures and programmes intended to prevent, detect and solve problems and issues of individuals and the family, as well as the improvement of their life within the community[145]. One beneficiary of the social services is indeed 'a family which, due to disturbed relationships or other unfavourable circumstances needs professional assistance or other form of support'.[146]

Provision of counselling and assistance to the family is a social service that includes all forms of professional assistance with the aim of overcoming family and parental difficulties in care for the children, as well as empowering the family to function in daily life. It includes support to the family, intensive support to the family in crises and long-term work with family members for improving family relationships. This service is primarily provided by professionals from social welfare institutions, but other organisations, religious communities and other legal and natural persons whose work is monitored by the state also provide them.[147]

As regards the family law framework, in light of the obligation of assistance, Croatia offers a wide range of counselling services for family members. Two predominant means of assistance to a family in times of crises are compulsory counselling and family mediation.[148] Compulsory counselling is a form of assistance to family members in reaching consensual decisions regarding family relationships, paying particular attention to the protection of those which include the child, as well as the legal consequences of failure to reach an agreement and of court proceedings in which the meritum concerns personal rights of the child.[149] Family mediation, on the other hand, represents a proceeding during which the parties endeavour to resolve the family dispute consensually with the assistance of family mediators. It is considered that both procedures serve as a "safety net," hence diminishing the need and obligation of the state to intervene into family life.[150,151]

Nevertheless, the efforts of the family and preventive activities by the state sometimes remain useless. In such cases, the parents need assistance to (re)establish the

144 Art. 61 para. 1 of the SWA.
145 Ibid., Art. 70.
146 Ibid., Art. 18 para. 1.
147 Ibid., Art. 81.
148 *Amplius* Čulo Margaletić, 2021, pp. 71–76; Majstorović, 2017c, pp. 133–137.
149 Art. 321 of the FA.
150 Majstorović, 2017c, pp. 137–146.
151 Art. 331 of the FA.

balance and harmonious relationships within the family and protect the rights and welfare of the child; this need is more often recognised than before. It is then the state's responsibility to provide support to parental efforts through complementary (preventive) measures and activities[152], to enable them to provide adequate care and upbringing.[153] In this regard, the Croatian legislation defines a plethora of preventive measures within the jurisdiction of the CISW, starting from warning of errors and omissions in childcare provision[154], professional assistance and support in childcare provision[155], intensive professional assistance and supervision over childcare provision[156].

7.4.6. Guardianship of Those Under Child Protection Care

Guardianship tasks regarding children are carried out by the CISW, a guardian and a special guardian from the Centre for Special Guardianship,[157] as well as a temporary representative outside the system appointed by the decision of a court or authority before which the proceedings are conducted and who also has the authority of a special guardian.[158,159]

A guardian will be appointed to a child whose parents have died, have disappeared, are unknown or have been of unknown temporary residence for at least one month, been deprived of the right to parental care or been deprived of legal capacity in the part that prevents them from exercising parental care.[160,161] A guardian will also be appointed for a child in cases where parents are minors and have not acquired legal capacity by entering into marriage, when parents are absent or unable to take care of their child and have not entrusted the exercise of parental care to a person who meets the requirements for a guardian and when parents have already given their consent for child adoption.[162]

The CISW decides to place a child in the care of a guardian and appoints a guardian. By the CISW's decision, the child's day-to-day care might be entrusted to a guardian or other person, foster family, children's home or legal institution that performs social welfare services, depending on the circumstances.[163]

The CISW is required to respect the parents' previously expressed wishes (in an advance directive[164]) regarding the selection of a guardian by the parents in the form

152 Art. 3 para. 2 of the CRC.
153 Hrabar, 2021, p. 241.
154 Art. 139 of the FA.
155 Ibid., Arts. 140–144.
156 Ibid., Arts. 145–148.
157 Aras Kramar, 2017a, pp. 22–23; Aras Kramar, 2017b, pp. 16–25.
158 Hlača, 2021, p. 384; Hrabar, 2021.
159 Art. 222 of the FA.
160 *Amplius* Korać Graovac, 2017, pp. 51–73.
161 Art. 116 para. 4, Art. 195, Art. 218 and Art. 224 of the FA.
162 Hlača, 2021, p. 384.
163 Art. 225 paras. 1 and 4 of the FA.
164 Žganec-Brajša, 2018, pp. 70–82.

of a notarial document if that person meets all legal requirements prescribed by Art. 225 para. 3 of the FA. When appointing a guardian, the CISW is required to obtain the opinion of a child who can understand the meaning of guardianship and to consider his or her wishes regarding the choice of a guardian, unless they conflict with his or her welfare.[165]

The CISW decides to appoint a guardian through an administrative proceeding in accordance with the provisions of the General Administrative Proceeding Act.[166] The decision on the appointment of a guardian is delivered to a child who has reached the age of 14 years and to a child under the age of 14 years if he or she is capable of understanding the meaning of the decision and if it is in accordance with his or her welfare. The decision is also sent to the child's parents, guardian, competent registrar and land registry department of the court in whose territory the child's property is located.[167]

Custodial protection must be appropriate, individualised and in accordance with the welfare of the child.[168] The guardian is responsible for the child's personal and property rights and obligations, including his health, upbringing and education.[169] Only with prior approval of the CISW may the guardian decide on the child's school and profession and termination of schooling or employment; take more important measures regarding the child's person such as health and statements about personal condition; and take more important measures regarding the child's property.[170]

Guardianship for the child ends with restoration of the parents' right to parental care; the child's acquisition of legal capacity; restoration of the parents' legal capacity in the part that refers to the exercise of parental care; parents' acquisition of legal capacity by reaching the age of majority or entering into marriage; and death or adoption of the child.[171,172]

Besides the abovementioned individual guardianship for the child, FA distinguishes guardianship for special cases.[173] Although it is common in theory and legislation to associate the institution of individual guardianship with special guardianship, it is necessary to emphasise that the content of protection is fundamentally different.[174,175] A special guardian ad litem is essentially a representative of a person in a very limited scope for the proceeding in which he or she has the authority to act based on appointment of the competent authority. His or her authority is legally and

165 Art. 225 para. 2 and Art. 230 of the FA.
166 General Administrative Proceeding Act, Official Gazette, No. 47/09, 110/21.
167 Art. 226 para. 1 of the FA.
168 Ibid., Art. 221.
169 Ibid., Art. 227.
170 Ibid., Art. 228.
171 Hlača, 2021, p. 385.
172 Art. 231 of the FA.
173 The special guardian is a lawyer who has passed the bar exam and works at the Centre for Special Guardianship. See: Rešetar and Rupić, 2016, pp. 1175–1200.
174 Hlača, 2021, p. 391.
175 Arts. 240–246 of the FA.

temporally limited, and it is dependent on the unique circumstances. For example, if there is a conflict of interest between the child under guardianship and his or her individual guardian, or between numerous wards who have the same individual guardian, the special guardian ad litem must be appointed.[176] Thus, in life events such as a conflict divorce of the parents, who are also the child's joint and equal legal representatives, a special guardian appears to be an acceptable protector of the child's rights.[177] In marital disputes for annulment or divorce, as well as proceedings disputing motherhood or paternity, the CISW will appoint a special guardian for the child to preserve specific personal and property rights and interests. When there is a conflict between the child and her or his parents as legal representatives, a special guardian will be appointed for the child in other processes in which decisions about parental care, specific components of parental care and contacts concerning the child are made. Similarly, a special guardian will be appointed when the interests of the child and his or her parents as legal representatives are in conflict.[178]

In the event of a disagreement between a ward and the individual guardian employed by the CISW, the court will appoint a special guardian and define the scope of his or her powers with the goal of protecting the ward's rights and interests.[179] A special guardian will also be appointed to safeguard the child's rights in judicial proceedings for imposing measures for the protection of the child's personal rights and welfare[180]. If the parents unjustifiably refuse to consent to the adoption, the special guardian will represent the child's interests in court proceedings for adoption of a decision that replaces the consent of parents.[181,182]

A special guardian will not be appointed in the case when a child has reached the age of 14 years and whose capacity to participate in the proceedings has been acknowledged by a court decision[183]. When the CISW assigns a special guardian for a child, children over the age of 14, their parents and the person appointed as a special guardian have the right to appeal.[184,185]

The obligations of the special guardian are limited by the type and character of the proceedings in which the child must be represented.[186] The special guardian is required to inform the child about the subject of the dispute, its course and its outcome in an age-appropriate manner, and to contact the parent or other persons close to the child if necessary.[187] Custody of a child ends upon his or her death or

176 Hlača, 2021, p. 391.
177 Ibid.
178 Art. 240 para. 1 of the FA.
179 Ibid., Art. 245.
180 Ibid., Art. 240 para. 1.
181 Hlača, 2021, p. 392.
182 Art. 240 para. 1 of the FA.
183 Ibid., Art. 240 para. 4.
184 Hlača, 2021, p. 393.
185 Art. 242 para. 6 of the FA.
186 Hlača, 2021, p. 392.
187 Art. 240 para. 2 of the FA.

termination of the circumstances for which a guardian was appointed. If a special guardian or temporary representative with the powers of a special guardian has been appointed for the child, the guardianship ends when the duties for which he or she was appointed in a judicial or administrative proceeding are fulfilled.[188]

The CISW or the court that appointed the special guardian are competent to make the decision on the termination of the special guardianship.[189] The special guardian's rights and obligations end when the decision to terminate the guardianship becomes enforceable, that is, when the legal consequences of that decision come into force.[190]

8. Aftercare

In practice, the right to care outside the biological family is exercised by children who are without parents; whose parents neglect or abuse their parental duties, obligations and rights; who have behavioural problems; whose parents are temporarily unable to care for them due to illness, lack of proper accommodation or other justifiable difficulties – if this is in their best interest; and who have developmental disabilities, if this ensures their adequate care, education and psychosocial rehabilitation.[191]

Depending on the circumstances, the child's day-to-day care may be entrusted to a guardian or other person, foster family, children's home or legal institution that provides social welfare agency by a decision of the CISW.[192]

However, in Croatia, a child's placement is frequently determined by

> 'the available place and the accommodation capacity of the institutions themselves, so the placement of a child is often conditioned by the location of an available place, which is frequently not close to the child's previous place of residence.'[193]

Children's homes continue to be the most common type of accommodation for children who do not have adequate parental care in the Republic of Croatia, indicating that work should be done on their transformation in terms of content (activities and equipment) and personnel (diverse and educated professional staff) for this form of care to reach the highest possible level.[194] Foster care is being increasingly chosen as the first choice of placement for a child as part of the deinstitutionalisation process.[195]

188 Hlača, 2021, p. 384.
189 Art. 246 para. 1 of the FA.
190 Ibid., Art. 246 para. 2.
191 Sladović Franz, 2016, pp. 229–230.
192 Art. 225 para. 4 of the FA.
193 Vejmelka and Sabolić, 2015, pp. 72–98; Sladović Franz, 2016, p. 231.
194 Vejmelka and Sabolić, 2015, pp. 72–98.
195 Sladović Franz, 2004, pp. 215–228; Sladović Franz, 2016, pp. 232–234.

In 2022, the Ombudsperson for Children requested information on children entrusted to care from all institutions to determine the trend in the number of children and young people in accommodation, residence and organised housing. The numbers supplied imply a minor increase in the number of children in foster care and organised housing in 2022, although there are still several times more children in foster care.[196]

The problems in securing accommodation in foster families are comparable to those encountered in institutions. However, the number of new foster care licences in 2022 was approximately 20% higher than that in 2019, but the number of foster families remains insufficient when considering the needs for care of children outside their home.[197]

Besides insufficient capacity in institutions and foster families and many requests for child placement, there are issues with uneven territorial representation of foster families, lack of professional foster care, lack of foster families in urban areas and lack of specialised foster parents who are additionally educated to care for children with behavioural disorders or specific physical or mental disabilities. Difficulties also exist in terms of foster parents' structure and needs (e.g. age of foster parents; lower educational structure of foster parents; insufficient professional support for foster parents, children and biological families, insufficient education and supervision of foster parents and professional staff; and uneven quality of services provided by foster families). Deficits are also seen in terms of monitoring of services given by foster families, as well as children's non-participation in making decisions about them.[198]

9. What Is the Institutional Background?

CISW is a place that, on behalf of the state and society, applies professional social work procedures and thus provides special care for children whose development and upbringing is endangered. CISW workers directly provide social services such as first social service, counselling service and family mediation service. Thus, CISW is also an institution providing services.[199,200]

Through assistance of the CISW, the family can receive high-quality and timely professional support and, in cooperation with experts and parents, ensure sufficiently good conditions for the child to grow up. Certain forms of care for children are also provided in foster families and in institutions for children, such as institutions for children with developmental disabilities, care institutions for the upbringing and re-education of children and children's homes.[201]

196 Ombudsman for Children, 2023, pp. 31–32.
197 Ibid.
198 Ibid.
199 Sladović Franz, 2018, p. 543.
200 Art. 71 in connection with Art. 74 para. 2 of the SWA.
201 Sladović Franz, 2018, p. 543.

The state provides a social housing service for children who cannot be cared for in their own home, which can be institutional care in a social care home or with other service providers, or non-institutional care in a foster family.[202,203]

Children can get non-institutional social services in addition to institutional care, such as psychosocial support, early development support, assistance with inclusion in education and regular education programmes, accommodation and structured housing.[204]

Social welfare institutions, local and regional self-government units such as the City of Zagreb, associations, religious communities, other legal entities, craftsmen and other natural persons who execute social welfare activities provide social services[205]. The Ministry of Labour, Pension System, Family and Social Policy oversees the conduct of social welfare initiatives.[206]

In situations wherein children's development is endangered, the CISW can itself operate as an authority by imposing certain measures that protect the rights and well-being of the child and carry out interventions. In other cases, the CISW can give opinions to the court as well as initiate judicial proceedings for imposing repressive measures towards the parents.[207]

Thus, when the CSWI determines that the child is exposed to a medium level of risk of undesirable developmental outcomes but that the family has resources to ensure basic safety and needs of the child, it decides to issue warning measures to the parents due to mistakes and omissions regarding the care and upbringing of the child or measures to supervise the execution of parental care. These measures are of a preventive nature, and their goal is to improve family circumstances and relationships.[208]

If the CSWI determines that the child is exposed to great risks that seriously jeopardise his or her overall health or even his or her life, and unfavourable consequences for physical, social and psychological development have occurred or will certainly occur, at the proposal of the CSWI, the court will impose repressive measures that result in the separation of the child from the family.[209]

202 See: Hrabar, 2021c, pp. 1–39; Župan, 2022, pp. 509–517; Sovar, 2015, pp. 311–332; Babić, 2014, pp. 145–153; Žganec and Kujundžić, 2003, pp. 189–203.
203 Art. 74 para. 4 of the SWA.
204 Ibid.
205 Ibid., Art. 17 para. 1.
206 Ibid., para. 3.
207 Sladović Franz, 2018, p. 544.
208 Ibid.
209 Ibid., p. 545.

10. What Is the Procedural Background?

If children have parents who are negligent, the competent authorities (CSWI and court) must impose family law measures on the parents to protect the children's welfare.[210] Measures for the protection of children, particularly those relating to children's personal rights, must be of a temporary character to assist parents and families in becoming functional again and, in circumstances of child separation, to reunite the family wherever possible.[211,212]

The measures imposed must correspond to the degree of endangering the child's rights, that is the proportionality principle; therefore, they are 'acceptable as long as they are necessary and their purpose cannot be successfully met by undertaking more lenient measures, including preventive assistance, i.e. family support'.[213] Moreover,

> 'The authority that conducts the proceeding when choosing a measure suitable for the protection of the rights and welfare of the child is obliged to determine the measure that least restricts the right of the parents to take care of the child, if it is possible to protect the rights and welfare of the child with such a measure.'[214]

The child's best interests must be considered in proceedings imposing child protection measures carried out by the CISW and the courts, as required by Art. 3 of the CRC. Proportionality implies the application of a measure proportionate to the degree of threat to the child's rights, as determined by an expert assessment of the facts[215].

Care for the child is endangered when it is inadequate, that is, insufficient and inappropriate, or if the child has psychosocial challenges visible in the child's behaviour, emotional, educational or other upbringing problems. In certain circumstances, an appropriate measure can be enforced if the child's rights may be jeopardised.[216]

To initiate the proceeding to defend the child's rights, the competent authority must first obtain initial information regarding the child's endangerment, whether in the personal or property sphere.[217] Everyone who discovers a violation or endangerment of the child's right is required to report it to the CISW, whose duty then is to investigate the case and take measures to protect the rights of the child. The court

210 Hrabar, 2021b, p. 21. Data from the competent ministry support the notion that milder measures are used more frequently, and more severe ones are used less frequently. See the reports of the Ministry of Labour, Pension System, Family and Social Policy, which can be found at: https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165 (Accessed: 1 July 2025).
211 Hrabar, 2021a, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.
212 Art. 128 of the FA.
213 Ibid., Art. 7.
214 Ibid., Art. 128.
215 Ibid., Art. 7 and Art. 131 para. 1.
216 Ibid., Art. 131 para. 2.
217 Hrabar, 2021a, p. 242.

and the CISW, parents and other persons or social welfare institutions entrusted with the care of the child (e.g. police administration, public health institutions and educational institutions) are obliged to mutually cooperate and inform each other about the actions they have taken.[218,219] Violence can be reported to the police and to a misdemeanour or criminal court. The court before which the misdemeanour or criminal proceedings are conducted, the state attorney and the police are obliged to notify the CISW within 24 hours of the initiation of proceedings in connection with violation of a child's rights[220]. This provision prescribes an obligation of cooperation of state authorities with the aim of opening the possibility of imposing some preventive or repressive family law measures towards the parents for timely protection of the child, regardless of the outcome of the misdemeanour or criminal proceedings.[221,222]

Besides the foregoing, the law requires parents and caregivers to cooperate with the CISW in the process of imposing child protection measures, which includes allowing employees of the CISW to examine housing conditions, provide information on income and assets and provide other personal and family data to get a general picture of the family[223].

Another topic covered by the FA is the prerequisites for determining all measures[224]. It is also important to conduct an expert interdisciplinary evaluation of the family situation to determine whether the child's rights have been violated or threatened, as well as whether the child's development has been jeopardised.[225] Parents cannot plead the right to privacy (family) in this circumstance since the interest of protecting the child outweighs this right.[226,227]

In the case of measures under the jurisdiction of the CISW, the prerequisite for initiating the procedure is the CISW's knowledge of the need to impose some of the measures, which can occur particularly when applying Art. 132 of the FA, which requires every individual and legal entity to report a violation of the child's rights.[228] Regarding initiation of the proceeding for imposing measures within the competence of the court, the CISW, parent and child are authorised for all measures, and the state

218 Ibid.
219 Art. 132 para. 3 of the FA.
220 Art. 132 para. 4 of the FA.
221 Hrabar, 2021a, pp. 242–243.
222 Art. 132 para. 1 of the FA.
223 Ibid., Art. 132 para. 3 and Art. 133 para. 1.
224 Ibid., Art. 131.
225 "The child's rights are jeopardized, which means they have not yet been violated, if: the child's care is inadequate; the child has psychosocial difficulties, or there is a risk of psychosocial difficulties." Hrabar, 2021a, p. 246; Khazova, 2016, p. 30; Sladović Franz, 2016, pp. 227–228.
226 Hrabar, 2021a, p. 246.
227 Art. 132 of the FA.
228 Hrabar, 2021a, p. 247.

attorney for youth is authorised in the case of a child with behavioural problems and deprivation of the right to parental care.[229]

In all procedures for the imposition of measures, regardless of whether a preventive or repressive measure is imposed, the competent authorities must act promptly while simultaneously protecting the child's well-being[230].

The child has the right to participate in and voice his or her opinion in procedures in which measures are imposed, and the child will be appointed a special guardian ad litem in court proceedings in which some of the repressive measures are imposed.[231] The special guardian ad litem represents the child (not the parents) in those proceedings; informs the child about the subject, course and possible outcome of the proceeding in an appropriate way; and assures that the child's right to express his or her opinion is realised.[232,233] The child's right to participate in the process is defined as

presenting facts, proposing evidence, submitting legal remedies and taking other actions in the proceeding, as a cumulative condition prescribes the ability to understand the meaning and legal consequences of these actions and the child's age, i.e. 14 years of age.[234]

The constraints adopted to protect children's interests also limit the parent's practically unfettered parental care. Depending on the degree of threat to the child's rights and welfare, they are pronounced as either support and prevention or repression. The CISW's competence refers to preventive measures for the protection of the child's personal rights, whereas the court's jurisdiction includes more severe repressive measures for the protection of the child's personal and property rights.[235] Some reasons for such a division of competence are impartiality, professionalism and expedience in judicial proceedings, as well as the impression of a stronger legal protection provided by the court, in comparison with the protection provided by administrative bodies such as the CISW. Such an impression is present mostly in the general public, but it was recognised by the legislator as relevant for such a division of powers to make the system as efficient as possible. Data from the competent Ministry of Labour, Pension System, Family and Social Policy support the notion that softer measures are used more frequently, and harsher measures are used less frequently.[236]

229 Ibid., p. 249. Data on the number of measures imposed are available in the reports of the Ministry of Labour, Pension System, Family and Social Policy, which can be found at https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165 (Accessed: 1 July 2025).
230 Art. 10, Art. 347 of the FA.
231 Hrabar, 2021a, p. 243. Art. 130 and Art. 240 para. 1 in connection to Art. 487 of the FA. This also means that in these non-contentious proceedings, the child is represented by a special guardian, while the parents are not authorised to act in the name and on behalf of the child.
232 For the role of a child's special guardian *ad litem*, see: Korać, 2003, pp. 32–43; Hlača, 2021, pp. 383–385, 391–395; Šimović, 2021, p. 176; Lucić, 2021b, pp. 100–101, 104–106, 109; Rešetar and Lucić, 2021, pp. 149–150; Aras, 2014, pp. 58–59.
233 Art. 240 para. 2 in connection with Art. 360 Paras. 3, 5 and 6 of the FA.
234 Ibid., Art. 130.
235 Ibid., Arts. 134 and 149.
236 See footnote 229.

The CISW has jurisdiction over emergency measures of separating and placing a child outside the family, warning of errors and omissions in childcare provision, providing professional assistance and support in childcare provision, providing intensive professional assistance and supervising childcare provision.[237,238]

In non-contentious proceedings, the court's jurisdiction includes measures that are in response to the parents' serious failures in the care and upbringing of the child. Those measures are: temporarily entrusting the child to another person, a foster family or a social welfare institution; banning access to the child; taking away the right to live with the child, and entrusting the child's daily care to another person, foster family or social welfare institution; entrusting a child with behavioural problems to a foster family or social welfare institution for help in upbringing; and depriving parents of the right to parental care.[239,240]

The measures are imposed on the parents, and their aim is to protect personal or property rights and the welfare of the child and not to punish the parents. The only measure imposed by the court on the child, rather than the parent, is entrusting the child with behavioural difficulties to a foster family or social welfare institution for help with his or her upbringing.[241,242] The most severe measure imposed on parents is deprivation of the right to parental care.[243] The goal of implementing this measure is to entirely impair parents in their care of the child owing to extremely detrimental actions and behaviour.[244] The judgement on parental care deprivation can apply to one or both parents, and it might limit the parent's parental care for an individual child or for all children.[245] When deprived of the right to parental care, the parent(s)

237 Hrabar, 2021a, p. 246.
238 Art. 134 of the FA.
239 Hrabar, 2021a, p. 246.
240 Art. 149 of the FA.
241 Hrabar, 2021a, p. 253. For the measure to be imposed, the child must (a) jeopardise his or her own rights and interests and (b) endanger the rights and interests of family members or other individuals. There is disregard of the child's upbringing or the impossibility of good parenting on the side of the parents, and the earlier, milder remedies are ineffective. The court will entrust the child to a social welfare institution or foster family during the weekend, in a half-day or full-day stay, based on an expert assessment and a proposal for placement by the CISW (and the results of a multidisciplinary diagnostic procedure; Arts. 164–169 of the FA.
242 Art. 127 para 3 of the FA.
243 The court shall deprive the parent of the right to parental care in an extra-contentious procedure when it establishes that the parent abuses or gravely infringes parental responsibilities, duties and rights. Furthermore, the FA depicts the special circumstances in which such a decision shall be passed: abandonment of the child; exposing of the child to violence among adult members of the family; disrespect for the measures previously passed by both the social welfare measures and the court; grave danger for the life, health and development of the child in case of return of the child to the family; final conviction of the parent for certain criminal acts at the detriment of his or her own child; and significantly limited mental abilities of the parents, which endanger the welfare of the child and permanently preclude him or her from exercising parental care (Arts. 171–172 FA).
244 Hrabar, 2021a, p. 254.
245 Ibid.

lose all rights pertaining to the institute of parental care, with the exception of possibly allowing contact with the child. Furthermore, the parent is obliged to provide maintenance to the child.[246]

This measure is imposed in accordance with the rebus sic stantibus principle, meaning that the right to parental care can be re-established by a court decision when the reasons for depriving the right no longer exist, unless the child has already been adopted, in which case the request for restoration of parental care would be pointless.[247,248] The court's judgement necessitates an expert family assessment performed by the CISW, aimed at ending the reasons for which the measure was determined.[249,250]

Regarding implementation of the court's decision on measures to protect the personal rights and well-being of the child, the CISW can submit a proposal for the implementation of enforcement to surrender the child[251]. A proposal for enforcement can also be submitted by a parent or another person with whom the child will live according to the court's decision[252].

To protect the property and property rights of the child, the court may render a decision in a non-contentious proceeding by which one or both parents are divested of the right to manage the child's property and represent him or her in property matters.[253,254]

A child, a parent or the CISW initiates the proceeding[255]. The court's decision will pertain to a specific topic or business (e.g., the purchase and sale will be carried out by a third party in the name and on behalf of the child), and the parent's access to the child may be restricted for a specific amount of time or indefinitely.[256,257]

The court may render a decision on establishing protection measures on the parents' property, this being the most severe legal measure that could be imposed on parents of the child[258]. The party initiating such a proceeding can be a child, parent or the CISW, and the CISW can be informed about the necessity to commence court proceedings either intentionally or unintentionally. If the court grants such a request, a mortgage on real estate and a lien on movables will be registered against the parents' property. In this way, parents are barred from selling their property in the event of

246 Art. 175 of the FA.
247 Hrabar, 2021a, p. 252.
248 Art. 176 of the FA.
249 Hrabar, 2021a, p. 252.
250 according to Art. 155 of the FA.
251 Ibid., Art. 513 para. 5.
252 Ibid., Art. 513 para. 4.
253 Hrabar, 2021a, p. 257.
254 Art. 178 paras. 1–2 of the FA.
255 Art. 178 para. 1 of the FA.
256 Hrabar, 2021a, p. 257; Hrabar, 2021c, pp. 1–39.
257 Art. 178 para. 1 of the FA.
258 Ibid., para. 2.

damage to their child's property, and the damage is not compelled to be collected.[259] Children are registered in the land and corresponding registers as owners, and in this case also as creditors with the primary right of claim.[260] Of course, it is a specific problem if the parents do not have their own property or a steady financial income using which the child may sustain him or herself. [261]

Both measures can be amended or repealed at the request of the child, parents or the CISW if the circumstances that led to their implementation or the court order no longer exist.[262]

To achieve an even higher level of legal certainty, the right to legal remedy is always respected as an inseparable element of basic human rights.[263] Namely, as regards all the state authorities involved in the child protection system, the citizens, that is family members, have the right to file an appeal and hence express their dissatisfaction with the decision[264]. This is in line with the provision of Art. 18 para. 1 of the Constitution that guarantees the right to appeal against individual legal acts made in first-instance proceedings by courts or other authorised bodies, as well as with the jurisprudence of the ECtHR.[265] Such rights are well protected in practice, and the legal path is clear.

11. Participation of Children in the Child Protection System

The Croatian legal order positions children as legal subjects (not de facto objects) who should actively participate and make autonomous decisions in all judicial and administrative proceedings in which their rights and interests are decided, thus exercising the rights prescribed by global and regional international legal sources. These sources include Art. 12 of the CRC, Art. 3 of the ECECR,[266] Art. 8 of the ECHR and Art. 24 of the Charter.[267,268]

The child's right to be informed and express his or her opinion has a pivotal position within the participation rights and is prescribed by both substantive and

259 Hrabar, 2021a, p. 257.
260 Ibid.
261 Ibid.
262 Ibid.
263 Triva and Dika, 2004, p. 659; Korać Graovac, 2013, p. 38.
264 See: Art. 489 of the FA.
265 See the following cases: *X v. Croatia*, No. 11223/04, 2008 (Paras. 48–49 and 51–53); *A.K. and L. v. Croatia*, No. 37956/11, 2013 (paras. 63–64 and 75); and S.S. *v.* Slovenia, No. 40938/16, 2018 (paras. 87 and 98).
266 ECECR, Official Gazette – International treaties, No. 1/2010, 3/2010.
267 Charter (2012), Official Journal of the European Union, C 326, 26 October 2012.
268 Hrabar, 2012, p. 104; Hrabar, 2021, pp. 192–195; Majstorović, 2017a, p. 57; Uzelac and Rešetar, 2009, pp. 163–179.

procedural provisions of the FA.[269] The substantive provision of Art. 86 para. 1 of the FA[270] prescribes how this right of the child should be realised in everyday life, referring to family, school, health, diet, sports, religious, cultural and upbringing issues.[271] This provision also prescribes the primary obligation of the parents to respect the child's right to be heard and help him or her realise this right in practice. Therefore, the parents have an obligation to talk to their children and try to reach an agreement while exercising their right to parental care, always taking into consideration the age and maturity of the children.[272,273]

The substantive provision of Art. 86 para. 2 of the FA[274] prescribes how this right of the child should be realised in all judicial and administrative proceedings in which his or her rights or interests are decided, emphasising the child's right to be informed and obtain advice, before eventually deciding to exercise the right to express his or her opinion. This provision is the legal basis of all considerations regarding participation of children in judicial and administrative proceedings, meaning that it is the duty of the society, represented by judicial and administrative bodies, to protect children's right to be "visible."[275] The logic behind such a standpoint is that if the child's opinion is not established because he or she was not given the opportunity to express his or her considerations, thoughts, wishes, etc., then the child cannot be protected as it will be impossible to determine what is in the child's best interest and how to protect it! Therefore, proper exercising of the child's right to be informed and heard is somewhat of a precondition for the correct assessment and protection of the best interests of the child within the domestic judicial and administrative child protection system.[276] This is particularly reflected in the provision of Art. 130 para. 1. of the FA, which provides the child with the right to participate and express his or her opinion in all procedures of assessment and determination of the need to impose preventive or repressive measures to protect his or her personal or proprietary rights and welfare.

269 Another Croatian legal source that is of relevance is the Bylaw on the Methods of Communication with the Child (Official Gazette, No. 123/15), which prescribes in more detail methods of obtaining the opinion of the child in judicial proceedings.

270 Art. 86 para. 1. of the FA: "Parents and other persons who take care of the child are obliged to respect the views of the child in accordance with his/her age."

271 See: Hrabar, 2020, p. 664; Rešetar, 2022, p. 352.

272 Age and maturity of the child are factors that should be considered, because the older and more mature the child is, the greater the influence his/her opinion has on the decision-making process. *Amplius* Korać Graovac, 2012, p. 121; Majstorović, 2017a, p. 57; Hrabar, 2021, pp. 194–195.

273 Art. 91 para. 3 in connection with Art. 86 para. 1 of the FA.

274 Art. 86 para. 2 of the FA.: "In all proceedings involving decisions on the child's right or interest, the child is entitled to be informed in an appropriate way of the relevant circumstances of the case, obtain advice and express his/her views and to be informed of the possible consequences of those views. The child's views shall be given due weight in accordance with his/her age and maturity." A similar procedural provision is included in Art. 360 Para. 5 of the FA.

275 Majstorović, 2017a, p. 59.

276 Hrabar, 2020, p. 664; Šeparović, 2014, pp. 52, 75–76, 205–206, 216; Rešetar, 2022, p. 349; Šimović, 2011, p. 1639; Majstorović, 2017a, p. 56.

The procedural provision of Art. 360 para. 1 of the FA[277] confirms that the right to be heard is solely a right and never the obligation of the child; however, at the same time, it imposes an obligation to inform the child that he or she can decide not to participate at any point in the proceeding.[278] If the child decides to participate, the court is obligated to enable him or her to express his or her opinion in an appropriate place and in the presence of a professional if it considers that necessary for obtaining an authentic opinion of the child.[279] In connection with this, the competent court is not obligated to obtain a child's opinion in cases where there are particularly important reasons that need to be explained in the decision (e.g. if the child is exposed to a conflict of loyalty or a high amount of stress or manipulation by parents, household members or third persons).[280]

Considering the fact that children usually lack legal capacity, as a general rule, they enter into legal transactions and undertake legal actions through a legal representative. For this reason, the Croatian legal order considers the parents as their most common legal representatives[281] who act consensually on behalf of the child.[282,283] Adoptive parents, as holders of the right to parental care, have the legal basis for representation of the adoptee.[284,285]

The Croatian legal order has incorporated a legal principle that guarantees the child's right to objective and impartial representation as one of his or her basic procedural rights. For this reason, a child who has been left without parents or without their adequate parental care will be protected and represented by the individual guardian[286]. Considering that guardianship substitutes parental care for minor wards, the individual guardian shall conscientiously, like a parent, represent the minor ward and care about his or her personal and proprietary rights, always considering the opinion of the minor ward in accordance with his or her age and

277 Art. 360 para. 1. of the FA: "In proceedings concerning the personal or proprietary rights and interests of the child, the court will enable the child to express his or her opinion, unless the child declines."

278 Majstorović, 2017a, p. 58; Hrabar, 2020, p. 663.

279 Art. 360 para. 2 of the FA: "The court shall enable the child to express his or her opinion in an appropriate place and in the presence of a professional if it considers that necessary in the circumstances of the case."

280 Majstorović, 2017a, p. 66.

281 Although the term "*representation*" of a child is most often associated with representation in judicial and administrative proceedings, this term implies a much wider range of actions and decision-making on behalf of the child. See: Lucić, 2021a, p. 816.

282 It is possible for one parent to solely represent the child in areas of parental care in which the other parent is limited by (a) provisions of the FA (Art. 99 para. 3 in connection with Art. 105 para. 2) and (b) a court decision (Art. 99 para. 3 in connection with Art. 105 paras. 1, 3 and 5 and Art. 175 para. 1).

283 Art. 92 para. 3, Art. 99 paras. 1–2 and Arts. 100–101 of the FA.

284 Hrabar, 2021, pp. 182, 184–185, 188, 190–192; Korać Graovac, 2017, pp. 51–73; Lucić, 2021a, pp. 815–840.

285 Art. 180 para. 2 and Art. 197 of the FA.

286 Ibid., Art. 219 para. 1 and Arts. 224–225.

maturity[287]. The position and duties of the child's special guardian ad litem come to the fore in proceedings in which the interests of the child conflict with those of the parents as their most common legal representatives, or in cases where there is the risk of such a conflict[288]. Moreover, if there is a certain conflict of interests between the child and his or her individual guardian or between several wards who have the same individual guardian, it is necessary to appoint a special guardian ad litem to the child. The special guardian ad litem represents the child in proceedings for which he or she was appointed; informs the child about the subject, course and possible outcome of the proceeding in an appropriate way; and ensures that the child's right to express his or her opinion is realised.[289,290]

12. Adoption

The Croatian family law system distinguishes two groups of assumptions: for adoption on the part of the child (passive adoptive capacity) and for adoption on the side of the adopter[291].

First, for a person to be adoptable, he or she must exist biologically and legally. It must be the subject of the law. Therefore, a conceived but not yet born child (nascitu-rus) cannot be adopted.[292]

It is not feasible to adopt a conceived but unborn child, but it is essential to wait a set amount of time after delivery, specifically six weeks, for the child to become adoptable[293]. The lawmaker attempted to prevent the giving of hurried, inconsiderate and unjustifiable consent for adoption in practice, most often by young, unmarried women, by imposing a six-week time restriction.[294] A child of unknown origin can also be adopted, but only after three months have passed after the child's birth or abandonment[295].

The potential adoptee must be under the age of 18 years[296]. The purpose of adoption rests on this criterion, which consists of care and protection of a child who was left without adequate parental care. [297,298]

287 Ibid., Art. 230.
288 Ibid., Art. 240 in connection with Art. 99 para. 6 and Art. 243.
289 *Amplius* Hlača, 2021, pp. 383–385, 391–395; Šimović, 2011, p. 176; Lucić, 2021b, pp. 100–101, 104–106, 109.
290 Art. 240 para. 2 in connection with Art. 360 Paras. 3, 5 and 6 of the FA.
291 active adoptive capacity; Ibid., Arts. 181–187.
292 Jakovac Lozić, 2021, p. 285.
293 Art. 194 para. 3 of the FA.
294 Jakovac Lozić, 2021, p. 285.
295 Art. 181 para. 2 of the FA.
296 Ibid., para. 1.
297 Jakovac Lozić, 2021, p. 284.
298 Art. 180 para. 1 of the FA.

Adoption can be established if it is in the best interests of the child[299]. As a result, the CISW is required to examine a child's eligibility and suitability for adoption by possible adopters in connection to the child's well-being, suitability for adoption and value of adoption for the child.[300]

Except in extraordinary circumstances, it is not possible to adopt a child of minor parents[301]. These circumstances relate to a child born to minor parents who has no chance of being reared in the family of his parents, grandparents or other close relatives, even after a year has passed.[302,303] In the case of a minor parent's child being adopted, the legislature deems that the parents' consent is required[304].

If the child has reached the age of 12 years, his or her consent is needed for establishing the adoption and if a child is younger, under 12 years of age, that child has the right to express his or her opinion on adoption; the child's opinion and wishes are taken into account in accordance with his or her age and maturity[305].

It is not feasible to adopt a blood relative, such as a brother or sister[306]. The legal norms of FA 2015 do not prescribe whether it is possible to adopt a half-sister or half-brother. However, brothers and sisters, like half-brothers and half-sisters, are second-degree collateral lineage relations; thus, to alleviate any uncertainties, the norm would be complete by including this category of relatives.[307]

The guardian cannot adopt his or her ward until the CISW relieves the guardian of his or her guardianship duties[308]. This prohibition is preventive in nature because the custodial relationship might be promptly turned, by adoption, into a parental or kinship tie, allowing the custodian to avoid any control.[309]

The existence of certain legally stated assumptions on the side of the adopter, which make the adopter suitable and capable for the responsible and difficult position of an adopter, is implied by his or her active adoptive capability.[310] An adoptive parent, unlike a biological parent, must provide some guarantees in advance, such as possessing traits and qualities that will make him or her a good parent in addition to completing the legal requirements. Thus, a person cannot adopt if he or she is deprived of the right to parental care, is deprived of business capacity or has past behaviour and characteristics indicating that it is not desirable to entrust him or her with parental care of the child[311].

299 Ibid., para. 3.
300 Jakovac Lozić, 2021, p. 286.
301 Art. 183 paras. 1-2 of the FA.
302 Jakovac Lozić, 2021, p. 287.
303 Art. 183 para. 2 of the FA.
304 Ibid., para. 3.
305 Ibid., Art. 191 paras. 1 and 3.
306 Ibid., Art. 182 para. 1.
307 Jakovac Lozić, 2021, p. 288.
308 Art. 182 para. 2 of the FA.
309 Jakovac Lozić, 2021, p. 289.
310 Ibid., p. 290.
311 Art. 187 of the FA.

Further, the FA prescribes that an adoptive parent must be at least 21 years old and at least 18 years older than the adopted child[312]. In exceptional circumstances, the adoptive parent may be a person under the age of 21 who is at least 18 years older than the adopted child[313]. A child can be adopted jointly by marital and extramarital spouses, one marital or extramarital spouse if the other marital or extramarital spouse is the child's parent or adopter, one marital or extramarital spouse with the consent of the other marital or extramarital spouse and by a person who is not married or cohabiting[314].

The child can be adopted by a Croatian citizen[315]. Exceptionally, the adoptive parent may also be a foreign citizen if this is in the best interests of the child[316]. If the adopter or the child are foreign nationals, the adoption can only be established with prior approval of the ministry responsible for social welfare affairs[317].

The process of assessment of suitability and eligibility for adoption and the procedure for establishing the adoption are carried out by the CISW as the actual competent authority in the adoption procedure[318].

312 Ibid., Art. 184 para. 1.
313 Ibid.
314 Ibid., Art. 185.
315 Ibid., Art. 186 para. 1.
316 Ibid., para. 2.
317 Ibid., para. 3.
318 Ibid., Arts. 203–217.

Bibliography

Aras Kramar, S. (2022) *Komentar Obiteljskog zakona – II. Knjiga*. Zagreb: Organizator.

Aras Kramar, S. (2017a) 'O djelovanju Centra za posebno skrbništvo: rezultati, dvojbe i perspektiva I. dio', *Hrvatska pravna revija*, 17(6), pp. 22–23.

Aras Kramar, S. (2017b) 'O djelovanju Centra za posebno skrbništvo: rezultati, dvojbe i perspektiva II. dio', *Hrvatska pravna revija*, 17(7-8), pp. 16–25.

Aras, S. (2014) 'Položaj djeteta u postupku prema novom Obiteljskom zakonu' in Barbić, J. (ed.) *Novo uređenje obiteljskih sudskih postupaka*. Zagreb: Hrvatska akademija znanosti i umjetnosti, pp. 35–65.

Babić, Z. (2020) 'Ulaganja u djecu kao visoko isplativa socijalna investicija', *Paediatria Croatica*, 64(2), pp. 56–64; https://doi.org/10.13112/pc.420.

Büchler, A., Keller, H. (eds.) (2016) *Family Forms and Parenthood – Theory and Practice of Article 8 ECHR in Europe*. Cambridge – Antwerpen – Portland: Intersentia.

Čulo, A. (2009) 'Zaštita i ostvarivanje prava djeteta na uzdržavanje u hrvatskom obiteljskom pravu', *Pravnik: časopis za pravna i društvena pitanja*, 43(Special edition), pp. 157–173.

Čulo Margaletić, A. (2014) 'Novine iz prakse Europskog suda za ljudska prava' in Rešetar, B., Aras, S. (eds.) *Represivne mjere za zaštitu osobnih prava i dobrobiti djeteta*. Osijek: Sveučilište J. J. Strossmayera, Pravni fakultet u Osijeku, pp. 13–21.

Čulo Margaletić, A. (2021) 'Obvezno savjetovanje i obiteljska medijacija kao oblici pravne pomoći obitelji u krizi', *Godišnjak Akademije pravnih znanosti Hrvatske*, 12(1), pp. 67–82; https://doi.org/10.32984/gapzh.12.1.4.

Herceg, B., Salitrežić, A. (2014) 'Odnos između kaznenih djela na štetu djeteta i poduzimanja mjere lišenja roditeljske skrbi' in Rešetar, B., Aras, S., (eds.) *Represivne mjere za zaštitu osobnih prava i dobrobiti djeteta*. Osijek: Sveučilište J. J. Strossmayera, Pravni fakultet u Osijeku, pp. 67–87.

Hlača, N. (2021) 'Skrbništvo' in Hrabar, D., et al. (eds.) *Obiteljsko parvo*. 1st edn. Zagreb: Narodne novine, pp. 355–398.

Hrabar, D. (2012) 'Europska konvencija o ostvarivanju dječjih prava – poseban zastupnik djeteta' in Filipović, G., Osmak-Franjić, D. (eds.) *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava*. Zagreb: Pravobranitelj za djecu, pp. 103–116.

Hrabar, D. (2020) 'Postmoderno doba kao predvorje negacije dječjih prava', *Zbornik Pravnog fakulteta u Splitu*, 57(3), pp. 657–688; https://doi.org/10.31141/zrpfs.2020.57.137.657.

Hrabar, D. (2021a) 'Obiteljskopravni odnosi roditelja i djece' in Hrabar, D., et al. (eds.) *Obiteljsko parvo*. 1st edn. Zagreb: Narodne novine, pp. 175–257.

Hrabar, D. (2021b) 'Uvod u obiteljsko pravo' in Hrabar, D., et al. (eds.) *Obiteljsko parvo*. 1st edn. Zagreb: Narodne novine, pp. 1–34.

Hrabar, D. (2021c) 'Posvojenje i udomiteljstvo pred izazovima za bolju budućnost nezbrinute djece', *Aktualnosti hrvatskog zakonodavstva i pravne prakse: građansko, trgovačko, radno i procesno pravo u praksi*, 2021/28, pp. 1–39.

Hrabar, D. (ed.) (2021) *Presude o skrbništvu i lišenju poslovne sposobnosti Europskog suda za ljudska prava protiv Republike Hrvatske*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu.

Hrabar, D. (ed.) (2022) *Presude Europskog suda za ljudska prava o mjerama za zaštitu dobrobiti djeteta*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu.

Jakovac Lozić, D. (2021) 'Posvojenje' in Hrabar, D., et al. (eds.) *Obiteljsko parvo*. 1st edn. Zagreb: Narodne novine, pp. 273–338.

Khazova, O. (2016) 'Interpreting and applying the best interests of the child: the main challenges' in Sormunen, M. (ed.) *The best interests of the child – A dialogue between theory and practice*. Strasbourg: Council of Europe Publishing, pp. 27–30 [Online]. Available at: https://rm.coe.int/1680657e56 (Accessed: 30 November 2023).

Korać Graovac, A. (2012) 'Pravo djeteta da bude saslušano – Opći komentar br. 12 Odbora za prava djeteta (2009)' in Filipović, G., Osmak Franjić, D. (eds.) *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava, Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu*. Zagreb: Pravobranitelj za djecu, pp. 117–137.

Korać Graovac, A. (2013) 'Povelja temeljnih prava Europske unije i obiteljsko pravo' in Korać Graovac, A., Majstorović, I. (eds) *European Family Law*. Zagreb: Narodne novine, p. 38.

Korać Graovac, A. (2017) 'Od zajedničkog do samostalnog ostvarivanja roditeljske skrbi i natrag – kako zaštititi prava djece i roditelja', *Godišnjak Akademije pravnih znanosti Hrvatske*, 8(Special issue), pp. 51–73.

Korać Graovac, A. (2021) 'Uzdržavanje' in Hrabar, D., et al. (eds.) *Obiteljsko parvo*. 1st edn. Zagreb: Narodne novine, pp. 399–452.

Korać Graovac, A. (2016) 'Uzdržavanje kao sredstvo ostvarenja prava djeteta na životni standard' in Hrabar, D. (ed.) *Prava djece – multidisciplinarni pristup*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 83–98.

Korać, A. (2003) 'Posebnosti parničnih postupaka uređenih Obiteljskim zakonom', *Hrvatska pravna revija*, 3(1), pp. 32–43.

Lucić, N. (2021a) 'Zastupanje u vezi s bitnim osobnim pravima djeteta', *Zbornik radova Pravnog fakulteta u Splitu*, 58(3), pp. 815–840; https://doi.org/10.31141/zrpfs.2021.58.141.815.

Lucić, N. (2021b) 'Child's special guardian – International and European expectations and Croatian reality', *Balkan Social Science Review*, 2021/17, pp. 97–116; https://doi.org/10.46763/BSSR21170097l.

Majstorović, I. (2017a) 'The Realisation of the right of the child to express his/her views – How "visible" are children in Croatian family judicial proceedings?', *Ljetopis socijalnog rad*, 24(1), pp. 55–71.

Majstorović, I. (2017b) 'O odjecima strasbourškog acquisa u hrvatskom Obiteljskom zakonu iz 2015. Godine' in Bubić, S. (ed.) *Zbornik radova Peti međunarodni naučni skup Dani porodičnog prava – "Odjeci prakse Evropskog suda za ljudska prava u nacionalnim porodičnim pravima"*. Mostar: Pravni fakultet Mostar, Univerzitet Džemal Bijedić, pp. 101–117.

Majstorović, I. (2017c) 'Obvezno savjetovanje i obiteljska medijacija de lege lata i de lege ferenda', *Godišnjak Akademije pravnih znanosti Hrvatske*, 8(Special issue), pp. 129–150.

Mandija, L. (2020) 'Challenging Paternity under Case Law of the European Court of Human Rights' in Brinig, M. (ed.) *International Survey of Family Law*. Cambridge – Antwerpen – Chicago: Intersentia, pp. 99–114; https://doi.org/10.1017/9781839700910.007.

Milić Babić, M., Hranj Zeko, M., Leutar, Z. (2023) *Prava i usluge u sustavu socijalne skrbi za djecu s teškoćama u razvoju i njihove obitelji*. Zagreb: Pravni fakultet – Studijski centar socijalnog rada, Sveučilište u Zagrebu.

Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike (2022) *Godišnje Statističko Izvješće O Primijenjenim Pravima Socijalne Skrbi, Pravnoj Zaštiti Djece, Mladeži, Braka, Obitelji I Osoba Lišenih Poslovne Sposobnosti, Te Zaštiti Tjelesno Ili Mentalno Oštećenih Osoba U Republici Hrvatskoj U 2022. Godini*. Zagreb: Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike [Online]. Available at: https://mrosp.gov.hr/UserDocsImages/dokumenti/Glavno%20tajni%C5%A1tvo/Godi%C5%A1nje%20izvje%C5%A1%C4%87e%202022/Godi%C5%A1nje%20statisti%C4%8Dko%20o%20primijenjenim%20pravima%20socijalne%20skrbi%202022.pdf (Accessed: 30 November 2023).

Omejec, J. (2021) 'Značenje i doseg prava na poštovanje obiteljskog života u praksi Europskog suda za ljudska prava' in Hrabar, D. (ed.) *Presude o roditeljskoj skrbi Europskoga suda za ljudska prava protiv Republike Hrvatske*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 1–26.

Radina, A. (2017) 'Izdvajanje djeteta iz obitelji u praksi Europskog suda za ljudska prava', *Godišnjak Akademije pravnih znanosti Hrvatske*, 8(Special issue), pp. 93–116.

The Ombudsman for children (2023) *Izvješće o radu pravobraniteljice za djecu 2022*. Zagreb: Ombudsman for children, pp. 31–32.

Rešetar, B. (2022) *Komentar Obiteljskog zakona – I. Knjiga*. Zagreb: Organizator.

Rešetar, B., Rupić, D. (2016) 'Posebni skrbnik za dijete u hrvatskom i njemačkom obiteljskopravnom sustavu', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 37(3), pp. 1175–1200; https://doi.org/10.30925/zpfsr.37.3.5.

Rešetar, B., Lucić, N. (2021) 'Child Participation in Family Law – Croatia' in Schrama W., et al. (eds.) *International Handbook on Child Participation in Family Law*. Mortsel – Cambridge: Intersentia; https://doi.org/10.1017/9781839701726.009.

Sladović Franz, B. (2016) 'Djeca u alternativnoj skrbi' in Hrabar, D. (ed.) *Prava djece – multidisciplinarni pristup*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 225–241.

Sladović Franz, B. (2018) 'Organizacija socijalne skrbi za djecu u Hrvatskoj' in Grgurić, J., Jovančević, M. (eds.) *Preventivna i socijalna pedijatrija*. Zagreb: Medicinska naklada, pp. 540–546.

Sladović Franz, B. (2004) 'Odabir izvanobiteljskog smještaja djece ugroženog razvoja u obitelji', *Ljetopis socijalnog rada*, 11(2), pp. 215–228.

Sovar, I. (2015) 'Institucionalizacija i deinstitucionalizacija ustanova za djecu bez odgovarajuće roditeljske skrbi', *Ljetopis socijalnog rada*, 22(2), pp. 311–332; https://doi.org/10.3935/ljsr.v22i2.36.

Šeparović, M. (2014) *Dobrobit djeteta i najbolji interes djeteta u sudskoj praksi*. Zagreb: Novi informator.

Šimović, I. (2011) 'Utjecaj dobi na poslovnu i parničnu sposobnost', *Zbornik Pravnog fakulteta u Zagrebu*, 61(5), pp. 1625–1686.

Šimović, I. (2015) 'Pravno uređenje obiteljskog doma u hrvatskom obiteljskom pravu – prijepori i dvojbe', *Hrvatska pravna revija*, 15(2), pp. 33–45.

Šimović, I. (2016) 'Obiteljski dom, novi Obiteljski zakon iz 2015. i Preporuka Vijeća Europe o pravu bračnih drugova na korištenje obiteljskog doma' in Barbić, J. (ed.) *Pravo na dom*. Zagreb: Hrvatska akademija znanosti i umjetnosti, pp. 141–163.

Šimović, I. (2021) 'Presuda u predmetu C protiv Hrvatske' in Hrabar, D. (ed.) *Presude o skrbništvu i lišenju poslovne sposobnosti Europskoga suda za ljudska prava protiv Republike Hrvatske*. Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 155–177.

Šimović, I., Majstorović, I. (2017) 'Povreda prava na obiteljski život u postupcima međunarodne otmice djece: o značenju načela žurnog postupanja', *Hrvatska pravna revija*, 17(11), pp. 1–9.

Šimović, H., Deskar-Škrbić, M. (2020) *Ekonomika javnog sektora s hrvatskim primjerima*. Zagreb: Arhivanalitika.

Triva, S., Dika, M. (2004) *Građansko procesno parvo*. 7th edn. Zagreb: Narodne novine.

UNICEF (2022) *Deep Dive Analysis of Policies, Programs, Services, Sources of Financing and Mechanisms Aimed at Preventing Poverty and Social Exclusion of Children in Croatia*. Zagreb: UNICEF Country Office [Online]. Available at: https://www.unicef.org/croatia/media/12546/file/Comprehensive%20Deep%20Dive%20Analysis%20-%20ENG.pdf (Accessed: 30 November 2023).

Uzelac, A., Rešetar, B. (2009) 'Procesni položaj djeteta i zastupanje djeteta u sudskom postupku' in Rešetar, B. (ed.) *Dijete i pravo – Interdisciplinarni pristup*. Osijek: Pravni fakultet, pp. 163–198.

Vejmelka, L., Sabolić, T. (2015) 'The potential of institutions for children without parental care: The perspective of the institutional caregivers', *Criminology and Social Integration*, 23(1), pp. 72–98.

Zermatten, J. (2010) 'The Best Interests of the Child Principle: Literal Analysis and Function', *International Journal of Children's Rights*, 18(4), pp. 483–499; https://doi.org/10.1163/157181810X537391.

Žganec-Brajša, L. (2018) 'Anticipirane naredbe i roditeljska skrb', *Hrvatska pravna revija*, 18(8), pp. 70–82.

Žganec, N., Kujundžić, M. (2003) 'Djeca i institucijska skrb', *Dijete i društvo*, 5(2-3), pp. 189–203.

Župan, I. (2022) 'Udomiteljstvo u Republici Hrvatskoj: vrste, uvjeti i postupak za stjecanje statusa udomitelja', *Aktualnosti hrvatskog zakonodavstva i pravne prakse: građansko, trgovačko, radno i procesno pravo u praksi*, 2022/29, pp. 509–517.

| Chapter 3 |

Child-Protection Systems – Czech Perspective

Martin Kornel

ABSTRACT

The Czech Republic's child protection system, assessed as risk-oriented with high intervention thresholds, faces many challenges such as fragmentation, excessive institutionalisation of children care and inadequate participation of children and parents, despite recent strategic aims for reform. However, its guiding principles encompass the best interest of the child, family protection, respect for children's participation rights, non-discrimination, prevention, cultural sensitivity, rehabilitation and voluntary participation. The responsibility for maintaining the Czech child protection system is divided among various actors, mainly socio-legal protection bodies, courts and social service providers. The system pays special attention to children at risk, including those lacking care, exhibiting problematic behaviour, being crime victims or having been frequently institutionalised. The system provides some specific measures for children with disabilities, but some accessibility issues, as a heritage of the past, persist. The state's intervention in the family for children's protection relies strongly on the activities of socio-legal protection bodies, which are mainly preventive, advisory, educational, and protection measures. The system provides various benefits regarding social support, pension and tax law systems. Moreover, a variety of paid and unpaid child welfare is provided, mainly social activation services, low threshold facilities for children and minors, respite care, accompanying organisations services for foster parents and adoptive parents and residential care centres. When considering alternative care arrangements for children, courts have a wide array of options under the law, including placing the child under the care of a guardian, another person (typically a relative) or foster care, with various provisions for short-term and long-term arrangements. Additionally, institutional care is an alternative to be employed only if other substitute family care is impossible.

KEYWORDS

child protection system, institutional care, social-legal protection of children, foster care, social services

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1. Aims, Foundations, Structure and Legal Regulation of the National Child Protection System

The child protection system in the Czech Republic is assessed as a risk-oriented system.[1] That means that the threshold for intervention in a family to protect children against harm is high.[2] At the linguistic level, ensuring a stable home and meeting children's basic needs for safe and continuous attachment to their caregivers is a key goal of the system. In practice, fulfilling this goal needs catching up. As an example, some studies indicate that the Czech Republic is considered among the least child-friendly Organisation for Economic Co-operation and Development countries, with a history of discriminating against groups of children.[3]

The most recent strategic document adopted by the Czech Government in December 2020 addressing the child protection system is the Strategy for the Protection of Children's Rights 2021 to 2029. The Strategy identifies some major systemic weaknesses, which are horizontal and vertical fragmentation and complexity of the system, unclear competencies and responsibilities between the different gestors. The fragmented system of children protection does not consider the complex needs of children that relate to other areas of a child's life (health, education etc.). There is also lack of a comprehensive quality management system approach across the whole system of services for children at risk, children's views are not sufficiently considered in decision-making processes and there is a high pervasiveness of the children protection system and uneven distribution of financial flows in the system. Based on those weaknesses, the Czech government sets the following aims (recommendations): unification of the system of rights protection and care for children at risk; coordination of activities and interdisciplinary cooperation; strengthening the offer of assistance and preventive services; promotion the offer of educational, leisure and other activities; measures in the field of public and judicial protection of children to improve the quality of life of children aimed at increasing efficiency of administrative agencies for reducing the time of court proceedings and improving the quality of decision-making processes; development of foster family care; reforming the institutional care for children; strengthening children's participation at all levels.

The origins of the current system are based on Foucauldian disciplinary society aims, meaning the proper education of children to engage in labour so that they do not become a burden to society, and can be traced back to the 19th century.[4] Despite the social changes after 1989 and the subsequent return to the concept of the rule of law, the system of the public protection of children has not yet succeeded in

1 Helland and Luhamaa, 2020, p. 29.
2 Gilbert et al., 2011. p. 248.
3 Tarshish, 2019, p. 162.
4 Ležková, 2022, p. 257.

eliminating the disciplinary effect of this system, either towards the children themselves or their parents.[5]

Individual protection of children's rights and the children themself have been brought to the centre of attention only recently,[6] and arguably mostly on a linguistic level, not so much in practice.[7] The literature demarks:

> 'three main waves of transforming child protection in the Czech Republic: 1) combatting residential (institutional) care and attempting to replace it with substitute family care in the 2000s; 2) focusing on the empowerment of biological families after 2008; and 3) providing campaigns against domestic violence, including the maltreatment of children.'[8]

Probably due to the grounds of the current system, there are some significant challenges that the Czech Republic still faces after the decades following the transition to standard democracy.

The first problem addressed by professionals[9] and international bodies such as the UN Committee on the Rights of the Child[10] is the abovementioned fragmentation of responsibilities among many different actors cooperating only to a limited extent (e.g. the agenda of services for at-risk children and their families belongs to three ministries, namely Ministry of Health, Ministry of Education, Youth and Physical Education and in part also the Ministry of Labour and Social Affairs).

Second, the excessive institutionalisation of care for children at risk and the involuntary removal of children from parental care are criticised.[11] Notably, the European Court of Human Rights recognised on some occasions that the Czech Republic violated fundamental human rights in specific cases of the involuntary removal of children.[12] The UN Committee on the Rights of the Child is also concerned about the high institutionalisation rates in general and specifically addressing the following problems: too large institutional care facilities; institutional care for children under three years of age; some aspects of institutionalisation of children upon the request of their parents; institutionalisation for "behavioural difficulties", high level of institutionalisation of children with disabilities and Roma children, lack of family-based care options; and practice where socioeconomic circumstances, in particular poverty, poor housing conditions and loss of housing, are being used as grounds for family separation.[13] As literature pointed out already in 2014, in the

5 Ibid.
6 Gojová et al., 2020, p. 11.
7 Sležková, 2022, p. 258.
8 Shmidt, 2023, p. 425.
9 Gojová et al., 2020, p. 16.
10 CRC/C/CZE/CO/5-6, point 30 (a).
11 Vavrecková et al., 2017, p. 247.
12 ECHR, *Wallová and Wallla v. Czech Republic*, 2006.
13 CRC/C/CZE/CO/5-6, points 30 (c) and (d).

> 'Czech case, the state's willingness to change course is evident, but the structure of institutionalization is dependent upon more than just current political authority. It is a deeply embedded and firmly established cultural practice, the deviation from which challenges current beliefs, knowledge, patterns, and processes'.[14]

Third, the schizophrenic role of the social-legal protection authority bodies serving as a guardian representing children in court proceedings but also as a public body controlling (and punishing) families or providing family services is criticised by experts.[15]

Finally, the insufficient participation of both children and parents in decision-making processes, coupled with institutional and domestic violence directed at children, are among the most significant concerns the literature points to.[16]

Concerning children's rights, protection of the family and parenthood the main sources of contemporary Czech law are: at the constitutional law level, the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 23/1991 Coll., the Charter of Fundamental Rights and Freedoms, re-adopted under No. 2/1993 Coll., as amended; "Charter"); at the substantive law level, the provisions of the Civil Code (Act No. 89/2012 Sb., as amended, "CC") regulate family relations.

The following sections are dedicated to a more detailed description of the child protection system in the Czech Republic and will address the system with specific attention to the following categories:

1. *The social-legal protection of children*. It is carried out mainly by public law entities (social-legal protection authorities) that are considered administrative authorities. The main functions of social-legal protection are supportive and advisory, protective, preventive, controlling and repressive.[17]
   The powers of the social-legal protection authority bodies are regulated mainly by Act No. 359/1999 Coll., on the social-legal protection of children (hereinafter, "SLPA").
   Institutional care of children is regulated by Act No. 372/2011 Coll., on Health Services ("HSA"), Act No. 109/2002 Coll. on the Execution of Institutional Care and Protective Care ("ICEA").
2. *Child justice (courts)* is considered part of the civil law court system, with some exceptions concerning non-contentious proceeding rules and the juvenile justice system. The court's role within the meaning of child justice is, thus, to decide disputes and other matters within its jurisdiction. During the last decade, the evolution toward problem-solving justice in this area has been evident (e.g. interdisciplinarity or a pilot project introducing the position of court social

14 Schmidt and Bailey, 2014, p. 72.
15 Rogalewiczová, 2015, pp. 713–719.
16 Shmidt, 2023, pp. 440–441.
17 Rogalewiczová, 2018, pp. 2–3.

worker). The judges sitting for the juvenile courts are typically specialised, yet it depends mostly on the timetable issued and changed by the President of the Court.

Civil proceedings are regulated mainly by the Civil Procedure Code from 1963 (Act No. 99/1963 Sb., Civil Procedure Code, as amended, "CPC") and Act on Special Civil Proceedings (Act No. 292/2013 Sb., on Special Civil Proceedings, as amended, "SCPA").

3. *Social services*. Concerning children, those include activities that assist and support social inclusion or the prevention of social exclusion.
   Legal regulation is included mainly in Act No. 108/2006 Coll., on social services ("SSA").
4. *Benefits.* Provided to ensure basic needs and financial support to persons taking care of children or the children directly. Depending on the type of benefit, it falls within a state social support, pension or tax system.
   Primary sources of law concerning the state social support system are Act No. 117/1995 Coll., on State Social Support ("StSocSA") Act No. 588/2020 Coll. Act on Substitute Maintenance, Act No. 111/2006 Coll., on Aid in Material Distress and Act No.329/2011 Coll., on providing benefits to persons with disabilities.
   Concerning pension system Act No. 155/1995 Coll. Pension Insurance Act ("PIA") is the primary source of legal regulation.
   Benefits that might be provided within the tax law system are regulated by Act No. 586/1992 Coll. Income Tax Act ("ITA").

2. Guiding Principles of the National Child Protection System

The law does not define the guiding principles of the national child protection system. Still, these could be derived by interpreting the SLPA and other sources of Czech law (mainly CC) and international law, being mainly[18]:

1. *Best interest of the child principle* expressly stipulated in Art. 5 of SLPA as follows:

> 'The primary aspect of social-legal protection is the interest and well-being of the child, the protection of parenthood and the family, and the mutual right of parents and children to parental education and care. At the same time, the broader social environment of the child is also taken into account.'

2. *Family protection*[19]
3. *Respect for children's right to participation*[20]

18 Králíčková et al., 2022, pp. 289–290.
19 Art. 5 of SLPA.
20 Ibid., Art. 8.

4. *Non-discrimination*
5. *Free accessibility*[21] with the exception of the child's stay in an educational and recreational camp, the child's stay in an institution for children in need of immediate assistance and the administration of the child's property.
6. *Accessibility to all children*[22] on the territory of the Czech Republic under the age of 18, unless they attain a majority earlier.
7. *Positive obligation of the state* to safeguard children from physical or psychological violence and other risk[23]. If a situation threatens the proper upbringing and development of the child and the parents or other persons responsible for the upbringing of the child are unable or incapable of resolving it themselves, it is necessary to take social protection measures to protect the child and provide assistance.
8. *Prevention*[24]
9. *Special protection* of children without family care[25]
10. *Cultural sensitivity*: The choice of actions aims at continuity in the child's upbringing and respects their ethnic, religious, cultural and linguistic background.
11. *Biological family rehabilitation and preference*[26]
12. *Voluntary participation of other persons in the socio-legal protection of children:* Natural or legal persons may participate voluntarily in the social protection activities defined by law, subject to authorisation. Certain activities with significant impact are reserved for state authorities or delegated public administration bodies.

3. Maintenance and Financing of the Child Protection System

Responsibility for maintaining the *child protection system* is divided among many actors. As explained above, its fragmentation is criticised and aims to be reformed in the future.

Social-legal protection is provided by *social-legal protection authority bodies* (regional authorities, municipal authorities, the Ministry of Labour and Social Affairs, the Office for International Protection of Children and the Labour Office) ("SLPB"). The competencies are divided among those authorities, yet the primary workload (and highest number of employees) is given to municipal authorities. Data from 2018 show that the state covers approximately 73 % to 100 % of the cost of the

21 Ibid., Art. 58 para. 3.
22 Ibid., Art. 2.
23 Ibid., Art. 8 para 1 and Art. 9a and others.
24 Ibid., Arts. 10-10a.
25 Ibid., Art. 15 para 42 and others.
26 Ibid., Art. 9a para 2 and others.

municipal social-legal protection authorities (non-governmental funding is based on an estimate).[27] Moreover, other persons (entities) might provide *social-legal protection* for children if authorised by the regional authority for a specific agenda. Those may include, for example, assisting parents in solving educational or other problems related to the care of the child; organising counselling activities, lectures and courses; establishing and operating childcare counselling facilities; providing expert advice and assistance to applicants for adoption or foster care placement and provision of counselling assistance to individuals suitable to become adoptive or foster parents and to adoptive or foster parents. Entities providing service based on the authorisation are typically charities, societies, hospitals or even business corporations. There are no precise statistics on their financing, but vast variability can be assumed, including private (e.g. donations) and public funds (e.g. subsidies). The Ministry of Labour and Social Affairs is the state administration's central body in the social and legal protection of children. It carries out legislative, methodological and control activities concerning this area, including reviewing regional authorities' final decisions in appeal and review proceedings. The literature criticises fragmentation and insufficient coordination of state, municipalities and providers of social-legal protection.[28]

Regarding *child justice,* the courts are the primary actors of child protection. In practice, most cases concerning child protection are adjudicated by civil district courts (86 courts) at the initial stage, with civil regional courts serving as appellate courts (eight courts) and limited recourse for extraordinary appeal to the Supreme Court. Administrative, benefit and tax law cases are exceptions under administrative courts' jurisdictions. The Ministry of Justice acts as the central body of the state administration of the courts and is responsible for creating favourable conditions for the courts to administer justice effectively. This includes personnel, organisation, economics, finance and education, as well as supervising the proper execution of tasks within the boundaries prescribed by law.

Other significant stakeholders in the child protection system include *social service* providers, encompassing municipalities, regions, non-governmental and non-profit organisations and individuals. Among others, the Ministry of Labour and Social Affairs is the incorporator of five specialised social care institutions.[29] The Ministry of Labour and Social Affairs is the central body of the state administration in this field and is responsible for the concept of the social services system, its development and implementation, subsidies, coordination, control, among others. Social services are mostly financed by the state and municipal budgets and various national and supranational grants. Public expenditure on social services is considered to be low.[30]

27 Ministry of Labour and Social Affairs, 2019a.
28 Pemová and Ptáček, 2022, p. 19.
29 Ministry of Labor and Social Affairs, 2019b.
30 Horák et al., 2016.

The state *social support system* primarily relies on the Regional Branches of the Labour Office of the Czech Republic (*Úřad práce ČR*) serving as contact points for processing applications, assessing eligibility and distributing benefits funded by the state. The Ministry of Labour and Social Affairs is the central body of the state administration in this field and the appellate body. The *pension system* relies on the District Social Security Administrations (*Okresní správa sociálního zabezpečení*), which are local organisation units of the Czech Social Security Administrations (*Česká správa sociálního zabezpečení*). Benefits provided under this system to the children (orphan pension, as will be explained in the subsection 7.1) are funded through the insurance system. Again, The Ministry of Labour and Social Affairs is the central body of the state administration in this area.

The *tax system* relies on Financial Administrative Bodies (*Orgány finanční správy*), with the Ministry of Finance as the central state administration body.

4. Child at Risk

The Czech legislation does not provide a comprehensive definition of a child at risk, a fact that is criticised by professionals.[31] However, children at risk for the purpose of socio-legal protection could be categorised into at least four groups:[32] a) children who lack adequate care or whose proper development is jeopardised; b) children whose behaviour is problematic (e.g. illegal or criminal activities); c) children who are victims of crime or are at risk of becoming victims; d) children who are repeatedly placed or have been placed for a long period of time into institutional care.

This categorisation relies on the demonstrative list included in the legal definition provided by Art. 6 of the SLPA, encompassing the following groups of children:

> ‘(a) whose parents
> 1. are deceased,
> 2. fail to fulfil the obligations arising from parental responsibility, or
> 3. fail to exercise or abuse the rights of parental responsibility;
> (b) who have been entrusted to the care of another person responsible for the upbringing of the child, if that person fails to fulfil the obligations arising from the entrustment of the child to his or her care;
> (c) who lead an idle or immoral life consisting in particular of neglecting school attendance, not working, even if they do not have a sufficient source of livelihood, using alcohol or addictive substances, being at risk of addiction, living in prostitution, have committed a criminal offence or, in the case of children under the age of 15, have committed an act which would otherwise be

31 Pemová and Ptáček, 2022, p. 15.
32 Rogalewiczová et al., 2018, p. 42.

a criminal offence, repeatedly or persistently commit offences under the law governing offences or otherwise endanger civil coexistence;
(d) who repeatedly abscond from their parents or other natural or legal persons responsible for the upbringing of the child;
(e) on whom an offence endangering life, health, liberty, their human dignity, moral development or property has been committed or is suspected of having been committed;
(f) who, at the request of their parents or other persons responsible for the child's upbringing, are repeatedly placed in institutions providing continuous care for children or whose placement in such institutions lasts longer than 6 months;
(g) who are threatened by violence between parents or other persons responsible for the upbringing of the child, or violence between other natural persons;
(h) who are applicants for international protection, asylum seekers or persons enjoying subsidiary protection and who are in the territory of the Czech Republic unaccompanied by their parents or other persons responsible for their upbringing;
if these facts *persist for such a period of time* or are of such *intensity* that they adversely affect the development of the children or are or may be the cause of the adverse development of the children.'

Social workers employed by the SLPB are responsible for assessing whether an individual child is in a situation that poses a risk. However, a recent analysis reveals notable differences in the methods used by different social workers.[33] Similarly, research shows difficulties in introducing and strengthening the principle of the child's best interests in the practice of social workers.[34]

Statistics continually show that most children at risk are neglected children and sexually, physically and mentally abused children.[35]

5. Children With Disabilities in the Child Protection System

In former Czechoslovakia, the families with children with disabilities faced prevailing institutional care, neglect of rights and the absence of essential services in the area of healthcare, education and social care.[36] The literature outlines the numerous challenges those families have encountered since 1989, encompassing issues such as discrimination in benefit allocation, limited accessibility of public places and the

33 Ďuraško Mádlová and Mertová, 2023, p. 100.
34 Hloušek et al., 2020, p. 189.
35 Ministry of Labour and Social Affairs, 2024 and Pemová and Ptáček, 2012, p. 24.
36 Sedláčková et al., 2022, p. 4.

use of cage beds in social care homes.[37] The education system in the Czech Republic has been based on a principle of "duality" (education within special schools outside the mainstream education remains available), which serves as another example, although a significant shift in inclusion has been visible in recent years.[38]
Specific measures available to children with disabilities are:

1. *Social services for families caring for a child with a disability*[39] include, among others, early care, nursing care, personal assistance, relief service (field and outpatient) and social activation service for families with children. Recent research on early care accessibility indicates the potential challenges in the accessibility of the service, with variations depending on the region and type of disability.[40]
2. *Support measures in education*[41]. A child with a disability should be entitled to support measures in his or her education, which include a teaching assistant in school or kindergarten, counselling assistance, adjusting the organisation, content, evaluation, forms and methods of education, modifying the conditions for admission to education and for leaving education, the use of compensatory aids, special textbooks and special teaching aids, adjusting the expected learning outcomes within limits set by the framework education programmes and accredited education programmes, education according to an individual education plan, the use of an additional pedagogical worker, the provision of structurally or technically adapted education or school services in premises.
3. *Benefits:*
    a. *Care allowance* is provided monthly to individuals unable to manage basic life needs without assistance[42]. The amount of the allowance depends on the level of dependency (four categories) and is based on an assessment of the ability to manage basic needs of life like mobility, orientation, communication, eating, dressing and footwear, physical hygiene, exercising physiological needs, health care, personal activities while considering the age of the child. The allowance might cover care provided by family members or professionals.
    b. *Mobility allowance*[43] is provided to a person over the age of 1 who holds a so-called disability card and repeatedly transports to school, culture, social activities, medical appointments etc.
    c. *Special assistance allowance*[44] is a comprehensive benefit that enables persons with disabilities to obtain funds for the purchase of various types

37 Sinecka, 2009, pp. 199–201.
38 Pivarč, 2019, p. 705.
39 Art. 32 of SSA.
40 Veřejný ochránce práv, 2020, p. 62.
41 Art. 16 of Act No. 561/2004 Coll., Education Act.
42 Arts. 7–30 of SSA.
43 Arts. 6–8 of Act on providing benefits to persons with disabilities.
44 Ibid., Arts. 9–12.

of compensatory aids (e.g. motor vehicle or a special restraint system). Persons with severe locomotor and weight-bearing disabilities and persons with severe visual and hearing impairments are entitled to this allowance.

6. Necessary Intervention

The SLPB plays a crucial role in fulfilling the Czech Republic's positive obligation to protect children even though many other authorities or persons are also responsible for intervening (e.g. Police, schools, and health service providers). Therefore, the following text focuses on the competencies of SLPB in relation to necessary intervention. Generally, the SLPB must intervene in situations that endanger the child's proper upbringing and favourable development[45].

The intervention measures

> 'must be chosen so that they build on each other and influence each other. In the execution and implementation of measures, priority shall be given to those which ensure the proper upbringing and favourable development of the child in his or her family environment and, if this is not possible, in a foster family environment; this shall be done by using methods of social work and procedures corresponding to current scientific knowledge.'[46]

The intervention measures available to the SLPB could be classified as:

1. *Preventive and advisory* measures[47] of SLPB include influencing parents to fulfil their parental responsibility obligations, discussing with the child any deficiencies in his or her behaviour, assisting parents in solving educational or other problems related to the care of the child, providing or facilitating advice to parents on the upbringing and education of the child and on the care of a disabled child etc.
2. *Educational measures*[48]. Namely, the SLPB may issue: a) a *warning* to the child, parents and other persons as a reprimand intended to make a particular person behave as required by law; b) an order on child *supervision* to ensure control over the child's behaviour and conduct. The supervision is mainly performed by social workers of the municipal authority, with the cooperation of other entities like schools, sports clubs, and employers of a child over 15 years of age; c) a *restriction order* imposing duties on a child, parents and other persons to prevent negative influence on the child's life. For example, an obligation to abstain from specified activities and prohibit visits to certain places, events, or

45 Art. 9a para 1 of SLPA.
46 Ibid., Art. 9a para 2.
47 Ibid., Arts. 10–12.
48 Ibid., Arts. 13–13a.

facilities might be imposed. Persons responsible for the upbringing of a child will usually be subject to such a prohibition; for example, if they visit places where they consume addictive substances or are under the influence of such substances and are subsequently unable, for example, to care for the children.

3. *Child protection measures* encompass various actions taken by the SLPB a motion to a court for an *interim measure* according to Art. 42 SCPA is needed when a child is in a state of lack of proper care or is in danger of life or other important child's interests are endangered. If the conditions are met, the court will issue an order placing the child out of the care of the parents or the care of a person related or close to the child and place the child into another type of care (e.g. institutional, foster); a motion to a court requesting a *decision on the merits* in matters such as foster family care, institutional care (temporary foster care, placement of a child in a facility for children in need of immediate assistance, ordering, prolonging or abolishing institutional care), adoption (whether the consent of the parent is required or not, deprivation of the parent's right to consent to the adoption in case of deprivation of parental responsibility) and interference with parental responsibility and its exercise (limitation, deprivation, suspension; suspension of the exercise of the duty and right of custody of a parent that is minor; retention of the duty and right of custody and personal contact with a parent with limited capacity); *provision of urgent care (temporary placement*). In situations where a child finds himself or herself without care, such as in instances of parental death or for unaccompanied migrant minors, the municipal authority in the place where the child is currently located has to arrange for urgent care for the child. This usually requires the location of persons related to the child or close to the child.

7. Structure of the Child Protection System

7.1. Monetary and In-Kind Benefits

The structure of the monetary benefits is complex and could be differentiated into the following groups:

1. *State social support system benefits:*
   a. *Child benefit*[49] is the basic long-term benefit for families with children. Families with an income up to 3.4 times the minimum subsistence level are eligible. Child benefit is provided in three amounts depending on the child's age and in two rates, basic and enhanced, depending on the type of income.
   b. *Parental allowance*[50] is available to all parents of children under four years of age, and eligibility is not contingent on household income or whether the child's mother or father is the recipient.

49 Arts. 17–19 of StSocSA.
50 Ibid., Arts. 30–31.

c. *Housing allowance*[51] is financial support assisting low-income families or individuals in meeting their housing expenses. The allowance is determined based on the family's income and housing expenditures.
d. *Substitute maintenance* (Act on Substitute Maintenance) is a social benefit designed to assist dependent children when a parent fails to adequately fulfil their court-ordered maintenance obligations. This may involve non-payment or payment of an amount lower than the court's determination. Applications for substitute maintenance can be submitted starting from 1 July 2021.
e. *Subsistence allowance*[52] is designed to meet the basic living needs of an individual or a group of individuals jointly assessed. This encompasses necessities such as food, clothing, footwear, essential hygiene items, and other fundamental requirements. To qualify for this allowance, a person must be recognised as being in material hardship and have an income and the income of the persons jointly assessed below the subsistence level.
f. *Material distress benefits*[53] are intended for immediate assistance as a one-time benefit (in case of serious health risks; extraordinary events such as natural disasters; unforeseeable events such as a pandemic or additional payment for energy supply; one-off expenditure such as overnight accommodation, in the event of loss of funds to pay for initial medical check-ups; purchase or repair of necessary essential long term need items such as refrigerator, washing machine, bed or stove; cost of education, counselling or leisure activities of a dependent child such as camp, special interest groups, family counselling; on social exclusion, that is, released).
g. *Foster care benefits*[54] include (a) foster carer's remuneration to which foster parents providing professional foster care are entitled; (b) allowance to cover the child's needs to which any foster parent or children up to 26 years old if he or she is still dependent and living with foster parents and; (c) foster care allowance to which non-professional foster parents are entitled; (d) one-off foster care benefits including allowance upon taking custody of the child and allowance for the purchase of a personal motor vehicle.
h. *Recurrent maintenance allowance*[55] benefits young adults transitioning out of residential care or foster care arrangements. This state allowance aims to support these individuals in covering essential expenses such as housing costs, clothing, shoes, personal needs and school supplies. A young adult must have experienced at least one year in professional foster care or court-ordered institutional care to be eligible. Alternatively, the young adult must have resided in non-professional foster care for at least three years before

51 Ibid., Arts. 24–28.
52 Arts. 21–29 of Act on Aid in Material Distress.
53 Ibid., Arts. 33–35a.
54 Arts. 47a–47n of SLPA.
55 Ibid., Arts. 50b–50u.

reaching full competence. The *one-off maintenance allowance*[56] supplements this allowance and assists in covering the expenses of a young adult, including housing costs, clothing, shoes, personal needs or school supplies.

i. *Care allowance*[57] for individuals unable to manage basic life needs without assistance.

j. *Mobility and special assistance allowances* (Act on providing benefits to persons with disabilities) serve as comprehensive benefits for persons with disabilities described in section 5.

2. *Pension system benefits: Orphan's pension*[58] is granted to an orphaned dependent child in case of parent (custodian/caregiver) death if the parent received an old-age or disability pension or passed away due to a work-related accident. In cases outside these circumstances, the orphan's pension is contingent upon the deceased person fulfilling the required pension insurance period.
3. *Tax system benefits: Dependent child tax credit*[59] The taxpayer is eligible for credit if taking care of their child, an adopted child or a child in foster care. The taxpayer will be eligible for a special tax bonus if the child tax credit exceeds the total tax amount. The bonus is equivalent to the difference between the child allowances and the individual's tax liability.

7.2. Child Welfare Services Within the Framework of Personal Care

Social activation services for families with children[60] are provided as field services or ambulatory services if a child's development is endangered because of the effects of a long-term crisis social situation that the parents cannot overcome on their own without help, and for whom there are other risks of endangering their development. Services include educational, training and activation activities, facilitating contact with the social environment, social therapeutic activities, assisting in exercising rights and legitimate interests and managing personal affairs.

Low threshold facilities for children and minors. The service targets children and minors at risk of social exclusion, especially those referred to as "street kids". Social workers aim to provide support by offering meaningful ways to spend the free time and assistance to families facing neglect or personal problems. The service adopts a low-threshold approach, allowing individuals to access it without presenting proof of identity, adhering to a regular schedule or being obligated to participate in activities.

Respite care is provided to families, for example, in children's centres or summer camps.

Accompanying organisations services for foster parents and adoptive parents that provide support (to children – being in contact with a child at least every three

56 Ibid., Art. 50c.
57 Arts. 7–30 of SSA.
58 Arts. 52–53 of PIA.
59 Art. 35c of ITA.
60 Art. 65 of SSA.

months), foster parents and family) exercise control, monitor ongoing substitute family care and educate the competencies of foster parents.

The daily *residential care* centre is a type of health care facility where the patient (child) goes during daytime but goes home for the night (non-inpatient care). The weekly residential care centre (stationary) provides services to children who have reduced self-sufficiency due to medical, mental, physical or combined disabilities and also provide overnight stays. Depending on the target group and their focus, they are nursing, rehabilitation, resocialisation or therapeutic.

Despite the range of services available, research shows limited or unsatisfactory results of the system towards some groups of vulnerable children (e.g. minority children's education)[61] or homeless children.[62]

7.3. Authority Measures

A wide range of options are available to the court when considering the child's placement to someone's other care than a parent's. According to Art. 34 para. 4 of the Charter,

> 'the care and upbringing of children is the right of parents; children have the right to parental education and care. The rights of parents may be limited and minor children may be separated from their parents against their will only by a court decision based on the law.'

The substantive law thus allows the placing of children by court order into another environment in the following order of preference:

1. *Care of guardian (péče poručníka)*[63]: As subsequently explained , if no parent holds and exercises full parental responsibility for the child, guardianship (*poručenství*) includes the exercise of all rights and duties belonging to parental responsibility. This means the guardian, if a natural person, might physically care for the child. If it is not contrary to the child's interests, the court shall appoint the person nominated by the parents as guardian unless that person refuses guardianship. Otherwise, the court shall appoint a person related to or close to the child or the child's family as guardian unless the parent has expressly excluded this person. If no such person exists, the court shall appoint another suitable guardian[64], which might also be a social-legal protection authority. In such a case, the possibility of physical care by the guardian is excluded by its nature.
2. *Care of another person* (typically a relative)[65] : If neither parent nor guardian can care for the child personally, the court may entrust the child to the personal

61 Merhaut et al., 2022, pp. 13–14.
62 Glumbíková and Mikulec, 2021, pp. 188–189.
63 Arts. 928–942 of CC.
64 Ibid., Art. 931.
65 Ibid., Arts. 953–957.

care of another person. If a person related to or close to the child has already taken care of the child, the court shall prioritise him or her over another person, unless this is not in the child's best interest.

3. *Foster care, pre-foster care (pěstounská, předpěstounská péče)*[66]: If neither parent nor guardian can care for the child personally, the court may entrust the child to the personal care of one or two (only if married) foster parents. The foster parent is then obliged and entitled to care for the child personally, exercise the parents' duties and rights proportionately in the child's upbringing and may decide on the ordinary affairs of the child (parental responsibility, decision making included, remains vested to the parents). Foster parents can be professionals (who have completed training and are registered in the register of persons who can carry out foster care maintained by the social-legal authority and are under the supervision of SLPB)[67] or non-professionals, usually relatives or other persons close to the child. The statistics show that about 72 % of foster parents are relatives (mostly grandparents).[68] The duration of a child's stay in foster care can vary depending on the circumstances and type of foster care. The following options are available:
   a. *Pre-foster care*[69]. If a person wishing to accept a child in foster care is a non-professional, there is an option for facultative short-term court-ordered care. For professional applicants, pre-foster care is mandatory before entrusting a child to their foster care[70]. This aims to establish a relationship between the child and the foster parent, or even the foster parent's family, to get to know each other and bring them closer together in the conditions and space where the child will live with the foster family.[71]
   b. *Short-term foster care*[72] involves specially trained professional foster parents equipped to handle the situation when a child is placed in their care for a limited period. They thus receive foster care benefits even when they do not have any child in their care. The statutory time limit for such care is one year[73]. This type of foster care provides interim care for a child without sufficient care until it is clear whether the child can be returned to his or her natural family, can be adopted or some other measure must be applied.
   c. *Foster care,* in general, could be provided by both non-professionals and professionals during the time when neither a parent nor guardian can care for the child personally. There is no statutory time limit for its duration (except adulthood or full legal capacity of the child).

66 Ibid., Arts. 958–970.
67 Fabián, 2022, p. 62.
68 Lipová et al., 2019, p. 8.
69 Art. 963 of CC.
70 Ibid., Art. 24.
71 Westphalová, 2020, p. 1148.
72 Art. 958. para 3 of CC.
73 Art. 27 para. 9 of SLPA.

4. *Institutional care* (*ústavní výchova*)[74]
   a. If the upbringing of the child or the child's physical, mental or intellectual state or his or her proper development is seriously endangered or impaired to such an extent that it is contrary to the best interests of the child, or if there are serious reasons why the child's parents cannot provide for his or her upbringing, the court may also order institutional care.
   b. *Child centres (nursery homes)* for children of up to three years (*dětské domovy pro děti do tří let věku*)[75] whose health condition requires the provision of healthcare in the form of inpatient care and who cannot grow up in a family environment, especially abused, neglected, abused or disabled children. On 1 January 2025, an amendment of the legislation will come into effect to forbid placing children up to three years of age in nursery homes by court order with some very strict exceptions (e.g. sibling groups).
   c. *Educational institutions:*
      I. *diagnostic institutions* (*diagnostické ústavy*)[76] are coeducational boarding facilities that perform diagnostic tasks, training, education and therapy for children of preschool and school age. The primary outcome of the stay should be comprehensive diagnostic reports with a personality development program. A stay in this type of institution should be at most eight weeks. After that period, the child should be returned to the family, substitute family care or other institutional care.[77]
      II. *children's homes* (*dětský domov*)[78] for children over three years of age (in effect since 1 January 2015, the age limit should be raised to four years) who do not have severe behavioural problems. These children are educated in schools that are not part of the children's home. The basic organisational unit in a children's home is a family group of six to eight children, usually of different ages and sexes. Siblings shall be placed in one family group.
      III. *children's home with a school* (*dětský domov se školou*)[79] for children over six years of age who have severe behavioural disorders or who require educational and therapeutic care because of a temporary or permanent mental disorder until the end of compulsory school. The basic organisational unit in a children's home with a school is a family group of five to eight children.
      IV. *educational institution* (*výchovný ústav*)[80] takes care of children over 15 years of age with severe behavioural disorders. It performs mainly

74 Arts. 971–975 of CC.
75 Arts. 43–44 of HAS.
76 Arts. 5–11 of ICEA.
77 Blažková and Nováková, 2018, p. 91.
78 Art. 12 of ICEA.
79 Ibid., Art. 13.
80 Ibid., Art. 14.

educational, training and social tasks. The basic organisational unit in educational institutions is an educational group consisting of five to eight children.

d. *Homes for people with special needs* (*domovy pro osoby se zdravotním postižením*)[81] provide residential services to children with disabilities and reduced self-sufficiency if their situation requires regular assistance from another person. The service includes, among others, accommodation, alimentation, assistance, educational, training and activation activities and social therapeutic activities.
e. *Facilities for children requiring immediate assistance* (*zařízení pro děti vyžadující okamžitou pomoc*)[82] serve as crisis accommodation centres for children, offering a temporary residence, meals, clothing, and care. The child's stay in these facilities is limited to six months if placed there by court order due to the inability of parents to take care of him or her[83], three months if placed there at the request of the child's legal representative with the possibility of prolongation upon social-legal protection authority approval[84] or six months if placed there at the request of the child or social-legal protection authority with the possibility of prolongation up to 12 months in total[85]. The facilities are operated by regional offices, municipalities, or private entities, and the Ministry of Labour and Social Affairs provides supervision.

Except for the above-described options being outcomes of court judgments on merits, a court may also issue *interim measure orders*. The law provides the following options:

1. *General interim measure order*[86]: If there is a necessity for the temporary adjustment of the minor child's circumstances, the court shall issue an interim order. Motion for such an order might be lodged with the court by parents or SLPB, or the court might issue such an order even without any motion (*ex officio*). The court shall decide on the motion without any delay, but if there is no risk of delay, the court up to seven days after the motion has been lodged.
2. *Special interim measure orders in respect of minor children*[87] : If the child lacks proper care or his or her life, normal development or other important interests are seriously threatened or impaired, the court shall issue an order placing the child into a suitable environment. If the child is placed out of the care of the parents or persons related to or close to the child, only the SLPB may bring the motion for interim measure order to the court.[88] The court shall decide on

81 Art. 48of SSA.
82 Arts. 42–42ab of SLPA.
83 Art. 917 of CC.
84 Art. 45 para 5 point a) of SLPA.
85 Ibid., Art. 42 para. 5 point c).
86 Art. 74 of CPC.
87 Art. 452 of SCPA.
88 Šínová, 2021.

the motion without any delay. If it decides after the expiry of the 24 hours, it shall explain in the decision why it was not possible to decide earlier.

Parents, in general, can entrust the care and protection of the child, the exercise of his or her upbringing or certain aspects thereof or the supervision of the child to another person; the agreement of the parents with that person need not affect the duration or extent of parental responsibility[89]. However, if the parents entrust the child to another person with the intention that this person should take over the permanent care of the child, the parent must notify the SLPB[90]. The SLPB must then assess whether taking subsequent measures to protect the child is necessary[91]. If the parents entrust the child to the permanent or long-term care of another person without the decision of the competent authority (court), the SLPB should take advisory and educational measures and, if parents are not activated, lodge a motion to the court to formalise the care of another person.[92]

Parents also may[93] entrust a child to the care of a facility for *children requiring immediate assistance*, especially in situations where the child's favourable development is threatened, the child has educational problems that the parents cannot cope with or they are temporarily unable to provide care for the child themselves. For three months, there is no need for SLPB's or court's approval with such placement; after that, SLPB's approval is necessary.

8. Guardianship of Those Under Child Protection Care

The Czech law differentiates two institutes that traditionally fall within the meaning of guardianship. The guardianship of children under protection is generally regulated by CC[94] with some specific rules included in the SLPA[95]. In respect of procedural rules, CPC[96] and SCPA provide regulation.

The first institute (*poručenství*) is invoked when no parent holds or exercises full parental responsibility for the child[97]. This typically arises in the scenarios where both parents are deceased or their parental responsibility has been terminated by court order. In such cases, a court-appointed guardian (*poručník*) exercises parental responsibility rights and duties instead of the parents.

89 Art. 881 of CC.
90 Art. 10a, para. 2 and para. 4 of ASLP.
91 Ibid., Art. 16a.
92 Westphalová, 2020, p. 835.
93 Art. 42 of ASLP**.**
94 Arts. 465–471 and Arts. 943–952 of CC.
95 e.g. Art. 17 of SLPA.
96 Art. 29 of CPC.
97 sec. 928 of CC, Art. 928.

The second option (*opatrovnictví*) resolves the specific situations provided by law. Specifically, a court shall appoint such a guardian (*opatrovník*) to a minor when there is a risk of conflict of interests between the child and the person exercising parental responsibility, the legal representative does not sufficiently protect the child's interests or the child's interests require it[98]. Moreover, an *ad litem* guardian is appointed to the child in almost all civil proceedings if a minor.

In general, when appointing a guardian, the court is required in the decision to delineate the reasons for the appointment, duration or limitation of the function; outline the guardian's rights and obligations; detail reporting requirements; address potential compensation for expenses; and determine whether remuneration is applicable[99]. Moreover, the appointed guardian must consistently act in the child's best interests and safeguard his or her rights[100]. Guardianship *ad litem* will be explained in the following sections.

9. Aftercare

The preparation of young people for leaving institutions takes place throughout their stay, yet research shows its limited impact.[101] Any child in foster or institutional care is considered to be an endangered child. As such, an individual protection plan must be prepared for any such child. The plan's goal is to support young people in becoming independent, activate them and gradually prepare them to take responsibility for fulfilling their own goals. The plan's objectives relating to empowerment will likely include the critical areas of securing housing, preparing for future employment and/or a career, material provision and possibly various other forms of support.

In some cases of institutional care, a social curator (social worker) is assigned to monitor the child's rights. The main job of this social worker is to work with the child, the child's family and other entities involved in case cooperation; be in direct contact with the child; monitor the influences on the child; identify the causes and seek measures to reduce the adverse influences. Moreover, the director of the institutional care facility is obliged[102] to inform the competent municipal authority at least six months before the child's discharge from the institution and enable the child to meet with a social worker – social curator.

Institutional care generally ends when a child attains 18 years of age (or earlier if a child acquires full legal capacity by court order or enters marriage). Under exceptional circumstances, the institutional care might be prolonged by a court order for one additional year[103]. Reasons for such a prolongation are usually: (i) the inability of

98 Art. 943 of CC.
99 Ibid., Art. 945.
100 Ibid., Art. 457.
101 Blahová, 2020, pp. 48–49; or Daněk, 2022, pp. 33–34.
102 Art. 24 of ICEA.
103 Art. 975 of CC.

the concerned child to become independent (e.g. needs to complete education) or (ii) a serious medical condition.[104] Nevertheless, even in such situations, the court should not order prolongation against a child's wishes capable of formulating them.[105]

Any child then has a statutory right '*to support and assistance after the end of the stay in the institution in accordance with the aim of the child's reintegration into the family and society*'.[106] Assistance for young adults would be provided mainly by the social curator voluntarily (as opposed to minor children).

After the end of institutional care, young adults may *stay in an institution* based on a contract between an institution and a young adult, but no longer than until the age of 26 years[107].

Moreover, the so-called *halfway houses*[108] are also accessible to young adults transitioning from institutional care. Those provide temporary residence services for individuals up to 26 years old and encompass accommodation (in principle for up to 12 months), facilitation of social connections, therapeutic activities, and support in advocating for rights and interests. These services are charged.

Another possibility for temporarily providing housing to young adults is *asylum house*[109]. The daily accommodation facility provides 24-hour care and temporary accommodation for homeless people.[110]

Regarding monetary benefits, young adults transitioning from institutional or foster care might also be eligible for social benefits – *the recurrent maintenance allowance or one-off maintenance allowance* to cover his or her needs up to 26 years of age (as explained in subsection 7.1).

10. Procedural Background

10.1. Client: The Child

The contemporary Czech child protection system could be defined as "child-centred",[111] hopefully being on the path towards family-centred. Therefore, a child is perceived more as a client or subject of protection, than an object of protection. This leads to the child having a role in initiating the procedure, being heard and participating, as explained in the following subsections.

104 Enochová, 2023.
105 Kornel and Šínová, 2016.
106 Art. 20 para 1 point q) of ICEA.
107 Ibid., Art. 2. para 6 and Art. 24 para 4.
108 Art. 58 of SSA.
109 Ibid., Art. 57.
110 Blažková and Nováková, 2018, p. 97.
111 Gojová et al., 2020, pp. 13–14.

10.2. Initiation of the Procedure

Regarding *socio-legal protection*, the initial phase[112] of the procedure should be: the identification of a child at risk (usually not by the SLPB but other persons – police, health professionals, teachers, parents, children themselves); receipt of information about the child at risk by the SLPB; and initial assessment determining the severity of the child's vulnerability and determining the speed and intensity of follow-up.

Most *court procedures* with respect to child protection may be initiated by the court without any motion (*ex officio*). Some exceptions are listed in Art. 468 SCPA (decisions on important matters for a child or representation of the child in case of parental disagreement) or Arts. 429 and 446 SCPA (adoption); then, the procedure would be initiated by a motion of the subject specified by the law in respect of each procedure (parents, adoptees, foster parents etc). Moreover, the SLPB may initiate some court procedures with respect to the children. Some exclusively, meaning no one else may initiate court procedure, and even the court cannot start the procedure and issue ex officio (as for special interim measure order under Art. 458 SCPA). Some non-exclusive, meaning other persons (mostly parents), may motion to the court, or the court may start the procedure without any motion (listed in Art. 14 SLPA, e.g. ordering institutional care or foster care placement and termination).

10.3. Representation

Regarding *socio-legal protection*, a minor child has the right to act independently to some degree. For example, the child shall have the right to request assistance from the SLPB and other state authorities[113] even without the knowledge of the parents or other persons responsible for the child's upbringing. However, the parents and other persons responsible for the child's upbringing or a guardian will generally represent the child.

According to Art. 20 para. 1. CPC, every individual possesses procedural capacity to the extent that they can independently engage in *civil law proceedings*, as determined by substantive law. Therefore, minors without full legal capacity cannot generally act directly and must be represented. However, for certain legal proceedings, particularly those concerning family law matters, the law may grant full procedural capacity to minors, deviating from the general rule mentioned above (e.g. procedure for authorisation to marry of a child over 16 years of age, proceedings for granting full legal capacity).

If child needs a guardian ad litem for civil proceedings[114], the court shall appoint someone close to the child or another suitable individual, with lawyers appointed only if no other suitable candidates are available. For the so-called custodial proceedings defined by Art. 466 SCPA (including foster care proceedings, adoption or institutional

112 Pemová and Ptáček, 2012, p. 51.
113 Art. 8 para 1 of SLPA.
114 Art. 29 para. 4 of CPC.

care); the court shall usually appoint an SLPB as a guardian[115]. If a social-legal protection authority initiates the court proceedings, the court must choose another social-legal authority (typically a different municipality) to serve as guardian ad litem in such proceedings.

The social-legal authority as ad litem guardian should ascertain the child's circumstances (i.e. how the child is cared for, in what conditions he or she lives and what his or her behaviour is like).[116] The employees of social-legal authority are entitled[117] to visit the child and the parents or other persons responsible for the child's upbringing at their residence in a school and educational establishment or in any other environment where the child resides. The guardian also must respect and ensure the participatory rights of the child.

10.4. Hearing

If a child is identified as at risk within the system of socio-legal protection, the SLPB should have a conversation with the child immediately after the child's intake into the system, typically without the presence of parents.[118]

In *civil law proceedings* (especially in the so-called non-contentious custodial cases listed in Art. 466 CC), the court must ensure that the views of the child regarding the matter at hand are ascertained, ideally through direct questioning of the child[119]. A child is usually heard by a judge without the presence of the parents or their lawyers. However, the social worker of SLPB is usually present and the child has a statutory right to a chosen confidant presence.[120]

In civil law matters, holding a hearing before the court's decision is the norm with a limited scope for exceptions. In some proceedings, especially non-contentious ones, it is even expressly stipulated that a hearing is obligatory. However, the court may issue decisions on interim orders motions without holding a hearing and *ex parte*, as the law does not require serving the parties the motion in matters at hand.

10.5. Appointment of an Expert

If the civil law court decision depends on assessing facts requiring specialist knowledge, the court may appoint an expert[121]. The court shall hear the expert and may order the expert to prepare a written report. Expert authorisation is granted through registration in the List of Expert Witnesses, maintained by the Ministry of Justice. Experts are listed by field, branch, and specialisation, ensuring transparency and verification of their qualifications. An expert's status is strictly tied to their registered expertise, while acting outside their scope disqualifies them as an expert for that act.

115 Art. 469 of SCPA.
116 Killarová, 2018, p. 160.
117 Art. 52 para 1 of SLPA.
118 Pemová and Ptáček, 2012, pp. 80–81.
119 Art. 100 para. 3 of CPC.
120 Cilečková et al., 2021, p. 340 et seq.
121 Art. 127 para 1 of CPC.

Expert reports may also be obtained from expert institutes and, in cases where no registered expert is available, a one-time appointment may be granted by the court. In proceedings related to child protection, the court may request a psychology or psychiatry expert to answer questions related to parental competence, child development and specific needs, or ascertain the child's views. However, it is clear from practice that the number of experts available is insufficient, as far as it often takes from six months to one year for an expert to prepare deliver their report to the court.

10.6. Enforcement

Two types of court decisions, as described above, delivered in custodial proceedings might be enforced by: a) special interim measure orders in respect of minor children (sec. 452 et seq. SCPA) or b) general interim measure orders and decisions on merits (typically judgement).

A *special interim measure order* shall be executed immediately[122]. Enforcement shall be carried out by the court, in cooperation with the competent public authorities (SLPB, court bailiff, police), transferring the minor child to a suitable environment; if the child is with another person or in an institution, he or she shall be removed from them for the purpose of placement in an environment indicated by the court order. The enforcement of the decision must not result in unacceptable interference with the child's psychological or emotional development or unjustified infringement of rights. As will be explained below, even in the case of this interim measure order, the court should take necessary steps to ascertain the child's opinion, considering his or her age and intellectual capacity.

General interim measure orders and decisions on merits enforcement[123] will depend on the chosen measure. If the child is to be transferred from institutional care to the care of parents or other persons responsible for his or her upbringing, foster parents or prospective adoptees, the institution's director has a statutory obligation to comply with the decision[124]. If a child is to be transferred from parental (or another person's) care to the care of someone else and the obliged parent (or another person) does not comply willingly, a court should inform such person of the consequences of non-compliance, impose fines or order removal of the child.

11. Participation of Children in the Child Protection System

The effective participatory rights of children are, on a textual level, strongly embedded in Czech national law[125] and are structured across the following four levels, varying depending on the matter and the circumstances of the individual child: a)

122 Art. 497 of SCPA.
123 SCPA, Art.500.
124 ICEA, Art. 24, para. 1, point c); Art. 24., para 2, point c).
125 Hoblíková and Kropáčková, 2019, pp. 951–954 or Kissová, n.d.

right to information; b) right to express his or views; c) right to be given his or her views due weight; d) right to decide (give consent, veto right).

First, *parents* must enable their children to participate in decision-making, and the general rule[126] dictates to provide information to the child, allow expression of his/her views and take them into account. Similarly, according to Art. 946 CC,

> 'Before the guardian proceeds on behalf of the child to the legal act he has been appointed to perform, he shall ascertain the opinion of the parent or guardian, if applicable, and the opinion of the child and, if appropriate, other persons'.

On the substantive law level, the general rule regarding children's participation in a *judicial* proceeding is stipulated in Art. 867 of CC,

> "before making a decision affecting the child's interests, the court shall provide the child with the necessary information to enable him or her to form his or her own opinion and to communicate it".[127]

> 'if, in the court's opinion, the child is unable to receive the information, or is unable to form his or her opinion, or is unable to communicate that opinion, the court shall inform and hear the person who is able to protect the interests of the child, provided that the person must be a person whose interests do not conflict with the interests of the child; a child over the age of twelve shall be presumed to be able to receive the information, form his or her own opinion and communicate that opinion. The opinion of the child shall be given due weight by the court.'[128]

Moreover, SLPB has to respect participating rights, as stipulated by Art. 8 para. 2 SLPA,

> 'a child capable of forming his or her own opinions shall have the right, for the purposes of social protection, to express those opinions freely in the discussion of all matters affecting him or her, even without the presence of his or her parents or other persons responsible for the child's upbringing. The child's views shall be given due weight, appropriate to his or her age and mental maturity, in the consideration of all matters affecting him or her. In its action, the social welfare authority shall take into account the wishes and feelings of the child, taking into account his or her age and development, so as not to endanger or impair his or her emotional and psychological development.'

126 Art. 875. para 2 of CC.
127 Art. 867 para. 1.
128 Ibid., para. 2.

and by sec. 8 3 SLPA,

> 'A child who is capable, having regard to his or her age and intellectual maturity, of assessing the impact and significance of decisions arising from judicial or administrative proceedings to which he or she is a party, or in the case of other decisions relating to his or her person, shall receive information from the social protection authority on all relevant matters concerning his or her person; a child over the age of 12 shall be deemed to be able to receive the information, form his or her own opinion and communicate it.1

Regarding procedural rules, Art. 20 para. 4 SCPA stipulates that:

> 'In proceedings involving a minor who is capable of understanding the situation, the court shall proceed in such a way that the minor receives the necessary information about the court proceedings and is informed of the possible consequences of the compliance with his/her opinion and the consequences of the court decision. The minor's legal representative or guardian has a similar duty towards the minor.'

Research shows that the actual participation of children in family law practice still needs to be improved, as the approach of individual district courts to ascertaining the child's opinion in proceedings varies considerably; court rulings often do not specify the reasons why the child's opinion was not ascertained; moreover, direct ascertaining of the child's opinion by the judge is an exception rather than a rule.[129] Additionally, Constitutional Court case law provides anecdotal evidence of insufficiencies, particularly concerning institutional care placement of children. One of the recent cases involved a minor close to the age of majority (16 years old).[130] The district court placed the child in an educational institution by interim order because '*the minor has long ignored all his obligations, lives an idle life and does not educate himself*'. However, the district court did not ascertain his opinion in the proceedings, and the first contact with the young man was only when the bailiff delivered the decision to him. A guardian has not even been appointed to the child to explain the proceedings to him before the district court.

129 Cilečková et al., 2021.
130 Constitutional Court case No. II. ÚS 2225/23.

12. Adoption

The prerequisites for adopting a minor child, as stipulated by the law[131], include: a) establishment of a parent-child relationship between the adopter and the adopted person[132]; b) submission of an adoption application by the prospective adopter to the court[133]; c) attainment of legal majority and full legal capacity by the adoptive parent[134]; d) reasonable age difference between the adopter and the adopted child, typically at least 16 years, with exceptions[135]; e) non-sibling or direct line relationship between the adopter and the adopted child[136]; f) consent of the adopted child is required if the child is at least 12 years old; otherwise, the guardian provides consent on his or her behalf[137]; g) consent of the child's parents, although exceptions when consent will not be required or substituted by the court judgement exists (e.g. the parent is in an unknown place and the court, in cooperation with other public authorities, is unable to ascertain that place even with the exercise of due diligence)[138]; h) Provision of care for the adopted child by the adoptive parent, at the adoptive parent's expense, for a sufficient period to establish a conclusive relationship, lasting at least six months[139].

131 Arts. 794–845 of CC.
132 Ibid., Art. 795.
133 Ibid., Art. 796.
134 Ibid., Art. 799.
135 Ibid., Art. 803.
136 Ibid., Art. 804.
137 Ibid., Arts. 806–807.
138 Ibid., Arts. 809–822.
139 Ibid., Art. 829.

Bibliography

Blahová, P. A-M. (2020) 'Preparing Young People for Leaving Children's Homes', *Czech and Slovak Social Work/Sociální Práce/Sociálna Práca*, 2020/20, pp. 35–53.

Blažková, V., Nováková, D. (2018) 'Integration of Children from Institutional Care into Society' in Adamczyk, B., Biel, K. (eds.) *Dzieci Ulicy: Perspektywa Międzynarodowa.* Kraków: Academic Publishing House of Jesuit University Ignatianum, pp. 91–102.

Cilečková, K., et al. (2021) 'Participation of Children in Legal Proceedings for the Care of Minors', *The Lawyer Quarterly*, 11(2), pp. 340–359.

Daněk, A. (2022) 'Social Integration of Young Adults Leaving Institutional Care: Personal Experiences', *Ad Alta: Journal of Interdisciplinary Research*, 12(2), pp. 32–34; https://doi.org/10.33543/12023234.

Ďuraško Mádlová, P., Mertová, J. (2023) 'The development of evaluation of the situation of the child and his family in the Czech Republic, or the needs of the child are a priority', *Social Pathology and Prevention*, 9(1), pp. 97–101.

Enochová, D. (2023) '§ 974 [Prodloužení ústavní výchovy po dosažení zletilosti]' in Petrov, J. (ed.) *Občanský zákoník.* Praha: C.H. Beck.

Fabián, P. (2022) Childcare in Czechoslovakia and the Czech Republic' in Szafranek, M., et al. (eds.) *Child Protection System – Just Think Differently? Critical Analysis of Selected Models.* Warszawa: Uniwersytetu Warszawskiego, pp. 49–74; https://doi.org/10.31338/uw.9788323554943

Gilbert, N., Parton, N., Skivenes, M. (eds.) (2011) *Child Protection Systems: International Trends and Orientations - International policy exchange series.* New York: Oxford University Press; https://doi.org/10.1093/acprof:oso/9780199793358.001.0001.

Glumbíková, K., Mikulec, M. (2021) 'Needs of homeless children in the Czech Republic', *Child and Family Social Work*, 26(1), pp. 183–190; https://doi.org/10.1111/cfs.12807.

Gojová, A., et al. (2020) 'Path toward a Child-Centered Approach in the Czech Social and Legal Protection of Children', *Sustainability,* 12(21), 8897; https://doi.org/10.3390/su12218897.

Helland, T., Luhamaa, K. (2020) *A comparative analysis of the Child Protection Systems in the Czech Republic, Lithuania, Norway, Poland, Romania and Russia.* Bergen: Centre for Research on Discretion and Paternalism, University of Bergen [Online]. Available at: https://www.regjeringen.no/contentassets/2f02bf9da8a9412889593ec4178d2df3/bfd_report_final_version_170120202.pdf (Accessed: 27 March 2024).

Hloušek, J., Kappl, M., Smutková, L. (2020) 'The Best Interest of the Child and its Application in the Practice of Social Workers in the Czech Republic', *Postmodern Openings*, 11(2), pp. 175–192; https://doi.org/10.18662/po/11.2/169.

Hoblíková, Ž., Kropáčková, J. (2019) 'Zjišťování názoru dítěte v soudním řízení – mezioborová studie', *Právník*, 2019/10, pp. 951–970.

Horák, P., et al. (2016) 'Governance, Financing and Employment in Social Services in the Czech Republic' in Sirovátka, T., Greve, B. (eds.) *Innovation in Social Services.* 1st. edn. London: Routledge. https://doi.org/10.4324/9781315588643.

Killarová, T. (2018) '§ 17 [Výkon opatrovnictví, hromadného a veřejného poručenství]' in Rogalewiczová, R., et al. (eds.) *Zákon o sociálně-právní ochraně dětí*. Komentář. Praha: C.H. Beck.

Kissová, V. (nd.) 'Czechia - Country-report: 'The Participation and the Rights of the Child in Legal Proceedings in the Czech Republic' in Wopera, Zs., Benyusz, M. (eds.) *Child-friendly justice: the participation and the rights of the child in civil, criminal and administrative court proceedings – Central European comparative perspective*. Budapest-Miskolc, Central European Academic Publishing (in print).

Kornel, M., Šínová, R. (2016) '§ 974' in Melzer, F., Tégl, P. (eds.) *Občanský zákoník. Svazek 4,2: § 655-975 a související společná a přechodná ustanovení*, Velký komentář. Praha: Leges.

Králíčková, Z., Hrušáková, M., Westphalová, L. (2022) *Rodinné parvo*. 3rd. edn. Praha: C.H. Beck.

Lipová, D., Krbcová, A., Tomanová, K. (2019) *Pěstounské rodiny v České republice. Základní charakteristiky pěstounů a dětí v pěstounské péči*. Praha: Asociace Dítě a Rodina [Online]. Available at: https://www.nadacesirius.cz/soubory/ke-stazeni/Analyza-Pestounske-rodiny-v-Ceske-republice.pdf (Accessed: 27 March 2024).

Merhaut, M., Fulkova, M., Rudorfer, L.F. (2022) 'Social Services Management in the Context of Ethnic Roma Issues in the Czech Republic with a Focus on Education for Roma Children', *Social Sciences* 11(10), 477; https://doi.org/10.3390/socsci11100477.

Ministry of Labour and Social Affairs (2019a) 'Analýza spolufinancování agendy sociálněprávní ochrany dětí a možného zavedení pevného podílu spolufinancování ze strany obcí s rozšířenou působností' [Online]. Available at: https://www.mpsv.cz/documents/20142/225517/Anal%C3%BDza+spolufinancov%C3%A1n%C3%AD+SPOD_2019.pdf/30e3aa91-1ee4-c9fd-2c24-c97180059501 (Accessed: 27 March 2024).

Ministry of Labour and Social Affairs (2019b) 'The Structure of Social Services – Current Status in the Czech Republic' [Online]. Available at: https://www.mpsv.cz/documents/625317/625935/2646.pdf/444365d8-7061-75a6-2b26-2d1cbe0f3948 (Accessed: 27 March 2024).

Ministry of Labour and Social Affairs (2024) 'Roční výkaz o výkonu sociálně-právní ochrany dětí za rok 2023' [Online]. Available at: https://www.mpsv.cz/documents/20142/225508/%C4%8Cesk%C3%A1+republika+1.xls/c91ca145-65db-a409-5f8a-3b15e2bdbbb3 (Accessed: 27 March 2024).

Pemová, T., Ptáček, R. (2012) *Sociálně-právní ochrana dětí pro praxi*. Praha: Grada Publishing.

Pemová, T., Ptáček, R. (2022) *Data o dětech. Sociálně-právní ochrana dětí v České republice v datech*. Praha: Grada Publishing.

Pivarč, J. (2019) 'Ideas of Czech primary school pupils about intellectual disability', *Educational Studies*, 45(6), pp. 692–707; https://doi.org/10.1080/03055698.2018.1509784.

Rogalewiczová, R. (2015) 'Orgán sociálně-právní ochrany dětí jako kolizní opatrovník dítěte', *Právní rozhledy : časopis pro všechna právní odvětví*, 10(20), pp. 713–719.

Rogalewiczová, R. (2018) '§ 1 [Sociálně-právní ochrana dětí]' in Rogalewiczová, R., et al. (eds.) *Zákon o sociálně-právní ochraně dětí*. Komentář. Praha: C.H. Beck.

Schmidt, V., Bailey, J.D. (2014) 'Institutionalization of Children in the Czech Republic: A Case of Path Dependency', *The Journal of Sociology and Social Welfare*, 41(1), pp. 53–75; https://doi.org/10.15453/0191-5096.3833.

Sedláčková, D., et al. (2022) 'Experiences of mothers of children with profound intellectual and multiple disabilities in the Czech Republic', *British Journal of Learning Disabilities*, 51(1), pp. 3–12; https://doi.org/10.1111/bld.12443.

Shmidt, V., (2023) 'Czech Child Protection after 1989: Between Socialist Legacy and the European Call for Democratic Legitimacy' in Duerr Berrick, J., Gilbert, N., Skivenes, M. (eds.) *Oxford Handbook of Child Protection Systems*. Oxford: Oxford University Press, pp. 423–443; https://doi.org/10.1093/oxfordhb/9780197503546.013.16.

Sinecka, J. (2009) 'The Czech Republic: Report on the Current State of Disability Law and Policy', *Journal of Disability Policy Studies*, 19(4), pp. 195–203. https://doi.org/10.1177/1044207308314947.

Šínová, R. (2021) 'K nové právní úpravě předběžného opatření o úpravě poměrů dítěte', *Bulletin advokacie*, 2021/12, pp. 28–35.

Sležková, A. (2022) 'Právněhistorický význam trestní politiky státu v oblasti chudoby pro zrod moderního systému veřejnoprávní ochrany dětí', *Právník*, 2022/3, pp. 241–295.

Tarshish, N. (2019) 'How friendly are OECD countries towards children? Conceptualization and measuring issues', *Children and Youth Services Review*, 2019/103, pp. 156–165; https://doi.org/10.1016/j.childyouth.2019.05.040.

Vavrecková, V., Tichá, M., Ondrúšová, Z. (2017) 'Substitute child care as a current problem of social care in the Czech Republic', *DANUBE: Law, Economics and Social Issues Review*, 8(4), pp. 237–248.

Westphalová, L. (2020) '§ 881 [Svěření jiné osobě]' in Králíčková, Z., Hrušáková, M., Westphalova, L. (eds.) *Občanský zákoník II. Rodinné právo (§ 655–975)*. Komentář, Velké Komentáře. Praha: C.H. Beck.

| Chapter 4 |

Child-Protection Systems – Hungarian Perspective

Nóra Jakab – Márta Benyusz

ABSTRACT

Child protection is aimed at promoting the upbringing of children in the family, preventing and eliminating their vulnerabilities and providing substitute protection for children leaving parental or other care. In Hungary, the framework for child protection is laid down by Act LXIV of 1991 on the proclamation of the Convention of 20 November 1989, the Fundamental Law of Hungary, Act V of 2013 on the Civil Code, Act III of 1993 on social administration and social benefits, Act XXXI of 1997 on the protection of children and the administration of guardianship (Gyvt.) and other regulations. According to the Central Statistical Office, a significant number of children benefit from the child protection care system. The legal significance of the Gyvt. is being the first complete and independent legal regulation of child protection in Hungary. Moreover, its significance for child protection is that it adds new institutions and transforms and systematises the child protection system. When drafting the legislation, the legislator considered that a child protection system based on special intervention by the authorities should always be preceded by a child welfare system based on voluntary benefits.

KEYWORDS

principle, child protection benefit, child protection guardian, statistical data

1. Introduction

The national child protection system in Hungary is based on the following legislation: Act LXIV of 1991 on the proclamation of the Convention of 20 November 1989, the Fundamental Law of Hungary, Act V of 2013 on the Civil Code, Act III of 1993 on social

Nóra Jakab and Márta Benyusz (2025) 'Child-Protection Systems – Hungarian Perspective' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 101–126. https://doi.org/10.71009/2025.njmb.cps_3.

administration and social benefits, Act XXXI of 1997 on the protection of children and the administration of guardianship (Gyvt.) and other regulations.[1]

Through Art. L) Subsection (1) of the Fundamental Law, Hungary protects the institution of marriage as the community of life between a man and a woman, based on voluntary consent, and the family as the basis for the survival of the nation. A family relationship is based on marriage and the parent–child relationship. Subsection (2) states that Hungary supports the adoption of children, while in Subsection (3), the protection of families is regulated by a cardinal law.

Art. XV Subsection (5) states that Hungary shall take special measures to protect families, children, women, the elderly and the disabled.

Art. XVI explicitly addresses the rights of the child, namely,

'(1) Every child has the right to the protection and care necessary for his or her proper physical, mental and moral development.

(2) Parents have the right to choose the education to be given to their child.

(3) Parents have the duty to care for their minor child.

(4) Children of full age have the duty to care for their parents in need.'

1 The legislation on child protection also includes other pieces of legislation: Decree 49/2004 (V. 21.) of the EszCsM on the regional provision of care by a regional nurse midwife; Act LXXX of 2007 on the Right of Asylum; Act CXXV of 2009 on Hungarian Sign Language and the Use of Hungarian Sign Language; Act CLX of 2009 on the ratification and proclamation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; Act CLXI of 2009 on the Sale of Children, Child Prostitution, Act CXI of 2011 on the Commissioner for Fundamental Rights; Act CXLIII of 2011 on the promulgation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Act CXC of 2011 on National Public Education (Nkt.); Government Decree No 328/2011 (29.XII.) on the fees for basic child welfare services and specialised child protection services providing personal care and on the evidence that may be used to claim them; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011; Act II of 2012 on Administrative Offences, Administrative Offences Procedure and the Administrative Offences Registration System (Szabstv.); Act C of 2012 on the Criminal Code (Criminal Code); Act V of 2013 on the Civil Code (new Civil Code); Act XCII of 2015 on the proclamation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and on the amendment of certain acts in connection therewith (Lanzarote Convention); Government Decree No. 41/2016 (9.III.) on the declaration of a crisis situation caused by mass immigration in the whole territory of Hungary and on the rules related to the declaration, existence and termination of the crisis situation; Act XX of 2017 amending certain laws related to the tightening of procedures in the border police area, Act XC of 2017 on Criminal Procedure (Be.); Government Decision No 1663/2017 (13.III.) on the strengthening of guardianship authorities and increasing the number of children's representatives; IM Decree No 13/2018 (12.VI.) on the establishment, operation and control of the use of police premises for the performance of procedural acts requiring the participation of a person requiring special treatment; Government Decision 1125/2019 (13.III.) on measures necessary to increase the effectiveness of the fight against human trafficking; and 1295/2019 (27 May) Government Decision on the long-term concept for the years 2019–2036 on the replacement of places in social institutions providing care and assistance to persons with disabilities.

According to Art. XVIII,

> '(1) The employment of children shall be prohibited, except in cases not endangering their physical, mental or moral development and provided for by law.
> (2) Hungary shall take special measures to ensure the protection of young persons and parents at the workplace.'

According to Art. XXX,

> '(1) Everyone shall contribute to the common necessities according to his/her capacity to meet those necessities and according to his/her share in the economy.
> (2) The contribution to the common necessities shall be determined by taking into account the expenses of bringing up children in the case of those bringing up children.'

Data collected by the Central Statistical Office on minors at risk until 2015 and data from child welfare services from 2013 until 2022 show that this statement covers disadvantaged and identified severely disadvantaged children and adults aged 0–24 years. In 2022, 84,152 persons were identified as disadvantaged and 85,045 persons were identified as severely disadvantaged, the number decreasing from 2019 onwards. Moreover, minors registered without father numbered 7,578, decreasing since 2019, and minors under guardianship 34,076, increasing since 2013. There were also 56,790 minors under guardianship, the number having levelled off since 2013, and 4,606 minors in receipt of child support in advance, whose number has been decreasing since 2013, as well as 28,678 minors in shelters, increasing steadily since 2000, and 4,864 children in family benefit suspension, decreasing steadily since 2013.[2]

2. What Is the Core Aim of the National Child Protection System?

Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship (Gyvt.) (Act IX of 2002 and Act IV of 2003, as amended) defines child protection as follows: child protection is an activity aimed at promoting the upbringing of children in the family, preventing and eliminating their vulnerability and providing substitute protection for children leaving parental care or other care.[3] The following subdivision of child protection – according to its purpose – follows from the legal definition. General child protection means supporting the upbringing of children in the family and preventing them from becoming vulnerable. This preventive action is mainly

2 Central Statistical Office Data, nd. The analysis of child protection system data is complicated by cross-sectoral data collection problems. The databases of the public education and social sectors are difficult to compare, and the statistics on the effectiveness of formal child welfare measures are missing. For more details on this, see: Lux and Sebhelyi, 2019, p. 10.
3 Art. 14 of Gyvt.

carried out within a network of educational, health and social institutions (sometimes with the involvement of NGOs) and is based on complex cooperation between various sectors. Special child protection guarantees special protection for orphans, abandoned children and children at risk (who may be delinquent). The full care of children who have been abandoned or who take priority is provided by the so-called institutional child protection. Specialised territorial child protection services, children's and residential care homes, professional foster parents, family and aftercare services and reformatories play key roles in this process.[4]

The purpose of the Act is to ensure that the state, local authorities and natural and legal persons responsible for the protection of children, by means of specific benefits and measures, namely: help protect children's rights and interests; facilitate the fulfilment of parental responsibilities, or, if this is not possible, make up for the lack of parental care; ensure the prevention and elimination of children's vulnerability; and help young adults (aged 18–24) leaving the child protection system integrate into society.

To this end, the law sets out: the fundamental rights and duties of children and the protection of their rights; the child protection system (benefits and public authority

4 Rózsás, 2004, pp. 140–141; Rózsás, 2008, p. 14. Historically, the first written record of child protection in Hungary is found in King Stephen's Act I, which established the protection of widows and orphans. In the Middle Ages, church shelters provided adequate care for the elderly, the sick, and orphans. The first orphanages were founded in the 18th century. The first – and until 1997 the only – uniform child protection law was adopted in 1901. This law, drafted by Széll Kálmán (then Prime Minister), not only established children's shelters but also created a form of foster care. The basic idea behind the law was family education based on the establishment of so-called colonies. Settlements were established in municipalities for children taken into state care. From shelters, children were placed with foster parents living in the settlements. Then, the families were visited by settlement supervisors who checked on treatment and conditions. After the Second World War, churches and social organisations focused their relief efforts on poor children orphaned during the war. In 1950, the system, which had been based mainly on foster care, was abolished and replaced by infant homes (usually in rural manor houses). The Family Law Act, which came into force in 1952, abolished the concept of the abandoned child and replaced it with the term "looked-after child", replaced abandonment with vulnerability, and extended the period of care to 18 years. In 1957, the Fóti Children's City, which became a symbol of "socialist child protection", was established, where children could be raised with their siblings between the ages of 3 and 18 years without changing institutions. In 1963, the Institute for the Protection of Children and Youth was founded, and large foster homes – not for child protection purposes – were established. In the second half of the 20th century, there was no separate legislation on child protection. The basic provisions for child and youth protection were incorporated into law by the 1974 amendment to the Act of the First Act of the Protection of Children and Young Persons, which only provided a framework for the measures to be taken by the authorities, while detailed rules were laid down by a separate government decree. The provisions relating to state care were introduced in the 1986 amendment to the Act. From the late 1980s onwards, child protection in the broader sense was adopted as opposed to child protection by the authorities. Social organisations, foundations and churches, and other civic initiatives are now providing preventive action and family care and protection. Herczog, 1997, pp. 9 and 27; Nemes, 1996, pp. 69–71.

measures); the bodies responsible for child protection; and the organisation and tasks of the administration of guardianship.

The guardianship authority, as well as the child protection and guardianship procedure are governed by a government decree.

3. The Guiding Principles of the National Child Protection System (e.g. Realisation of Children's Rights, Non-Discrimination, Best Interest of The Child, Cooperation, Separation of Services and Measures of Authority)

The child protection system is based on the following named and unnamed principles, derived from the Child Protection Act.

Serving the best interests of the child: local authorities, guardianship authorities, courts, police, prosecutors' offices, metropolitan and county government offices acting as probation services (hereinafter, "probation services") and other organisations and persons acting in the best interests of the child shall act in the application of the law, considering the best interests of the child and ensuring his or her rights recognised by law.[5]

The principle of family autonomy and the principle of remaining in the family: the organisations and persons involved cooperate with the family and promote the child's upbringing in the family, as defined by the law.[6]

The principle of appropriateness: the care to help the child to grow up in a family should be provided in a way that is adapted to the situation and needs of the child and his or her family. The safety, care, education and healthy personal development of a child who has been removed from his or her family for whatever reason should be ensured.[7]

The principle of least coercion, voluntariness: access to statutory benefits is usually voluntary. A parent or other legal representative of a child may be obliged to claim a benefit only in the cases specified by law.[8]

Non-discrimination and non-abuse of benefits: the requirement of equal treatment in the protection of children must be respected.[9]

Guaranteeing the right to self-identity: under the child protection system, the state protects children's right to self-identity according to their sex at birth.

The protection of the child's personal and property interests (and the performance of guardianship duties) is ensured by guardianship offices.

5 Art. 2 para. 1 of Gyvt. This principle is the most disputed and most difficult to interpret (and many even consider it unenforceable and unenforceable), yet the most important principle that permeates the law as a whole. Rózsás, 2004, pp. 141–142.
6 Art. 2 para. 2 of Gyvt; Rózsás, 2004, pp. 141–142.
7 Art. 2 paras. 3–4 of Gyvt.; Rózsás, 2004, pp. 141–142.
8 Art. 3 para. 1 of Gyvt.; Rózsás, 2004, pp. 141–142.
9 Art. 3 para. 2 of Gyvt.; Rózsás, 2004, pp. 141–142.

The (unnamed) principles that can be derived from the law are:[10]

1. *Permanency planning*: the aim of child protection intervention is to address the fate of a child in care as early and permanently as possible. Three options can be considered as "permanent placement": reintegration with the birth family, adoption and permanent foster care.[11]
2. *Preparing for reintegration into the family environment:* this principle includes the promotion of family relations and family care. It is primarily the duty of the institution or person providing substitute protection to the child to give effect to this principle.
3. *Special care adapted to needs:* in residential care, special care must be provided for children with disabilities, integration, behavioural or learning difficulties, or special needs according to their age.
4. *Priority of foster care:* children who are removed from their families should be placed in foster care in the first instance or in a children's home or other residential institution if the first option is not possible.[12]
5. *A limited number of children in foster care and small children's homes and a family environment:* a high number of children can cause excessive financial strain on some families, while a small number of children can reinforce the family environment.

4. Who and in What Capacity Is Responsible for the Maintenance of the Child Protection System? (State, Municipality)

In Hungary, the following bodies play important roles in the operation of the child protection system.

Tasks of the municipal government: the municipal government, in the capital city the district government and in the area directly administered by the capital municipality, the capital municipality is responsible for the establishment and operation of a local child protection system and the organisation of care for children living in its

10 Rózsás, 2004, p. 142.

11 Rózsás, 2008, p. 90.

12 An important change in the regulatory environment for child protection is that, from 1 January 2014, children under 12 years of age will be placed with a foster parent rather than in a children's home. An exception to this rule is the co-housing of a child with a chronic illness or a disability, or a sibling, which can be considered discrimination. This legal requirement is not always implemented in practice. The time limits for placement were set according to age: children under three had to be placed in foster care by 31 December 2014, children between three and six by 31 December 2015 and children between six and 12 by 31 December 2016. A campaign was launched to recruit foster parents. Concerns about the appropriate care of children who come into the system have been raised because of immediate vulnerability. These children are placed in temporary care, with children under 12 in foster care, rather than in temporary residential care. However, foster carers do not receive adequate training or support for children placed in their temporary care. See on this point: Lux and Sebhelyi, 2019, p. 12.

area. The municipal government shall provide basic child welfare services, with the exception of services to improve children's chances and, if it is not obliged to provide such services, shall organise and mediate access to services available elsewhere.[13]

The body designated by Government decree to perform the *state's* maintenance functions shall provide care in the home, aftercare and specialised territorial child protection services as provided for in the Gyvt. An institution providing specialised territorial child protection services may be maintained only by the body designated by Government decree to perform the state's maintenance functions.[14]

The Minister is responsible for the sectoral management of child protection. [15]

Any provider of child welfare and child protection services may provide such services if the provider, institution or network (seats, premises) is registered in the register of providers by a final decision. The provision of certain child protection service activities may be entrusted by law to a public body exclusively.[16] Child protection is provided by a system of institutions covering the entire country, the two main bodies being the *Child Protection Service and the Guardianship Authority.* The network of the *Child Protection Specialist Service* is composed of the regional child protection services in the capital and in each county. The service is available to children in foster care, providing support to family members and the child and, if it is not possible to keep the child within the family, it also takes care of the removal and placement of the child. *Guardianship Service* decides on the removal of the child from the family, placement with the other parent and review of the temporary placement. When necessary, it appoints a guardian and monitors the contact between the child and the relative entitled to contact, the payment of maintenance, among others. In addition to placement and protection issues, it also decides on financial and in-kind benefits and helps clarify the child's family status.

5. How Is a Child at Risk Defined (Disadvantaged and Cumulatively Disadvantaged Situation)?

The special protection of the state and the local authority is based on the existence of a threat to the *physical, mental, emotional, moral development of the child, whether material, environmental, behavioural or health-related.*[17] According to the explanatory memorandum of the Gyvt., the purpose of the Act is to prevent and eliminate the vulnerability of children, support the family and provide substitute protection.[18] Child protection begins when certain problems (cf. endangerment) are classified so that their solution cannot be left to the family. One of the fundamental questions of social policy (and child protection) is in what cases the state can intervene in family

13 Art. 94 paras 1–2 of Gyvt.
14 Art. 95 of Gyvt.
15 Art. 101 para. 1 of Gyvt.
16 Art. 98 para. 1 of Gyvt.
17 Rózsás, 2008, p. 19.
18 Ibid., p. 81.

autonomy. The actions of the state create a legal relationship under public law. The distinction is made between service and official action. Voluntary access to child welfare services creates a public law relationship in which neither the parent nor the child is liable. The obligation is rather on the side of the service provider (child welfare service), which must use the appropriate means at its disposal (financial or in-kind support or personal care) to try to solve the problem, that is, to *eliminate the risk* (this is the content of the legal relationship).[19]

According to the Gyvt., endangerment is a condition resulting from conduct, omission or circumstance – by the child or another person – which *hinders or* prevents *the child's physical, mental, emotional or moral development*.[20]

In 2014, the main reasons given by child welfare services for the 140,000 or so vulnerable minors they saw were 62% environmental, 18% behavioural, 14% material and 6% health related, while 5% of minors were at risk due to abuse and 17% due to neglect. Within environmental problems, parenting problems (21%), parental and family lifestyle (21%) and family conflict (13%) were the leading causes of vulnerability. Considering the cumulative number of problems reported, in almost all cases, the underlying problems were compounded by other types of vulnerability. Therefore, on average, professionals recorded three problems per child, most often related to family conflict or housing.[21]

According to the Gyvt., the crisis situation of a pregnant mother is a family, environmental, social or societal situation or a condition resulting from these, which causes physical or psychological distress or social impossibility for the pregnant mother and thereby endangers the healthy birth of the child; within this, a crisis situation of a pregnant mother who conceals her pregnancy is if she declares that she intends to keep her condition secret from her environment and relatives.[22]

Vulnerability is formulated in the case of individual benefits such as the body of representatives establishes an exceptional child protection allowance if the family caring for the child is experiencing temporary problems in maintaining its subsistence or has fallen into an exceptional situation that threatens its subsistence. Exceptional assistance is granted to children (families) whose care cannot be provided for in any other way or need financial support because of occasional additional expenses (e.g. return of the child to the family, illness, schooling, keeping the child of a mother in crisis).[23]

Temporary placement: the notary, guardianship office or another so-called referral body (border police, police, prosecutor's office, court, prison officer) temporarily places a child if he or she is left without supervision or if his or her *development is seriously endangered by his or her family environment or by the child himself or herself.* Reasons for endangerment: serious endangerment is defined as the abuse or neglect of a child

19 Ibid., p. 14.
20 Art. 5 para. 1 point n) of Gyvt.
21 Cenral Statistical Office Data, 2016, p. 2.
22 Art. 5 para. 1 point o) Gyvt.
23 Rózsás, 2004, pp. 142–143.

which places his or her life in imminent danger or which may cause substantial and irreparable harm to his or her physical, mental, emotional or moral development.[24]

Temporary foster placement: a child is placed in temporary foster care by the child welfare agency if the child's development is threatened by the family environment and cannot be eliminated by basic services or protective placement.[25]

The child has the right to be brought up in his or her own family environment, which ensures his or her physical, mental, emotional and moral development, as well as a healthy upbringing and well-being. This right is ensured by the provision that the child has the right to be assisted in his or her upbringing in his or her own family, to develop his or her personality, to avoid situations that threaten his or her development, to integrate into society and to lead an independent life.[26] The right to be brought up in the family is further guaranteed by the fact that the child may be separated from his or her parents or other relatives only in his or her own best interest in the cases and the manner provided for by law. The *practice and approach to child protection prior to the change of regime made it necessary to lay down in law that children should not be separated from their families solely on the grounds of financial vulnerability.* [27]

According to the Gyvt., a child entitled to regular child protection benefits and one that has reached the age of majority is *disadvantaged* if one of the following circumstances applies: a) low level of education of the parent or the adoptive guardian, if both parents raising the child together, the parent raising the child alone or the adoptive guardian can be voluntarily declared to have at most a primary level of education at the time of applying for regular child protection benefits; b) low employment status of the parent or the adoptive guardian, if either of the parents raising the child or the adoptive guardian can be found to be entitled to benefits for the active population under the Social Act at the time of applying for regular child protection benefits or to have been registered as a jobseeker for at least 12 months during the 16 months preceding the date of application for the regular child protection benefits; c) the child's unsatisfactory housing environment or housing conditions, if it is established that the child lives in a housing environment declared as segregated in the integrated settlement development strategy for the settlement; in semi-segregated, uncomfortable or emergency housing; or in housing conditions where the conditions necessary for his or her healthy development are limited.

Persons with multiple disadvantages are a) children entitled to regular child protection benefits and children who have reached the age of majority for whom at least two of the circumstances defined by points *(a)–(c)* above apply, *b)* children in foster care and *c)* young adults in aftercare and with student status.

The guardianship authority shall determine the existence of a disadvantaged or severely disadvantaged situation of a child or a child who has reached the age of

24 Ibid.
25 Ibid.
26 Art. 6 paras. 1–2 of Gyvt.
27 Ibid., Art. 7 para. 1.

majority, upon application and, at the same time, it assesses the entitlement to regular child protection benefits by a separate decision for the same period as the entitlement to regular child protection benefits.[28]

Government Decree No 149/1997 (IX.10.) on child protection and guardianship procedures regulates the form in which an application for the establishment of the existence of a disadvantaged or cumulatively disadvantaged situation must be submitted.[29]

The notary of the municipal government shall determine the existence of a disadvantaged or severely disadvantaged situation of a child or a child who has reached the age of majority as follows: a) for parents, foster parents and foster carers with low educational attainment, the voluntary declaration of educational attainment of both parents raising the child together, of parents raising the child alone and of foster carers; b) in case of low employment, data from the register kept by the Social Benefits Act or, in the absence of entitlement to benefits, a certificate from the public employment service confirming the registration of either of the parents raising the child or the foster carer as a jobseeker; c) the definition of segregation in the settlement development plan for the municipality or, failing this, the housing environment or housing conditions, on the basis of an environmental study carried out or obtained, or an environmental study carried out in the computerised system „Protecting our children" not older than six months, carried out under the same title.[30]

The assessment of the living environment or housing conditions is carried out based on an environmental assessment according to the form provided for this purpose by the Minister for Children and Youth Protection. The form shall be published on the government portal and the notary of the municipality shall ensure it is published on the website of the municipality.[31]

6. What Is the Definition of Necessary Intervention?

The contradictions between the provisions of the international convention(s) and domestic practice led to the creation of Act XXI of 1997 on the Protection of Children and Guardianship Administration (Gyvt.) The Act was (finally) voted by Parliament on 22 April 1997 and entered into force on 1 November 1997. The legal significance of the Act lies in that it is the first complete and independent legal regulation of child protection in Hungary. Its significance for child protection is that it adds new institutions, transforming and systematising child protection. When drafting the legislation, the legislator had in mind that a child protection system based on special intervention by the authorities should always be preceded by a child welfare system based on voluntary benefits.[32] One important principle of the Gyvt. is the principle of least coercion

28 Ibid., Art. 67/A paras. 1–3.
29 Art. 83/A para 1 of Government Decree 149/1997 (IX.10.).
30 Ibid., Art. 83/A para. 2.
31 Ibid., Art. 83/A para 2a.
32 Rózsás, 2008, p. 87; see also: Domszky, 1997.

(voluntariness), according to which the use of the benefits provided for by the legislation is generally voluntary. A child's parent or other legal representative can only be obliged to claim a benefit in the cases specified by law. Official intervention in the life is only allowed if it is unavoidable in the best interests of the child.

It is also important to note that the guardianship authority is not only responsible for child protection (official) tasks but also for safeguarding the personal and property interests of incapacitated and incapacitated children and wards.

> 'Public authority measures can be divided into two categories, according to the grounds and the means used. A first category includes, as a protective measure, the taking into care of a child to prevent the removal of the child from the family. If the preventive (protective) measures do not lead to the removal of the child from the family, the second group of measures includes placement, temporary placement, temporary fostering, permanent fostering, foster care and aftercare.'[33]

Pursuant to Art. 82 para. 5 of *Government Decree 149/1997 (IX.10.) on Child Protection and Guardianship Procedure*, the guardianship office shall take measures falling within the scope of child protection care, with the exception of the determination of disadvantaged and severely disadvantaged situations, if: the elimination of the risk cannot be ensured with the cooperation of the parent; the child does not have a parent who is able and entitled to exercise parental authority and the child is not in danger of harm even if a guardian is appointed; the care of the child in his or her own family is not ensured due to the health condition, justified absence or other family reasons of the parent; the child's vulnerability is primarily due to neglect, but there are reasonable grounds to believe that the child's needs can be provided for in a family environment through the targeted use of the family allowance, in particular the parent(s) providing for the child's daycare, nursery, school meals, food, clothing and developmental equipment (toys) and the development of the child's abilities.

According to Subsection (6), a parent shall be considered uncooperative if, despite reasonable assistance and warning: fails to take the necessary measures in the best interests of the child; does not contribute to or otherwise prevent the child from receiving child welfare or other social, health or public education services appropriate to the child's circumstances (hereinafter, "basic services").

According to Subsection (7), in the selection of measures falling within the scope of child protection care, account shall be taken of: the nature, cause and extent of the vulnerability; the child's personality; the child's family circumstances; the expected impact of the measure; the right of the child to be brought up in his or her own family environment.

The following table shows the reasons for the inclusion in the protection scheme.

33 Rózsás, 2008, p. 114.

Table 1. Registered minors in protection, 31 December[34]

25.1.1.16. Registered minors in protection, 31 December

Year	Minors protected for environmental reasons	Minors protected for reasons of behaviour attributable to parent	Minors protected for reasons of behaviour attributable to child	Minors protected for reasons of child abuse	Total protected minors	Per thousand inhabitants of appropriate age protected minors
2000	2,672	5,572	3,513	–	11,757	
2001	3,263	6,528	3,501	–	13,292	6.5
2002	4,259	7,233	3,835	–	15,327	7.6
2003	4,367	8,354	4,354	–	17,075	8.6
2004	4,371	9,105	4,259	–	17,735	9.1
2005	4,656	9,605	4,552	–	18,813	9.8
2006	5,048	8,924	4,792	398	19,162	10.1
2007	4,876	9,091	5,207	507	19,681	10.5
2008	5,046	9,694	6,031	452	21,223	11.4
2009	5,507	9,475	6,505	451	21,938	12.0
2010	6,548	9,371	7,687	421	24,027	13.4
2011	10,075	9,537	9,395	444	29,451	16.6
2012	8,800	8,670	7,879	406	25,755	14.7
2013	4,096	7,394	9,574	335	21,399	12.3
2014	4,571	8,295	9,611	407	22,884	13.3
2015	4,776	8,553	9,580	412	23,321	13.6
2016	4,777	9,712	10,503	431	25,423	14.8
2017	5,154	11,074	11,593	486	28,307	16.5
2018	5,376	11,080	12,098	460	29,014	17.0
2019	5,077	10,651	12,652	450	28,830	16.9
2020	5,264	11,396	10,093	390	27,143	15.9
2021	5,440	11,649	9,751	389	27,229	16.0
2022	5,186	11,900	11,112	480	28,678	16.8

34 Source: Cenral Statistical Office Data, n.d.a.

7. Structure of the Child Protection System

Child protection is an activity aimed at promoting the upbringing of children in the family, preventing and removing children from vulnerability and providing substitute protection for children leaving parental care or other care. Child protection is ensured through the provision of basic child welfare services and specialised child protection services; in cash, in kind and personal care; as well as through measures taken by the authorities.[35]

7.1. Monetary and In-Kind Benefits (e.g. Regular Child Protection Discount, Child Feeding, Advance Payment of Child Support, Home Building Support)

Benefits in cash and in kind include: regular child protection benefits; child feeding; advance payment of child support; home building support.[36]

7.2. Basic Child Welfare Services Within the Framework of Personal Care (e.g. Child Welfare Services, Daycare for Children, Temporary Care of Children, Children's Opportunity-Enhancing Services)

The basic child welfare services covered by personal care are: child welfare services; daycare for children; temporary care of children; children's opportunity-enhancing services.[37]

7.3. Special Child Welfare Services Within the Framework of Personal Care (e.g. Care Provided at Home, After-Care Care, Regional Child Protection Specialist Service)

Specialised child protection services under the personal care framework are: care provi ded at home; after-care care; regional child protection specialist service.[38]

35 Art. 14 paras. 1–2 of Gyvt.
36 Ibid., Art. 15 para. 1.
37 Ibid., Art. 15 para. 2.
38 Ibid., Art. 15 para. 3.

Table 2. Young people in specialised child protection[39]

25.1.1.1.18. Young people in specialised child protection [persons]

Year	0–2 years old	3–5 years old	6–13 years old	14–17 years old	Total minors	18 years and older	Total	Of which minors with special educational needs
Receiving special care								
2010	1,459	1,894	7,615	6,824	17,792	3,626	21,418	3,803
2011	1,524	1,975	7,713	7,075	18,287	3,162	21,449	3,873
2012	1,690	2,006	7,824	6,944	18,464	3,070	21,534	3,755
2013	1,916	1,997	7,972	6,789	18,674	2,954	21,628	3,932
2014	2,178	2,136	8,337	7,484	20,135	2,985	23,120	3,874
2015	2,045	2,290	8,558	7,378	20,271	2,873	23,144	3,644
2016	2,347	2,512	8,671	7,021	20,551	2,590	23,141	3,937
2017	2,442	2,611	8,956	6,939	20,948	2,417	23,365	4,234
2018	2,579	2,640	9,195	6,796	21,210	2,324	23,534	4,460
2019	2,560	2,820	8,944	6,552	20,876	2,214	23,090	4,390
2020	2,556	2,727	9,069	6,391	20,743	2,191	22,934	4,480
2021	2,690	2,877	9,076	6,398	21,041	2,286	23,327	4,491
2022	2,721	2,825	9,237	6,392	21,175	2,298	23,473	4,433

39 Source: Cenral Statistical Office Data, n.d.b.

7.4. Authority Measures

Measures taken by public authorities under the framework of child protection: the determination of the existence of a disadvantaged or severely disadvantaged situation; taking into protection; family reunification; temporary placement; fostering; ordering educational supervision; ordering aftercare; ordering aftercare; ordering preventive detention. [40]

The system of child protection includes the care of juveniles who have been remanded by the court to a correctional institution or wo have been arrested. Juvenile correctional education is governed by a separate law.[41]

Custody cases in 2022 in the country:

1. Declared disadvantaged children: 84,152;
2. Total number of children declared to be severely disadvantaged: 85,045;
3. Minors in need of protection: 28,678;
4. Minors under guardianship: 34,076;
5. Approved adoptions: 1,254.[42]

8. Guardianship of Those Under Child Protection Care

The Civil Code refers to the guardianship of persons under child protection guardianship as "child protection guardianship". In the new Civil Code, the scope of children under child protection guardianship sought to take over the previous solution but the institution of child protection guardianship has changed in the meantime, with the unified foster placement replacing temporary and permanent foster placement.[43]

Child protection guardianship evolved from institutional guardianship. Specifically, a minor who has been placed in institutional or state care by a guardianship authority, has been temporarily placed in an institution and has initiated the termination of parental custody or where the guardianship authority has ordered the suspension of the exercise of certain powers of parental custody is placed under institutional guardianship. The director (or his or her deputy) of the child protection institution is the institutional guardian. The institutional guardian has similar rights and duties as a legal guardian but is not required to report and is not legally represented by the director of the institution, but by one of his or her staff: One of the main characteristics of institutional guardianship, and one of its defects, was the lack of a direct, individual relationship between the institutional guardian, who could be

40 Art. 15 para. 4 of Gyvt.

41 Ibid., Art. 15 para. 5 of Gyvt.

42 Cenral Statistical Office Data, n.d.c.

43 Regarding the appointment of a guardian for children in specialised care, since 1 August 2015, the child protection guardian has taken over the responsibilities of the guardian. The purpose of this reform was to prevent possible conflicts of interest between the child and head of the child protection institution, who was previously the child's guardian. See: Lux and Sebhelyi, 2019, p. 12.

the guardian of thousands of children, and the ward.' In other words, there is a clear breach of the principle of immediacy and permanence in the event of a change of placement: 'The gradual transformation of institutional guardianship was a key issue for the renewal of child protection."[44]

A foster child is subject to child protection guardianship, that is, the guardianship authority takes the child into care if a foster guardian cannot be appointed (this is provided for in Civil Code Art. 4:229[45]) and the child's development is at risk within his or her own family and the risk cannot be eliminated by the services provided under the framework of basic care or by taking the child into protection (the least coercive measure by the authorities), or if the child cannot be cared for within his or her own family, or if both parents are dead, their parental rights have been terminated by the court or the guardianship authority has initiated proceedings for the termination of parental rights and the child derives from an unknown person.[46] A child who has been placed temporarily in a foster care, children's home or residential institution and whose parent has consented to secret adoption and who cannot be placed temporarily with his or her prospective adoptive parents shall be provided for by a child protection guardianship for the purpose of his or her continued protection and representation. If the child's parents are in an unknown place, in the case where the child is an unaccompanied minor under the Act on the General Rules for the Entry and Residence of Third-Country Nationals and the Asylum Act or the parents do not exercise their parental authority for any other reason and, in either case, it is not possible to appoint a foster parent, the child is taken into care, as well as when the child is of unknown parentage.[47]

In the past, the guardianship of children under child protection guardianship was performed by the foster parent (i.e. child protection foster parent within the meaning of the Civil Code) or the head of the children's home. However, Act CXCII of 2012 on the State Takeover of Certain Specialised Social and Child Protection Institutions and Amendments to Certain Acts fundamentally changed the system: it separated the legal representation of the child from the care of the child. Therefore, in the Gyvt. according to Art. 84, the guardianship authority shall appoint a child protection guardian for the child, irrespective of the child's place of care, based on a proposal by the regional child protection service. As a general rule, neither the head or employees of the children's home and foster care network nor the foster parent of the child may perform the duties of a guardian; however, the Gyvt. allows the guardianship authority to appoint a foster parent as a guardian, in addition to the child protection guardian, to perform certain guardianship duties specified in the Act. However, the care of the child will not be provided by the child protection guardian but, for example, by a

44 See: Rózsás, 2008, p. 59.

45 That person must be appointed as the child's guardian: a) with whom the child has been placed temporarily by the guardianship authorities; b) with whom the child has been placed by the court; or c) who has adopted the child with the consent of the guardianship authority.

46 Art. 78 para. 1 of Gyvt.

47 Szeibert, n.d.; Art. 84 para. 1 of Gyvt.

child protection foster parent. As a result of the above, child protection guardianship is even more strongly characterised by the predominance of public law elements over private ones.[48]

The activity of the child protection guardian is directed and supervised by the guardianship authority. The conditions necessary for the performance of the duties of the child protection guardian are provided by the regional child protection service. The child protection guardian works in cooperation with the foster parent, children's home or other care placement providing care for the child. The child protection guardian or the foster parent appointed as guardian for the performance of certain guardianship duties shall provide the guardianship authority with written information on their activities and on the affairs of the child under their guardianship every six months. The foster parent, children's home, home for the disabled or psychiatric patients or supported housing organisation caring for the child shall aid in preparing the information. This obligation to provide information shall be without prejudice to the obligation to report under the law.[49]

The child protection guardian monitors and promotes the child's physical, intellectual, emotional and moral development and education, and supervises the child's full care.[50] The child protection guardian shall have the right to meet the child in person, without the presence of the head of the child protection service or of a member of staff, including the foster parent, at a time of his or her choosing. When choosing the time, the child protection worker shall consider the child's compulsory occupation. The child's place of care shall ensure conditions for uninterrupted contact between the child and child protection worker. If a foster parent is appointed by the guardianship authority to act as guardian in addition to the child protection guardian, the child protection guardian and the foster parent shall cooperate with each other.[51] The child protection guardian has the right and the duty to represent the child in personal and property matters.[52] The guardianship authority shall appoint an ad-hoc guardian to represent the child *a)* ex officio, if the child protection guardian cannot legally represent the child in accordance with the rules of the Civil Code governing family law or *b)* upon request, if the child protection guardian does not undertake to represent the child in cases requiring special expertise.[53] It is the right and duty of the guardian to protect the child's property interests, to ensure the proper use and management of the property and to manage the child's affairs in accordance with the rules of ordinary property management.[54] The guardianship authority shall appoint a substitute guardian for the child, irrespective of the place of care, based on a proposal of the regional child protection service and at the same time as appointing the

48 Ibid.
49 Art. 85 paras. 4, 4a and 5 of Gyvt.
50 Ibid., Art. 86 para. 1.
51 Ibid., Art. 86 paras. 1–2.
52 Ibid., Art. 87 para. 1.
53 Ibid., Art. 87 para. 4.
54 Ibid., Art. 88 para. 1.

guardian in the event of the absence of the guardian or his or her actual inability to perform his or her duties, to solve the cases requiring immediate decisions and actions.[55]

9. What Is the Institutional Background?

Child protection and guardianship administration are closely related, with child protection care overlapping between them, which is also part of the child protection system under the Gyvt. The Gyvt., as mentioned above, clearly separate the activities of public authorities from those of service providers. Child protection (service provision) is the responsibility of the municipal (capital district) and county governments. The notary or the guardianship office may take official measures in guardianship administration. The Minister is responsible for sectoral management and professional supervision.[56]

According to § 1 of the Government Decree No. 331/2006 (XII.23.) on the performance of child protection and guardianship duties and powers and on the organisation and competence of the guardianship authority, the duties and powers of the guardianship authority are: a) the notary of the municipality; b) the district (metropolitan district) office of the government office of the capital and county (hereinafter referred to as the "child protection and guardianship office"); and c) the Metropolitan and County Government Office acting in its capacity as a child protection and guardianship authority.

10. What Is the Procedural Background?

The main rules of child protection and guardianship administration can be summarised as follows based on the Gyvt.

Procedure in the case of siblings: in guardianship proceedings, the cases of siblings who are being brought up together must be dealt with together in one file. The guardianship authority shall draw up a summary official record of any case of separated minor siblings of the child before the guardianship authority or of the case pending before the guardianship authority accompanied, where appropriate, by a copy of the guardianship decisions concerning the separated minor sibling. The guardianship authority shall prepare the summary official record by means of a request if a child's separated sibling has been or is being dealt with by another guardianship authority.[57]

55 Ibid., Art. 90 para. 1.
56 Rózsás, 2008, p. 128; see: point 4.
57 Art. 123 of Gyvt.

Preliminary hearing: the guardianship authority may decide to take a preliminary hearing without the approval of the public prosecutor to hold a hearing or trial which cannot be waived, if the child is in danger or if immediate action is necessary in the interest of the person to be placed under guardianship or the person placed under guardianship whose capacity is affected.[58]

The guardianship authority may, unless otherwise provided by law, initiate proceedings ex officio in cases within its competence. In guardianship proceedings, a child with limited capacity and an adult person with partially limited capacity shall have procedural capacity in matters in which he or she is entitled to initiate proceedings or make a declaration of rights under the Gyvt. or other legislation. In the proceedings, the client is obliged to cooperate in the expert examination.[59]

The guardianship authority acts as a party in the administrative, civil and other legal proceedings in which it has the right to bring proceedings under the law, even if it does not otherwise have standing.[60]

In the guardianship proceedings, the parent and other legal representative, the guardian, the child with limited capacity, the person partially limited in his or her capacity to act in respect of a statement of rights arising in the guardianship proceedings and the child who is incapacitated in the exercise of his or her judgment, as well as the person against whom a liability is sought to be imposed and, where appropriate, other close relatives of the child, shall be heard. The child who has the capacity to make a statement in the guardianship proceedings shall be informed of the opportunity to make a statement and the legal representative shall be informed at the same time. The hearing may be waived if a delay due to the hearing would cause unavoidable harm or danger.[61]

At the request of a minor mother with limited capacity who is in a crisis situation and is concealing her pregnancy, the guardianship authority may waive the hearing of the legal representative if it would jeopardise the interests of the expectant mother in a crisis situation who is concealing her pregnancy or of the unborn child.[62]

If the law requires the legal representative to act or make a declaration in the personal matters of the child, both parents, exercising joint parental authority, must act or make a declaration in person.[63]

During the guardianship proceedings, statements may only be made in person and, if the guardianship authority holds a hearing to clarify the facts, must appear in person at the hearing:

> '(a) except for applications for the institution of proceedings before the guardianship authorities and applications for legal remedies,

58 Art. 124 of Gyvt.
59 Ibid., Art 127.
60 Ibid., Art. 127/A.
61 Ibid., Art. 128 para. 1.
62 Ibid., Art. 128 para. 1a.
63 Ibid., Art. 128 para. 2.

aa) by authorising the marriage of a minor,
ab) the residence of the unborn child of a pregnant mother in crisis who is concealing her pregnancy,
ac) the exercise of parental authority,
ad) family reunification,
ae) guardianship, trusteeship and assisted decision-making,
af) with the exception of (b);
family status
(b) with the exception of applications for legal remedies, adoption, acknowledgement of parentage and full acknowledgement of paternity;
(c) the request to initiate proceedings, with the exception of the request for redress, by contact in the context of guardianship proceedings.'[64]

If the determining authority carries out an on-site visit to clarify the applicant's material, social, health, cultural, housing or other circumstances, it shall record the relevant statements and findings in a report ("environmental report"). The determining authority may also use in the procedure an environmental report drawn up by another authority or by another body or person dealing with family protection, provided that six months have not elapsed since the report was drawn up. The guardianship authority may request another guardianship authority to prepare a background report on the circumstances of the applicant referred to in Para. 1. At the request of the court and the public prosecutor's office, the determining authority shall prepare a report on the environment. The recipient of the benefits shall notify the determining authority within 15 days of any change in the material facts or circumstances affecting the conditions for entitlement to benefits.[65]

In case of child abuse, serious neglect or other serious endangering or self-inflicted serious endangering of the child: the authority and the customer may communicate by any means; if an environmental assessment is required, it shall be carried out without delay; and the on-site inspection may be carried out by opening up the sealed area, building or premises against the will of the persons present.

In the event of child abuse, serious neglect or other danger, the guardianship authority shall keep data on the child, the witness and the body or person initiating the proceedings in camera, even in the absence of a specific request to that effect. In the absence of any other indication, the refusal of the parent or other legal representative who has the care of the child to cooperate with the primary health care provider – general practitioner, family doctor, paediatrician, nurse – or, in relation to the care of the child, with the daycare provider, public education institution or vocational training institution shall be considered as a serious cause of danger.[66]

64 Ibid., Art. 128 para. 3.
65 Ibid., Art. 130 paras. 1–5.
66 Ibid., Art. 130 paras. 1–3.

If the case requires special expertise to assess a significant fact or circumstance relating to the child's personality, the guardianship authority *a)* shall consult an educational counsellor, an expert and rehabilitation committee, a specialised psychiatric care institution or a family protection agency or *b)* shall appoint an expert. In the case of a child suffering from a physical, sensory, intellectual, speech or other disability and, for a child with an integration, learning or behavioural disability, the expert committee or educational counsellor under the National Public Education Act shall give an opinion. The county, capital and national expert committees for child protection shall make recommendations on the care of children in care who have serious psychological or psycho-social symptoms or are suffering from psychoactive substances and on the manner and form of care. The detailed rules of procedure of the expert committee are laid down by separate legislation. To resolve a conflict arising in proceedings for the regulation of contact between a child and his or her relatives, the guardianship authority may initiate or order, in the interest of the child, the settlement of the conflict in a mediation procedure or in a supported mediation procedure, as defined in the Government Decree on Guardianship Authorities and Child Protection and Guardianship Procedure.[67]

According to § 7/A of the *Government Decree 149/1997 (IX.10.) on guardianship authorities and child protection and guardianship proceedings lays down the common rules of procedure in guardianship cases*, a *client* in the framework of child protection care is:

> '(a) where the guardianship authority takes a decision within its competence;
> aa) the head of the family and child welfare service and the head of the family and child welfare centre,
> ab) the head of the regional specialised child protection service (specialised child protection service),
> ac) the child's legal representative, guardian or deputy guardian,
> ad) a foster parent appointed as a guardian for the performance of certain guardianship duties pursuant to para. (2) of Art. 4:122 of Act V of 2013 on the Civil Code (the foster parent),
> ae) the head of the probation service, the preventive probation officer;
> (b) in proceedings initiated by the children's representative.'

The rules for initiating proceedings are as follows: the guardianship authority may, unless otherwise provided by law, initiate or continue proceedings ex officio in a matter within its competence. The guardianship authority may, ex officio, or, unless otherwise provided by law or regulation: may initiate proceedings if requested to do so by an incapacitated child who has the capacity to judge, if this is in the best interests of the child; initiate the procedure if the family and child welfare service, the family and child welfare centre or the Gyvt. or by the body or person specified in para. 1 of Art. 17(1) of the Gyvt.

67 Ibid., Art. 132 paras. 1, 3, 4 and 6.

The guardianship proceedings may also be initiated by a child with limited capacity and a person with partially limited capacity independently. In proceedings initiated on the grounds of child abuse or serious neglect or other serious grounds of danger, or on the grounds of serious danger caused by the child himself or herself, the guardianship authority shall, after an immediate environmental assessment, take the necessary measures to protect the child.[68]

The guardianship authority shall prepare a detailed *environmental assessment* (situation assessment) or may request other persons or bodies to do so, in particular the family and child welfare service and the notary of the municipality. The child welfare office may ask: the family and child welfare service in the procedure for the declaration of adoptability; the child protection specialist service in the pre-adoption procedure and in the procedure for the authorisation of adoption.

The environmental assessment (situation assessment) includes:

'a) the child,
aa) contact details of relatives or other persons residing in the place of residence,
ab) contact details of persons present at the recording of the report which are relevant to the care and education of the child,
ac) the contact details of family doctor, nurse or, if he/she in a nursery or school, the head of the public education institution,
ad) findings relevant to the case, an assessment of the family's circumstances;
b) the person concerned by the guardianship,
ba) contact details of persons present at the recording of the report which are relevant to his or her lifestyle and care,
bb) contact details of your general practitioner, psychiatrist,
bc) contact details of the manager of the social institution used by the person concerned,
bd) financial and social circumstances,
be) findings relevant to the case.'[69]

With regard to the rules on representation, the guardianship authority will examine ex officio at each stage of the procedure whether the child or the person subject to guardianship has a legal representative. Parents exercising joint parental custody have the right to decide on the child's property, in accordance with the Civil Code pursuant to Art. 4:156 (1) parents who have joint parental authority over the child may grant each other power of attorney, which the parent with power of attorney must submit to the guardianship authority during the proceedings. If there is a conflict of interest, the guardianship office ensures the representation of the child or the ward: between the child and his or her legal representative, through an ad hoc guardian; between the

68 Art. 8 paras. 1–5 of Government Decree 149/1997 (IX.10.).
69 Ibid., Art. 9 paras. 1–3.

person subject to guardianship and his or her legal representative, through an ad-hoc guardian.[70]

According to the rules of the hearing, in guardianship proceedings, the hearing may be waived if its delay would cause unforeseeable harm or danger, or if the adult to be heard is in an unknown place. In guardianship proceedings, an incapacitated client may be summoned to make a personal statement if it is in his or her own interest and the evidence expected from the statement cannot be substituted in any other way. The guardianship authority shall hear the child directly or otherwise, in particular through the family and child welfare services or an expert body or person, on matters concerning the child. The guardianship authority may not refrain from hearing the child directly: if the child of sound mind so requests; with certain exceptions, in the personal and property matters of a child with limited capacity and of a child who is incapacitated [Civil Code, Art. 2:12 (4), Art. 2:14 (3)]; where a specific legal provision so provides.

The direct hearing of a child with limited capacity and of a child who is incapacitated may be waived if: the annual amount of the payment and the annual amount of the withdrawal from the maintenance deposit does not exceed ten times the amount of the social projection fund, and the person legally representing the child provides credible evidence of the child's consent.

In particular, a statement by the parents or other legal representatives in a private or public document of the child's views, or a written request by the child for the payment or withdrawal of the money shall constitute credible evidence of consent.

The guardianship authority may hear the child without the presence of his or her legal representative or other interested person if it is in the best interests of the child. The guardianship authority may, if necessary, hear the client or the person concerned outside its official premises. In duly justified cases, the hearing shall take place at the place of residence of the incapacitated person, at the educational establishment or healthcare establishment providing services to the incapacitated person. The hearing may also take place by electronic means with simultaneous video and audio links, except in cases of adoption and parentage.[71]

If necessary, or at the request of the client, the guardianship authority will hold a hearing for which the client may be summoned to its seat. The guardianship authority may hold a hearing anywhere in its territory in the interests of the child or the ward, in particular if several clients would have to travel to the place of the headquarters from another place. In such cases, the place of the hearing shall be the official premises of the mayor's office of the municipality nearest to the place of residence of the client. If the guardianship authority holds a hearing in a case initiated by the client and the client does not appear at the hearing and does not excuse his or her absence, his or her application is deemed to be withdrawn. [72]

70 Ibid., Art. 10 paras. 1, 3 and 5.
71 Ibid., Art. 11 paras. 1–7.
72 Ibid., Art. 13 paras. 1–3.

The operative part of the decision must contain: the identity of the child and of the person for whom a guardian has been appointed and, except as provided in para. 2, for whom a right or obligation has been established; information on the legal consequences of the decision, warning of the consequences of non-compliance; and the request of the body involved in the implementation or execution of the decision.[73]

The decision on the provision of family allowances in kind, temporary placement, foster care and parental supervision shall be enforced by the guardianship office. At the request of the guardianship office and of the capital and county government office acting in its child protection and guardianship functions, the notary of the municipal government shall assist in the enforcement of temporary placement and foster care.[74]

11. Participation of Children in the Child Protection System (Role of the Representative of Children's Rights if Any)

According to Art. 2 (*a) of Government Decree 149/1997 (IX.10.) on guardianship authorities and child protection and guardianship procedures, a child who has the capacity to judge is a* minor who, in accordance with his or her age and intellectual and emotional development, can understand the essential content of the facts and decisions affecting him or her and to see the expected consequences. The rules governing the hearing of such a child are described in the previous section.

Pursuant to Art. 2 (1) *of 15/1998 (IV.30.) NM Decree on the professional duties and conditions of operation of child welfare and child protection institutions and persons providing personal care,* personal care shall be provided in a manner that respects the rights of children and parents and ensures their enforcement. Pursuant to (2), to ensure the widest possible exercise of children's rights, the providers of child welfare and child protection services (service providers) shall ensure that children have access to the name and telephone number of the children's representative and the place and time of his or her appointments. Para. 3 states that service providers shall ensure that children's rights representative: a suitable room within the premises of the institution that is easily accessible and suitable for children to have a private conversation during the visit; the possibility to be informed on the spot and to consult the documents; to be informed of the date of the meeting of the representative forum.

The children's council elected by more than 50% of the children may represent all children in the residential childcare institution. The children's council decides on its own functioning after consulting the head of the institution. The rules for organisation and operation are adopted by the elected children's council and approved by the head of the institution. Approval may be withheld only if the rules are unlawful or contrary to the institution's rules of organisation and operation or of procedure. The

73 Ibid., Art. 14.
74 Ibid., Art. 16.

children's self-governing body may express its opinion to the head of the institution on all matters relating to the operation of the residential childcare institution and to the children, which the head of the institution shall consider.[75]

12. Summary

In theory, the Hungarian child protection system works in line with international standards. However, ratification of the Istanbul Convention; signing of the Third Optional Protocol to the UN Convention on the Rights of the Child, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and accession to the International Convention for the Protection of All Persons from Enforced Disappearance are still pending.

The Gyvt. was indeed of epoch-making importance and its amendments sought to reflect the changes that have taken place since 1997. However, to date, no national action plan or comprehensive strategy for children has been developed, except for the Digital Strategy for Child Protection, which sets out tasks to promote safe Internet use for children. This strategy came into force in 2016.

However, the theoretical rules cannot be effective in practice without a comprehensive strategy on children's rights. Without such a strategy, the practical implementation of legal provisions cannot be effective. It is essential that such a strategy involves the actors in the child protection system working together. It is essential to initiate closer cooperation with NGOs and the National Professional College, as well as to create an independent ombudsman for children's rights.

75 Art. 2/D paras. 1–3 of 15/1998 (IV. 30.) NM Decree.

Bibliography

Central Statistical Office Data (n.d.c.) 'Table on Custody Cases' [Online]. Available at: https://www.ksh.hu/stadat_files/szo/hu/szo0013.html (Accessed: 5 January 2024).

Cenral Statistical Office Data (n.d.a.) 'Registered minors in protection, 31 December' [Online]. Available at: https://www.ksh.hu/stadat_files/szo/hu/szo0059.html (Accessed: 5 January 2024).

Cenral Statistical Office Data (n.d.b.) 'Young people in specialised child protection' [Online]. Available at: https://www.ksh.hu/stadat_files/szo/hu/szo0016.html (Accessed: 5 January 2024).

Cenral Statistical Office Data (n.d.c.) 'Custody cases by county and region, 31 December' [Online]. Available at: https://www.ksh.hu/stadat_files/szo/hu/szo0042.html (Accessed: 21 January 2024).

Cenral Statistical Office Data (2016) 'Gyermekesély – A gyermekvédelmi jelzőrendszer működése 2014', *Statisztikai Tükör*, pp. 1–5 [Online]. Available at: https://www.ksh.hu/docs/hun/xftp/stattukor/gyermekvedelem14.pdf (Accessed: 5 January 2024).

Domszky, A. (1997) *Szociális-kulturális igazgatás: Gyermek- és ifjúságvédelem*. Budapest: Budapesti Corvinus Egyetem, Államigazgatási Kar.

Herczog, M. (1997) *A gyermekvédelem dilemmái.* Budapest: Pont Kiadó.

Lux, Á., Sebhelyi, V. (2019) (eds.) *A gyermekjogok helyzete Magyarországon (2014-2019) - Alternatív jelentés az ENSZ Gyermekjogi Egyezményének hazai végrehajtásáról*. Budapest: Gyermekjogi Civil Koalíció [Online]. Available at: https://unicef.hu/wp-content/uploads/2019/11/alternativ_jelentes.pdf (Accessed: 5 January 2024)

Nemes, G. (1996) 'A gyermekvédelem története' *Eszmélet*, 1996/3, pp. 69–71.

Rózsás, E. (2004) 'A gyermekvédelem rendszere' *JURA*, 10(2), pp. 140–149 [Online]. Available at: https://szakcikkadatbazis.hu/doc/7786703 (Accessed: 5 January 2024).

Rózsás, E. (2008) *A gyermekjogok tartalma, érvényesülése és védelme – PhD Thesis*. Pécs: Pécsi Tudományegyetem.

Szeibert, O. (nd.) 'Gyermekvédelmi gyámság' in Vékás, L., Gárdos, P. (eds.) *Nagykommentár a Polgári Törvénykönyvről szóló 2013. évi V. törvényhez* [Online]. Available at: https://uj.jogtar.hu/#doc/db/1/id/A1300005.TV/ts/20240101/ (Accessed: 5 January 2024).

| Chapter 5 |

Child-Protection Systems – Polish Perspective

Stanisław Józef Nitecki

ABSTRACT

The main right of a child is the right to live in a natural family. In this family, actions are taken for the good of the child. This right is sometimes violated and transgressed in social life. This means that the state and its bodies must take over responsibility for the care and upbringing of the child. This responsibility is taken over through the institution of foster care. This care can be implemented in institutional and environmental forms. It is to provide the child with appropriate conditions for development when the natural parents are not or cannot provide care. Foster care is temporary. In the event that the child cannot return to the natural family, domestic or international adoption actions are taken. The childcare system assumes that the child is provided with care by natural or adoptive parents. Unfortunately, this system is not effective. A significant number of children remain in foster care until they reach adulthood. In many cases, longer, until they finish school and complete the process of becoming independent. This system is not efficient. There is a lack of foster families providing care and upbringing for children. The gaps in social infrastructure result from the negligence of the bodies responsible for it. They are a consequence of social changes and the lack of foster families. Negative phenomena in this area force corrective actions to be taken. These actions aim to provide children with proper care and upbringing.

KEYWORDS

child, foster care, family, local government, care and educational facility

1. Introduction

The state, an organism created by a community, comprises different categories of people, ranging from children to adults to senior citizens. The state as invoked here is a common good,[1] i.e. an entity responsible for providing its citizens with conditions in which they can function and satisfy their needs. This means that the state is also obliged to ascertain that children are guaranteed conditions that allow them to live

1 Re. the common good, see: Trzciński, 2018, pp. 23ff.

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in their natural families, and if, for various reasons, this is not possible, it will take measures to create conditions in which they can live and grow peacefully.[2]

In the initial stage of these considerations, the focus should be on the concept of the child, particularly on how a child is perceived and who is a child. These considerations require the background of international law and the Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly on 20 November 1989. According to the CRC,[3] the term "child" refers to any human below the age of 18, unless, as per the law applicable to the child, he or she has attained majority earlier. Meanwhile, the national legal order views a child as any human being from conception until the age of attaining majority.[4]

A child's proper development depends largely on the proper functioning of the family, which is the basic unit of society and the natural environment of development, and the well-being of all its members, especially children. The concept of a family is enshrined in the Constitution, featured in Arts. 18 and 71 of the Constitution of the Republic of Poland.[5] Art. 18 stipulates that the family is under the protection and guardianship of the Republic of Poland, while Art. 71 claimes that the state considers the well-being of the family in its social and economic policies. Families in difficult economic and social conditions, especially those with many children and single-parent families, are entitled to special assistance from the public authorities. Granting constitutional protection to the family is, however, not tantamount to laying down the scope of this concept. It should be emphasised that the Polish law has numerous definitions of the family, with practically each of them being applied on the grounds of a particular act, and thus there exists no universal approach to this concept. Literature emphasises that on the basis of the provisions of the Basic Law, the notion of a family is understood as spouses, their relatives and kinsmen,[6] i.e. persons connected by certain rights and obligations arising from blood ties or as a result of a legal act performed before an authorised authority (entering into marriage). A family understood in this way is subject to special care and protection and assistance from public authorities. Within the framework of these considerations, the regulations in the Constitution distinguish two categories of families, namely, large families and single-parent families.

However, it needs to be emphasised that the regulations on family rights included in the Constitution of the Republic of Poland are not cover to civil partnerships (regardless of their nature). Consequently, parents of a child who are not in a formal

2 Re. the state obligations, see: Florczak-Wątor, 2018, p. 119.

3 Journal of Laws 1991, No. 120, item 526.

4 Act of 6 January 2000 on the Ombudsman for Children (Journal of Laws of 2023, item 292). In the study addressing the issue of foster care, the definition of child is applicable only from the moment of birth, as only from that moment they function as independent beings. Thus, considerations related to the legal status of the child from conception to birth will not be analysed. Re. the above topic, see: Blicharz and Zacharko, 2021, pp. 15ff; Nitecki, 2020, p. 147.

5 See: Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws 1997, item 48, item 483 as amended).

6 Smyczynski, 1997, p. 191.

union are deprived of the potential to employ the full scope of the instruments provided for in the provisions of the substantive law, which support the family in the implementation of its custodial and educational function. This lack of provision for such couples is incorrect and needs to change.

2. The Aim of the National Child Protection System in Poland

The norms contained in the substantive legislation regulating the provision of care for the child and family[7] are aimed at creating mechanisms for delivering effective assistance to families struggling with caring for and raising children. This assistance is achievable through the cooperation of all persons, institutions and organisations working with children and parents. In this regard, principle of subsidiarity plays a special role,[8] as it assumes that, first, the family is obliged to undertake activities to overcome the challenges it faces; however, when these difficulties exceed its capabilities, it can expect help from other social life participants located at higher organisational levels, i.e. non-public entities, and further from the relevant entities of the executive power at its various levels, as well as from entities of judicial power.[9]

The child protection system aims to, first, ensure that children remain in their natural families. Therefore, measures taken are expected to support families facing difficulties in appropriately fulfilling their custodial and educational duties towards the child.

In a situation where the natural family is unable, for reasons beyond its control (absence of such a family) or for reasons within its control (unable or incapable), to provide care for the child, the state is obliged to take measures to provide care. However, it should be emphasised that in all instances where the return of a child to his or her natural family is possible, the state authorities and all entities acting for and on behalf of the state are obliged to take measures aimed at creating conditions for the child to return to his or her natural family.

The return of the child to his or her natural family is a priority, implying that all forms of (community and institutional) foster care are only ad hoc. Furthermore, foster care is a form of care provided for the child during the period of adoption proceedings, in all instances where launching an adoption procedure is possible and the child can be provided with domestic or foreign adoption.

The objective mentioned is achieved to varying degrees, since much depends not only on the activities undertaken by the authorities and bodies involved, but also on the natural parents. Targeting natural parents to prepare them to fulfil their role as parents in an appropriate manner is crucial and determines whether a temporary

7 In the Polish legal order, the Act of 9 June 2011 rules on support for families and the foster care system (Journal of Laws 2023, item 1426, as amended).

8 See: Nitecki, 2015; Klose, 1985, pp. 13–14; Dudzik, 2004, pp. 51–62; Stopka, 2009; Bąkowski, 2007.

9 For more on this topic, see: Zajączkowska-Burtowy, 2021, p. 1061.

provision of care to a child will be terminated or transformed against its function into a permanent institution. Natural parents are deprived of custody of their children for very different reasons. These include situations where their frailty is noticed, particularly due to deficiencies in their intellectual capacity, as well as the consequence of various kinds of breaches in the proper exercise of their custodial and educational duties due to alcoholism, drug or other addictions. The most drastic reasons involve the use of violence against children.[10]

In conclusion, it should be stated that in the light of the current legal regulations on family support, work with the biological family of the child is conducted in order to facilitate the child's return to this family.[11] In situations where the above-mentioned activities fail to produce a positive result, activities towards adoption of the child are undertaken. If the child does not receive adequate care in the natural family or through adoption, a foster environment must be give custody of the child. The sequence of the operations presented here seems rational because the legislator seeks to normalise the legal situation of the child so that it is stable and provides the child with a sense of security. The above considerations demonstrate that the legislator has prioritised taking all measures aimed at returning the child to the family.[12]

3. Primary Principles of the National Child Protection System

The principles of child protection must be considered on several levels. The first level of the child protection system involves considering the rights related to all persons living within the country. Children are citizens and, in accordance with the provisions of the Constitution of the Republic of Poland, the main rights included in the aforementioned legal act, i.e. those related to dignity, freedom or equality, also address children. The second tier of the system of protection of children's rights refers to regulations that exclusively address children, or, in other words, children and their rights are at the core of their adoption.

Child protection can be ensured only if the subjectivity of the child is recognised by the law. The child's subjectivity lies at the heart of the child's right. The notion of the child's legal subjectivity should be perceived as any qualification for legally relevant behaviour in the sense of being the recipient or administrator or the point of attachment of rights or obligations.[13] The capacity to act in proceedings aimed at granting rights or imposing obligations must be determined by the prerequisites of subjectivity deriving from substantive law. The child's subjectivity is the child's entitlement, which implies protecting its autonomy. Another definition of this concept would be to refer to being someone or having an identity that allows one to be distinguished from

10 On the reasons for limiting parental custody, see: Walencik-Ryba, 2019, p. 16.
11 Nitecki, 2017, p. 723.
12 Andrzejewski, Zajączkowska-Burtowy and Gajda, 2020, p. 21.
13 Filipek, 1995, p. 223.

others. Adopting this approach, the legislator has assigned the child the status of a subject who exists, functions in society and remains in relation to it, and anyone who takes action towards the child is obliged to recognise that the child is an autonomous subject who is entitled to protection under the norms of the basic law.[14]

The child, as an autonomous subject, has rights granted by the law, which includes the right to protection from arbitrary or unlawful interference in his or her life. This implies that decisions taken in relation to the child by entities applying legal norms, including the Act on Family Support and the System of Foster Care, cannot overlook the child' s right to object.[15] The fundamental and natural, and at the same time primary, right of a child is the right to be brought up in a family. Further, if it is necessary for the child to be brought up outside his or her family, it is the right of the child to be cared for and brought up within family foster care forms, if this is consistent with the child's welfare. Furnishing the child with the above right also means that the child placed in foster care has the right to return to his or her biological family. Ensuring that it is possible for the child to return to his or her family is one of the child's natural rights, and this implies that the authorities tasked with this are obliged to undertake actions that will enable the child to return to his or her family. The catalogue of rights includes the rights connected with the upbringing process. Within this group of rights, the focus is to be first on the right to a stable environment for the child's upbringing. In other words, changes to the environment of the child's upbringing should be made only in situations that warrant it, namely, when the natural family or the established form of foster care fails to manage the child's upbringing problems or is no longer able to perform such a function. In addition to the presented rights, the child has the right to protection against degrading treatment and punishment. This right is of a universal nature and applies to all.

As mentioned above, the child is a human being and is therefore covered by the concept of dignity under Art. 30 of the Constitution of the Republic of Poland.[16] This concept includes within its scope the principle of listening to the child, which is anchored in Art. 12 of the Convention on the Rights of the Child.[17] The essence of this principle is that all actors undertaking activities involving children are obliged to listen to them, to the extent allowed by their age and degree of maturity. The child's right to be heard is also addressed to those implementing foster care tasks, particularly to the bodies that assess the situation of a child placed in foster care and qualify the child for adoption. To the extent indicated, this principle amounts to allowing the child to express his or her personal situation and make suggestions. The implementation of this principle should lead to considering child's stance as much as possible.

14 Nitecki, 2022, pp. 696–697.
15 Tryniszewska, 2012, p. 27.
16 On the concept of dignity, see: Duniewska, 2021, p. 155.
17 See: Pawlak, 2015, p. 215.

4. Who Is Responsible for the Child's Protection (State, Municipality, Churches)?

The comments so far have already clarified that the subject obligation to support a family experiencing difficulties in fulfilling its custodial and educational duties, as well as to organise foster care, rests with local government units and government administration bodies. Within the framework of the public administration indicated here, the local government units are responsible for substantive activities undertaken with regard to families experiencing difficulties in performing custodial and educational duties, as well as with regard to persons benefiting from the provided-for forms of foster care. The division of tasks among individual units of the local government is based on the principle of subsidiarity, which implies that entities at the municipal level work with natural families, while foster care is the task of the powiat. The situation is different in the case of government administration bodies, since these bodies, within the discussed scope, do not undertake any activities of a substantive character, yet they bear control powers and, moreover, they undertake activities of a strategic nature, which are important from the perspective of the state and its social policy. The functions of a field authority (voivode) are substantially different from the tasks facing central authorities (the minister responsible for the family division), because the tasks of field authorities are more supervisory and controlling, while the central authorities are oriented towards planning strategies on a national scale to resolve problems of families experiencing difficulties in performing their custodial and educational duties.

4.1. Principle of Subsidiarity

The principle of subsidiarity materialises in two approaches.[18] First, the introduction of this principle means that local and regional government units situated lower in the organisational structure of the state cannot delegate tasks with this scope to the local and regional government units situated at a higher level; in other words, tasks can be transferred in the indicated form only to the units situated lower in the organisational structure of the state. The second implication of principle discussed here amounts to the creation of the possibility for local government units to outsource public tasks to non-public entities and involve them in the performance of tasks provided for in the legal norms concerning family and foster care. Involving the social factor in the implementation of the indicated tasks is significantly important because this contributes to an intensified activity of society. The inclusion of non-public entities may result in parents, who struggle with performing their custodial and educational duties, finding it easier to establish contact and understanding with persons working

18 On the principle of subsidiarity, see: Sierpowska, 2012, p. 144.

in these organisations than with employees representing public administration bodies.[19]

4.2. Local Government Units

Local government units and government administration bodies perform the tasks entrusted to them with the cooperation of the local community, courts and their auxiliary bodies, i.e. the police, educational institutions, medical entities, as well as churches and religious associations and social organisations. It should be noted that cooperation indicated here means that the public administration performs the tasks together with the entities mentioned herein on the basis of the legal regulations in force and the position to which these entities are entitled. Thus, none of the entities exceeds the rights to which they are entitled, and each of these entities, guided by the welfare of the child and the family that faces difficulties in performing its custodial and educational duties, strives to resolve the situation and to ensure that the family performs their tasks correctly. Adopting such a solution would mean that local and regional authorities and governmental bodies are not limiting themselves to their own activity. At the same time, this does not mean that the public administration bodies indicated herein have any special powers and hold a dominant position and impose their own will. The catalogue of entities with which the territorial government units and government administration bodies are to cooperate is broad and open, and thus the obligation of such cooperation will also cover other entities not listed therein.[20] Such entities, through their operations, aim to support families experiencing difficulties in fulfilling their custodial and educational duties.[21]

Public administration bodies performing the tasks in question are obliged to cooperate with churches and religious associations in supporting families experiencing difficulties in fulfilling their custodial and educational duties and organising foster care. The term "churches" here is understood to include the Catholic Church as well as other churches. At the same time, it should be emphasised that the indicated authorities will cooperate with the relevant bodies of these churches and religious associations.[22]

4.3. Social Organisations

In the implementation of tasks with the scope of fulfilling custodial and educational duties and organising foster care, social organisations play a special role. The term "organisation" is not precisely defined in the Polish law; however, it is commonly understood to mean associations.[23] Associations can be of two distinctive types; registered associations and ordinary associations. Only registered associations deal with

19 Blicharz, 2018, p. 44.
20 This issue is treated using an analogous approach by Tryniszewska, 2012, p. 23.
21 Nitecki, 2015, p. 135.
22 For more on this topic, see: Nitecki, 2020, p. 345.
23 See: the Act of 7 April 1989. - Law on Associations (consolidated text: Journal of Laws of 2020, item 2261, as amended).

the issues of children and foster care. The obligation to cooperate indicated herein applies only to those associations whose statutory objectives include support for families as well as measures to organise foster care or adoption procedures. It should be emphasised that the activities of associations within this scope are of a subsidiary nature and contribute to resolving the existing difficulties in the families.[24]

5. Financing Childcare Tasks

As indicated above, substantive tasks within the field of family support and foster care are assigned to individual local government units. This circumstance bears significance regarding the manner of financing the tasks performed within this scope. It should be emphasised that the tasks within the scope of family support have been recognised as the municipalities' own tasks, which means that the municipalities incur expenditures for the implementation of these tasks from their own resources. In other words, when drawing up the budget, municipalities are obliged to secure funds allowing proper implementation of such tasks. The amount of funds dedicated to the established purpose depends not only on the needs that arise, but also by the possibilities available to a given municipality. In accordance with Art. 177 of the Act on Support for Families and the System of Foster Care, regarding tasks delegated by the government administration, a municipality implements only the tasks under government programmes. These tasks are performed in line with the guidelines of the voivode and within the framework of the funds provided by the government administration.

The powiat's performance of foster care tasks is included in the provisions of the aforementioned Act as the powiat's task. An exception in this respect is the provision of foster care to foreign minors, since the implementation of this task has been included within the scope of government administration. Additionally, the powiat implements government programmes as part of the tasks delegated to it. According to the principles of financing for foster care tasks, powiats are obliged to ensure the fulfilment of such tasks, in terms of community as well as institutional foster care, within their financial resources. At the same time, legal regulations allow powiats to claim reimbursement of expenses incurred from other local government units (municipalities and powiats) for the benefit of which the tasks in the discussed scope are performed. Owing to such an approach to financing for performing these tasks, the amount of funds allocated for the indicated purpose will depend on the possibilities of a given local government unit, the existing needs and the awareness regarding the importance of a given task on the part of the representatives of the legislative and executive authorities of this unit.

24 Nitecki, 2015, p. 137.

When foster tasks are implemented by non-public entities commissioned by the county, their financing is at the expense of the respective local authority, which is obliged to provide the relevant funds when commissioning the tasks.

On the financing of foster care related tasks, it should be noted that the scope of financial resources tasks performed by other administrative entities (social insurance institutions), which perform tasks of a universal nature, including those relating to children in (community or institutional) foster care. The only difference is in this instance, consideration is given to the child's benefit.

6. Indications That the Child Is at Risk

The norms of Polish laws governing the presented issues do not mention the premises that endanger the child and justify taking actions aimed at restricting the role of natural parents and possibly placing the child in the foster care system. The Family and Guardianship Code includes a provision according to which, if the welfare of the child is at risk, the guardianship court will issue appropriate orders.[25] Thus, the legislator has introduced only one concept, namely, "endangerment to the welfare of the child". This covers any situation that could potentially constitute such a risk. The introduction of such a general concept shifts the entire responsibility for decisions taken with regard to the child and the natural parents to the guardianship court. The court will decide in each individual case on the basis of the material presented by the authorities and bodies acting on behalf of the court. This facilitates capturing any risk to the welfare of the child and enables the court to issue an appropriate decision.

It should be emphasised that a child may be placed in foster care only when the previously applied other measures as set out in the provisions of the Family and Guardianship Code and forms of assistance for the child's parents referred to in the provisions on family support and the foster care system have not eliminated the risk to the child's wellbeing. The indicated restriction does not apply when the necessity to provide immediate foster care to the child arises from a serious danger posed to the child's wellbeing, particularly placing his or her life or health at risk.[26] The norm cited here mentions two hazards that would require the guardianship court to take radical measures: the child's life and health. Any danger to these compel the said court to take the necessary measures prescribed by law to protect the child. At the same time, placing a child in foster care against the will of the parents solely on the grounds of poverty is not acceptable.[27] The above regulation is important because it places a higher priority on the relationship between natural parents and children than on the living conditions in which the children are raised. The primacy of respect for family bonds is confirmed by another regulation providing that siblings should be

25 See: Art. 109 para. 1 of the Family and Guardianship Code (Journal of Laws 2020, item 1359).
26 Ibid., Art. 1123 para. 1.
27 Ibid., Art. 1123 para. 2.

placed with the same foster family, family foster home, foster care centre or regional custodial and therapeutic centre, unless it would be contrary to their wellbeing.[28] Within the scope of the discussed issues, another provision mentions that if maintaining contact between the parents and the child seriously threatens or violates the wellbeing of the child, the court would prohibit the same.[29]

These comments of a general nature should be followed by an analyses of specific risks to s wellbeing.[30]

6.1. Child Hazard Due to Family Circumstances

Child hazards arising from family circumstances should be considered bearing in mind the family's financial situation or the composition of the family. Regarding the former, the amount of income it has at its disposal and its ability to meet the current needs of its individual members are considered. As mentioned earlier, the poverty of the natural family cannot be a premise for placing a child in foster care. In other words, the financial circumstances of the family cannot be the sole and exclusive basis for making appropriate decisions in this respect. Another risk is the absence of one of the parents. However, the reasons for the absence of the parent do not play any role (natural absence due to their death or due to the reasons lying withing the family itself, e.g. divorce or one parent leaving the other parent with the child). The risk referred to hereinabove also may not constitute the sole and exclusive basis for placing a child in foster care.

6.2. Child Hazard Due to Violence

Violence, in any form whatsoever, be it physical or psychological, is not acceptable and, if it occurs, the guardianship court will have to place the child in foster care as per the relevant principles. Violence endangers the child's life or health and, as indicated above, is an absolute prerequisite for placing a child in foster care. The violence could be directed at other persons who constitute the respective family, or it could be directed solely at the children or at a particular child. Documenting the occurrence of this phenomenon is a separate issue, because drastic forms of violence, especially physical violence, are noticeable, while it is difficult to document and demonstrate the occurrence of psychological violence, which in many respects can be equally devastating.[31]

28 Ibid., Art. 1128.
29 On the wellbeing of the child, see: Zacharko and Wanterberg-Kempka, 2017, p. 281.
30 Extensive reflections on the indicated topic are provided by Walencik-Ryba, 2019, pp. 107–109.
31 See the decision of the Supreme Court of 7 September 2000 ref. No. I CKN 931/00 (Lex 1166290).

6.3. Poor Financial Conditions and Risk for the Child

The poor financial condition of the family is most often manifested in family poverty; as indicated above, this circumstance may not be the exclusive basis for the decision to place a child in foster care.[32]

6.4. Child Hazard on Moral Grounds

Moral premises creating risks for a child are usually linked to the conduct of the parents, which may constitute the basis for drastic measures such as placing a child in foster care. An example of a moral hazard could be one of the parents of the child involved in prostitution. The risk would be considered severe if such a hazard occurred on the premises where the child resides and the child has witnessed it. This category of risk includes incitement to commit a crime. Another type of moral hazard could be the health of the child's parent, which may prevent the parent from having proper control over their own behaviour and thus creating a risk environment for the child's wellbeing.[33]

6.5. Child Hazard Arising From Health Conditions

The child's own health condition can sometimes prove to be a hazard. For instance, if the child is born with certain deficiencies or in such a condition that the parents give up raising the child once they know of its condition after birth and leave the child in an appropriate health care facility or some form of foster care. Another hazard based on health grounds may be due to the professed faith of the parents, which limits the possibility of undertaking the necessary steps for treatment. For instance, some faiths prohibit blood transfusions, a treatment process that could, in particular cases, save the child's life and health. In such instances, action must be taken to enable conducting the relevant procedure, including restricting the parents' custodial rights and placing the child in foster care.

6.6. Child Hazard Due to Parental Neglect

Another type of risk that the child is exposed to could be related to the natural parents' lack of skills in performing their custodial and educational duties towards the child. The child hazard rationale referred to here is very broad, as it encompasses situations where parents lack the necessary skills, or despite being equipped with skills, do not employ them, but instead focus on their own life needs and overlook the child's needs. Such behaviour may be the result of the parents' disabilities, insufficiencies, or an underlying a medical condition (psychological or psychiatric in nature). The neglect may constitute a hazard to the life and health of the child. Negligence on the part of the parents, especially those of a significant nature, and above all a failure

32 Analysis of the premises for placing the child in foster care showed that poverty was not the basis. The issue of poverty was most often associated with another premise for placing the child in foster care, namely, alcoholism or drug addiction of the parents or one of the parents and their incapacity to care and provide educational sustenance.

33 Walencik-Ryba, 2019, p. 16.

to undertake measures to correct their conduct, repeatedly constitutes grounds for placing a child in foster care.

7. Legal Status of Disabled Children

In Poland, the legal situation of children with disabilities is complex. This complexity stems from the fact that disabled children are covered by regulations that cover all children and, in addition, the legislator has introduced norms that regulate the legal situation of disabled children or grant additional rights to persons caring for such children in a different way. It should be noted that the additional benefits provided for disabled children or their guardians do not guarantee that the needs of these children will be met. Among the numerous benefits provided for disabled children is the attendance allowance. This benefit is available to a disabled child and to a disabled person over the age of 16 if they hold a severe disability certificate. This allowance benefit is around PLN 215.84[34] per month. Another benefit is the family allowance. According to the Act on Family Benefits,[35] the right to family allowance and supplements to this allowance are granted to parents, one parent. or the child's legal guardian or the child's actual guardian. An actual guardian is the person who cares for the child during in the process of adoption of the child. Among the supplements to the family allowance is a supplement for the education and rehabilitation of the disabled child. This allowance is due to a child up to the age of 16 if they hold a disability certificate, and over the age of 16 up to the age of 24 if they have a certificate for moderate or severe disability. The allowance is paid monthly and its amount varies, with PLN 90 for a child up to the age of 5 and PLN 110 for a child over 5 up to the age of 24.

Pursuant to the provisions of Art. 81 para. 1 of the Act on Support for Families and the Custody System, a foster family and a foster home operator are entitled to an allowance of no less than PLN 200 per month for a child with a disability certificate or a certificate of a significant or moderate degree of disability to cover the increased maintenance costs of that child.

A special benefit offered on the grounds of a child's disability is a nursing benefit, due on the grounds of resigning from employment or other gainful work, to the mother or father, the actual guardian of the child, a person who is a foster family relative within the meaning of the Act of 9 June 2011 on Family Support and the System of Foster Care. It may also be given to other persons who, in accordance with the provisions of the Act of 25 February 1964 on the Family and Guardianship Code, bear the responsibility of the alimony obligation. However, for a child with a severe degree of disability, if the carers resign from employment or other gainful

34 See: Art. 2 para. 2 of the Regulation of the Council of Ministers of 31 July 2018 on the amount of family income or learner's income constituting the basis for applying for family allowance and special care allowance, the amount of family benefits and the amount of guardian's allowance (Journal of Laws 2018.1497).

35 Act of 28 November 2003 on family benefits (Journal of Laws of 2023, item 390).

work in order to provide care for the child with a severe disability or with a disability certificate indicating the need for permanent or long-term care or assistance or with significantly limited possibility of independent existence and the need for permanent co-participation of the carer in the child's everyday life for treatment, rehabilitation and education, a benefit amounting to PLN 2458. per month is provided (as of 1 January 2024, this benefit will amount to PLN 2988 per month). As can be understood from the above, this benefit is not addressed to the child, but to the person resigning from work to care for the child who requires assistance.

In addition to the solutions presented, it is important to recognise the provisions of the Act of 4 November 2016 on support for pregnant women and families "Za życiem".[36] Pursuant to this Act, a one-off cash benefit is granted for the birth of a child diagnosed with a severe and irreversible disability or an incurable life-threatening illness that arose during the prenatal period or during childbirth. The amount of this benefit is set at PLN 4,000. In addition to this benefit, the parents of such a child are entitled to appropriate health care benefits for the child, with particular consideration for a child diagnosed with a severe and irreversible disability or an incurable disease threatening his or her life, which arose during the prenatal period or during childbirth. Furthermore, the parents of such a child are entitled to access coordination, care and rehabilitation services.

8. Instruments for the Integration of Disabled Children

The situation of children with disabilities in foster care with regard to their integration varies and depends on the form of foster care in which they are placed. Integration of children is understood to mean including them into specific communities with which they have contact. In the case of disabled children in institutional foster care, such children are subject to a process of integration into the particular community residing in the relevant institutional foster care unit. This process depends on whether the relevant unit hosts healthy and disabled children or only disabled children. The process of integration in such entities also depends on the age of the children, because as the child grows older, integration activities become more important will influence the socialisation of the child. Additionally, the degree of disability of the child has to be borne in mind as it will determine the activities undertaken within this scope. Institutional forms of foster care, in the scope of their activities, also undertake activities aimed at the integration of disabled children at various levels.

In the case of children with disabilities in community foster care, the problem of integration is related both to the degree of disability of the child and the type of foster family in which the child is placed. Integration of such a child in a foster family where it is the only child with disability will be more difficult than in the case of foster families caring for several children, including those with disabilities.

36 Journal of Laws 2023, item 1923.

The considerations presented above allow an observation that the current legal regulations do not include legal norms aimed at the integration of disabled children. The process of integration of these children is related to the actions of entities that take care of these children and the environments in which they live.

9. Premises Enforcing Undertaking Activities of a Protective Nature (Definition of Necessary Intervention)

The considerations above concerning the hazards to the child, justifying his or her placement in institutional or community foster care, constitute the premises justifying undertaking protective measures. It should be emphasised that Polish norms do not contain a definition of necessary intervention, while Art. 109 para. 1 of the Family and Guardianship Code stipulates that appropriate actions are to be taken in the instance of a hazard to the child's welfare, and thus this notion constitutes a specific definition of necessary intervention.

9.1. Child Protection System in Poland

The child protection system in Poland is extensive and uneven. However, one should first recognise the relevant regulations adopted by the legislative authority to ensure child protection. Recent laws aimed at child protection have been adopted in the wake of drastic incidents related to violation of child rights.[37] The essence of the child protection system is connected with the proper functioning of the judiciary and the executive powers. The legislator provides for action to be taken by the judiciary, particularly by the family and guardianship courts aimed at protecting the wellbeing of the child. The wellbeing of the child determines the actions taken by this authority. The decisions taken by the family court judges are implemented by the executive authority, particularly by the bodies of the local authorities operating at the powiat level. Furthermore, non-public entities also operate within this system, performing the tasks commissioned to them by the executive authorities. The discussed system employs the instruments specific to private law as well as public law.

9.2. Non-Authoritative (Custody) and Authoritative (Foster Care) Forms of Providing Care to a Child

The Polish legal system mentions two situations related to the provision of custody to a child whose parents are unable to provide proper upbringing and care. These form the legal basis of provision of custody to a child. The first situation is related to the provisions of private law and refers to the custody of the child based on the provisions

37 A classic example of this type of action was the Act of 28 July 2023, commonly referred to as 'Lex Kamilek', amending the Family and Guardianship Code and certain other acts (Journal of Laws, item 1606) adopted after the tragic incident involving the child Kamilek.

of Art. 755 (1) of the Code of Civil Procedure.[38] Pursuant to it, if the object of security is not a pecuniary claim, the court shall grant security in such manner as it considers appropriate according to the circumstances, not excluding the manners provided for securing pecuniary claims. The court may in particular regulate the manner of custody over minor children and contact with children. This rule provides for the placement of a child in custody, where such placement does not directly entail rights for the custodian on that account. The situation is incomprehensible when the child is placed in the custody of a non-parent. Such a person is then obliged to provide care and upbringing to the child without receiving any financial means for performing such tasks. This was the case until the jurisprudence of the administrative courts ruled that the custodians should be treated in the same way as parents and persons with a legal title to care for and bring up the child.[39] It ought to be emphasised that the arrangement presented herein stems exclusively from private law regulations, and within this scope the public administration bodies have no involvement whatsoever, as all actions are a consequence of the decisions made by the common courts, in fact the family divisions of these courts.

Apart from the form characteristic to private law, a form proper to public law, effective in the Polish legal system, is the institution of foster care. The public law form indicated here is in relation to the entity carrying out foster care, since it is the task of the public administration, particularly assigned as tasks of powiats and of cities with powiat rights. At the same time, it should be noted that decisions on placing a child in foster care are, as per principle, made by the family divisions of common courts. Occasional prospects on the part of parents to place a child in foster care or to place a child in such a form of care following an appropriate intervention still require a final decision by the family court.

Within foster care are two distinct forms of care, community foster care and institutional foster care.[40] Community foster care refers to family foster care, which can be care in a foster family, through care provided by relatives, a non-professional foster family, or a professional foster family; it also includes care by an emergency foster family and professional specialist foster family. This category of foster care also includes a family-type foster home. A child is placed in a foster family or a family-type foster home following consent of foster parents or a family-type foster home's manager, respectively. The indicated entities, upon their request, may be supported by support families.

Institutional foster care can be categorised into custodial and educational units; regional foster care and therapy units; and intervention pre-adoption centres. A custodial and educational facility is run by the powiat or an entity commissioned by the powiat to carry out such tasks. A custodial and educational facility can be of the following types: socialisation; intervention; specialist-therapeutic and family. The

38 Journal of Laws 2023, item 1550.
39 See judgement of the WSA in Warsaw of 26 June 2020 ref. No. I SA/Wa 2519/19 LEX No. 3128070.
40 This issue is discussed at great length in Nitecki and Wilk, 2016, p. 195.

regional foster care and therapeutic centre hosts children who require special care, who, owing to their health condition, require specialised care and rehabilitation and, hence, cannot be placed in family foster care or in a custodial and educational unit. The intervention pre-adoption centre hosts children who require specialised care and cannot be placed in family foster care during the period of awaiting adoption. No more than 20 children may be placed in an intervention pre-adoption centre at any one time, and a child's stay in such a facility cannot last longer than until the child's first birthday.

As has been pointed out, the authoritative form of foster care is a matter of public law, although it should be recognised that placement in foster care requires the opinion of the family court, which undertakes the relevant decision. On the contrary, the public administration needs to administer community and institutional foster care. In this respect, entities run by the powiat play a special role, as it is this local government unit that covers the tasks within this scope.

9.3. Benefits in Cash and in Kind (To the Child as Well as to the Carers)

Guardians of children in the Polish legal system receive benefits from two different sources. The first is benefit provided on the grounds of their function as a foster family or a person running a family orphanage, i.e. a benefit that supports these persons in performing their function. The second is a cash benefit granted on general terms to all children, irrespective of whether they are growing up in a natural family or are in foster care. From this study's viewpoint, the first identified source of benefit plays a key role.

Pursuant to the applicable legal regulations, a foster family and a person running a family-type children's home are entitled to a benefit for each child placed there in order to cover the costs of the child's upkeep, not lesser than an amount of: PLN 660 per month, if a child is placed in a foster family by relatives; if the child is placed in a professional foster family, non-professional foster family or family-type foster home, the amount is PLN 1000 per month. A foster family and a person running a family-type foster home are entitled to an allowance not lesser than PLN 200 per month for a child with a certificate of disability or a certificate with a severe or moderate degree of disability per month to cover higher maintenance costs of that child. Additionally, a professional foster family for a child placed on the basis of the Act of 9 June 2022 on support and re-socialisation of minors is entitled to an allowance not lesser than PLN 200 per month to cover the higher maintenance costs of that child.[41]

In addition to the above-mentioned benefits, a starost may grant to a foster family and those running a family-type foster home (1) a subsidy for holidays away from the child's place of residence; and (2) a benefit to cover the necessary costs associated with the needs of the child (received on a one-off basis) and costs associated with the

41 Nitecki and Wilk, 2016, p. 387.

occurrence of random events or other events affecting the quality of care provided (on a one-off basis or periodically).[42]

Apart from the funds allocated to meet the immediate needs of the children, a non-professional and professional foster family may receive funds for the maintenance of the living premises in a multi-family building or a single-family home. The amount corresponds to the costs incurred by the non-professional or professional foster family for rent, rental fees, cost of electricity and heat, fuel, water, gas, solid and liquid waste collection, a passenger elevator, a collective antenna, television and radio subscriptions, telecommunication services and related operating costs.[43]

Separate regulations apply only to those running a family-type foster home. Such persons receive funds for the maintenance of the living premises in a multi-family building or a single-family house in which the family-type foster home is run, to an amount corresponding to the costs incurred by the family-type foster home for rent, rental fees, cost of electricity and heat, fuel, water, gas, solid and liquid waste collection, a passenger elevator, a collective aerial, television and radio subscriptions, telecommunication services and related operating costs. An additional form of support is aimed at covering the necessary costs associated with the renovation or refurbishment of the premises in a multi-family building or a single-family house. Apart from the above-mentioned forms of support related to covering the housing maintenance expenses, the operator of a family-type foster home receives funds to cover other necessary and unforeseen expenses related to the care and upbringing of the child or the operation of the family-type foster home. The amount for this type of support is estimated from the provisions of a signed agreement.[44]

Apart from the above-mentioned forms of support for entities performing community foster care aimed at creating appropriate conditions for children, it should be noted that benefits are also earmarked for supporting the community foster care entity itself. Such an instrument, which is used in this respect, is a form of remuneration for the performed tasks. Pursuant to the current legal regulations, a professional foster family and a person running a family-type foster home are entitled to a monthly remuneration not lesser than PLN 4100. A professional foster family acting as a family emergency family service is entitled to a monthly remuneration not lesser than 124% of the amount referred to above. When determining the amount of remuneration referred to herein, the qualifications, training and assessments of the professional foster family and the person running the family-type foster home are considered. The parties to such an agreement are the relevant powiat (city with powiat rights) and the entity of community foster care.

As indicated earlier, community foster care entities receive forms of support provided for all families raising children. Such an instrument is, for instance, a benefit intended for the child. Notably, from the very beginning, this benefit was granted

42 Ibid., p. 397.
43 Ibid., p. 405.
44 Ibid., p. 408.

for children in foster care, and in the initial period it was an appropriate allowance of a similar amount granted to all children. Currently, in accordance with Art. 5a(2) of the Act on State Aid for Upbringing of Children,[45] a child benefit for a child placed in foster care is granted only to a foster family, a person running a family-type foster home, the director of a custodial and educational unit, the director of a regional educational-therapeutic centre or the director of an intervention pre-adoption centre, respectively. The amount of this benefit is comparable to that received by children residing in a natural family.

An example of another benefit granted as a general rule is an alimony advance granted under the provisions of the Act of 7 September 2007 on assistance for persons entitled to alimony.[46] Pursuant to the provisions of this Act, children in foster care are also entitled to receive the indicated advance in case the person obliged to pay such monies evades their obligation. Further, attendance allowance is also granted on the grounds of a child's disability or a moderate or severe degree of disability. This benefit amounts to PLN 215.85 per month.

In the context of benefits for raising children, the special situation in relation to the receipt of family allowance has to be recognised as this benefit is not available for children in foster care.

9.4. Childcare Allowances Under Personal Care Services (e.g. Child Day Care; Temporary Childcare; Enhancing Children's Opportunities, Work)

The above considerations demonstrate that the Polish legal system offers benefits whose recipients are persons caring for children. An example of such a benefit is the attendance allowance, which is granted on the grounds of resigning from employment or other gainful work and is due to a) the mother or father; b) the actual guardian of the child (a person applying for adoption of a child); c) a person who is a related foster family; d) other persons who are subject to maintenance obligation, with the exception of persons with a severe degree of disability – if they do not take up or resign from employment or other gainful work in order to take care of a person with a certificate of a severe degree of disability or a certificate of disability, with the following indications: the necessity of permanent or long-term care or assistance of another person in connection with the severely limited possibility of independent existence and the necessity of permanent daily participation of the child's guardian in the process of the child's treatment, rehabilitation and education.

9.5. Authoritative Forms of Foster Care

Since the issue of authoritative forms of foster care have been discussed earlier, the focus here will be on the main issues within this scope. Authoritative forms of foster care include community foster care and institutional foster care. While placing a

45 Journal of Laws 2023, item 810.
46 Journal of Laws 2023, item 1993.

child in community-based foster care is the preferred form, institutional foster care is allowed when it is not possible to provide care in a community-based form.[47]

9.5.1. Environmental Assistance in the Form Of…

As mentioned earlier, community care is provided through various types of foster families and by means of a family-type foster home. Performing as a foster family and running a family-type foster home may be entrusted to persons[48] who guarantee proper exercise of foster care; are not and have not been deprived of parental rights, and their parental rights are not limited or suspended; fulfil the obligation of alimony – where such an obligation towards them results from an enforcement order; are not limited in their legal capacity; are capable of providing proper care for a child, which has been confirmed by an appropriate medical certificate on their health condition issued by a general practitioner and an opinion on their predispositions and motivation to perform the function of a foster family or to run a family-type foster home issued by a psychologist; and reside within the territory of the Republic of Poland.

However, in the instance of the foster family being foreigners and their stay is legal, they shall provide appropriate living and housing conditions satisfying the child's individual needs, including emotional, physical and social development, proper education and development of interests, leisure and organisation of leisure time. Furthermore, such persons may not or shall not have featured in the database of the Sexual Offenders Register with restricted access.

According to the provisions of Art. 41 para. 2 of the Act on Support for Families and the Foster Care System, a related foster family refers to a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is the child's ascendant or sibling.

An unrelated foster family, in accordance with the provisions of Art. 41(3) of the aforementioned Act, is understood to be a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is not the child's ascendant or sibling. Serving as this type of family may be entrusted to persons who have not been convicted of an intentional crime by a final judgement. In this type of foster family, at least one person forming the family must have a regular source of income.

According to the above provision, a professional foster family is understood to be a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is not the child's ascendant or sibling. Serving as this type of family may be entrusted to persons who have not been convicted of an intentional crime by a final judgment.

A family-type foster home as a community-based form of foster care in accordance with Article 41(1) of the aforementioned Act refers to the spouse or an unmarried person with whom a child has been placed to be provided foster care.

47 See: Art. 1127 para. 3 of the Family and Guardianship Code, as well as Zajączkowska-Burtowy, 2021, p. 1116.

48 See: Art. 42 of the Act on Support for Families and the Foster Care System.

Institutional care is intended to complement the foster care system and is used as a secondary option when it is not possible to place a child in community-based foster care. This form of foster care is generally provided by entities run by local governments, either directly or through a contract with a non-public entity. This task has been entrusted to powiats, and only custodial and educational facilities of a specialist and therapeutic character are run by the voivodeship authorities. Pursuant to the provisions of Art. 93 of the Act on Support for Families and the System of Foster Care, institutional foster care is provided in the form of: a foster-care centre; a regional foster-care centre and an intervention pre-adoption centre.

Pursuant to the provisions of Art. 93 para. 4 of the aforementioned Act, a custodial and educational unit is meant to provide the child with round-the-clock care and upbringing apart from satisfying the child's fundamental needs, particularly emotional, developmental, health, living, social and religious needs; implement a plan of assistance for the child prepared in cooperation with a family assistant; enable the child to have contact with his or her parents and other persons close to the child, unless the court decides otherwise; take measures to return the child to the family; provide the child with access to education suitable to the child's age and developmental capabilities; and include the child in therapeutic measures and ensure the child avails the health care services to which the child is entitled.

Pursuant to Art. 101 para. 1 of the Act referred to above, such a unit is run as a custodial and educational unit type for socialisation, intervention, specialist-therapeutic or family activities. The type of custodial and educational institution is specified in its regulations.

This type of foster care facility includes those units that are not classified as intervention, specialist and rehabilitation or family type as mentioned in the Act.

The intervention-type custodial and educational unit is tasked with providing emergency care for a child during a crisis situation; in particular, the facility is obliged to accept a child in cases requiring immediate care for the child.

Pursuant to Art. 105 of the aforementioned Act, a custodial and educational facility of a specialist-therapeutic type cares for a child with individual needs, specifically, one a) who holds a certificate of disability or a certificate of a moderate or severe degree of disability; b) who requires the application of special educational methods and specialist therapy; and c) who requires compensating for developmental and educational delays.

The facility provides educational, social and therapeutic, corrective, compensatory, logopaedic, therapy sessions, compensating deficiencies in family upbringing and preparing for social life, and to disabled children providing appropriate rehabilitation and revalidation sessions as well.

The family-type foster care unit is meant to care for children of different ages, including adolescents and those becoming independent; enable siblings to be brought up and cared for together; and cooperate with a family foster care coordinator and a family assistant.

9.6. Pre-Adoption Intervention Centre

Children who require specialised care and cannot be placed in family-type foster care during the waiting period for adoption are placed in an intervention pre-adoption centre. No more than 20 children may be placed in an intervention pre-adoption centre at any one time, and the child's stay may not last longer than the child's first birthday.

10. Children Leaving Foster Care and Becoming Independent[49]

When children in foster care leave upon reaching the age of majority or completing their education, they require appropriate support to enable them to function independently in society. The essence of the assistance for independence is that it creates the conditions for those who can benefit from it to meet their essential needs, as well as to acquire an education that will enable them to gain an advantage in the labour market. The scope of this assistance is not directed to meet a specific need, but to create the conditions that will allow the eligible persons to return to their environment and function there independently.

Aid for becoming independent is granted to a person leaving a foster family, family-type foster home, custodial and educational institution or a regional care and therapeutic institution upon attaining the age of majority, if placement in foster care was based on the decision of the guardianship court. A person becoming independent is also understood to be a person whose placement in family foster care ceased as a result of the death of the persons forming the foster family or the person running the family-type foster home during a period of six months prior to the person becoming an adult. The aid for becoming independent is conditional upon leaving one of the listed forms of foster care.

As assistance for those who become independent, aid is granted for continuing education, for becoming independent and for domestication. Such assistance is also provided for obtaining appropriate housing, employment, legal assistance and psychological support.

Aid for the continuation of education, for becoming independent and for domestication is granted to a person becoming independent who has been in foster care for a strictly specified period. The specified period is three years for a person leaving a related foster family and one year for a person leaving a non-professional foster family, professional foster family, family-type foster home, custodial and educational unit or regional care and therapeutic facility.

Aid for becoming independent and assistance for domestication are granted to an independent person who meets the income criterion entitling them to receive the same. When the monthly income of the person becoming independent exceeds the

49 For more on the subject of empowerment, see: Nitecki, 2022, p. 876.

above amount, the indicated forms of assistance may be granted if it is justified by their housing, income, property or personal circumstances.

Aid to continue education is granted when an independent person continues his or her education at school, at a teacher training institution, at a university or pursues relevant courses. The amount of such aid is no less than PLN 500 per month. The benefit is due from the month in which the application is submitted until the month in which it is completed or until the person reaches the age of 25. The aforementioned benefit is not due if the person who has become independent continues education at a secondary school or a university that provides free education and full board free of charge; changes school three times at the same level of education without justifiable reasons; and was placed in a penal institution.

11. Organisation of Entities Operating Within the Scope Discussed

The tasks of the state in the field of foster care are carried out by the organs of the judiciary and the executive powers, i.e. the public administration, including the government administration and the local government administration.

The tasks posed before the various organs of the state are carried out in accordance with their position in the organisational structures and their functions.

11.1. Organs of the Judiciary

The tasks within this area are carried out by common courts and administrative courts. The common courts are focused on issues of parental custody; therefore, they undertake all key decisions from the point of view of the parent and the child within the discussed field.[50] Common courts may take a number of different actions with regard to the natural parents of children, ranging from supporting them in their efforts to fulfil the tasks they face in the field of upbringing and caring for their children, through actions of a disciplinary nature addressed at natural parents having difficulties in the presented scope, to the most radical actions related to limiting or depriving them of their parental rights and placing the child in a community or institutional form of foster care. This court also decides on matters relating to adoption, whether domestic or foreign. Administrative courts[51] control the legality of actions taken by public administration bodies, particularly bodies of local government units. These courts review resolutions adopted within this scope, which are acts of local law, as well as review administrative decisions issued in this area, especially those related to granting assistance to persons performing the function of foster care; they also review decisions that impose obligations on natural parents with respect to payment for staying in foster care.

50 Walencik-Ryba, 2019, p. 13.

51 See: the Act of 25 July 2002. Law on the system of administrative courts (Journal of Laws of 2022, item 2492).

11.2. Local Government Bodies

The tasks in the field of foster care are divided between government administration and local government administration bodies. In the first instance, these tasks are performed at the central level by the minister in charge of family affairs. The tasks of this body are related to the introduction of new arrangements in the discussed scope, as well as the preparation of new legal norms regulating these issues. On the contrary, the tasks of government administration functioning locally are performed by the voivode. The tasks of this body are focused on issues related to control and supervision of the activities of local government units. In this respect the voivode holds powers, using which they can eliminate faulty acts of local law from legal circulation, as well as impose certain penalties on entities for improper performance of the entrusted tasks in the sphere of foster care.[52]

As already pointed out, foster care tasks are carried out by local government units. Following the provisions of the subsidiarity principle, these tasks are, as a rule, located at the level of powiats, as the territorial government unit that has at its disposal appropriate resources enabling it to perform the entrusted tasks properly. In the early stages, these tasks are performed by government voivodeships (running regional custodial and educational facilities – of a very specialised nature). The powiat (city with powiat rights) is the unit that is obliged to perform the tasks in the field of community care and institutional care. In community care, the powiat appoints the organiser of family care, which may be the powiat family support centre or another powiat unit, or another entity entrusted with such a task. Apart from community foster care, the powiat is responsible for the creation and operation of institutional foster care units, namely, custodial and educational facilities. Such a unit is obliged to create and run facilities according to the needs, ensure adequate staff, as well as create living conditions for the children staying in them such that they do not suffer any negative consequences from using these services.[53]

11.3. Non-Public Entities Performing Foster Care Tasks

According to the existing legal regulations, the tasks posed before the public administration bodies, particularly powiats, are performed in cooperation with the local community, courts and their auxiliary bodies, the police, educational institutions, medical entities, as well as churches and religious associations and social organisations. Churches and religious associations and social organisations occupy a special position within the wide range of entities with which a powiat or voivodeship government cooperates. It should be emphasised that the activities of these entities are aimed at realising tasks that are service-oriented i.e. running specific entities (custodial and educational units) or other entities trying to offer families various forms of support in proper fulfilment of custodial and educational duties. Non-public entities may be entrusted with the tasks of a foster care organiser, in which case such an entity would

52 For more on the tasks of the government administration see: Nitecki, 2022, 938ff.
53 Nitecki, 2022, 928ff.

be obliged to perform tasks of an administrative nature, including signing certain agreements or even making decisions that would be subject to review procedure or court control.

12. Procedural Issues in Foster Care

The substantive law determines the prerequisites for placing a child in foster care, whereas the procedural law regulates the principles of placing a child in an indicated institution. Therefore, the procedural rules are of significance, as they constitute guarantees of compliance with the fundamental values present in the discussed scope, and in particular the wellbeing of the child.

Two types of procedures are mentioned in the discussed scope, namely, procedures before the family courts and procedures related to administrative decision-making. Although other procedures are also visible, they do not have any major bearing on the decisions taken.

12.1. Procedures Before Common Courts (Role of the Probation Officer and Social Welfare Bodies)

Foster care cases are recognised by the common courts on the basis of the general procedural regulations.[54] In this regard, no specific norms distinguish cases concerning restriction of parental custody of natural parents and establishment of foster care. The court of general jurisdiction makes the decision in this regard, and it is executed by the local government entities performing foster care tasks. In proceedings before common courts, the court makes its decision on the basis of the findings made by the probation officer and provided by the public administration bodies. It should be noted that the probation officers present their opinion before the court on the situation of the natural family and refer in it on whether the family performs the custodial and educational functions with respect to the child or children in a proper manner. The probation officers may suggest measures to be taken with regard to the natural family and thus to the child. In cases where a family assistant has been appointed for such families, they are entitled to pass their own assessment relating to the functioning of the natural family. Within the framework of these procedures, the role of the organiser of foster family care, at the stage of establishing foster care, is small. The situation changes once such custody is established, as such an organiser is obliged to provide the court with relevant information and report on how the foster families exercise their duties.

54 For more on this subject, see: Walencik-Ryba, 2019, p. 107.

12.2. Procedures Before Public Administration Bodies (Time Limits for Processing the Cases, Environmental Interviews, Participation of Experts – Opinion Teams)

Within the sphere of foster care, the public administration bodies carry out various procedures such as resolution procedures (related to the adoption of resolutions by local government bodies), procedures related to the acquisition of foster family status and procedures related to the adoption of administrative decisions. It should be emphasised that in the case of resolution procedures, no significant formalisation is noted. The drafts of such resolutions are adopted by the executive body of the powiat (powiat management board, or by the city council in the case of cities with powiat rights), and then the decision-making body (powiat council or city council in a city with powiat rights) adopts an appropriate resolution. Some of these resolutions are adopted as acts of local law and therefore require publication in the provincial official gazette. Resolutions that do not have the status of acts of local law are published in the manner prescribed for such acts. The second procedure is related to the acquisition of status of the foster family. In this respect, it is necessary to note the existence of two separate procedures, those aimed at placing the child in such a form of foster care, where actions are taken by a common court and procedures are aimed at acquiring the status of a foster family. In this case, candidates for this function are subject to verification by the organiser of family foster care. It should be emphasised that no administrative decisions are issued in this respect, and the decisions concerning fulfilment of formal requirements for performing the function in question are subject to review by the administrative court. Within the framework of this procedure, the employees of the organiser of foster care verify the conditions displayed by the candidates and assess them; hence, in this respect the very last resource is a visit to the place of residence aimed at assessing these conditions. The last procedure distinguished here is the one related to issuing administrative decisions. These decisions are issued within the following scope: granting financial assistance to families fulfilling the function of a foster family; demanding the return of unduly collected cash benefits; and determining the payment for the stay of a child in foster care and, for a person leaving foster care and becoming independent, within the scope and the decisions made by the supervisory body conducting supervision activities in community and institutional foster care. In the context of administrative procedures aimed at issuing an administrative decision, general rules for conducting such proceedings apply, where all regulations follow the same principles or deadlines for handling cases. It should be emphasised that simple cases should be decided within a month, and particularly complex cases within two months from the date of initiation of the proceedings or submission of a relevant application. As part of the procedure for issuing an administrative decision, no provisions exist for the institution to use an expert opinion and no obligations to conduct a prior environmental interview. Such a statement, however, does not imply that in specific cases such actions and activities will not be undertaken.

12.3. Control by the Administrative Court

Administrative courts in Poland are appointed to control administrative decisions and other legal forms of administrative action by means of which the public administration influences the legal situation of the addressee of its actions. In cases concerning foster care, administrative courts control resolutions of local government bodies, which are acts of local law, regulating the principles of payment by natural parents for the stay of the child in foster care or other provided for by relevant statutory delegations. Such control also applies to acts undertaken by the organiser of family foster care in the procedure related to selection of candidates for fulfilling the function of a foster family. A relatively large number of recognised cases within this scope are connected with the control of administrative decisions granting foster families the assistance provided for by law and issues relating to payment by natural parents for the stay of children in foster care.

13. The Ombudsman for Children and Their Powers

The institution of the Ombudsman for Children was introduced into the Polish legal system by the Act of 6 January 2000 on the Ombudsman for Children.[55] Pursuant to the provisions of Art. 1 para. 2 of this Act, the Ombudsman shall safeguard the rights of the child as set out in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other legal provisions, by observing the responsibilities, rights and duties of parents. In exercising their powers, they will be guided by the wellbeing of the child, considering the family as the natural environment for the child's development. They take measures to ensure the full and harmonious development of the child, respecting his or her dignity and subjectivity.

The Ombudsman works to protect the rights of the child, particularly, the right to life and health protection; the right to be brought up in a family; the right to decent social conditions; and the right to education.[56] Moreover, the Ombudsman takes action to protect the child from violence, cruelty, exploitation, demoralisation, neglect and other forms of ill-treatment. The legislator has obliged the Ombudsman to provide special care and assistance to disabled children. The Ombudsman promotes children's rights and methods of protecting them.

The Ombudsman's term of office lasts five years, counting from the date of taking the oath before the Parliament. They are appointed by the Parliament, with the consent of the Senate, following the proposal of the Speaker of the Parliament, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators. The same person cannot be the Ombudsman for more than two consecutive terms. The Ombudsman is independent of other state bodies in their activities and is accountable only to the Parliament under the terms set out in the law.

55 Journal of Laws 2023, item 292.
56 For more on this topic, see: Blicharz and Zacharko, 2021, p. 71.

The Ombudsman's powers are extensive and include, inter alia, the following. The Ombudsman may examine, even without notice, any case instantaneously; request public authorities, organisations or institutions to provide explanations, information or access to files and documents, including those containing personal data, for inspection at the Office of the Ombudsman for Children; report and participate in proceedings before the Constitutional Tribunal initiated on the basis of a motion of the Ombudsman or in cases of constitutional complaint, concerning the rights of the child; apply to the Supreme Court with motions to resolve differences in the interpretation of the law as regards the legal provisions concerning the rights of the child; file a cassation or cassation complaint against a final decision in the procedure and on the principles specified in separate regulations; request the initiation of proceedings in civil matters and participate in pending proceedings, in accordance with the rights vested in the public prosecutor; participate in pending proceedings in juvenile matters, in accordance with the rights vested in the public prosecutor; request the initiation of preliminary proceedings by an authorised prosecutor in criminal matters; request the initiation of administrative proceedings; file complaints to the administrative court, as well as participate in such proceedings, in accordance with the rights vested in the public prosecutor; request punishment in misdemeanour proceedings, in accordance with the procedure and principles set out in separate provisions; and order an investigation and the preparation of expert reports and opinions.

It is worth noting that the Ombudsman, guided by the wellbeing of the child and indications of the lack of possibility to provide the child with family foster care, issues an opinion in which they express their opinion on the legitimacy of creating a custodial and educational unit.

Under their operations, the Ombudsman cooperates with associations, civic movements, other voluntary associations and foundations working for the protection of children's rights. They are obliged to submit to the Parliament and the Senate, annually, no later than 31 March, information on their activities and comments on the state of observance of children's rights. Such information is placed in the public domain.

14. Adoption – Legal Conditions on the Part of the Child and the Adoptive Parents

In Poland, adoption issues are regulated by private law regulations as well as public law regulations. Private law regulations refer to norms contained in the Family and Guardianship Code Act, while the public law regulations refer to norms contained in the Act on supporting families and the foster care system, particularly Section V of this Act.

Adoption is the institution by means of which the adoption of a minor takes place. It should be emphasised that adoption is carried out for the benefit of only the minor and is carried out up to the date of application for adoption. Only a person with full legal capacity may adopt if his or her personal qualifications justify his or

her ability to fulfil the duties of an adopter and they hold a qualifying opinion, as well as a certificate of completion of training organised by the adoption centre. An additional requirement to be met is an adequate age difference between the adopter and the adopted person. As a rule, priority is given to domestic adoption; however, foreign adoption is not excluded. It may take place if this is the only way to provide the adoptee with a suitable substitute family environment.

It must be emphasised that adoption is effected by a decision of the guardianship court at the request of the adopter and, if the adoptee has reached the age of 13, his or her consent is required. The consent of the adoptee's parents is required for adoption, unless they have been deprived of parental custody or are unknown or there are insurmountable obstacles to establish communication with them. One of the consequences of adoption is that the adoptee receives the adopter's surname. It should be noted that adoption is not irreversible, since, for valid reasons, both the adoptee and the adopter may request for termination of the adoption relationship by the court. The termination of the adoption relationship is not permissible if the wellbeing of the minor child would suffer as a consequence.

After presenting the rules classified as private law, a few remarks are devoted to the rules classified as public law. Conducting the adoption procedure and the preparing persons declaring their readiness to adopt a child is the exclusive competence of the adoption centre, and it is therefore the entity playing a key role in this respect. The centre is guided in the performance of its tasks by the welfare of the child and respect for the child's rights. This is a reference to the analogous regulation imposing the same obligation on the family court. The adoption procedure is conducted by the provincial government or an entity commissioned by the provincial government to perform this task.

In performing the tasks it faces, the adoption centre cooperates with the local environment, particularly with other entities competent in the field of family support and the foster care system, organisational units of social assistance, courts and their auxiliary bodies, educational institutions, medical entities, as well as churches and religious associations and social organisations.

Information about the child justifying how the child qualifies for adoption is submitted to the adoption centre operating in the territory of the voivodship where the child resides, by the parents, medical entity, organiser of the family foster care, director of the custodial and educational institution, regional care and therapeutic institution or intervention pre-adoption centre and other institutions or persons. On receiving such information, the centre immediately applies to the organiser of the family foster care, the team for periodical assessment of the situation of a child placed in institutional foster care and the director of the family-type foster home for relevant information and opinion on the child and prepares information on the child's legal, family and health situation. Such information is called the "child's card". Within 30 days of the date on which the card is created, the adoption centre shall qualify the child for domestic adoption, draw up a document confirming the qualification of the child for domestic adoption and commence the search for a candidate for adopting

the child. If, after qualifying the child for domestic adoption, the adoption centre does not qualify the child for domestic adoption, it shall inform the organiser of family foster care, the director of the custodial and educational unit, the director of the regional care and therapy centre or the director of the intervention pre-adoption centre accordingly. If the search for the adoptive candidates from the area of the child's province of residence proves unsuccessful, candidates from the areas of other provinces can be considered.

The adoption centre responsible for qualifying a child for domestic adoption shall be obliged to analyse the situation of the child at least every three months – for children under three years of age – and at least every six months – for children over three years of age. The adoption centre maintaining the central data bank shall qualify the child for international adoption and prepare a document confirming the qualification of the child for international adoption. In qualifying a child for international adoption, the adoption centre running the central data bank may consult the minister for family affairs. This type of adoption is permissible if this is the only way to provide the child with a suitable foster family environment.

Candidates who qualify for adoption of a child will have to complete training and receive a positive qualifying opinion. If a child is qualified for adoption, the adoption centre will then make information about the child available to those candidates who have qualified for adopting a child and facilitate their contact with the child.

If readiness to adopt a child is reported by persons related or related by affinity to the child, the foster family or the head of the family-type foster home in which the child is placed and persons who have already adopted the minor's brother or sister, the adoption centre does not initiate the procedure of searching for candidates for the adoption of the child.

15. Summary, Summary of Best Practices

In conclusion, it must be emphasised that the main right of the child is the right to live in a natural family, where measures are taken for his or her wellbeing. This right is sometimes violated and exceeded in social life, owing to which responsibility for the care and upbringing of the child must be assumed by the state and the bodies acting on its behalf, such as foster care institutions, which may be in institutional or community forms. The aim of foster care is to provide the child with appropriate conditions for development during the period when the natural parents are not or cannot provide such care, and it is therefore intended to be temporary. Should the child's return to his or her natural family not be possible, steps should be taken to initiate the process of national or international adoption.

> 'Adoption is an instrument that can be used to provide a child with conditions similar to those found in a natural family. The child care system assumes providing a child with care and upbringing in a natural or adoptive family.

> In situations where the child is at risk, the child is placed in community or institutional foster care. At the end of 2023, there were 58,210 children in community foster care, while 17,128 children were in institutional care, i.e. a total of 75,338 children were in care. Among them, 18,675 married couples and 17,303 single people served as foster families. It should be noted that 834 family orphanages existed, with such homes run by 707 married couples and 127 single people, and 1,318 institutional care facilities existed. Family foster care is dominated by related families, constituting 63.8% of all families, non-professional 30.4% and professional families only 5.8%. It should be noted that families that adopted only one child dominate and they constitute 72.3% of all families; 18.1% of all families adopted two children, 5.4% adopted three children, and 4.1% adopted four or more children. The age of people creating foster families is noteworthy, as people aged 51–70 dominate the list.'[57]

The childcare system assumes the provision of permanent care by natural or adoptive parents. Unfortunately, the system is not so effective that children, once taken into care in the form of foster care, stay there only until they are returned to their natural family or until they are provided with an adoptive family. A significant proportion of children remain in foster care, irrespective of its form, until they reach the age of majority and, in many cases, even longer, until they graduate from relevant schools and complete the process of becoming independent. In addition, the system is not efficient, foster families to provide care and upbringing for children who need it are scarce.[58] The shortcomings of the social infrastructure are not only caused by the omissions of the authorities in charge but are also linked to social changes and the lack of families willing to take on this task. This negative trend observed calls for a new approach to resolve these issues and for measures to be taken to overcome the difficulties encountered and lead to the provision of proper upbringing and care for children.

One of the ways in which these challenges can be overcome is to increase the financial resources allocated to foster families, so that performing this function would be attractive for those interested.

57 Central Statistical Office alert from 9 May 2024. Foster care in 2023.
58 See: Zaremba-Stanulewicz, 2023.

Bibliography

Andrzejewski, M. (2020) 'Sytuacja prawna wychowanka pieczy zastępczej' in Andrzejewski, M., Zajączkowska-Burtowy, J., Gajda, J. (eds.) *Status osób małoletnich – piecza zastępcza, kontakty, przysposobienie*. Warszawa: INP PAN, pp. 15–77; https://doi.org/10.5281/zenedo.4404822.

Bąkowski, T. (2007) *Administracyjnoprawna sytuacja jednostki w świetle zasady pomocniczości*. Warszawa: Wolters Kluwer.

Blicharz, J., Zacharko, L. (eds.) (2018) *Administracja – Prawo administracyjn – Część ogólna*. Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Blicharz, J., Zacharko, L. (2021) *Ochrona praw dziecka w działalności Rzecznika Praw Dziecka*. Wrocław: Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.

Dudzik, S. (2004) 'Zasada pomocniczości w przyszłej konstytucji europejskiej', *Państwo i Prawo* 2004/3, pp. 51–62.

Duniewska, Z. (2021) 'Zasada ochrony godności człowieka' in Stahl, M., Korzeniowski, P. (eds.) *Prawo administracyjne*: *Pojęcia – instytucje – zasady w teorii i orzecznictwie*. Warszawa: Wolters Kluwer, pp. 175–187.

Filipek, J. (1195) *Prawo administracyjne – Instytucje ogólne*. Część I. Kraków: Kantor Wydawniczy Zakamycze.

Florczak-Wątor, M. (2018) 'Konstytucja jako źródło obowiązków państwa w stosunku do obywatela', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2018/1, pp. 119–131.

Klose, A. (1985) *Katolicka nauka społeczna*. Warszawa: PAX.

Nitecki, S. (2015) 'Zadania administracji publicznej w zakresie wspierania rodzin przeżywających trudności w realizacji funkcji opiekuńczo-wychowawczych' in Ćwiertniaka, B.M. (ed.) *Samorząd terytorialny* – Zadania i kompetencje samorządu terytorialnego. Tom II. eBook: Wyższa Szkoła Humanitas, pp. 129–138.

Nitecki, S. (2017) 'Wspieranie rodzin jako wyraz działań na rzecz dobra dziecka' in Żyłko, W. (ed.) *Człowiek – Prawo – Państwo: Księga jubileuszowa S.L. Stadniczenko*. Warszawa: Wyższa Szkoła Finansów i Zarządzania.

Nitecki, S. (2020) 'Kościół katolicki i związki wyznaniowe wykonujące zadania z zakresu pomocy społecznej w Polsce' in Sobczyk, P., Steczkowski, P. (eds.) *Człowiek – Państwo – Kościół: Księga jubileuszowa dedykowana księdzu profesorowi Arturowi Mezglewskiemu*. Lublin: Academicon, pp. 345–365.

Nitecki, S. (2020) 'Piecza zastępcza jako forma zapewnienia opieki zastępczej dziecku' in Maj, E., Pawlica, B. (eds.) *Realizacja konwencji o prawach dziecka w prawie wewnętrznym i międzynarodowym*. Kraków: PETRUS, pp. 147–160.

Nitecki, S., Wilk, A. (2021) *Ustawa o wspieraniu rodzin i systemie pieczy zastępczej – Komentarza*. Warszawa: Lex.

Nitecki, S. (2022) 'Pomoc dla osób usamodzielnianych' in Sierpowska, I. (ed.) *Meritum. Pomoc społeczna. Wsparcie socjalne*. 2nd edn. Warszawa: Wolters Kluwer, pp. 1299–1330.

Nitecki, S. (2022) 'Ustrój administracji' in Sierpowska, I. (ed.) Meritum. Pomoc społeczna. Wsparcie socjalne. Warszawa: Wolters Kluwer.

Nitecki, S. (2022) 'Wspieranie rodzin i piecza zastępcza' in Sierpowska, I. (ed.) Pomoc społeczna. Wsparcie socjalne. Warszawa: Meritum.

Pawlak, A. (2015) 'Dziecko w procedurze cywilnej i karnej – wysłuchanie i przesłuchanie' in Stadniczeńko, S.L. (ed.) *Konwencja o Prawach dziecka – Wybór zagadnień (artykuły i komentarze)*. Warszawa: Biuro Rzecznika Praw Dziecka, pp. 215–231.

Smyczyński, T. (1997) 'Rodzina i prawo rodzinne w świetle nowej Konstytucji', *Państwo i Prawo*, 1997/11-12, pp. 185–194.

Sierpowska, I. (2012) *Pomoc społeczna jako administracja świadcząca – Studium administracyjnoprawne.* Warszawa: Wolters Kluwer.

Stopka, K. (2009) *Zasada subsydiarności w prawie pomocy społecznej*. Warszawa: Difin.

Tryniszewska, K. (2012) *Ustawa o wspieraniu rodzin i systemie pieczy zastępczej – Komentarz*. Warszawa: Wolters Kluwer.

Trzciński, J. (2018) 'Rzeczpospolita Polsk dobrem wspólnym wszystkich obywateli', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 80(1), pp. 23–31.

Walencik-Ryba, K. (2019) *Rodzina zastępcza – Uregulowania prawne a praktyka sądowa*. Warszawa: Naukowe PWN.

Zacharko, L., Wanterberg-Kempka, B. (2017) 'Dobro dziecka jako wartość najwyższa w prawie administracyjnym' in Zimmermann, J. (ed.) *Aksjologia Prawa Administracyjnego.* Vol I. Warszawa: Wolters Kluwer, pp. 281–295.

Zajączkowska-Burtowy, J. (2021) 'Piecza zastępcza' in Habdas, M., Fras, M. (eds.) *Kodeks rodzinny i opiekuńczy –Komentarz*. Warszawa: Wolters Kluwer.

Zaremba-Stanulewicz, J. (2023) 'Czy przeżywamy kryzys pieczy zastępczej?', *Rzeczpospolita*, 17 October [Online]. Available at: https://www.rp.pl/rzecz-o-prawie/art39275151-joanna-zaremba-stanulewicz-czy-przezywamy-kryzys-pieczy-zastepczej (Accessed: 18 October 2023).

| Chapter 6 |

Child-Protection Systems – Romanian Perspective

Carmen Oana Mihăilă

ABSTRACT

Children's rights are fundamental rights with a universal character. Therefore, it is imperative to ensure their protection at a common level not only in the European Union but also globally. Thus, considering the multiple challenges in the field of child protection, the approach must be a cross-border one and not just at the level of each individual member state.

In Romania, the child protection system has seen a profound reform in recent years, with a strong emphasis on preventing separation of the child from the family, with the attempt to deinstitutionalise and create an alternative in accordance with the best interests of the child and the family type, with efforts to protect and support children with disabilities.

This multifaceted process involves central and local public authorities, NGOs, and community-based structures. Despite progress, Romania still faces systemic shortcomings, especially regarding funding and resource allocation.

Changes in public policy are required; a correct application of the legislation and specialised personnel are needed; risk situations in which children are found must be quickly identified, including in rural areas; and urgent interventions are needed to protect children without care by choosing the most suitable service. Moreover, children with special educational needs or disabilities remain vulnerable to exclusion due to a persistent lack of adapted infrastructure and support services.

KEYWORDS

deinstitutionalisation, special protection services, foster care, placement, guardianship, adoption

1. Introduction

A multidimensional approach can lead to the elimination of ineffective practices and the creation of an integrated, functional system. This can be achieved by adopting policies and useful programmes, such as increasing the quality of child-centred services and their protection; identifying risk categories; creating services to prevent children from being separated from their families to avoid institutionalisation; ensuring deinstitutionalisation of children and their care in the community; establishing social, medical, educational, rehabilitation and psychological counselling services;

Carmen Oana MIHĂILĂ (2025) 'Child-Protection Systems in Romania – Romanian Perspective' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 159–225. https://doi.org/10.71009/2025.njmb.cps_5.

creating unitary work methodologies; allocating sufficient financial resources; and involving the community and non-governmental organisations (NGOs).

Furthermore, reforming the system for the protection of children with disabilities should aim to ensure dignity, eliminate isolation and exclusion, and support those in protection institutions in order to facilitate their participation in community life.

Romania's child protection system has undergone significant reform. During the communist regime before 1989, Romania had a disastrous child protection system, where poor families or those with children with disabilities were even encouraged to leave them in large institutions: in 1989, over 100,000 children lived in such institutions.[1] After the 1990s, there was no coherent institutional support strategy for children in Romania, as child protection responsibilities were divided between many institutions. However, funds and technical support were received from international organisations and NGOs whose objective was to support the children.[2]

In Romania, progress has been made in terms of reducing the number of children in the protection system, but there is still a lot to do. After 2018, the deinstitutionalisation process was accelerated and led to a reduction in the number of children in residential services, especially in public foster care centres.

As of December 31, 2024, in the social protection system in Romania, there were 26,333 children in family-type services and 9,579 children in residential services. Additionally, 38,898 children were beneficiaries of services aimed at preventing separation from their parents.[3]

From exclusive care in institutions, Romania gradually moved to deinstitutionalisation (i.e. placement in the extended family, family-type services, foster care and adoptions). NGOs have contributed to the development of support services and alternative care.[4]

The better alternative to the residential system is the protection of the child in a family environment. To ensure this, the Romanian legislator, public administration bodies, NGOs and the community in general must unite their efforts in the best interests of the child. Day-care and family-type services constitute an alternative form of protection, a solution when a child cannot be raised and cared for by their parents. However, the temporary nature of these measures is desirable. Therefore, greater emphasis is being placed on the development of services aimed at preventing the separation of the child from their family.

1 Marin and Stănculescu, 2019, p. 68.
2 Zamfir, 1997, pp. 7–10.
3 Ministry of Labor, Family, Youth and Social Solidarity, 2024c, p. 1.
4 Marin and Stănculescu, 2019, p. 72.

Despite these advances, unfortunately, the decentralization of social services has not been followed by adequate financial support [5]

On average, a child spends 7.5 years in the social protection system, and the duration is even longer in the case of children with disabilities.[6] A real issue remains the transition from the residential protection system to independent life for young people who have spent their childhood in care.

However, children in institutions represent diverse groups, some of whom are unable to reintegrate. Therefore, some of them must continue to be protected either in family-type services (i.e. family placement or foster care) or in small residential services (i.e. family-type houses or apartments)[7].

Although our country has adopted mandatory minimum standards for the care of children in residential services, with licensed residential services and a procedure in this regard, as outlined in the 2020 National Authority for the Protection of Children's Rights and Adoption Report 'Monitoring and Evaluation Tool for the Transition from Institutional Care to Community Care'[8] actions aimed at reducing the number of children in residential centers and developing better family-type alternatives must continue. The same document highlights that 'the care of children in institutions is based on an individualized protection plan (IPP), but the outcome of the IPP is often determined formally, and the stability of the case manager is not yet strictly ensured.' The report further shows that, despite the existence of procedures, there are still suspicions of abuse, neglect, and exploitation of children within the special protection services, which are not yet prioritized for monitoring nor addressed with the necessary firmness and urgency.

The *National Strategy for the Protection and Promotion of Children's Rights 'Protected Children, Safe Romania' 2023–2027*[9] states that 'children are still not placed at the centre of development policies at the national level, and for many families with poor resources raising children represents a major challenge, support services being insufficient'.[10]

5 The 2020 Country Report on Romania accompanying the document called 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup European Semester 2020: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176(2011)', Bruxelles, 26.2.2020, COM(2020) 150 final.

6 Stănculescu et al., 2016, p. 42.

7 See: Ministry of Labour and Social Solidarity, 2021. This is part of the project 'Elaborarea planului de dezinstituționalizare a copiilor din instituții și asigurarea tranziției îngrijirii acestora în comunitate' [Development of the deinstitutionalization plan for children in institutions and ensuring the transition of their care into the community; hereinafter referred to as *Project*] – SIPOCA 2, regarding the Development of Plans for the Deinstitutionalisation of Children Without Parental Care and Their Transfer to Community Assistance.

8 Ministry of Labour and Social Solidarity, 2020, p. 11.

9 Official Gazette, Part I No. 942bis of 18 October 2023.

10 Ibid, p. 6.

Moreover, the expenses required for the child protection system are below the European Union (EU) average. The most vulnerable are children from single-parent families or families with many children, Roma children and children with disabilities or from families with adults with disabilities.[11]

An important element in the organisation of the child protection system is the existence of *the electronic register for social services*: a tool regulated by Romanian legislation to centralize and manage information related to social services provided to citizens. Its purpose is to ensure transparency, accessibility, and efficiency in the administration of social services, as well as to facilitate their monitoring and evaluation by the competent authorities[12]. The electronic register of social services is published on the website of the Ministry of Labour and Social Solidarity in MS Excel format and contains data on accredited social service providers and licensed social services, according to Law No. 100/2024 of 16 April 2024 which amends Law No. 197/2012 regarding the assurance of quality in the field of social services.[13]

A positive development worth mentioning is that, in addition to education-related legislation, a new law was adopted in 2023 - Law No. 156/2023 on the organization of activities for the prevention of child-family separation[14]. This law establishes the *National Child Observatory*, which encompasses activities carried out using digital tools to register, by local public administration authorities, children at risk of separation from their families.

In Romania the Social Assistance Law No. 292/201 has undergone significant changes in recent years, aimed at improving the social protection of children and responding more effectively to their needs. The essential amendments have targeted several aspects, ranging from the integration of measures to prevent the separation of children from their families to the development of more appropriate services focused on integrating children into the community and protecting their rights.

It should be noted that within the General Directorates of Social Assistance and Child Protection, at least one structure was created in most counties for intervention in situations of violence, and emergency reception centres were also created for

11 See also: Marc and Bacter, 2016, pp. 204–205.

12 In the SPREV Register *Services for the Prevention of Child Separation from the Family*, a mapping of the services and infrastructure available for children at risk of family separation was carried out. The SPREV Register has collected data on the full list of services that Public Social Assistance Services (SPAS) should take into account when planning interventions and new services, in accordance with the law: '(a) services intended to prevent child separation from parents, such as counselling and support centers for parents, etc.; (b) educational services; (c) healthcare services; (d) legal information services; (e) services for children with disabilities; and (f) other services such as social canteens, shelters for victims of domestic violence, premarital counselling for young couples, counselling centers for citizens.' Ministry of Labour and Social Solidarity, 2022a, p. 13.

13 Law No. 100/2024 of 16 April 2024 on amending and supplementing certain normative acts in the field of social assistance, as well as on supplementing Law No. 78/2014 on the regulation of voluntary work in Romania and amending Law no. 272/2004 on the protection and promotion of children's rights, Official Gazette, Part I No. 369 of 18 April 2024.

14 Official Gazette, Part I No. 484 of 31 May 2023.

abused, neglected and exploited children (according to data of the National Authority for the Protection of Children's Rights and Adoption, some counties have more structures while others have none at all).[15]

In Romania, the "child helpline – 119 – has been launched, which can be called by children in vulnerable situations as well as other people who know about abused, exploited or violent children.

2. Core Aim of the National Child Protection System

As numerous specialists have previously pointed out, it is necessary to ensure the provision of support services within the community for families, in order to prevent child abuse and neglect, as well as to implement concrete measures for intervention in situations of risk, abuse, or neglect.[16]

The purpose of the child protection system is to protect the child from violence, abuse, neglect or exploitation. This goal can only be achieved through the development of appropriate legal regulations, the adoption of sound policies and the establishment of necessary services to ensure the education, health and well-being of the child.

The special protection of the child represents a set of measures, benefits and services intended for the care and development of the children who are deprived temporarily or permanently of the protection of their parents or of those who, to protect their interests, cannot be left in the parents' care.[17]

Following the UN Guidelines for the Alternative Care of Children, which recommend *that removing a child from family care should be seen as a measure of last resort and whenever possible, a temporary and as short as possible measure,* Romania has adopted a series of legal regulations to ensure the effective child protection.

The main legislative benchmarks regarding child protection are as follows: a) Law No. 272/2004 on the protection and promotion of children's rights[18]; b) Law No. 273/2004 on the adoption procedure[19]; c) Law No. 448/2006 on the protection and

15 Roth, Antal and Călian, 2019, p. 14.
16 See: Marin and Stănculescu, 2019, p. 62.
17 Art. 54 of Law No. 272/2004 regarding the protection and promotion of children's rights, Official Gazette of Romania No. 159 of 5 March 2014.
18 Official Gazette of Romania No. 159 of 5 March 2014.
19 Republished under the provisions of Art. X from Law No. 57/2016 for the amendment and completion of Law No. 273/2004 regarding the adoption procedure, as well as other normative acts. Official Gazette No. 283 of 14 April 2016.

promotion of the rights of persons with disabilities[20]; d)Law No. 287/2009 – Civil Code[21]; e) Social assistance Law No. 292/2011[22]; f) Pre-university education Law No. 198/2023[23]

This legal framework is supplemented by government decisions and ordinances or ministerial orders.[24]

The major objective of the child protection system has been the restructuring of the residential care system and placing greater emphasis on family-based care. The reform is ongoing, with a strong focus on developing services that prevent the separation of children from their families.

3. Guiding Principles of the National Child Protection System

The principles underlying the entire child protection system are (according to Art. 6 of Law No. 272/2004 on the protection and promotion of children's rights) as follows: the respect for and prioritization of the best interests of the child; equal opportunities and non-discrimination; respect for the dignity of the child; provision of individualized and personalized care for each child; protection against abuse, neglect, exploitation, and any form of violence against the child; listening to the child's opinion and taking it into account, considering the child's age and level of maturity; ensuring stability and continuity in the care, upbringing, and education of the child, considering the child's ethnic, religious, cultural, and linguistic background when a protection measure is taken; promptness in making any decision regarding the child; holding parents accountable for exercising their rights and fulfilling their parental duties, and recognizing the primary responsibility of parents for respecting and guaranteeing the rights of the child; decentralization of child protection services, multisectoral

20 Official Gazette No. 1 of 3 January 2008.

21 Republished pursuant to Art. 218 of Law No. 71/2011 for the implementation of Law No. 287/2009 regarding the Civil Code, Official Gazette of Romania, Part I, No. 409 of 10 June 2011, with amendments.

22 Official Gazette, Part I No. 905 of 20 December 2011.

23 Official Gazette Part I No. 613/5.VII.2023.

24 Examples include Government Decision No. 691/2015 for the approval of the procedure for monitoring the manner of raising and caring for children with parents working abroad and the services they can benefit from, as well as for the approval of the working methodology regarding the collaboration between the general directorates of social assistance and child protection and the public social assistance services and the standard model of the documents developed by them; Government Decision No. 354/2021 regarding the amendment and completion of the annex to Government Decision No. 867/2015 for the approval of the nomenclature of social services, as well as the framework regulations for the organisation and operation of social services; Order No. 25/2019 regarding the approval of the minimum quality standards for residential social services intended for children in the special protection system; Order No. 26/2019 regarding the approval of the minimum quality standards for family-type social services intended for children in the special protection system; Order No. 27/2019 regarding the approval of the minimum quality standards for day social services intended for children; Order No. 81/2019 regarding the approval of minimum quality standards for social services organised as maternity centres.

intervention, and partnership between public institutions and authorized private organizations.

Despite the regulation of these principles, with all the efforts made so far, Romania still lacks the capacity to fully implement them.

4. Institutions Responsible for Ensuring the Child Protection System: Modalities of Their Financing

In Romania, *the following institutions have duties for the protection and promotion of children's rights*:

A.N.P.D.C.A. – Autoritatea Națională pentru Protecția Drepturilor Copilului şi Adopție or the National Authority for the Protection of Children's Rights and Adoption is organised and functions as a specialised body of the central public administration, with legal personality, and it is subordinated to the Ministry of Family, Youth and Equal Opportunities at the central level.

The authority monitors compliance with the principles and rights established by the *Convention on the Rights of the Child* or the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. It prepares draft normative acts in the field of child protection and adoption, which it submits, through the relevant ministry, to the government for adoption.

This institution has undergone changes in its name and responsibilities over the years. Established in 2001, the *National Authority for the Protection of Child's Rights and Adoption* was renamed since 2005 as the *National Authority for the Protection of Children's Rights*. Duties in the field of adoption were taken over by the *Romanian Office for Adoptions*. In 2009, the *National Authority for the Protection of Children's Rights* was abolished, and the institution's powers were taken over by the *National Authority for the Protection of the Family and the Rights of the Child*. In 2019, *The National Authority for the Rights of Persons with Disabilities, Children and Adoption* was organised, and in 2022, Government Decision No. 233/2022[25] came into force, establishing the current structure and responsibilities of the *National Authority for the Protection of Children's Rights and Adoption*.

A.N.P.D.P.D. – Autoritatea Națională pentru Protecția Drepturilor Persoanelor cu Dizabilități or the National Authority for the Protection of the Rights of Persons with Disabilities is the Romanian central authority, subordinate to the Ministry of Labour and Social Solidarity. It plays a role in the coordination of activities for the protection and promotion of the rights of persons with disabilities; elaboration of policies, strategies and standards in the field of protection and promotion of the rights of persons with disabilities; follow-up of the application of regulations in their own field; and control of activities for the protection and promotion of the rights of persons with disabilities,

25 Official Gazette, Part I No. 165 of 18 February 2022.

according to Government Decision No. 234 of 2022[26] regarding the powers, organisation and operation of the *National Authority for the Protection of the Rights of Persons with Disabilities*.

It should be noted that this institution has also changed its name and powers. In 2014, the *National Authority for Persons with Disabilities* was established. In 2019, it was reorganised as the *National Authority for the Rights of Persons with Disabilities, Children and Adoptions*, and in 2022, the *National Authority for the Protection of the Rights of Persons with Disabilities* was established.

CPC – Comisiile pentru protecția copilului or Commissions for the Protection of the Child are subordinated to the county council and local councils of the sectors of the city of Bucharest, as their specialised body. They are without legal personality and their organization and functioning are regulated by government decision.[27]

D.G.A.S.P.C. – Direcțiile Generale de Asistență Socială și Protecție a Copilului or the General Directorates of Social Assistance and Child Protection are subordinate to county councils, and local councils of the Municipality of Bucharest. They are a public institution with legal personality. The D.G.A.S.P.C. have under their control residential institutions that protect children separated from their families.[28]

SPAS – Serviciile Publice de Asistență Socială or the Public Social Assistance Services are with or without legal personality. They are established under the subordination of the local councils of the municipalities and cities, as well as within the mayor's office at the commune level. Social workers, social assistance technicians, school counsellors and mediators, community medical assistants and health mediators work within them.

SCC – Structuri comunitare consultative or Consultative Community Structures aim to promote the respect of children's rights within their administrative-territorial units, collaborating with the Guardianship Authority and D.G.A.S.P.C. They represent formal or informal associations of local businesspeople, priests, teachers, doctors, local councillors, police officers, and other community members, supporting local public authorities and social service providers in addressing the community's social service needs (Art. 6 letter n) of Social Assistance Law No. 292/2011).

DAS – Direcțiile de asistență socială cu Serviciul protecția copilului și Autoritate tutelară or the Departments of Social Assistance with the Child Protection Service and Guardianship Authority undertake all the necessary measures for early detection of risk situations that may cause child-parent separation and to prevent abusive parental behaviours and domestic violence. They identify and evaluate situations requiring the provision

26 Official Gazette, Part I No. 165 of 18 February 2022.

27 Government Decision No. 502/2017 of 13 July 2017 regarding the organisation and operation of the child protection commission, Official Gazette No. 596 of 25 July 2017.

28 Government Decision No. 797/2017 of 8 November 2017 for the approval of the framework regulations for the organisation and operation of public social assistance services and the indicative personnel structure, Official Gazette No. 920 of 23 November 2017.

of services and benefits to prevent child separation from the family and prepare service plans for approval by the mayor.

OPA – Organisme private or Private Organisations are private legal entities, without profit purposes, established and accredited according to the law, conducting activities in the field of child rights protection and special protection.

Avocatul Poporului or the Ombudsman is an institution that aims, among other things, to defend the rights and freedoms of children in their relations with public authorities to promote and improve the condition of the child. Since 2018, the institution has had a specific domain dedicated to defending, protecting, and promoting children's rights, known as the *Child's Advocate*, created at the proposal of the Save the Children organization and supported by the National Authority for the Protection of Children's Rights and Adoption.

MMSS – Ministerul Muncii și Solidarității Sociale or the Ministry of Labour and Social Solidarity was established by Government Decision No. 23/2022, and it is organised and functions as a specialised body of the central public administration, subordinate to the Government. It has a legal personality and engages in synthesis and coordination of the application of the government's strategy and policies in the fields of work, family, equal opportunities and social protection. It has also operated under the following names: Ministry of Labour and Social Solidarity; Ministry of Labour, Social Solidarity and Family; Ministry of Labour, Family and Social Protection; Ministry of Labour and Social Justice; and Ministry of Labour and Social Protection.

Ministerul Familiei, Tineretului și Egalității de Șanse or the Ministry of Family, Youth and Equal Opportunities is organised and operates through Government Decision No. 22/2022 as a specialised body of the central public administration. It has a legal personality and is subordinate to the government. It ensures coordination of the implementation of the government strategy and policies in the areas of family policies, youth, protection of children's rights, adoption and domestic violence and equal opportunities for women and men.

In 2025, the Ministry of Labor absorbed the Ministry of Family and now operates under the name Ministerul Muncii, Familiei, Tineretului şi Solidarităţii Sociale or the *Ministry of Labour, Family, Youth and Social Solidarity*, established by Government Decision No. 29/2025. The Ministry of Labour, Family, Youth and Social Solidarity develops national policies, aligned with those at the European and international levels, in its areas of activity, fulfilling the role of state authority in terms of strategy and planning, regulation, synthesis, coordination, monitoring, inspection, and control.

In Romania, *social services* can be provided by both *public and private providers. Social service providers*, according to Art. 37 of the Social Assistance Law, as amended by Law No. 100/2024, include the following: a) legal persons governed by public law, who have legally established attributions for the provision of social services; b) natural or legal persons governed by private law, whether profit-making or not-for-profit, who have stipulated in their deed of establishment/statutes the provision of social services as classified in the Nomenclature of Social Services.

The procedure for the accreditation of social service providers started at the beginning of 2014, based on the provisions of Law No. 197/2012 for ensuring quality in the field of social services, with subsequent amendments and additions. At the national level, a social services registry system is organized, which includes data and information related to social services – Art. 43 Para. (2) of Social Assistance Law No. 292/2011.

Public service providers can be the following: a) specialized structures within/subordinated to local public administration authorities and executive authorities of administrative-territorial units organized at the level of communes, cities, municipalities, and sectors of the municipality of Bucharest; b) central public administration authorities or other institutions under their subordination or coordination that have legal duties regarding the provision of social services for specific categories of beneficiaries; c) healthcare units, educational units, and other public institutions that develop integrated social services at the community level.

Private service providers can be the following, according to the law: a) non-governmental organizations, namely associations and foundations; b) religious organizations recognized by law Natural persons authorised under the law; c) individuals authorized in accordance with the law Profit-making economic operators; d) branches and subsidiaries of international associations and foundations recognized in accordance with the current legislation; e) economic operators, under special conditions provided by law

On 11 July 2024, there were 4,002 accredited social service providers: 1,639 public providers (41.0%) and 2,363 private providers (59.0%).[29] In contrast, on 10 July 2023, 3,745 social service providers were accredited in accordance with the legal provisions. Depending on the legal organisation's regime, 1,510 public providers (40.3%) and 2,235 private providers (59.7%) were accredited.[30]

At the *central level*, attributions in the field fall to the Ministry of Labour and Social Solidarity, and at the *local level,* the organisation, administration and provision of social services fall to the local public administration, namely the county councils through the General Directorate of Social Assistance and Child Protection and town halls through public social assistance services. Services outsourced to NGOs, religious institutions or other natural and legal persons under public or private law can be used.

The *annual action plans* of local public administration authorities are carried out in accordance with the measures and actions provided for in the social services development strategy approved by the county and local councils. These plans must include detailed data on the number and categories of beneficiaries, existing social services, social services proposed to be established, the programme for contracting

29 Ministry of Labour and Social Solidarity, 2024b, p. 20.
30 Ministry of Labour and Social Solidarity, 2023b, p. 24.

services from private providers, the subsidy programme and the estimated budget and funding sources[31].

The *financing of social services,* in accordance with the law, is provided from the local budget, from the contribution of the beneficiary and/or, as the case may be, their family, the state budget, as well as from other sources – Art. 39 letter c) of Social Assistance Law No. 292/2011. Social assistance is financed from funds allocated from the state budget; local budgets; donations; sponsorships or other contributions from individuals or legal entities, both domestic and foreign; from beneficiaries' contributions; European funds; as well as other sources, in compliance with the relevant legislation and within the limits of available financial resources.[32]

Day-care services for children receive funding from the local budget, and funding for the services of authorised private bodies can be provided from own sources. Through the relevant ministry, they can grant funding for capital investment and repairs to day-care and residential centres of both public and private providers.

Social assistance benefits, depending on their purpose, are classified as follows: a) social assistance benefits for the prevention and combating of poverty and the risk of social exclusion; b) social assistance benefits for supporting the child and family; c) social assistance benefits for supporting people with special needs; d) social assistance benefits for special situations.

Social assistance benefits are granted in cash or in kind and include allowances, indemnities, social aid, and facilities (Art. 9 of Social Assistance Law No. 292/2011).

Prevention of the child's separation from his or her family, as well as special protection of the child deprived, temporarily or permanently, of the protection of his or her parents is financed by the following sources (Art. 132 of Law No. 272/2004 on the protection and promotion of the rights of the child):

1. *State budget* – within the limits of amounts allocated from certain state budget revenues approved for this purpose by the annual budget laws, distributed by counties, based on proposals made by the Ministry of Labour, according to the cost standards for social services, approved by Government decision
2. *County budget,* respectively the budget of the Bucharest municipality sector – to supplement the funding from the state budget for covering the expenses of organizing and operating services, from its own revenues or from amounts allocated from certain state budget revenues for balancing local budgets;
3. *Local budget of communes, cities, and municipalities;*
4. *Donations, sponsorships,* and other private forms of financial contributions, allowed by law.

*The Ministry of Labour and Social Solidarity (*as of 2025, referred to as *Ministry of Labour, Family, Youth and Social Solidarity)* can finance programmes of national interest for the protection and promotion of children's rights, from funds allocated from the state

31 Art. 118 of Social Assistance Law No. 292/2011.
32 According to the provisions of Art.128 of Social Assistance Law No. 292/2011.

budget for this purpose, external reimbursable and non-reimbursable funds and other sources, in accordance with the law.[33]

In 2024, the Ministry of Labour and Social Solidarity through the budget of the National Agency for Payments and Social Inspection spent a total of 43.334 million lei in the first quarter for financing social services. This amount represents a 32.5% increase compared to the same period in 2023[34]. The amount spent from the Ministry of Labour and Social Solidarity budget in 2022, through the budget of the National Agency for Payments and Social Inspection, to finance social services was 27,768,014 lei, which was 5,656,240 lei (25.6%) higher than that in 2021.

In addition to public institutions at the county or local level, private services or interventions carried out by NGOs, religious cults and volunteers can be identified.[35] NGOs are already developing early intervention and support services for children at risk, by cooperating with local public administration authorities. For example, some NGOs are established to support children with special needs and their families.

Voluntary activities, as well as material support, can also be carried out through the community and by involving specialists gathered in the Consultative Community Structure. The consultative community structures include, but are not limited to, local businesspeople, priests, teachers, doctors, local councillors, and police officers. The role of these structures is both to solve specific cases and to respond to the overall needs of the respective community. The mandate of the consultative community structures is established through acts issued by the local public administration authorities. To fulfil the role for which they were created, consultative community structures will benefit from training programmes in the field of social assistance and child protection (Art. 114 of Law 272/2004 on the protection and promotion of children's rights).

To prevent or limit certain situations of difficulties; combat poverty and social exclusion of children, families and individuals who do not have the necessary resources to meet a minimum standard of living; and ensure their access to fundamental rights, such as the right to housing, education, healthcare, services to increase the chances of employment for people seeking employment, the public social assistance service provides the minimum package of social assistance, in accordance with Art. 54 of Social Assistance Act No. 292/2011.

5. The Child at Particular Risk: Necessary Interventions

According to Council Recommendation (EU) 2021/1004 of 14 June 2021[36] that establishes a *European Child Guarantee*, Member States must identify *children in difficulty*.

33 Ministry of Labour and Social Solidarity-National Authority for the Protection of Children's Rights and Adoption, 2022b, p. 26.
34 AGERPRES, n.d.
35 For more details, see the following report: Ministry of Labour and Social Solidarity, 2021a.
36 OJEU L 223/14 22.6.2021.

Within this group of children, they must consider the development of integrated national measures for the specific forms of disadvantages the children face. This group includes children who: are homeless or face severe homelessness; have disabilities; have mental health problems; come from a migration context or have a minority ethnic origin, especially Roma; are in alternative care, especially those who are institutionalised; and are in vulnerable family situations.

In Romania, the child protection system mainly addresses children who:[37]are from poor communities; are at risk of separation from their parents; are separated from their parents, including children whose parents are away working abroad; are abandoned in health facilities; are abused, neglected or exploited, including those who are trafficked, labour-exploited, sexually exploited and exposed to illegal migration; are unaccompanied in the territory of other states, repatriated, refugees and street children; have committed criminal acts but are not criminally liable; have disabilities, are HIV-infected or AIDS patients or have serious chronic diseases; belong to ethnic minorities; and are children/youth beneficiaries of a protective measure.

To respect the best interests of the child, the Romanian law (Art. 2 para. 6 of Law No. 272/2004 on the protection and promotion of children's rights) imposes several criteria to be considered, such as the following: a) needs of physical, psychological, education and health development; security and stability; and belonging to a family; b) opinion of the child, depending on the age and degree of maturity; c) history of the child, particularly considering the situations of abuse, neglect, exploitation or any other form of violence against the child, as well as potential risk situations that may occur in the future; d) ability of the parents or persons who will take care of the child's upbringing and care to respond to his or her concrete needs; e) maintenance of personal relationships with persons with whom the child has developed attachment relationships

State intervention is necessary for children exposed to or victims of any form of violence, within or outside the family. These children are offered information, social, psychological, family, and legal counselling, and monitoring services. All suspicions or cases of abuse and/or neglect must be reported to the County Directorates for Social Assistance and Child Protection.

The institutions and public services with responsibilities are the ministries and other authorities at the central level, public social assistance services, public health departments, medical services, General Directorate of Social Assistance and Child Protection, school inspectorates and school units.

Public social assistance services are required to prioritize identifying children in a *risk situation* – a situation or inaction that may affect the child's physical, mental,

37 For details, see also: Onica-Chipea, 2014, p. 258.

spiritual, moral, or social development, within the family or community, for a determined period[38].

The risk situation requires the analysis of several elements, including the economic and social situation of the family, level of education, state of health, living conditions and existence of risky behaviours among the child's family members.

As regulated in Art. 7 of Government Decision No. 691/2015, the public social assistance service will identify the risk situation to which the child may be subjected and will use an observation sheet and a risk identification sheet. People at the local level, by the nature of their profession, can come into contact with the child – namely the local police officer, family doctor, teaching staff, medical assistant, school mediator, health mediator and assistant medical community. They can have suspicions regarding the existence of a risk situation and complete the observation sheet according to the legal powers and send it within a maximum of 48 hours to the public social assistance service of the administrative-territorial unit in which they operate.

For planning such interventions, Public Social Assistance Services are obliged to draw up a list of existing local resources, including potential partners at the local and county level and active service providers in the community, as well as available financial benefits and social, educational, medical, legal, public, or private services (Art. 9 of Government Decision No. 691/2015).

Romania continues to have the highest child poverty or social exclusion rate in the EU, with 41.5% of children – around 1.5 million – affected by family income insufficiency, social and educational isolation, lack of adequate nutrition, and limited access to quality socio-educational and health services[39]. This makes *prevention services* extremely important, aiming to support children who are abused, neglected, exploited, living in poverty or precarious conditions, or in disorganized or criminal households.

Children may be subjected to physical, emotional, sexual abuse, neglect, or exploitation through labour or forced into criminal activities. Cases of physical and sexual abuse, neglect, and labour exploitation are more frequent in rural areas.

The *most common causes of child-family separation,* accounting for 55% of cases, are related to neglect, abuse, or exploitation, while 26% are due to social causes such as poverty, inadequate housing, disorganized families, underage parents, excessive alcohol or substance use, or promiscuous or criminal adult behaviour[40].

38 The risk situation is, by definition, *any situation, measure or inaction that affects the physical, mental, spiritual, moral or social development of the child, in the family or in the community, for a determined period of time* (Art. 2 letter g) from Government Decision No. 691/2015, for the approval of the procedure for monitoring the way of raising and caring for children with parents working abroad and the services they can benefit from, as well as for the approval of the working methodology regarding the collaboration between the general directions of social assistance and protection of the child and the public social assistance services and of the standard model of the documents elaborated by them, Official Gazette No. 663 of 1 September 2015).

39 Save the Children, 2022.

40 Ministry of Labour and Social Solidarity, 2022a, p. 11.

Romania has adopted the *National Action Plan for the European Child Guarantee*, committing to invest over 19 billion euros in accessible and quality services for vulnerable children. The European Child Guarantee is a recommendation from the Council of the European Union, adopted in 2021, to ensure that all Member States take the necessary actions to 'guarantee' that all children in the European Union, particularly the most vulnerable, have access to quality services that are free or affordable, in order to combat poverty and social exclusion[41].

From 1 January to 31 December 2024, the National Authority for the Protection of Children's Rights and Adoption reported 20,216 cases of *abuse, neglect and exploitation*. Of these, 2,413 children were physically abused, with 283 children placed in emergency care; 2,817 were emotionally abused; 1,865 were sexually abused; 12,740 were neglected, with 2,218 ordered for emergency placement; 216 were labour exploited; 66 were sexually exploited; and 99 were exploited for committing crimes. During the same period in 2023, 15,503 cases of child abuse, neglect and exploitation were reported. The children benefited from psychological counselling, psychotherapy and other therapies, medical services, school reintegration, vocational guidance and training and legal advice/assistance.[42]

Intervention in cases of children in risk situations must be rapid, effective, and based on an individualized protection plan.

Recommendations: children in risk situations must benefit from an educational system that provides not only knowledge but also emotional and social support; access to healthcare services must be free or financially accessible; local authorities must intervene to ensure adequate housing and to prevent the risk of family abandonment or separation of the child from the family; children who are victims of abuse or exploitation must be protected through clear legal measures – the intervention must include removing the child from the abusive environment, emergency placements, and legal counselling to ensure the child's rights are upheld; educational programs for parents, interventions in poor or vulnerable communities, and awareness campaigns regarding abuse and exploitation are essential for preventing the emergence of risks.

6. Children With Disabilities in the Child Protection System

The group of persons with disabilities can be considered one of the most exposed to the risk of poverty or social exclusion in Romania.[43]

It is well known that the child protection system faces numerous issues related to children with disabilities, who do not have uniform access across the country to

41 UNICEF, n.d.
42 Ministry of Labour, Family and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption, 2024f.
43 Bihor County Council, 2024, p. 14.

the necessary resources, technical means, or adequately trained personnel to ensure that their rights are respected (public social assistance services need both personnel and specialized training). Key objectives remain the promotion and protection of the rights of children with disabilities, the continued deinstitutionalization of children with disabilities, and ensuring a smooth transition within the protection system for young people with disabilities – from institutional care to community-based care and integration.

6.1. Internal and International Contexts

The Convention on the Rights of Persons with Disabilities[44] recognises in Art. 19 'the equal right of all persons with disabilities to live in the community, with choices equal to others. It also reinforces 'the need to promote and protect the human rights of all persons with disabilities, including those who need more support'. According to the provisions of the convention, the right to independent living and inclusion in the community must be guaranteed for all persons with disabilities, regardless of their level of intellectual capacity, degree of autonomy, or support needs.

Regarding *children with disabilities*, Art. 23 para. 5 of the *Convention on the Rights of Persons with Disabilities* states that 'States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.'

Non-family care (e.g. residential care) 'should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests'.[45]

Art. 17 of the *European Social Charter*[46] stipulates that the states shall take 'all appropriate and necessary measures designed to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support'. Children who belong to vulnerable categories, such as children with disabilities, should not be placed in children's centres, but alternative forms of non-institutional and family-type care should be utilised in practice (the European Committee for Social Rights considers it a violation of Art. 17 of the European Social Charter[47]).

Article 50 of the *Romanian Constitution* enshrines the right of persons with disabilities to benefit from special protection, in accordance with the provisions of the 2007 New York Convention on the rights of persons with disabilities. Romania adopted in 2016 the *National Strategy 'A Society Without Barriers for People with Disabilities'*

44 Convention on the Rights of Persons with Disabilities, 13 December 2006, Art. 23 (5), ratified by Romania through Law No. 221/2010, Official Gazette No. 792 of 26 November 2010.

45 United Nations, General Assembly, 2010, para. 21.

46 Council of Europe, 1996, Art. 17. para. 1 point c).

47 *European Committee of Social Rights, European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, Complaint No. 157/2017, 17 June 2020 [Online]. Available at: https://hudoc.esc.coe.int (Accessed: 27 October 2023).

2016–2020, which aimed to implement *The Convention on the Rights of Persons with Disabilities,* but its implementation was limited.

The *Constitutional Court*[48] has ruled that any protective measure must be proportionate to the degree of capacity, tailored to the person's life, applied only if other measures cannot provide sufficient protection, based on the individual's will, applied for the shortest time possible, and reviewed periodically.

Children with disabilities in Romania, according to Art. 71 of Social Assistance Law No. 292/2011 have the right to support and care measures tailored to their needs. They benefit from social services intended to facilitate the effective and non-discriminatory access of the child with disabilities to education, professional training, medical assistance, recovery, preparation for employment, recreational activities and any other activities capable of enabling their full social integration and personal development. These services are also intended for the parents of such children or for persons to whom the children have been entrusted under foster care or legal guardianship.

In Romania, *respite centers* have been established which, by providing temporary support, contribute to preventing the institutionalization of persons with disabilities, encouraging their care within the family or community. Respite centers are social services designed for persons with disabilities, especially children with disabilities, aimed at providing a break for their families, allowing them to recharge, regain their energy, or fulfil other responsibilities.

To *deinstitutionalise people with disabilities* in old-style institutions and prevent the institutionalisation of people with disabilities in the community, several programmes of national interest were started. These include establishment of the following:[49] a) social services in the form of day-care centres[50]; b) social services such as day centers, /crisis centers, and supported housing, aimed at the deinstitutionalization of persons with disabilities living in outdated institutional settings, and at preventing the institutionalization of persons with disabilities from the community[51]; c) social services to ensure the transition of young people with disabilities from the special child protection system to the adult disability protection system [52]

Additionally, Government Decision No. 1444/2022 approved the *'Data collection and monitoring mechanism for the implementation of the UN Convention on the rights of persons with disabilities and for the modification and completion of some normative acts.'*

48 Decision No. 601 of July 16, 2020 regarding the exception of unconstitutionality of the provisions of Art. 164 para. 1 of the Civil Code, point 34, published in the Official Gazette No. 88 of 27 January 2021 [Online]. Available at: https://www.ccr.ro (Accessed: 20 October 2023).

49 Ministry of Labour and Social Solidarity - National Authority for the Protection of the Rights of Persons with Disabilities (2022d) 'Raport de activitate pentru anul 2022', pp. 21-24 [Online]. Available at: https://anpd.gov.ro/web/despre-noi/rapoarte-si-studii/rapoarte/ (Accessed: 27 October 2023).

50 Official Gazette, Part I No. 501 of 20 May 2022.

51 Government Decision No. 1205/2022 for the amendment of the annex to Government Decision no. 798/2016 and annexes to Government Decision No. 193/2018, Official Gazette No. 979 of 7 October 2022.

52 Government Decision No. 1205/2022.

Through this mechanism, the authorities will have appropriate information, including statistical and research data, to formulate and implement policies leading to the implementation of the UN Convention.

With the adoption of the *National strategy regarding the prevention of institutionalisation of adults with disabilities and the acceleration of the deinstitutionalisation process, for the period 2022–2030*, the need for deinstitutionalisation and respect for the right to independent life was recognised.[53]

The National Strategy for the Rights of Persons with Disabilities 'An Equitable Romania,' 2022–2027[54] was adopted to ensure implementation of the UN Convention in Romania and, implicitly, of the national framework to fully exercise all rights and fundamental human freedoms by all persons with disabilities under equal conditions.

Among the *principles* listed in this *Strategy,* we mention the following: non-discrimination and equal treatment, equal opportunities, transparency, accessibility of information and data, the principle of integrated approach, respect for inalienable dignity, individual autonomy, full and effective participation and integration in the society, respect for diversity and acceptance of people with disabilities, respect for the developmental capacities of children with disabilities and/or *special educational needs* (SENs) and effectiveness of the use of funds. SENs represent additional educational needs, complementary to the general objectives of education, which are adapted to individual particularities and characteristics of a certain deficiency/disability, learning disorders/difficulties or difficulties of another nature, as well as complex medical, social and/or educational assistance.[55]

6.2. Benefits and Forms of Support for Children With Disabilities and Special Needs

It is necessary to ensure a minimum income in the form of financial benefits for children, together with access to health, education and protection services.

In Romania, the following *financial benefits* are granted for children with disabilities and their families:[56]

1. *Allowance for the care of a child with disability* aged 3–7 years in the amount of 1,496 lei starting from 1 March 2023 and 1,651 lei from January 2024
2. *Compensatory allowance for people who support a child with (severe or accentuated) disability* until the age of 18 years and opt for a reduced working schedule of 4 hours,[57] in the amount of 826 lei from January 2024

53 'National Strategy of December 19, 2022 regarding the prevention of the institutionalization of adults with disabilities and the acceleration of the deinstitutionalization process, for the period 2022–2030', Official Gazette No. 1249 bis of 23 December 2022.

54 Ministry of Labour and Social Solidarity, 2022c. (Government Decision No. 490/2022 for the approval of the National Strategy for the Rights of Persons with Disabilities 'An Equitable Romania', 2022-2027).

55 Pre-university Education Law No. 198/2023, Official Gazette Part I No. 613/5.VII.2023.

56 Ministry of Labour and Social Solidarity, 2024b, pp. 1–19.

57 According to the provisions of Art. 32 para. 1 letter a) of Emergency Ordinance No. 111/2010 regarding leave and monthly allowance for raising children, Official Gazette No. 830 of 10 December 2010.

3. *Monthly support granted to a person with a severe disability* who does not earn any other income apart from the social assistance benefits intended for people with disabilities, for a child aged 0–3 years, in the amount of 743 lei from January 2024
4. *Monthly support granted to the person with a disability* who does not earn any other income apart from the social assistance benefits intended for people with disabilities, for a child aged 3–7 years in the amount of 578 lei from January 2024
5. *Monthly support granted to the person who does not meet the conditions provided by law for the granting of parental leave*, for a child with disability aged 3–7 years in the amount of 248 lei from January 2024
6. *Monthly support for the person with a severe disability who does not meet the conditions provided by law for the granting of parental leave* and who has a dependent child aged up to 2 years, in the amount of 743 lei from January 2024
7. *Monthly support for the person with a severe or pronounced disability who does not meet the conditions provided by law for the granting of parental leave* and who has a dependent child aged 2–7 years, in the amount of 248 lei from January 2024.

Children with SENs schooled in mass education units or in special, state and private education units, including those schooled in a county other than their home county, benefit from one of the following *forms of support* during the school year: educational vouchers in a fixed amount for support services, psycho-pedagogical interventions and support materials, from the state budget in amounts broken down from some revenue of the state budget; full social assistance, consisting of daily allowance of food, school supplies, weapons, clothing and footwear, in an amount equal to that for children in the child protection system, as well as free accommodation in boarding schools within the general county/Bucharest municipality directorates for social assistance and child protection

Children with severe disabilities have the right to a personal assistant. This can be one of the parents, another family member or a person designated by the relatives. The personal assistant is employed by the General Directorate of Social Assistance and Child within the local municipality to which the child's family belongs. A minor with a severe disability benefits from a companion allowance in the amount of 2,574 lei (starting from 01 January 2025) or the hiring of a personal assistant (for minors classified with the disability "Severe – with personal assistant"). The monthly social benefit is 463 lei from June 2024.

Children classified with an accentuated degree of disability do not benefit from a personal assistant, and the monthly social benefit is 232 lei from March 2024.

Children with medium disabilities benefit from a monthly social benefit of 80 lei from March 2024.

The state allowance of 719 lei and free medical assistance are other benefits for children with disabilities.

Parents of children with disabilities, whose own monthly net income is less than or equal to 2,210 lei, can benefit from social cards for purchasing basic food items.

Additionally, the legal representatives of children with severe or accentuated disabilities are exempt from paying taxes for the residential building, the land associated with it, and one means of transportation. The legal representatives of children with severe and accentuated disabilities can also benefit, upon request, from a card-identifier for free parking spaces in specially designated public areas or exemption from paying the toll for the use of the national road network based on the road tax.

Children with disabilities and SENs should be granted access to inclusive education within the community, ensuring equal opportunities alongside their peers, thereby enabling them to achieve their fullest developmental potential.[58] *Special education* is regulated by Art. 68 of the Pre-University Education Law No. 198/2023 which governs both special and integrated special education. This form of education is tailored for children with various disabilities – mental, psychological, intellectual, sensory, physical, motor, neuromotor – as well as those with emotional, neurodevelopmental disorders, social maladaptation, or chronic, genetic conditions. For children requiring hospitalization exceeding four weeks, a flexible educational model known as – *The hospital school* – is available. For children with SENs who, for medical reasons or a disability, cannot be moved, home schooling can be organised for a certain period.

In pre-school education[59], special education is organised in the form of *early intervention groups* for children with SENs due to physical, intellectual and/or sensory disabilities; emotional disorders; neurodevelopment or social maladjustment; or any other disease, disorder or chronic genetic condition. Specific recovery and compensatory therapies are provided, along with specialized services such as social, medical, and psychological assistance, psycho-pedagogical counseling, audiometry, and speech therapy, all tailored to the specific educational needs of the children. The organization of these services, the therapies, and early intervention programs are regulated by a methodology approved through a joint order of the Minister of Education, the Minister of Health, and the Minister of Family, Youth, and Equal Opportunities.

Children and young people with disabilities and/or special educational needs, integrated into mainstream education, benefit from educational support provided, on a case-by-case basis, by support and itinerant teaching staff.

The financing of special and special integrated education is ensured from amounts allocated from certain revenues of the state budget, through the local budgets of county councils and the sectors of the Municipality of Bucharest, regardless of the domicile of the children, based on a management contract.

58 Ministry of Labour and Social Solidarity, 2022c, p. 7. (Government Decision No. 490/2022 for the approval of the National Strategy for the Rights of Persons with Disabilities 'An Equitable Romania', 2022-2027).

59 Art. 69 of Pre-university Education Law No. 198/2023.

6.3. System Deficiencies

The promotion and enforcement of the rights of persons with disabilities fall mainly to under the responsibility of local public administration authorities where the person with a disability has their domicile or residence, and secondarily and complementarily, to the central public administration authorities, civil society, and the family or legal representative of the person with a disability, in accordance with the provisions of Art. 7 of Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities.

Although these rights are legally regulated, it is not enough, for example, to guarantee access to education for a child with disabilities if this goal cannot be achieved due to the lack of conditions adapted to their needs. Some children with disabilities require physiotherapy or speech therapy in order to learn, or the presence of assistants to help them.

According to some reports, there are very few support teachers; on average, there is one support teacher for every 47 children with disabilities enrolled in mainstream education.[60]

For children with intellectual, mental or visual disabilities, there are no learning materials adapted to their special needs.

Playgrounds are also not adapted for children with physical disabilities. In reality, children with disabilities have great difficulties accessing housing, schools or other institutions, compared to those without disabilities.

According to a document prepared by the National Authority for the Protection of Children's Rights and Adoption and the World Bank in 2021, of the 1,442 institutions checked, including courts, employment agencies, pension houses, health insurance houses, schools, or police stations, most had issues with accessibility for persons with disabilities (lack of access routes into buildings, absence of ramps, lack of accessible bathrooms). Moreover, public transportation is very hard to access because it is not adapted to their needs. Schools are not adapted to the needs of children with disabilities, with 1 in 5 schools lacking an access ramp. Few children with special educational needs receive the necessary support services to participate in and benefit from quality mainstream education, and as a result, they achieve much lower educational levels than the average[61].

6.4. Obligations Concerning a Young Person With Disabilities Who Turned 18 and Left the Protection System

A young person with a disability who has been part of the child protection system to a smooth transition into the adult disability protection system, to be ensured by the responsible public authorities (the measures are provided by Art. 30 of Law 448/2006 on the protection and promoting the rights of people with disabilities).

60 See: Grigoraș et al., 2021, p. 24.
61 Ibid., pp. 19, 54 and 242.

At the request of a child with disabilities who was placed under guardianship or foster care with a family or individual, if they are not enrolled in education or vocational training upon reaching 18 years of age, they may remain under the care of that family or individual for an additional 3 years-with the consent of the family or person with whom the child was placed under guardianship.

Within the framework of the project implemented by the National Authority for the Rights of Persons with Disabilities, Children and Adoptions called *'Progress in Ensuring the Transition from Care in Institutions to Care in the Community',* a monitoring and evaluation tool was developed to assess the status of the transition from institutional to community care. The monitoring system enables the analysis of the transition from institutional care for children deprived of parental care to community-based care, based on four main objectives: (a) closure of foster care centres, as every child must grow up in a family; (b) development of alternative services to care in placement centres, especially those of the family type, both numerically and from the point of view of quality; (c) strengthening case management to ensure the quality and appropriateness of protection services; and (d) development of prevention and support services within the community to reduce institutionalization and encourage reintegration into families.[62]

6.5. Statistics on Children With Disabilities in Romania

On 31 December 2024, the *total number of persons with disabilities* reported in Romania, was *960,428 persons.* Of these, 944,280 persons are cared for by their families and/or live independently (non-institutionalised) and 16,148 persons are in public residential social assistance institutions for *adults* with disabilities (institutionalised)[63].

At the end of 2024, 86,210 *children with disabilities* were registered[64], none of whom were institutionalised. By comparison in 2023, there were 78,587 children with disabilities, of whom: 2,192 in 2023 (2,150 in 2024) were classified with mild disabilities; 16,820 in 2023 (18,671 in 2024) were classified with moderate disabilities; 10,788 in 2023 (11,711 in 2024) had with marked disabilities, and 498,787 in 2023 (53,678 in 2024) had severe disabilities.

The distribution of children with disabilities by age group was as follows:

1. Children classified with mild disabilities:
   0–2 years: 619 in 2023 (527 in 2024)
   3–6 years: 664 in 2023 (672 in 2024)
   7–13 years: 506 in 2023 (611 in 2024)
   14–17 years: 284 in 2023 (340 in 2024)
3. Children classified with moderate disabilities:
   0–2 years: 2,097 in 2023 (2,343 in 2024)

62 Ministry of Labour and Social Solidarity, 2020, p. 11.
63 Ministry of Labor, Family, Youth and Social Solidarity-National Authority for the Protection of the Rights of Persons with Disabilities, 2024, p. 2.
64 Ministry of Family, Youth and Equal Opportunities-National Authority for the Protection of Children's Rights and Adoption, 2024e.

3–6 years: 4,791 in 2023 (4,047 in 2024)
7–13 years: 6,965 in 2023 (7,374 in 2024)
14–17 years: 4,728 in 2023 (4,907 in 2024)

3. Children with marked disabilities:
0–2 years: 995 in 2023 (1,058 in 2024)
3–6 years: 2,566 in 2023 (2,821 in 2024)
7–13 years: 4,552 in 2023 (4,903 in 2024)
14–17 years: 3,034 in 2023 (2,929 in 2024)
4. Children with severe disabilities:
0–2 years: 3,244 in 2023 (3,220 in 2024)
3–6 years: 12,495 in 2023 (14,363 in 2024)
7–13 years: 21,122 in 2023 (22,192 in 2024)
14–17 years: 12,666 in 2023 (13,183 in 2024)

In 2024, of the total 1,237 residential services, 269 residential services (25 public residential services and 12 private residential services) were intended for children with disabilities. The number of children benefiting from special protection measures in these services for children with disabilities was 2,713 on 31 December 2024, a decrease of 259 children compared to the same period in 2023.

At the end of 2023, out of the total of 1,274 *residential services*, 270 residential services (258 *public* and 12 *private* residential services) were intended for children with disabilities. By 31 December 2023, 2,972 children had benefited from a special protection measure in these services intended for children with disabilities, a decrease of 409 children compared to the same period in 2022. In 2022, of the 1,308 *residential services*, 284 residential services were for children with disabilities, compared to 269 public and 12 private residential services in 2021. By 31 December 2022, 3,381 children had received special protection measures through these services for children with disabilities, a decrease of 388 children compared to the same period in 2021.[65]

According to the National Authority for the Protection of Children's Rights and Adoption, by 1 January 2022, the public social assistance services reported that there were 149 recovery centres for children with disabilities in 97 administrative-territorial units. There is still a rather large imbalance between centres in the urban environment (132) compared to those in the rural environment (17). Thus, children from marginalised rural areas do not have access to recovery centres, as they do not have the means to travel to them.[66]

According to the statistics of the National Authority for the Protection of the Rights of Persons with Disabilities, we can follow the evolution of the reported number of

65 Ministry of Labor, Family, Youth and Social Solidarity-National Authority for the Protection of Children's Rights and Adoption, 2023, p. 2.; Ministry of Labor, Family, Youth and Social Solidarity, 2022b, p. 2.
66 Ministry of Labour and Social Solidarity, 2022a, p. 17.

children with disabilities:[67] 1993: 11,466 children; 2003: 56,886 children; 2013: 60,993 children; 2023: 77,053 children; 2024: 87,577 children.

Moreover, 4,349 children with disabilities were institutionalised in 1993; this number was 568 children in 2003 and none in 2024.

The protection of children with disabilities is especially important to ensure that they become integrated adults who live with dignity.

7. Structure of the Child Protection System

7.1. Basic and Special Services for the Welfare of Children in Personal Care

According to the legislation in force, children have the right to social assistance and social insurance. If the parents or persons who, according to the law, have the obligation to support the child are unable, for reasons beyond their control, to meet the child's basic needs for housing, food, clothing, and education, the state, through the competent public authorities, is obliged to provide appropriate support in the form of financial benefits, in-kind benefits, as well as services, in accordance with the law. Local public administration authorities have also the obligation to inform parents and children about the rights they have, as well as the way of granting social assistance and social insurance rights.

The minimum package of social services for the child and family,[68] which must be provided by the central and local public administration authorities, consists of basic and information services in the field of health, education and social protection, including the following: identifying situations that can lead to marginalisation or social exclusion and assessing them; providing information and counselling; accompaniment, assistance and monitoring.

The aim of the minimum services package is to guarantee every child's right to survival, development and protection, as well as to combat and prevent poverty, violence, disease and school dropout. The minimum package of services is provided by a mixed, multidisciplinary team, formed at the level of the administrative-territorial unit. It comprises a social assistant/social worker, a community medical assistant, a school counsellor, and a health or school mediator, as the case may be.[69]

Regarding the *right to education*, children benefit from early education, which, according to the Pre-University Education Law No. 198/2023, is carried out through nurseries and kindergartens that are part of the national pre-university education system. They provide integrated education services and annual assessments for

67 Ministry of Labour and Social Solidarity-National Authority for the Protection of the Rights of Persons with Disabilities, 2024a.

68 Regulated by Law No. 231 of 5 November 2020 for the amendment of the Social Assistance Law No. 292 of 2011. According to the UNICEF, financing of the minimum package of services is done from the state budget/local authorities and external funds, such as European Economic Area, Norwegian and Swiss grants.

69 Ministry of Labour and Social Solidarity, 2021c, p. 80.

ante-preschool children aged between 3 months and 3 years (nurseries), and preschool children aged between 3 and 6 years (kindergartens). These assessments result in a descriptive evaluation report regarding the child's physical development and the formation of cognitive and socio-emotional skills. In administrative-territorial units where there are not enough nurseries and kindergartens, or where the number of available places is limited, complementary early education services can be developed, such as toy libraries, playgroups, or community kindergartens.

Moreover, there are social services intended for the child and/or family, persons with disabilities and victims of domestic violence.

To prevent and combat the risk of young people leaving the child protection system becoming homeless, as well as to promote their social integration, local authorities can establish multifunctional centres that provide their living and household conditions for a determined period.

7.2. Special Protection Services[70]

Law No. 272/2004 on the protection and promotion of children's rights establishes the types of services intended to prevent the separation of the child from the parents, as well as types of special protection services for children who have been temporarily or permanently separated from their parents. These are *day services, family-type services and residential-type services.*

7.2.1. Day Services

These are services that ensure the maintenance, recovery and development of the capacities of the child and their parents to overcome situations that could lead to the separation of the child from the family (Art. 120 para. 1 of Law No. 272/2004 regarding the protection and promotion of children's rights).

These services include[71]: day-care centres; counselling and support centres for parents; assistance and support centres for the rehabilitation of children with mental and social problems; and monitoring, assistance and support services for pregnant women prone to abandoning their child.

According to Art. 3 letter (h) of Law No. 156/2023 regarding the organisation of the activity to prevent the separation of the child from the family, the *day centre* represents

> 'the social service whose mission is to prevent the separation of the child from the family, by ensuring, during the day, care activities, informal and non-formal education, recreation - socialisation, counselling, development of

70 The website of the Ministry of Labour and Social Solidarity, the National Authority for the Protection of the Rights of Persons with Disabilities provides a map of social services (residential, community and at home) for each county. See https://anpd.gov.ro (Accessed: 5 December 2023).

71 Ministry of Labour and Social Solidarity-National Authority for the Protection of Children's Rights and Adoption, n.d.

independent living skills, empowerment/rehabilitation, as the case may be, food provision, etc. for children, as well as support activities, counselling, education, etc. for parents or legal representatives, as well as for other people who take care of children.'[72]

Day-care centres for children in the family and separated or at risk of separation from their parents include centres for children at risk of separation from their parents; centres for preparing and supporting the integration/reintegration of the child into the family; recovery centres for children with disabilities; day centres for the development of independent life skills; centres for orientation, supervision and support for the social reintegration of children who have committed criminal acts and are not criminally liable; and day centres for street children. Moreover, *day-care centres for families with children* are centres for counselling and support for parents and children and centres for monitoring, assistance and support for pregnant women likely to abandon their children.

According to the SPREV Register data, as of January 1, 2022, only 11% of UATs (administrative-territorial units) in the country had at least one day-care center for children or families with children. Additionally, there were 261 day-centers for children at risk of separation from their parents -157 in urban areas and 104 in rural areas.[73]

As stated in the National Strategy for the Protection and Promotion of Children's Rights 'Protected Children, Safe Romania' 2022–2027, the number of day-care centres and their beneficiaries increased significantly between 2014 and 2019; however, the degree of ensuring access for vulnerable children to these services is still modest and has been affected by the 2020 COVID-19 crisis.[74]

7.2.2. Family Services

Family-type services ensure the upbringing and care of a child temporarily or permanently separated from his or her parents at the home of an individual or family, as a result of establishing the placement measure (Art. 121 of Law No. 272/2004 regarding the protection and promotion of children's rights).[75] These services are organized based on internal rules and regulations developed by each social service provider.

Family-type services include *foster care* provided by professional foster carers and *family placement* which can be arranged with relatives up to the fourth degree (extended family), or with other persons/families.

72 See also: Order of the Ministry of Labour and Social Justice No. 27/2019 of 3 January 2019 regarding the approval of minimum quality standards for day social services intended for children, Official Gazette No. 160 bis of 28 February 2019.

73 Ministry of Labour and Social Solidarity, 2022a, p. 16.

74 Monitorul Oficial al României, 2023, p. 16.

75 See also: Order No. 26/2019 of 3 January 2019 regarding the approval of the minimum quality standards for family-type social services intended for children in the special protection system, Ministry of Labour and Social Justice, Official Gazette No. 103 bis of 11 February 2019.

These social services are organized without legal personality; the functions are performed by at least one case manager for the child and the person/family or professional foster carer where the child is placed, according to the decision of the legally authorized bodies.

The provider of family-type social services creates its own network of foster persons/families and professional foster carers. It monitors the children in placement, reviews monitoring reports, and drafts a self-evaluation report of the family-type social services.[76]

The person/family wishing to take one or more children in placement submits an evaluation application, addressed to the General Directorate of Social Assistance and Child Protection or to Authorised Private Bodies, along with required documents.[77]

These services are aimed at raising and caring for children in compliance with the individualised care plan (ICP) developed for each child (an ICP framework model is developed by social service providers and approved at the national level by the National Authority for the Protection of Children's Rights and Adoption).

For the *child's placement in family-type services*, it is necessary to identify the child, the fostering persons/families and foster carers who are suitable for the child. This is followed by the decision to place and transfer the child to the care and residence of the foster persons, families or parental assistants.

Upon termination of the foster care service, the child must be informed. The competent authority will issue a decision for termination, revocation, or replacement of the measure.

The professional maternal assistant is a natural person, certified under the conditions of Government Decision No. 679/2003, which ensures through the activity they carry out at their home, the growth, care and education necessary for the harmonious development of the children they receive in foster care.[78] This assistant is an employee of General Directorate of Social Assistance and Child Protection or Authorised Private Bodies, based on a special employment contract. The child cared for by the foster carer is also supervised by a social worker.

Foster care services were initially viewed as a temporary solution for caring for children temporarily or permanently separated from their families, especially for young children. However, the large number of children in the special protection system, as well as the limited number of other services or adoptions have made foster care services a long-term care solution. Although developed in recent years, foster care services still have gaps. They are disproportionately distributed across the country, especially in rural areas, with most foster parents being women over 40 with

76 Ibid., p. 16.
77 Ministry of Labour and Social Solidarity, 2021c, p. 13.
78 Order No. 35/2003 regarding the approval of the mandatory minimum standards for ensuring child protection for the professional maternal assistant and the methodological guide for the implementation of these standards, Official Gazette No. 359 of 27 May 2003.

secondary education, who may lack experience when caring for children with special needs (disabilities or special educational needs).[79]

Family placement services are provided through placement with relatives up to the fourth degree and placement with other persons: relatives, in-laws, family friends with whom the child has developed attachment relationships or with whom they have shared family life. There are more family placement services in rural areas, than in urban areas, but the situation is relatively balanced.

Moreover, changes are needed in these services; for example, it is shown that foster care is accredited as a service provided by the General Directorate of Social Assistance and Child Protection only in some counties.[80]

7.2.3. Residential Services

Residential-type services ensure the protection, upbringing and care of the child temporarily or permanently separated from their parents, as a result of the placement measure established by law (Art. 123 para. 1 of Law No. 272/2004 regarding the protection and promotion of children's rights).

These services include *placement centres (and family-type homes), emergency child-care centres and maternity centres*, which provide accommodation for the child for more than 24 hours.

By the Ministry of Labour Order No. 26/2019, mandatory minimum quality standards for family-type social services intended for children in the special protection system were developed and approved.

For example, '*The minimum quality standards for social services with accommodation, organized as residential centres for children temporarily or permanently separated from their parents*' include the following:

1. Access to the service: admission to the residential centre and termination of care in the residential centre
2. Assessment and planning: child assessment and service planning
3. Daily life: current needs, food, personal care, recreation and socialisation, relationship with family and other close persons, participation and involvement in personal and community life
4. Health: assistance for health, hygiene and infection control
5. Specific activities/services: education, preparation for independent living, social integration/reintegration and functional empowerment/rehabilitation
6. Physical living environment: accessibility and comfort, safety and protection, accommodation and sanitary facilities
7. Rights and ethics: respect for children's rights and professional ethics, children's relationships with staff and suggestions/reports/complaints
8. Protection against abuse and neglect: protection against abuse and neglect and behaviour control

79 Ministry of Labour and Social Solidarity, 2021c, pp. 111–112.
80 Ibid., p. 40.

9. Management and notification of special incidents: management of special incidents and notification of special events
10. Management and human resources: administration, organisation, operation and human resources

The residential centre[81] owns and applies its own regulation of organisation and operation, developed by the social service provider that administers the centre, in compliance with the provisions applicable framework regulation.

After entering the residential centre, the *child temporarily or permanently separated from his or her parents* a person will be designated by the center coordinator to establish, together with the child, depending on their needs, an accommodation program with a minimum duration of two weeks, to monitor the child's evolution and integration level.

For each child protected in the center, a file is created, which includes, among other things, the child's individualized protection plan.

The centre carries out quarterly reassessment of the child's physical, mental, spiritual, moral, or social development, the manner in which they are cared for, and the circumstances that led to the establishment of the special protection measure.

The recommended number of children per group in placement centers is a maximum of 12, except for young people, where the number can be 15. Group inclusion should consider the children's age and sibling relationships. In this regard, it is recommended that the age difference between children in a group not exceed 3-4 years, except for siblings.

The family home covers the essential needs of rest, food preparation, education and hygiene, ensuring the minimum requirements for a maximum of 12 children for whom the measure of emergency placement or placement has been established, under the terms of this law. In exceptional situations, the number of children can be a up to 16, maintaining minimal requirements, but only during the existence of the exceptional situation.

The *apartment* is a home that covers the essential needs of rest, food preparation, education and hygiene, ensuring the minimum requirements for a maximum number of 6 children for whom the measure of emergency placement or placement has been established in accordance with the provisions of Art. 123, para. 5 of Law No. 272/2004 on the protection and promotion of children's rights.

The emergency reception centre is the structure that provides temporary accommodation, up to a maximum of 6 months, without the possibility of extension. It is organised in compliance with the minimum requirements provided for in para. 8 of Art. 123 of Law No. 272/2004 on the protection and promotion of children's rights for a maximum of 30 children for whom the emergency placement measure was established. A maximum of three emergency reception centres can be organised at the level of each county.

81 See: Appendix 1, Order of the Minister of Labour and Social Justice No. 25/2019.

Admission to the *emergency reception centre for the abused, neglected or exploited child*[82] is based on the emergency placement measure, made in accordance with the law. Within the center, children receive appropriate services tailored to their individual situations and needs, as outlined in an individualized protection plan or, where applicable, a personalized service plan. Each child has an emergency placement file containing relevant documents regarding their situation.

Children protected in the residential centre, organised as an emergency reception centre, are encouraged and supported to maintain contact with their parents, extended family and other close people, if this does not contradict with their best interests. The maximum recommended number is 12 children/group, and the inclusion of children in a group must consider their age and family relationships.

When a child leaves the centre, specific activities are carried out for his or her reintegration into the family or integration into the extended or substitute family, as well as for raising the child's awareness of the future way of life. The ending-of-services procedure, annexed to the Regulation on the Organisation and Functioning of the Centre, is approved by decision or, if necessary, by order of the head of the social service provider.

The emergency reception centre for street children[83] accepts children based on an emergency placement decision and only if the centre can respond to their individual needs for care, education, socialisation, etc., established through an initial assessment.

Admission to the night shelter for street children is carried out because of a voluntary request of the children, street social services or police bodies, as well as based on the decision of the director of the General Directorate of Social Assistance and Child Protection regarding the measure of placement in the emergency regime. Initial assessment of the child's situation is carried out by the street social service. Children are evaluated and receive services appropriate and tailored to their situation and personal needs, provided according to a personalized service plan.

The emergency reception centre for minors who have committed criminal acts and are not criminally liable[84] is based on the measure of residential placement. The mission of this centre is to ensure, for a determined period, the hosting, supervision, care, education and behavioural rehabilitation of a child who has committed criminal acts and is not criminally liable, to integrate/reintegrate him or her into the family and society. The coordinator of the centre nominates, from their own staff, a case manager for the respective child.

82 Annex 2 of the Order of the Minister of Labour and Social Justice No. 25/2019.
83 Ibid., Annex 3.
84 Annex 4 of the Order of the Minister of Labour and Social Justice No. 25/2019.

The maternity centre[85] is a structure that provides temporary accommodation, for a duration of up to 2 years. It is organised in compliance with the minimum requirements for a maximum number of nine mother-child couples.[86]

Regarding social services intended for young people who leave the child protection system, residential centres for young people in difficulty should be mentioned.[87]

According to *statistics*, the total number of children and young people in the special protection system has continuously decreased from almost 65,000 in 2010 to around 55,000 in 2017 and around 47,000 by 1 January 2021.[88] By 31 December 2024, there were 998 *public residential services* and 239 *residential services of accredited private bodies*. These services include classical or modulated residential care centres, apartments, family-type homes, maternity homes, emergency reception centres and other services (services for the development of independent living skills and day and night shelters). By the end of December 2024, 35,912 children were in the special protection system. Among them, 9,579 children (26.68%) were in a special protection measure in residential services (7,765 children were in public residential services, and 1,814 children were in private residential services); 26,333 children (73.32%) benefited from a special protection measure in family-type services (14,524 children were placed with foster carers 9,255 children were placed with relatives up to and including fourth-degree relatives and 2,554 children were placed with other families or persons).[89]

The main reason for children entering social protection systems[90] is poverty. Vulnerabilities such as lack of housing, unemployment, school dropout, domestic violence, child neglect and abuse, inadequate parenting skills, low parental age, single-parent family, low expectations and/or low self-esteem lead to the child entering the protection system.

85 Order of the Ministry of Labour No. 81/2019 of 16 January 2019 regarding the approval of minimum quality standards for social services organised as maternity centres, Official Gazette No. 111 bis of 13 February 2019.

86 Art. 123 paras. 4–7 of Law No. 272/2004 on the protection and promotion of children's rights.

87 Annex 3, Order No. 29/2019 for the approval of the minimum quality standards for the accreditation of social services for the elderly, homeless people, young people who have left the child protection system and other categories of adults in difficulty, as well as for services provided in the community, services provided in integrated system and social canteens. It is available at: https://www.mmuncii.ro (Accessed: 27 September 2023).

88 Ministry of Labour and Social Solidarity, 2021c, p. 11.

89 Ministry of Labour and Social Solidarity, 2024c, p. 2.

90 International Labour Organization and United Nations Children's Fund, 2023.

Table 1. Beneficiaries of the special protection scheme[91]

Type of service	Number of children (active cases on 31 December 2024)
Family services	***26,333***
Foster carers employed by the General Directorates for Social Assistance and Child Protection	14,474
Childminders employed by accredited private bodies	50,000
Relatives up to and including the fourth degree	9,255
Other families/persons	2,554
Residential services	***9,579***
Public	7,665
Private	1,814

Table 2. Number of children by age group (completed years) in residential services, 31 December 2024[92]

Residential services	<1 year old	1–2 year olds	3–6 year olds	7–9 year olds	10–13 year olds	14–17 year olds	>18 year olds	Total
Public	109	110	218	408	1,752	3,956	1,212	7,765
Private	2	6	15	96	543	946	206	1,814
Total	**104**	**101**	**243**	**527**	**2,386**	**4,982**	**1,611**	**9,954**
Percentage	1.2%	1.2%	2.4%	5.3%	24.0%	51.2%	14.8%	100%

Table 3. Beneficiaries of services to prevent separation from parents[93]

Type of service	Number of children (active cases on 31 December 2024)
Day-care centres	27,569
Day centres under the authority of local councils	5,732
Day centres run by accredited private bodies	11,694
Day centres under the supervision of the General Directorates for Social Assistance and Child Protection	10,143

7.3. Monetary and In-Kind Benefits to Ensure Child Protection

Social protection expenditures (including administrative costs of social protection schemes) amounted to 229.2 billion lei in 2022, reflecting an increase of 31.347 billion lei or 15.8% compared to 2021. The share of social protection expenditures in GDP was 16.5%, down by 0.1 percentage points compared to 2021. As for social protection

91 Ministry of Labor, Family, Youth and Social Solidarity – National Authority for the Protection of Children's Rights and Adoption, 2024d.
92 Ibid.
93 Ibid.

revenues, they increased by 18.9% compared to 2021, totalling 231.367 billion lei and accounting for 16.7% of GDP[94].

Romania's expenditure on social protection as a percentage of gross domestic product (GDP) is among the lowest in the EU: in 2022, the share of social protection expenditure in GDP was 16.5%**;** in 2022, out of the total expenditure of 197,853 million lei on social benefits, 11.7% was allocated to family/children.

The resources for financing social protection in Romania were composed of 74.9% social contributions (from employers and protected individuals), 24.6% contributions from public administration, and 0.5% other expenditures.

According to the legislation in force, 12 social protection schemes were identified that regulated social benefits under the *Family/Children* function[95]: state child allowance; social protection of children in difficulty; social scholarships and other entitlements for pupils and students; kindergartens and nurseries; health insurance; social assistance and protection provided by non-governmental organizations; social protection provided in the form of pensions and other social insurance benefits; free or discounted transport; family support allowance and allowance for single-parent families; maternity protection in the workplace; adjustment allowance for adoptive parents; social protection for the prevention of social marginalization.

Analysing the structure of social benefit expenditures under the Family/Children function, it is observed that the most significant portion of benefits was provided through the State Child Allowance scheme in the form of state allowances, accounting for 46.9%**,** amounting to 12,519 million lei**.**

Art. 12 of the Social Assistance Law No. 292/2011 establishes the following *benefits for child and family support* for the birth, education and maintenance of children: child allowances; allowances for children temporarily or permanently deprived of parental care; child-raising allowances; facilities in accordance with the law.

The levels and amounts of social assistance benefits are determined in relation to the RSI by applying a social inclusion index. Starting from 1 March 2024, it was 660.2 lei (increased by 10.4%).

The state allowance for children is intended for those under the age of 18. The monthly amount is 292 lei. For children up to 2 years old and for children classified with a disability, the monthly amount is 719 lei.

The largest share of the resources managed by the Ministry of Labour and Social Solidarity for these social assistance benefits was directed to the state child allowance. In 2024, the amount paid for this type of allowance was 11.3% higher than that in the same period in 2023. However, the number of child beneficiaries is decreasing.

The *child benefit* is received by stay-at-home parents with children younger than 2 years (3 years for children with disabilities).

The *child-raising incentive* is paid if the parent returns to work until the child is 6 months old, or 1 year old in the case of a child with disability.

94 Institutul Național de Statistică, 2024.
95 Ibid., pp. 41–42.

The *foster care allowance* consists of monthly payments for each child for whom a foster care measure has been taken or guardianship has been established, paid to the person who has taken the child into care or to the guardian. On 1 March 2024, the amount of the foster care allowance was 1,194 lei. In the first semester of 2024, 31,519 children received this allowance.

The *family support allowance* was dedicated to poor families with children (to receive support, family income must be lower than the threshold set by law, and school-age children must attend school). Starting from January 1, 2024, social assistance and the family support allowance were replaced by the *minimum inclusion income*, the amount of which is composed of two components: *inclusion support* for families with an income below 275 lei/month per member or 400 lei/month in the case of single persons aged at least 65; and *support for families with children*: for families with an income below 700 lei/month that have one or more dependent children up to the age of 18.

The amount of assistance for families with children is determined based on the level of monthly income and the number of children in the family.

In the 2024-2025 school year, students from single-parent families can benefit from a social scholarship, also known as a single-parent scholarship. To be eligible, they must come from families with a net average monthly income per family member lower than the net minimum wage in the economy, which, starting from July 1, 2024, is 2,363 lei.

The average monthly number of beneficiaries of the placement allowance and the support allowance in the first half of 2024 was 31,519 children, of which 25,984 were children without disabilities (82.4%) and 5,535 were children with disabilities (17.6%). The total amount spent was 242,332,713 lei. Compared to the first half of 2023, there was a decrease of 1,890 beneficiaries (5.7%), while the amount spent was higher by 10,678,593 lei (4.6%)[96].

According to Government Decision No. 1253/2022[97] amending Government Decision No. 426/2020 approving the cost standards for social services, the minimum amounts of annual expenditure necessary was established for the provision of social services calculated for one beneficiary/year/type of social service.

The *cost standard/year/beneficiary* (minimum amount of annual expenditure required to provide social services, calculated for one beneficiary/type of social service) was as follows:

1. For children in foster care, with one child in foster care: 49,766 lei
2. For services for children with disabilities placed with foster carers, with one foster child: 59,464 lei
3. For residential services for children:
   a. Children placed in foster homes: 74,883 lei
   b. Children placed in family homes: 59,311 lei

96 Ministry of Labour and Social Solidarity, 2024b, pp. 2-3.
97 Official Gazette No. 1023 of 20 October 2022, in force since 20 October 2022.

   c. Children placed in apartments: 84,832 lei
4. For residential services for children with disabilities:
   a. Children placed in foster homes: 91,950 lei
   b. Children placed in family homes: 86,428 lei
   c. Children placed in apartments: 90,232 lei

Law No. 272/2004 on the protection and promotion of children's rights also provides for *additional benefits*. For example, children and young people for whom a special protection measure has been established are entitled to food, clothing, footwear, hygiene and sanitary materials, school supplies/manuals, toys, transport, cultural and sports materials as well as financial allowances for personal needs.

In the case of *children with disabilities* classified as disabled, for whom a special protection measure has been established under the law, the amounts allocated for these entitlements are increased by 50%.

Additionally, children for whom a placement measure has been established are entitled, on leaving the special protection system, to a one-off allowance equal to the amount of the guaranteed gross minimum wage.

The amount of the daily *food allowance* (22 lei) has been established for children in public day-care services, as well as for children and young people under a special protection measure in a public residential service, children in family-type homes, and mothers housed in maternal centers. The amount of food allowance for children in day-care services is also applicable to children in nurseries and other early education establishments. The food allowance for children in day-care services organised by accredited private bodies must be set at no less than the level established for public day services.

Romanian law establishes the possibility for the mayor to grant *exceptional financial benefits* including in-kind support (such as food, clothing, textbooks and school supplies or school equipment, covering transportation costs, procurement of prosthetics, medicines, and other medical accessories) when the family caring for the child is temporarily facing financial difficulties due to an exceptional situation that endangers the child's harmonious development (Art. 130 of Law No. 272/2004 on the protection and promotion of children's rights).

7.4. Measures of the Authorities to Ensure Special Protection of Children

Article 20 of the *Convention on the Rights of the Child* obliges State Parties to provide special protection and assistance to children who are temporarily or permanently deprived of their family environment. This includes ensuring alternative care arrangements such as foster care, adoption, or institutional placement when necessary.

In Romania, the Civil Code (Law No. 287/2009) and Law No. 272/2004 on the protection and promotion of children's rights establish the legal framework for child protection measures. Art. 106 para. 1 of the Civil Code, under the marginal heading of *Protective Measures* outlines the responsibilities of public social security services

and local councils in monitoring and analysing the situation of children, preventing separation from their families, and providing necessary services and assistance.

The Committee on the Rights of the Child, in its General Comment No. 13 (2011)[98] on the *right of the child to freedom from all forms of violence,* stresses the importance of an integrated and rights-based child protection and support system.

One of the most important measures for the protection of the child is the prompt appointment of a guardian, when necessary, as set out in General Comment No. 6 (2005) of the Committee on the Rights of the Child.[99] The choice of placement is compatible with Art. 8 of the convention only when it is in accordance with the law, pursues a legitimate aim, is in the best interests of the child and is considered a necessary measure in a democratic society.

Furthermore, Recommendation Rec(2005)5 of the Council of Europe to Member States on the Rights of Children Living in Residential Institutions underscores that placement in residential institutions should be a measure of last resort and that children's human rights must be fully respected in such settings.

7.4.1. Special Protection Measures for Minors

As stated above, special protection of the child requires measures and services for the care and development of the child temporarily or permanently deprived of parental care or of a child who, to protect his or her interests, cannot be left in the care of his or her parents.

IPP: The individualized protection plan *IPP,* developed by the General Directorate for Social Assistance and Child Protection is a key component in implementing these measures. This plan is developed within 30 days from the date the request for special protection is received, or immediately after the institution of emergency placement. The IPP must be drawn up based both on the child's developmental capacities and abilities and respect for their autonomy, as well as on the maintenance of connections with the outside world and preparation for future life outside the institution.[100]

Case management: The IPP is developed and implemented by the case manager. Thus, children in special protection have a designated case manager (within the General Directorate of Social Assistance and Child Protection or Authorised Private Bodies). Additionally, a case manager is also appointed for children with disabilities who are not subject to a special protection measure.

According to Order No. 288 of 2006[101] of the National Authority for the Protection of Children's Rights which approved the minimum mandatory standards for case management in the field of child protection

98 United Nations Committee on the Rights of the Child, 2011.
99 United Nations Committee on the Rights of the Child, 2005.
100 Recommendation Rec (2005)5 of the Committee of Ministers to member states of the Council of Europe on the rights of children living in residential institutions.
101 Official Gazette No. 637 of 24 July 2006.

> 'Case management in the field of child rights protection is a method of coordinating all social assistance and special protection activities carried out in the best interest of the child by professionals from various public and private services or institutions.'

The case manager ensures the coordination and monitoring of social assistance and special protection activities carried out in the best interests of the child. They assess children separated from their parents, prepare placement documentation, propose the necessary measures and services for the upbringing and care of the child in the special protection system, draft personalized intervention plans, conduct field monitoring visits in the services where the child is cared for, and prepare the child's transition out of the system. If a child is in a situation of difficulty, a comprehensive assessment is conducted by an interinstitutional team coordinated by the case manager.

At the request of the child, their family/legal representative, a public or private institution, a written notification by a third party, or through self-notification, *an initial assessment* must be conducted.

After the case manager is designated, they analyse the needs of the beneficiary and their family, requiring knowledge of: identification data of the child, parents, siblings, and others living with the child; the case history; any previous prevention services; reasons for family separation; the child's institutional trajectory – placement decisions, exits/returns to the protection system; school situation; special needs; health condition; disability status; psychological evaluation (behaviour types, personality, motor skills, will, attention, memory, imagination, cognitive capacity/thinking, language); services received; personal independent living skills; attachment types; the child's relationship with extended family and community; the child's opinion on the protection measure; data about the biological family; their health status; family income; and the relationship between the family and the professionals involved[102].

For children with disabilities, it is necessary to draw up the habilitation-rehabilitation plan provided for in Art. 19 of Government Decision No. 502/2017 on the organisation and functioning of the Commission for Child Protection. For abused, neglected and/or exploited children, including victims of trafficking, labour exploitation and commercial sexual exploitation, the case manager draws up the rehabilitation and/or social reintegration plan in accordance with the provisions of Law No. 272 The IPP developed by the case manager may ultimately lead to family reintegration, adoption, or socio-professional integration (for youth over 18 leaving the child protection system). When establishing the objectives of the IPP, the case manager is required to give priority to the reintegration of the child into the family.

Special protection measures for children include *placement, emergency placement and specialised supervision*.

102 SOS Children's Villages Romania, 2022.

The special protection measures established by this law shall benefit: a child having parents who are deceased, unknown or deprived of parental rights; who have been sentenced to a ban on parental rights; who receive legal counselling if they cannot exercise parental authority according to the law, or special guardianship; and who have been judicially declared dead or missing, when guardianship could not be established; a child who, to protect his or her interests, cannot be left in the care of his or her parents for reasons beyond his or her control; an abused or neglected child; a child found or a child left in a health facility; a child who has committed an offence under criminal law and who is not criminally responsible; unaccompanied children, foreign citizens or stateless persons, including those seeking asylum or benefiting from international protection in Romania, under the terms of Law No. 122/2006, as subsequently amended and supplemented

Under the terms of Art. 55 para. 1 of Law No. 272/2004 on the protection and promotion of children's rights, as a general rule, the child shall benefit from special protection until the date of acquiring full legal capacity. However, special protection can be granted under the law at the request of the young person who has acquired full legal capacity if he or she continues studies only once in each form of day education; the special protection is for the duration of the continuation of studies, but not exceeding the age of 26 years.[103] The period may be extended by 2 years if the young person is at risk.

Special protection measures for children who have reached the age of 14 are established only with their consent. If the child refuses to give consent, protection measures are determined only by the court, which, in duly justified cases, may overrule the child's refusal to consent to the proposed measure[104].

The placement of the child is a special protection measure, of a temporary nature, granted to all categories of children mentioned in Article 60 of Law No. 272/2004 on the protection and promotion of children's rights [105].

The court is the only competent authority to rule, considering the best interests of the child as a priority, on the person who exercises parental rights and fulfils parental obligations in a situation where the child is deprived, temporarily or permanently, of parental care[106].

Thus, among the measures that can be taken, the law establishes as a special protection measure of a temporary nature *the placement of the child with a person or family, a foster carer or a residential service*. The person or family receiving a child in foster care must meet two requirements: they must be residents of Romania and be assessed by the General Directorate of Social Assistance and Child Protection regarding the moral guarantees and material conditions they must meet to receive a foster child.

103 Domocoș, 2021, p. 120.
104 Art. 57 paras. 2–3 of Law No. 272/2004 on the protection and promotion of children's rights.
105 Irinescu, 2024, p. 498.
106 Art. 43 of Law No. 272/2004 on the protection and promotion of children's rights.

Children who have not reached the age of 7 years cannot be placed in a residential centre but only with an extended family, foster family or foster carer. By exception, placement in a residential type of service may be ordered for a child aged 3–7 years who has not yet reached the age of 7 and for whom habilitation/rehabilitation cannot be provided in other types of services if the child has both a complete functional deficiency/affliction and complete activity limitations and participation restrictions, as confirmed by the complex assessment service of the General Directorate for Social Assistance and Child Protection[107].

The child will be placed in accordance with the following rules expressly provided by law: *placing the child, as a priority, with the extended family or a substitute family*; *keeping siblings together*; *facilitating the exercise by parents of the right to visit the child and to maintain contact with the child.*

As regards *competent authorities* for taking the placement measure, the *Commission for the Protection of the Child* will determine the placement measure only in the case of a child who, to protect his or her interests, cannot be left in the care of the parents for reasons beyond their control and of a child who has committed an offence under criminal law and is not criminally responsible. In the absence of parental consent, placement will be determined by the guardianship court.

The court, at the request of the General Directorate for Social Assistance and Child Protection, will determine the measure of placement in the following cases (Art. 60 letters (a) and (f)) of Law No. 272/2004 on the protection and promotion of children's rights:

> 'A child whose parents are deceased, unknown, deprived of parental rights, or have been subjected to the penalty of prohibition of parental rights, who benefits from judicial counselling if they are unable to exercise parental authority according to the law, or from special guardianship, declared judicially deceased or missing, when guardianship could not be established; An unaccompanied child, a foreign citizen or stateless person, including one who applies for asylum or benefits from international protection in Romania, in accordance with Law No. 122/2006, with subsequent amendments and completions.'

Court intervention is also necessary if the emergency placement measure is to be replaced in the following cases - Art. 60 Letters c) and d) of Law No. 272/2004 on the protection and promotion of children's rights: "A child who is abused or neglected; A child found or abandoned in healthcare facilities."

The *effects of the placement* include the following:

1. Parental rights and obligations towards the child are maintained for the duration of the placement ordered by the child protection commission. On the other hand, parental rights and obligations towards the child are exercised

107 Ibid., Art. 64 para. 2.

by the Director of the General Directorate for Social Assistance and Child Protection for the duration of the placement measure ordered by the court in the case of the child referred to in Art. 60 Letters (a), (c), (d) and (f) of Law No. 272/2004 on the protection and promotion of the rights of the child. In these cases, by exception, parental rights and obligations towards the child may be exercised by the person, family, foster carer or head of the residential service having the child in placement.

2. Following the placement order, the natural parent's right to consent to the adoption of the child shall apply in accordance with the provisions of the law in force.
3. The Commission for the Protection of the Child, or the court that ordered the child's placement, shall establish a monthly contribution of the parents for the child's maintenance. If the payment of the maintenance contribution is not possible, the court shall oblige the parent who is able to work to perform actions or work of local interest for 20–40 hours per month for each child during the application of the special protection measure, within the administrative-territorial area where the parent resides or has their domicile[108].

Emergency placement is a special protection measure of a temporary nature in situations referred to in Art. 68 para. 1 of Law 272/2004 on the protection and promotion of children's rights:

> 'Emergency placement is a special protection measure of a temporary nature established for children in the following situations:
> (a) abused, neglected or subjected to any form of violence;
> (b) found or abandoned in healthcare facilities.'

Paragraph 2 of the same article provides that emergency placement may also be ordered in the case of a child whose sole legal guardian or both legal guardians have been detained, arrested, imprisoned or for any other reason are unable to exercise their parental rights and obligations in relation to the child.

The measure of emergency placement shall be determined by the director of the General Directorate of Social Assistance and Child Protection of the administrative-territorial unit in which the child is found in the situations referred to in Art. 68 para. (1) of Law No. 272/2004 on the protection and promotion of children's rights. For the child in the situations referred to in Art. 68 Para. (2), the measure of emergency placement shall be determined by the director of the General Directorate of Social Assistance and Child Protection. The court may issue a presidential order for emergency placement of the child if there are reasonable grounds for the existence of imminent danger to the child due to abuse and neglect.

108 Aniței, 2024, p. 423.

The *effects of the emergency placement* include the following:

1. For the duration of the emergency placement, the exercise of parental rights shall be suspended by operation of law until the court decides on the maintenance or replacement of this measure and on the exercise of parental rights. The automatic suspension of the exercise of parental rights is the result of situations that made it necessary to introduce the measure.
2. Any measure concerning the child shall be carried out in accordance with the principle of the best interests of the child. The aim is therefore to place the child, as a matter of priority, with the extended or substitute family, to keep the siblings together and make it easier for the parents to exercise their right to visit and maintain contact with the child.

Specialised supervision represents a special protection measure applied to *a child who has committed a criminal offence but is not criminally liable.* When deciding on this measure, the following factors are taken into account: the circumstances that led to the offense, the degree of social danger posed by the act, the environment in which the child was raised and lived, the risk of the child committing another criminal act, and any other elements that help characterize the child's situation (Art. 84 para. 2 of Law No. 272/2004).

This measure is ordered by the Child Protection Commission if the parents or legal representative give their consent; otherwise, it is ordered by the court.[109]

According to Art. 85 of Law No. 272/2004 on the protection and promotion of children's rights, the measure of specialised supervision consists in *maintaining the child within their family*, under the condition that they comply with certain obligations, such as: *attending school; using day care services; undergoing medical treatments, counselling, or psychotherapy; refraining from visiting certain places or associating with certain people.*

However, if it is not possible to keep the child in the family, or if the child fails to meet the imposed obligations, the competent authorities may decide to place the child in the extended family or a substitute family.

There is also the possibility, provided by law, to place the child in a specialized residential care service if the criminal act presents a high degree of social danger, or if the child continues to commit criminal offenses.

7.4.2. Procedural Framework

The cases provided for under Law No. 272/2004 on the protection and promotion of children's rights concerning the establishment of special protection measures fall within the jurisdiction of *the court* of the child's domicile and are exempt from court fees.

The cases are resolved under an emergency procedure, and court hearings cannot be scheduled less than 10 days apart[110]. The decision of the court of first instance is

109 Art. 71 of Law No. 272/2004 on the protection and promotion of children's rights.
110 Irinescu, 2024, p. 498.

final and enforceable.[111] Appeals must be submitted within 10 days from the date the decision is communicated.

Special protection measures are addressed as a matter of urgency, with the mandatory summoning of the child's legal representative, the General Directorate of Social Assistance and Child and the mandatory participation of the public prosecutor[112].

A child who has reached the age of 10 must be heard. The child's written statement about abuse, neglect, exploitation, or any form of violence can be used as evidence. Alternatively, the statement can be audio-video recorded in the presence of a psychologist, with the child's mandatory consent. When the court considers it necessary, hearings in cases involving abuse or neglect must take place in the hearing chambers, in the presence of a psychologist and only after the child has been properly prepared.

The General Directorate of Social Assistance and Child Protection from the child's place of residence or the administrative-territorial unit where the child was found shall prepare and submit to the court a report concerning the child, which shall include the following information: the child's personality and physical and mental conditions; the child's socio-medical and educational background; the conditions in which the child was raised and lived; proposals regarding the person, family, or residential-type service where the child could be placed; any other relevant information regarding the upbringing and education of the child that may assist in resolving the case.

7.4.3. Monitoring the Implementation of Special Protection Measures

The General Directorate of Social Assistance and Child Protection must review quarterly the circumstances that led to the establishment of the protection measures. If those circumstances change, the Child Protection Commission or the court must be notified to either modify or terminate the measures. For example, Art. 73 para. 4 of Law No. 272/2004 requires that

> 'The proposal for the termination of the protection measure and reintegration into the family must. A proposal to terminate the protection measure and reintegrate the child into the family must be accompanied by documents proving that the parents have attended counselling sessions aimed at developing parenting skills, so that reintegration occurs under the best possible conditions.'

Upon the *termination of special protection measures* through the child's reintegration into the family, the public social assistance service organized at the level of municipalities and towns, the social assistance personnel within the mayor's specialized services, as well as the General Directorate of Social Assistance and Child Protection (in the case of the sectors of Bucharest Municipality), from the child's place of residence or, as the

111 Lupașcu and Crăciunescu, 2021, p. 644.
112 Art. 134 para. 1 of Law No. 272/2004.

case may be, the parents' residence, are required to monitor the child's developmental progress and the manner in which the parents exercise their rights and fulfil their responsibilities toward the child. In this regard, monthly reports must be drawn up for a period of at least six months. Failure to comply with this obligation constitutes a contravention and is punishable by a fine.[113]

Upon *leaving the protection system,* young people are on their own, yet they often lack the necessary skills for independent living, as shown in a study conducted by the National Authority for the Protection of Children's Rights and Adoption and SOS Children's Villages Romania[114] about the situation of young people who have left the special protection system in Romania. The research targeted 13,151 young people who exited the special protection system between 2014 and 2017, with the results published on the National Authority for the Protection of Children's Rights and Adoption website. Of the 13,151 young people, half came from residential services, 10% from professional foster carers, and 40% were cared for by relatives or other families.

The proportion of youth who are neither employed, enrolled in education, nor participating in vocational training is almost twice as high among those from the protection system; of these, 46.4% are girls and 22.3% are boys; 24.3% of young people have graduate only eight grades; girls are 5.5 times more vulnerable; 65.9% do not have a job at the end of the protection measure and, most often, occupy positions with a very low degree of qualification (51% are in worker positions with/without qualification); 31% are not ready to find a home, and 22% are not ready to look for a job; 50% of the young women in the protection system who have children gave birth before the age of 20; and 11% do not live with their children, and about 5% of the children themselves entered the protection system.

In accordance with Art. 129 of Law No. 272/2004:

> 'children for whom a placement measure has been established, in accordance with the law, as well as mothers protected in maternal centers, are entitled, upon leaving the special protection system, to a one-time allowance equal to the amount of the national gross minimum basic salary guaranteed in payment, as established by law.'

Young people who have been subject to a special protection measure are entitled, upon leaving the special protection system – regardless of the timing, including if they have chosen to continue the measure – to a one-time allowance equivalent to three times the national gross minimum basic salary guaranteed by law. Additionally, those who can demonstrate that they are either enrolled in a legally recognized educational program or hold a job may choose between continuing the special protection measure or receiving a monthly allowance of 4.8 times the Social Reference Indicator (ISR), up until the age of 26. This choice can only be made once, regardless of when

113 Roth, Antal and Călian, 2019, p. 19.
114 See: Toth and Mita, 2020.

the individual exits the protection system. The amount of the allowance is 3,170 lei from 1 March 2024. The number of beneficiaries of this allowance in the first semester of 2024 was 5,324 young people, 3,367 more than that in the first semester of 2023, and the amount spent was 103,274,204 lei, 68,301,686 lei more than that in the first semester of the previous year.[115]

8. Guardianship of Those Under Child Protection Care

The legal bases for the guardianship of those under child protection care are the Civil Code[116] as well as European and international instruments.

European documents indicate that, although there is no general explicit obligation in EU legislation to appoint a guardian or curator for children deprived of parental care, at least seven EU directives require member states to appoint a guardian/curator for children in various contexts, some of which are directly related to children lacking parental care.[117]

Among the protective mechanisms is the institution of *guardianship*. Under the provisions of Art. 44 of Law No. 272/2004 on the protection and promotion of children's rights, '*any child who is temporarily or permanently deprived of parental care, or who, in order to protect their interests, cannot be left in the care of their parents, has the right to alternative care.*'

Guardianship has received various definitions in Romanian legal doctrine, the most eloquent being that "it is a responsibility assumed by a legally and factually capable person, whose purpose is to ensure the child's personal protection, manage their assets, and exercise their civil rights." [118]

Guardianship represents a set of legal rules governing the protection of a minor by a person other than their parents – the guardian – under the permanent supervision, control, and guidance of the guardianship court.

It is a *legal, gratuitous* (in principle), and *personal obligation*, through which the appointed guardian exercises parental rights and duties toward a child in any of the following situations, as provided in Art. 110 of the Civil Code: when both parents are, as the case may be, deceased or unknown; when both parents have been deprived of parental rights or have received a criminal penalty prohibiting parental rights; when both parents are under judicial advice or special guardianship; when both parents are missing or have been declared legally dead; when, upon the termination of an adoption, the court determines that establishing guardianship is in the best interest of the child.

115 Ministry of Labour and Social Solidarity, 2024b, p. 3.
116 Civil Code – Law No. 287/2009, Arts. 110–163, and Law No. 272/2004 on the protection and promotion of children's rights.
117 European Union Agency for Fundamental Rights and Council of Europe, 2014, p. 14; European Union Agency for Fundamental Rights and Council of Europe, 2022, p. 115.
118 Ungureanu and Munteanu, 2013, p. 268.

The operation of the guardianship institution must be based on several *principles*: the principle of acting in the *best interests of the child*[119]; the principle of *patrimonial independence* between the child and the guardian; the principle of *judicial oversight* by the guardianship court.

Protection of a minor through guardianship falls under the jurisdiction of the *guardianship court,* specifically the local court where the minor resides or was found. According to Art 111 of the Civil Code, notifying the court is a legal obligation for various parties, including close relatives of the minor, local civil registry services, the courts, or the public prosecutor. The guardian is appointed in the council chambers by a final court ruling.

The court will appoint as guardian either the person designated by the parent or another suitable person (a relative, in-law, or family friend), taking into account the child's best interests. Art. 114 of the Civil Code includes an important provision: the parent may designate a guardian through a unilateral legal act, a legally authenticated agreement, or a will.

The General Directorate of Social Assistance and Child Protection must prepare and present to the court an *evaluation report* of the family or individual proposed as guardian.

The child's opinion, their personal relationship with the prospective guardian, and the proximity of their residences are among the factors considered. Priority is given to members of the child's extended family.

A child placed under guardianship will receive a monthly placement allowance paid to the guardian.

Hearing the child who has reached the age of 10 is mandatory, as stipulated by Art. 264 of the Civil Code.[120] The right to be heard includes the possibility for the child to request and receive any information appropriate to their age, to express their opinion, and to be informed about the consequences of that opinion if followed, as well as the consequences of any decision affecting them.

Among the duties of the guardianship court is the possibility of constituting a *family council,* whose role is primarily to oversee how the guardian exercises their rights and fulfils their obligations regarding the child and their property. This council will provide advisory opinions at the request of the guardian or the court and will make decisions in cases provided by law. Acts performed by the guardian without the required advisory opinion may be annulled.

119 UN Committee on the Rights of the Child, 2013, 'General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration [art. 3, para. (1)], CRC/C/GC/14', para. 87 [Online]. Available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf (Accessed: 3 December 2023); See also: European Union Agency for Fundamental Rights, 2022.

120 Mihăilă, 2016, p. 516.

National legislation does not set specific professional or educational qualifications for guardians.

According to Art. 113 para. 1 of the Civil Code, the following cannot be appointed as guardians:

> 'A minor; a person under special guardianship or judicial advice, a person under legal assistance for entering into legal acts, a person subject to a protective mandate, or a person placed under legal curatorship; a person who has been stripped of parental rights or declared unfit to be a guardian; a person whose exercise of certain civil rights has been restricted, either by law or by court decision, as well as a person whose misconduct has been officially noted by a court of law; a person who, having previously served as a guardian, was removed from that role; a person in a state of insolvency; a person who, due to having interests contrary to those of the minor, would be unable to properly fulfil the duties of guardianship; a person excluded through an authenticated document or a will by the parent who was the sole holder of parental authority at the time of their death.'

The rights and obligations of the guardian are exercised in relation to both the person of the minor and his or her patrimony. Therefore, the guardian is responsible for the child's care, physical and mental health and development, education, schooling, and professional training, according to the child's abilities – Art. 134 of the Civil Code. Other rights and duties include: determining the child's domicile or a special residence for educational or professional training purposes; guiding the child in choosing a religion; supervision; requesting the return of the child from anyone holding them without right, consenting to the marriage of the minor who has reached the age of 16 years, consenting to the child's adoption under legal conditions, good-faith management of the child's assets, representing the minor under the age of 14 and providing maintenance[121].

By law[122], guardians are prohibited from engaging in any voluntary act that could harm the child's life, physical, mental, spiritual, moral, or social development, physical integrity, or health. They are also forbidden from committing any act of violence or depriving the child of rights in ways that could endanger their well-being, whether in the family or in institutions providing care and education, medical units, schools, or any other public or private institutions offering services to children.

The guardian also has a legal obligation to submit an annual report to the guardianship court detailing the administration of the child's property, within 30 days of

121 Lupașcu and Crăciunescu, 2021, pp. 620–626; Munteanu and Cercel, 2020, pp. 158–165.
122 Arts. 94 and 95 of Law No. 272/2004.

the end of the calendar year. At the court's request, the guardian may also be required to report on how they cared for the child, beyond just financial matters.

Guardianship is generally a legal, unpaid, and voluntary duty. Some nuances of the problem are required. Thus, the guardian may be entitled to compensation for the period of guardianship, the amount of which is determined by the court, with the advisory council's opinion, based on the effort involved in managing the child's assets and the financial situation of both the child and the guardian, but not exceeding 10% of the income generated by the child's property – Art. 123 Para. (2) of the Civil Code.

The guardian must personally fulfil their duties - they cannot appoint a representative or transfer these responsibilities to heirs. (Art. 157 Para. (2) of the Civil Code provides an exception: until a new guardian is appointed, the heirs may temporarily take on the guardianship duties, and if there are multiple heirs, they may authorize one among them via a special power of attorney.) Also, the guardianship court, with the advisory council's approval, may decide to entrust the administration of the child's property, or a part of it, to a qualified individual or specialized legal entity, depending on the complexity of the child's assets.

Guardianship ends when the conditions that led to its establishment no longer exist or upon the minor's death. The guardian's role also ends upon their death, removal from guardianship duties, or replacement, as outlined in Art. 156 of the Civil Code.

9. Curatorship of the Minor

Curatorship of the minor has as its legal bases the Civil Code (Law No. 287/2009 and Art. 150, Art. 142 para. 2, Art. 157 para. 3, Art. 160 para. 2, Art. 161 and Art. 29 para. 6 of Law No. 272/2004 on the protection and promotion of children's rights).

The *curatorship of a minor* is a *temporary and subsidiary form of protection*, often referred to in legal doctrine as an '*ad-hoc guardianship*' because the legal rules governing guardianship apply accordingly.

The reasons of establishing the *curatorship* of the minor are as follows:[123] when there is a time gap between the appointment of the guardian and the actual commencement of exercising the guardian's rights and duties guardian[124]*;* in the administration of property received by the minor free of charge, if the donor or testator has not specified that the assets be managed by the guardian[125]; whenever there are conflicting interests between the guardian and the minor that do not justify replacing the guardian, the guardianship court shall appoint a special curator[126] ; when the guardian is prevented from fulfilling his or her duties due to illness or other reasons[127] ; for well-grounded reasons during inheritance procedures, the public notary, at

123 Nicolae et al., 2016, p. 238.
124 Art. 119 para. 6 of the Civil Code.
125 Ibid., Art. 142 para. 2.
126 Ibid., Art. 150 para. 1.
127 Ibid., Art. 150 para. 2.

the request of any interested person or ex officio, may appoint a provisional special curator, to be later confirmed or replaced by the guardianship court[128]; if, upon the death of the guardian, their heirs are minors, the guardianship court must urgently appoint a special curator, who may be the executor of the will[129]; *Until the new guardian over the position*, in the cases provided by Articles 157 and 158 (death or removal of the guardian), the guardianship court may appoint a special curator[130]

The special childcare curatorship concerns both the minor's person and their assets. To carry out the patrimonial side of the curatorship, the curator administers the minor's property, represents him or her until the minor reaches the age of 14 years at the conclusion of the legal acts and approves the acts of the minor with limited legal capacity. This form of protection ends when the causes that determined the institution of the measure disappear or when the minor's incapacity ceases.[131]

With the legislative changes of 2022[132] (Law No. 140/2022 which amends, among other things, the Civil Code and the Civil Procedure Code) the legislator provided for the intervention of the court *in relation to the degree of discernment of the person who requires a form of protection.* Moreover, the extent of protection or its duration is established by law.[133]

Therefore, *judicial counselling* is the applicable measure when mental faculties are partially impaired, and the person requires ongoing guidance in exercising their rights and freedoms.

A person may benefit from *special guardianship* when their mental faculties are completely and, where applicable, permanently impaired, and the person needs continuous representation in the exercise of their rights and freedoms. Minors with limited legal capacity can also benefit from special guardianship – Art. 164 para. 6 of the Civil Code. However, when the guardianship court determines that protection can be provided by appointing a curator or placing the person under judicial counselling, this measure may be ordered up to one year before the individual turns 18, and it will take effect on the date the person reaches 18 years of age[134].

10. Adoption

The legal bases for adoption are the Civil Code[135]; Law No. 273/2004 on the adoption procedure; Methodological norms for the application of Law No. 273/2004, approved by

128 Ibid., Art. 150 para. 3.
129 Ibid., Art. 157 para. 3.
130 Art. 159 of the Civil Code.
131 Lupașcu and Crăciunescu, 2021, p. 633.
132 Law No. 140/2022 on some protection measures for persons with intellectual and psychosocial disabilities and amendment and completion of some normative acts, Official Gazette No. 500 of 20 May 2022.
133 Crăciunescu, 2022, p. 171.
134 Art. 164 para. 6 of the Civil Code.
135 Law No. 287/2009.

Government Decision No. 579/2016, amended by Government Decision. No. 798/2021; and Law No. 272/ 2004 on the protection and promotion of children's rights, which is complemented by European and international regulations including UN Convention on the Rights of the Child, The Hague Convention, the European Convention on the Adoption of Children and the Charter of Fundamental Rights of the EU.

Adoption, as the finality of the IPP, is established for the following reasons:[136] a) One year has passed since the establishment of the special protection measure, and the child's biological parents – from whose care the child could not remain for reasons not attributable to them – do not cooperate with the authorities in carrying out the steps necessary for the reintegration or integration of the child; b) six months have passed since the establishment of the special protection measure, and the child's biological parents – from whose care the child could not remain for reasons attributable to them – do not cooperate with the authorities in carrying out the steps necessary for the reintegration or integration of the child; c) six months have passed since the establishment of the special protection measure, and the biological parents could not be located; d) the child was registered as born to unknown parents. In this case, adoption as the final goal of the individualized protection plan is established within a maximum of 30 days from the issuance of the child's birth certificate; e) one year has passed since the establishment of the special protection measure, and the child's biological parents – from whose care the child could not remain for reasons not attributable to them – do not cooperate with the authorities in carrying out the steps necessary for the reintegration or integration of the child; f) after the establishment of the special protection measure, the biological parents over the age of 18 who have submitted a written declaration stating that they do not wish to care for and raise the child do not withdraw their initial declaration within 45 days.

The best interest of the child must be the paramount consideration in adoption cases, in accordance with international law.

Child adoption in Romania can take two forms: *domestic and international adoption* (depending on the presence of the element of a foreign element)[137].

The Civil Code defines adoption in Art. 451 as follows:

> 'The legal operation through which a parent-child relationship is created between the adopter and the adoptee, as well as kinship ties between the adoptee and the adopter's relatives.'

International adoption is defined as:

> 'An adoption in which the adopter or adoptive family and the child to be adopted have habitual residence in different countries, and, following the

136 Art. 28 of Law No. 273/2004 on the adoption procedure.
137 Mihăilă, 2010, p. 40.

approval of the adoption, the child is to have the same habitual residence as the adopter.'[138]

10.1. Principles of Adoption

The principles underlying adoption are enshrined in both the Art. 452 of the Civil Code and Art. 1 of Law No. 273/2004 regarding the adoption procedure:

> 'a) the principle of the best interest of the child; b) the principle of raising and educating the child in a family environment; c) the principle of continuity in the education of the child, taking into account their ethnic, cultural and linguistic origin; d) the principle of informing the child and taking into account his/her opinion in relation to his age and degree of maturity; e) the principle of promptness in the fulfilment of any acts related to the adoption procedure; f) the principle of guaranteeing confidentiality with regard to the identification data of the adopter or, as the case may be, of the adoptive family, as well as with regard to the identity of the natural parents.'

The substantive conditions of concluding the adoption are regulated in Arts. 455–468 of the Civil Code and Arts. 6–18 of Law No. 273/2004.

10.2. Conditions Regarding the Child to Be Adopted

10.2.1. Adoption Must Be Done in the Best Interests of the Person to Be Adopted

Art. 454 para. 1 of the Civil Code provides that '*Adoption is approved by the guardianship court, if it is in the best interest of the child and all other conditions stipulated by the law are met*'. This requirement is also stated in Art. 263 Para. (1) of the Civil Code: 'Any measure regarding the child, regardless of its author, must be taken with respect for the best interests of the child'. They are also present in the provisions of Law No. 273/2004 regarding the adoption procedure. The best interest of the child is a fundamental requirement of adoption, being one of its essential characteristics. Regarding the notion of the best interest of the child, we can say that we are referring to the child's primary needs, such as ensuring a moral framework and material conditions necessary for his or her growth and education.

10.2.2. The Person to Be Adopted Must Be a Minor

As the law provides, a child can be adopted until reaching the age of 18, at which point they gain full legal capacity[139]. This age condition of the adoptee has its rationale in the finality of the adoption itself. According to the provisions of Art. 455 para. 2 of the Civil Code, if the person who acquired full exercise capacity was raised during his or

138 Art. 2 letter d) of Law No. 273/2004 on the adoption procedure.
139 Art. 455 para. 1 of the Civil Code.

her minority, he or she can also be adopted. This provision is justified on the idea that if the one to be adopted was raised during the minority, it means that the minor was protected and the finality of the adoption was realised in advance, before the adoption was approved.[140]

10.2.3. Consent to Adoption

Consent of the minor: Art. 463 para. 1 letter b) of the Civil Code states: 'For the conclusion of an adoption, the consent of the adoptee who has reached the age of 10 is required'. This establishes a genuine special legal capacity for the minor.[141]

The consent to adoption of a child who has reached the age of 10 is given before the court during the adoption approval stage, according to Art. 15 of Law No. 273/2004 on adoption procedure. The same provision states that *the adoption cannot be approved without the consent of the child who has reached the age of 10.*

To ensure informed consent, "prior to expressing consent, the child protection authority in whose jurisdiction the child resides shall counsel and inform the child, taking into account their age and maturity, especially regarding the consequences of the adoption and their consent to it, and shall prepare a report in this regard."

Consent of the minor's natural parents: It is also necessary for consent to adoption to be given 'by the biological parents or, where applicable, the child's guardian if the biological parents are deceased, unknown, declared dead or missing, or are under judicial counselling or special guardianship and are unable to express their will due to lack of discernment, in accordance with the law' – Art. 463 para. 1 letter a) of the Civil Code.

According to Art. 14 of Law No. 273/2004 on adoption procedure, the consent of the biological parents or, where applicable, the guardian is given before the court when the application for the initiation of adoption proceedings is decided. In the specific case of adoption by the spouse of the child's parent the biological parent's consent is given before the court during the adoption approval hearing.

The consent of the biological parents must be informed, free, unvitiated, and not conditional upon any benefit of any kind. The parents or guardian may only give their consent after 60 days have passed since the child's birth, and they may revoke it within 30 days of having expressed it (Art. 466 of the Civil Code).

The court may, in exceptional cases, override the refusal of the biological parents or, where applicable the guardian to consent to the adoption if it is proven, by any means of evidence, that such refusal is abusive and the court considers that the adoption is in the best interest of the child. The child's opinion expressed in accordance with the law must also be taken into account and the court must explicitly justify its decision in this regard.[142]

140 Florian and Floare, 2024, p. 492.
141 Nicolescu, 2023, p. 501; Avram, 2022, p. 336.
142 Art. 467 of the Civil Code and Art. 8 para. 2 of Law No. 273/2004 on adoption procedure.

10.2.4. Conditions Regarding the Adopting Person/Family

Adopter's full exercise capacity and state of health: According to the provisions of Art. 459 of the Civil Code the person seeking to adopt must have full legal capacity. This is required by law because through adoption parental rights and responsibilities are transferred to the adopter, and therefore the adopter must have the necessary psychological aptitude to exercise them under normal conditions, in the best interest of the adopted child. Persons with mental illnesses or intellectual disabilities are not permitted to adopt. According to Romanian legislation there is no maximum age limit for the adopter.

Minimum age difference of 18 years between adopter and adoptee: Under Art. 460 of the Civil Code the person who wishes to adopt (the adopter) must be at least 18 years older than the adoptee. If there are valid reasons, the guardianship court may approve the adoption even if the age difference is less than 18 years, provided that there is at least a 16-year age difference between the adopter and the adoptee.[143]

Moral and material ability to adopt: Both Civil Code in Art. 461 and Law No. 273/2004 on the adoption procedure in Art. 13 require that the adopter or adoptive family fulfil the moral guarantees and material conditions necessary for upbringing, education, and harmonious development of the child.

The adopter/adoptive family are subject to an evaluation process after which they obtain a certificate of a person/family fit to adopt which confirms the applicant's parental abilities as well as the fulfilment of the moral guarantees and material conditions required for the upbringing, education, and harmonious development of the child.

Consent of the adopter, respectively of the adopter's spouse: Art. 463 para. of the Civil Code requires the consent of the adopter or, as the case may be, of the spouses in the adopting family, when they adopt together, or of the spouse of the adopter, unless the lack of discernment makes it impossible for him or her to express his or her will. This latter agreement is one of non-opposition to adoption, given that the spouse does not become the adopter.

The consent of the adopter or adoptive family must be given in front of the court together with the resolution of the request for approval of the adoption[144].

Other substantive conditions required for the validity of an adoption are the *absence of impediments to the adoption.*

143 According to Art. 9 of the European Convention on the Adoption of Children of Strasbourg: "(1) A child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.
(2) The law may, however, permit the requirement as to the minimum age or the age difference to be waived in the best interests of the child: when the adopter is the spouse or registered partner of the child's father or mother; or by reason of exceptional circumstances."

144 Art. 16 of Law No. 273/2004.

10.2.5. Substantive Negative Conditions or Impediments to Adoption

Other substantive conditions required for the validity of an adoption are the *absence of impediments to the adoption.*

Kinship: Adoption between siblings is prohibited, regardless of their gender; thus, second-degree collateral kinship is an impediment to adoption (Art. 457 of the Civil Code).

Status of spouses and ex-spouses: Adoption of two spouses or former spouses by the same adopter or adoptive family, as well as adoption between spouses or former spouses, is prohibited (Art. 458 of the Civil Code).

Simultaneous or successive adoption: Two people cannot adopt together, either simultaneously or successively, unless they are husband and wife. However, a new adoption can be approved in the following cases: (a) the adopter or adoptive spouses have died; in which case, the previous adoption is considered dissolved on the date the final court decision authorizing the new adoption becomes definitive.

Adoption by same-sex couples: Adoption by two people of the same sex is not allowed.[145]

Law No. 273/2004, in addition to the above-mentioned Civil Code provisions, establishes in Art. 6 letter c) the possibility of adopting a child who has a single, unmarried parent who is in a stable relationship and living with an unmarried person of the opposite sex, who is not related to the parent up to the fourth degree, and who declares by notarized document that the new adopter has directly and consistently participated in the upbringing and care of the child for an uninterrupted period of at least five years.

Other impediments to adoption provided in Art. 7 of Law No. 273/2004 regarding the adoption procedure are as follows:

1. A person who has been definitively convicted for a crime against another person or family, committed with intent, as well as for the crime of child pornography and crimes related to drug or precursor trafficking, cannot adopt.
2. A person or family whose child benefits from a special protection measure or who is deprived of parental rights cannot adopt.
3. A person who wants to adopt alone or whose spouse is mentally ill or mentally disabled cannot adopt.
4. A child out of wedlock, recognised by the father administratively, as well as a child whose paternity was established by a court decision that acknowledged the recognition by the father or that confirms the will of the parties, cannot be adopted, without an investigation of the validity of the request; they can be adopted by the father's wife only if the filiation is confirmed by the result of the expertise carried out using the DNA serological method.

145 Art. 462 of the Civil Code; Mihăilă, 2021, pp. 279–314; Moloman and Ureche, 2022, p. 996.

5. A child whose natural parents have not reached the age of 14 years cannot be adopted[146].

The international adoption of a child with habitual residence in Romania by a person/family with habitual residence abroad can only be approved for children who are in the records of the National Authority for the Protection of Children's Rights and Adoption and only in the following situations, according to the provisions of Art. 60 of Law no. 273/2004 regarding the adoption procedure: the adopter or one of the spouses of the adopting family is related up to the fourth degree, including the child for whom the opening of the adoption procedure was approve; the adopter or one of the spouses of the adopting family is also a Romanian citizen; the adopter is the spouse of the natural parent of the child whose adoption is requested.

Adoptable children in an international adoption procedure must be in the records of the Authority for the Protection of Children's Rights and Adoption, in this case, the children for whom the case manager established adoption as the finality of the IPP.

After reaching its peak in 2004, the number of domestic and international adoptions has been fairly constant in recent years. What is encouraging is that according to officials' statements, largely due to legislative changes in the field, the number of adoptions is increasing. According to official statistics for the year 2023,[147] a total of 1,356 national adoptions and 12 international adoptions were completed. During the same period, 7,057 children were registered as adoptable, of whom 6,285 were publicly listed on the adoptable children's profile. In terms of potential adoptive parents, 3,119 individuals or families were certified for national adoption, and an additional 67 received certification for international adoption. Comparable figures from previous years reflect a similar trend. In 2022, for example, 6,702 children were declared adoptable, 2,845 families or individuals were certified for adoption, and 1,587 children were adopted, including 16 through international adoption procedures. In contrast, 2021 saw a total of 1,655 adoptions finalized, with 5,797 children listed as adoptable - most of whom were aged between 3 and 6 years – and 3,067 certified adopters or adoptive families.[148]

Thus, regardless of the positive evolution of the statistics, there is still a significant gap between the number of adoptable children and people certified to adopt. Particularly concerning is the growing number of children who are considered difficult to adopt, including those with disabilities. A special category is represented by children who have experienced an unsuccessful adoption, the majority being in the age category over 7 years, with siblings in the system or with developmental delays. Children who have run away from home and street children have quite a small chance of being successfully adopted.[149]

146 Art. 11 of Law No. 273/2004 on the adoption procedure.
147 Ministry of Labour and Social Solidarity, 2023a, pp. 1–3.
148 Ministry of Labour and Social Solidarity, 2021b, p. 1.
149 Stănculescu et al., 2016, pp. 300 and 302.

11. Participation of Children in the Child Protection System

The participation of children in the social protection system represents an essential dimension of respecting children's rights, as enshrined in the UN Convention on the Rights of the Child and in national legislation, particularly Law No. 272/2004 on the protection and promotion of children's rights. In a system where children are often seen as passive beneficiaries, recognizing their capacity to actively contribute to decisions that affect their lives is a necessary paradigm shift for promoting genuine and effective protection.

Children can participate in various civil, administrative and criminal procedures. Therefore, they must be helped to be aware of the importance of participation in decision-making that concerns them and to understand the reasons why some of their opinions or wishes cannot be considered.

Whether we are talking about requests related to the establishment of guardianship, civil status registrations, inheritance claims, divorce, adoption, or procedures before public administration authorities for the granting of services or benefits, or situations where children are arrested or convicted, or serve as witnesses in judicial proceedings, *a child-friendly infrastructure* must be ensured, as stated in the '*National Strategy for the Protection and Promotion of Children's Rights "Protected Children, Safe Romania*" 2023–2027.'

According to Art. 12.1 of the *Convention on the Rights of the Child* (CRC):

> 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

This is regarding both the child's capacity as a legal subject and the legal and social status of the child, who has full autonomy, like adults. The child has the right to be heard and informed in relation to all administrative or judicial proceedings in which he or she participates.

Similarly, Art. 24 of the *Charter of Fundamental Rights of the EU* stipulates the following:

> 'Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.'

According to Art. 6 of the *European Convention on Human Rights* (ECHR), specific requirements must be respected when a minor is involved in criminal proceedings. In any such procedure, the child's age and level of maturity must be taken into account, ensuring that

the minor understands the implications of every step in the process that concerns them. Hearings should be conducted behind closed doors, publicity should be limited, and the minor must have access to legal counsel.

The '*Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice*'[150] stipulate that a child-friendly judicial system is characterized by a set of fundamental principles: participation, the best interests of the child, dignity, protection against discrimination, and the rule of law.

Regarding the *child's participation*, the following must be respected: access to justice, consultation, the right to be heard, and consideration of the child's views, taking into account the child's maturity and any potential communication difficulties. The best interests of the child are paramount, and the best interests of all children involved in the same proceeding or case should be assessed and weighed separately to reconcile the possible conflicting interests of the children. To ensure the *dignity of the child*, the child must be treated with care, sensitivity, fairness, and respect throughout all procedures, and must not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. The child must be *protected against discrimination* guaranteeing their rights without discrimination based on sex, race, colour or ethnic origin, age, language, religion, political or other beliefs, national or social origin, socioeconomic background, parental status, association with a national minority, property, birth, sexual orientation, gender identity, or any other status. *The principle of the rule of law* aims to ensure procedural guarantees, such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right of access to justice and the right to appeal.

The participation of the child in the assessment and planning of protection measures is a fundamental component of child-centered social care practice. Every child for whom a special protection measure is established benefits from an individualized protection plan developed by a multidisciplinary team coordinated by the case manager. Depending on the child's age and capacity, they are invited to participate in the development of this plan, expressing their views regarding: the type of proposed measure (family placement, institutional care, reintegration; the place where they wish to live; maintaining contact with their biological family or siblings; their educational or personal needs and aspirations. This participation holds both legal and therapeutic value, helping the child feel valued, heard, and involved in their own life.

Children entering the special protection system should know and be informed about every step taken – from the preparation for placement in the alternative care system to details about siblings, school, or the placement location.[151] However, studies carried out in Romania show that two out of three children in the special protection system are not consulted about their opinions and preferences. Children who have been consulted tend to prefer the living conditions in the special protection system,

150 Council of Europe, 2011.
151 Council of Europe, 2014, p. 26.

expressing their desire for their families to be free from violence, alcohol or substance abuse, and to have decent living conditions.[152]

In Romania, *Standard 5 from the Order of the Minister of Labour and Social Justice No. 25/2019*, on the approval of minimum quality standards for residential social services intended for children in the special protection system, supports the ongoing involvement of children in decisions and processes concerning their own lives, as well as their active participation in all aspects of social life. The same document requires residential centres to carry out, at least once a year, periodic information and training sessions for children. Additionally, center staff must train and inform children about how they can express and communicate their opinions, wishes, and suggestions regarding their living environment, the services they receive, and the activities in which they are involved.

The same document requires residential centers to conduct at least one annual information and training session for children. Additionally, center staff must train and inform children about how they can express and communicate their opinions, wishes, and suggestions regarding their living environment, the services they receive, and the activities in which they are involved.

Hearing the minor, a guarantee of their participation in the protection system, is a fundamental procedural safeguard aimed at ensuring that children's voices are considered in decisions affecting their lives. The guardianship court cannot decide without *hearing the minor* if the minor has reached the age of 10 years. According to Art. 264 of the Civil Code, in the administrative or judicial procedures that concern the child, hearing of the child who has reached the age of 10 years is mandatory. However, a child under the age of 10 may also be heard if the competent authority considers it necessary for resolving the case. The child may request to be heard, and if the competent authority rejects the request, it must provide justification.

In principle, the court considers the child's opinion, valuing it according to age and degree of maturity.

The hearing of the minor is done in the council room. Generally, only the judge and the court clerk are present, but depending on the circumstances, the court may allow the participation of other individuals (a parent, guardian, psychologist).[153] Recently, *special rooms* have been set up *for hearing children*, but they are present in few places in the country.[154]

According to the provisions of Art. 57 para. 3 of Law No. 272/2004 on the protection and promotion of children's rights, special protection measures for children who have reached the age of 14 years are established only with their *consent*. In the case where the child refuses to give his or her consent, the protective measures are established only by the court, which, in well-reasoned situations, can override the child's refusal to express his or her consent to the proposed measure.

152 Stănculescu et al., 2016, p. 43.
153 For details, see: Neamț, 2021, p. 225.
154 Federația Organizațiilor Neguvernamentale Pentru Copil, 2021.

The child who has reached the age of 10 years will give his or her *consent to the adoption* in front of the court, in the adoption approval phase, according to Art. 15 of Law No. 273/2004 on the adoption procedure. This does not involve just listening, and it is a requirement of consent that cannot be met otherwise.

Article 2 letter r) of the Pre-University Education Law No. 198/2023 affirms that the pre-university education system is founded on a set of core values, including *the principle of respecting students' right to express their opinions*. In addition, Art. 116, letter r) provides that the County Directorates for Pre-University Education and the Bucharest Directorate for Pre-University Education are responsible for maintaining communication with representative organizations of students, teachers, and parents. These bodies must also ensure their effective participation in both the development and implementation of education policies at the county level, as well as in decision-making processes that impact the school community.

The concept of *Student Status* plays a crucial role in shaping the educational experience by formally recognizing students not merely as passive recipients of knowledge but as active participants in the learning environment.

Student Status from August 1, 2024[155] regulates the rights and duties of students in pre-university education in Romania, establishing a legal framework that guarantees a series of essential rights for students' active participation in the educational system.

Students have *the right to be heard* (the right to express their opinions on all matters that concern them, including the educational process); *the right to actively participate in school life* (students can be involved in decision-making processes that affect them through student councils and other representation mechanisms); they have *the right to be consulted regarding the curriculum* (in order to ensure that it meets their learning needs and interests); *the right to actively participate in school life* (students have the right to be actively involved in school life and decision-making processes at the institutional level. This includes participating in extracurricular activities, school councils, and the development of local educational policies) *the right to access to information* (students have the right to be informed about school regulations, their rights, and evaluation procedures); *the right to association* (student representation in schools is carried out through student councils and their representative associations).

Children and young people with special educational needs integrated in mainstream education have the same rights as other students (Art. 8 of Student Status).

These rights are essential for developing an inclusive and participatory education that promotes student autonomy and responsibility in their learning process. Student involvement in decisions affecting their education helps create a more equitable and respectful environment for all.

The National Council of Students serves is an important institution in Romania's pre-university education system, providing a formal and unified platform for student representation. The National Council of Students is the official representative body

155 Student Status from August 1, 2024, Official Gazette, Part I No. 795 of 12 August 2024.

for all students in Romania's pre-university education system. Established in 2007, it aims to ensure the active participation of students in the educational decision-making process and to promote their rights and interests at the local, county, and national levels. The National Council of Students operates under the coordination of the Ministry of Education, but it is an autonomous structure made up of representatives from student councils in each county and from every educational institution. Its organization is based on the Regulation on the organization and functioning of the National Council of Students, which is periodically approved through a ministerial order[156]. The National Council of Students is an important mechanism for children's participation in decision-making in the field of education.

Through the program initiated by the *Save the Children organization*, titled '*We Have Rights Too*', over 20,000 children from all the organization's branches were involved in 2019, along with more than 600 volunteers, teachers, and schools as partners. In 2024, the program reached 40,000 children nationwide, providing information on topics such as children's rights and responsibilities, the phenomenon of discrimination and its emotional impact, violence, and bullying, using a non-formal, peer-to-peer education approach.

The aim of the program was to:

> 'inform children to raise awareness of their own rights and responsibilities, in line with the UN Convention on the Rights of the Child, using peer-to-peer education techniques and to encourage their participation in social programs and actions, increase the respect for children's rights, and involve children and young people in non-formal education activities to develop their knowledge of child rights as well as skills.' [157]

Despite the favourable legal framework, the implementation of children's participation in the social protection system faces several obstacles: lack of adequate professional training in the field of communication with children; adult-centric attitudes among professional staff, who sometimes do not value children's opinions; absence of standardized procedures for listening to and documenting the child's views; administrative pressures that may lead to decisions being made based on efficiency rather than the best interest of the child.

Additionally, younger children, children with disabilities, or those from severely disadvantaged backgrounds are often excluded or underrepresented in the decision-making process, which further exacerbates systemic inequalities.

156 Regulament din 8 iulie 2024 de organizare și funcționare a Consiliului Național al Elevilor, [Regulation of July 8, 2024, on the Organization and Functioning of the National Council of Students], Official Gazette Part I No. 683 of 16 July 2024.
157 Salvati Copiii, n.d.

12. Conclusions

Children in Romania and especially those in the protection system face difficulties that can affect their development, despite the real progress made by Romania.

As a priority, we identify the need to create an integrated child protection system with qualified personnel and the involvement of territorial administrative units and the entire community. Through social programmes, effective measures must be implemented to prevent children's abandonment and separation from their family. Early detection of risk situations, particularly those involving abuse, neglect, or abandonment, is imperative to ensure timely intervention by competent authorities and existing social services.

The social assistance system in Romania is still underdeveloped. It is necessary to increase the number of people or foster families, implement training and preparation programmes for foster carers and provide material means for them, as well as ensure constant evaluation and monitoring. Another aspect that must be considered is the creation of a specialised placement network for children with disabilities, following the model of other states.

Even though the number of children in the special protection system and the number of residential services and institutionalised children has decreased, prevention is still ineffective, as are the forms of support given to young people when they leave the system. There is a pronounced lack of comprehensive information and counselling services for both children and their parents.

The limited access to quality education for children with SENs and disabilities, lack of infrastructure adequate for the needs of these children and lack of resources and qualified support platforms continue to lead to the children's marginalisation or even exclusion.

To address these gaps, prevention and support services, including day services (e.g. day-care centres, rehabilitation centres and counselling and support centres for children and parents) and family-type services (foster care or foster homes) must be strengthened. Family-type services represent vital alternatives for families temporarily or permanently unable to care for their children Nonetheless, institutional care should remain an exceptional and temporary measure, reserved for cases where other interventions are not viable.

The different practices at the level of the counties in Romania, regarding deinstitutionalisation, closing of residential centres and the alternative services offered,[158] require the creation of a transparent monitoring system to take the necessary measures in time.

Finally, the establishment and enhancement of rehabilitation and social integration services are critical for equipping children with the skills necessary for independent living after exiting the protection system. By fostering these capacities, Romania

158 According to the statistical analyses carried out within the SIPOCA 2 Project.

can support a more successful transition for vulnerable children into autonomous adulthood.

Bibliography

AGERPRES (n.d.) 'Suma cheltuită în trimestrul I din bugetul MMSS pentru finanţarea serviciilor sociale a fost de 43 ,3 milioane lei', *agerpres.ro* [Online]. Available at: https://www.agerpres.ro/economic-intern/2024/08/10/suma-cheltuita-in-trimestrul-i-din-bugetul-mmss-pentru-finantarea-serviciilor-sociale-a-fost-de-43-3-milioane-lei--1339726?utm (Accessed: 16 December 2024).

Aniței, N.C. (2024) *Dreptul familiei.* Bucharest: Universul Juridic.

Avram, M. (2022) *Drept civil. Familia.* 3rd edn. Bucharest: Hamangiu.

Bihor County Council (2024) Strategia județeană de dezvoltare a serviciilor sociale în domeniul asistenței sociale şi protecției copilului pe termen mediu (2022 - 2027) şi lung (până în 2031). Bihor: Bihor County Council - D.G.A.S.P.C., p. 14 [Online]. Available at: https://www.dgaspcbihor.ro/dgaspcbh.ro/informatii_publice/Strategie_2023-2031.pdf (Accessed: 10 October 2023).

Council of Europe (1996) 'European Social Charter (revised)', *Council of Europe Treaty Series*, No. 163, 3 May 1996.

Council of Europe (2011) 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, *coe.int* [Online]. Available at: www.coe.int/children. (Accessed: 12 December 2023).

Council of Europe (2014) 'Securing Children's Rights: A Guide for Professionals Working in Alternative Care', *coe.int,* p. 26 [Online]. Available at: https://rm.coe.int. (Accessed: 12 December 2023).

Crăciunescu, C.M. (2022) 'Câteva considerații privind ocrotirea minorului în perspectiva proiectului de modificare a Codului civil', *Revista de Dreptul familiei,* 2022/1, pp. 165–181.

Domocoș, V. (2021) 'Reintegrarea minorilor ulterior dispunerii măsurilor speciale de protecţie. Abandonul de familie în contextul interesului superior al minorului', *Revista de Dreptul familiei* 2021/2, pp. 116–140.

European Union Agency for Fundamental Rights (2014) 'Guardianship systems for children deprived of parental care in the European Union - With a particular focus on their role in responding to child trafficking', p. 16 [Online]. Available at:
https://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf (Accessed: 29 September 2023).

European Union Agency for Fundamental Rights (2022) 'Guardianship systems for unaccompanied children in the European Union. Developments since 2014' [Online]. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-guardianship-systems-developments_en.pdf (Accessed: 3 December 2023).

European Union Agency for Fundamental Rights, Council of Europe (2014) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office, p. 14.

European Union Agency for Fundamental Rights, Council of Europe (2022) *Handbook on European law relating to the rights of the child 2022 edition*. Luxembourg: Publications Office, p. 115.

Federaţia Organizaţiilor Neguvernamentale Pentru Copil (2021) 'AUDIS: pentru o mai bună audiere a minorilor in Romania' [Online]. Available at: https://fonpc.ro/2021/08/20/audis-pentru-o-mai-buna-audiere-a-minorilor/#:~:text=SCOPUL%20PROIECTULUI%20Proiectul%20isi%20propune%20sa%20dezvolte,ceea%20ce%20prive%C8%99te%20instrumentarea%20cauzelor%20cu%20minori (Accessed: 29 September 2023).

Florian, E., Floare, M.I (2024) *Dreptul familiei. Căsătoria. Regimuri matrimoniale. Filiația*. 9th edn. Bucharest: C.H. Beck.

Grigoraș, V., et al. (2021) *Diagnoza situației persoanelor cu dizabilități în România*. Bucharest: Ministry of Labour and Social Protection p. 24 [Online]. Available at: https://anpd.gov.ro. (Accessed: 5 November 2023).

Institutul Național de Statistică (2024) 'Sistemul de protecție socială în România în anul 2022' [Online]. Available at: https://insse.ro/cms/sites/default/files/field/publicatii/statistica_protectiei_sociale_2022.pdf, (Accessed: 16 December 2024).

International Labour Organization and United Nations Children's Fund (2023) *More than a billion reasons: The urgent need to build universal social protection for children – Second ILO–UNICEF joint report on social protection for children*. Geneva, New York: UNICEF [Online]. Available at: https://www.unicef.org/media/135211/file/More%20than%20a%20billion%20reasons:%20The%20urgent%20need%20to%20build%20universal%20social%20protection.pdf (Accessed: 15 November 2024).

Irinescu, L. (2024) *Dreptul familiei.* Bucharest: Hamangiu.

Lupașcu, D., Crăciunescu, C.M. (2021) *Dreptul familiei.* 4th edn. Bucharest: Universul Juridic.

Marc, C., Bacter, C. (2016) 'Protecția copilului în România: provocări și soluții' in Hatos, A., Chipea, F. (eds.) *Bihorul în Europa – Local, național și european în transformările sociale regionale din perioada 1996-2015*. Cluj-Napoca: Presa Universitară Clujeană, pp. 201–222.

Marin, M., Stănculescu, M.S. (2019) 'Evoluția sistemului de protecție a copilului în România în ultimii 30 de ani', *Sociologie Românească,* 17(2), pp. 60–91; https://doi.org/10.33788/sr.17.2.3.

Mihăilă, C.O. (2010) *Adopția - Drept român și comparat.* Bucharest: Universul Juridic.

Mihăilă, C.O. (2016) 'Consideratins on the minor's guardianship' in *Proceedings of the International Conference "European Union's Hystory, Culture and Citizenship".* 9th edn. Bucharest: C.H. Beck.

Mihăilă, C.O. (2021) 'Adopția internațională. Interzicerea adopției de către persoanele de același sex. Rainbow families. O realitate încă de neacceptat?', *Revista de Dreptul Familiei,* 2021/2, pp. 279–314.

Ministry of Labour and Social Solidarity (2020) The Report 'Instrument de monitorizare și evaluare a stadiului asigurării tranziției de la îngrijirea în instituții la îngrijirea în comunitate', within the *Project,* p. 11 [Online]. Available at:
https://copii.gov.ro/1/wp-content/uploads/2022/10/Instrument-de-monitorizare.pdf. (Accessed: 27 September 2023).

Ministry of Labour and Social Solidarity (2021a) The Report 'Ghid de modele alternative de dezvoltare a activității de prevenire a separării copilului de familie' [Online]. Available at:
http://comunitate.copii.ro/wp-content/uploads/2021/07/Ghid-de-modele-alternative-de-dezvoltare-a-activita%CC%86t%CC%A6ii-de-prevenire-a-separa%CC%86rii-copilului-de-familie.pdf. (Accessed: 5 October 2023).

Ministry of Labour and Social Solidarity (2021b) 'Statistici 2021 Date statistice privind adopțiile în anul 2021', p. 1 [Online]. Available at: https://copii.gov.ro/1/date-statistice-copii-si-adoptii/ (Accessed: 28 September 2023).

Ministry of Labour and Social Solidarity (2021c) 'Propunere de politică publică privind îmbunătățirea și diversificarea serviciilor alternative la îngrijirea în instituții' [Online]. Available at: https://copii.gov.ro/1/wp-content/uploads/2022/10/Propunere-politica-publica-servicii-alternative.pdf (Accessed: 5 September 2023).

Ministry of Family Youth and Equal Opportunities (2022a) 'Cartografierea nevoilor, a serviciilor și infrastructurii disponibile pentru copiii expuși riscului de separare de familie, în special în comunitățile vulnerabile' [Online]. Available at: https://mfamilie.gov.ro/1/wp-content/uploads/2022/09/Cartografierea-nevoilor-RO.pdf. (Accessed: 30 September 2024).

Ministry of Labour and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption (2022b) 'Evoluții în domeniul protecției copilului', p. 26 [Online]. Available at: https://www.mmuncii.ro/j33/images/buletin_statistic/copil_2022.pdf (Accessed: 27 September 2023).

Ministry of Labour and Social Solidarity (2022c) *National Strategy for the Rights of Persons with Disabilities "An equitable Romania" 2022-2027.* Bucharest: Ministry of Labour and Social Solidarity [Online]. Available at: https://anpd.gov.ro/web/wp-content/uploads/2022/12/The-National-Strategy-for-the-Rights-of-Persons-with-Disabilities-An-equitable-Romania-2022-2027.pdf (Accessed: 5 November 2023).

Ministry of Labour and Social Solidarity - National Authority for the Protection of the Rights of Persons with Disabilities (2022d) 'Raport de activitate pentru anul 2022', pp. 21-24 [Online]. Available at: https://anpd.gov.ro/web/despre-noi/rapoarte-si-studii/rapoarte/ (Accessed: 27 October 2023).

Ministry of Labor, Family, Youth and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption (2023) 'Evoluţii în domeniul protecţiei copilului' p. 2 [Online] Available at: https://copii.gov.ro/1/wp-content/uploads/2024/04/Buletin-statistic-trim-IV-2023.pdf (Accessed: 16 May 2025).

Ministry of Labour and Social Solidarity (2023a) Statistica adopții 2023 'Date statistice privind adopțiile în anul 2023', pp. 1-3 [Online]. Available at: https://copii.gov.ro/1/date-statistice-copii-si-adoptii/ (Accessed: 1 March 2024).

Ministry of Labour and Social Solidarity (2023b) 'Evoluții în domeniul asistenței sociale în trimestrul I 2023', p. 24 [Online]. Available at: https://www.mmuncii.ro/j33/images/buletin_statistic/Asist_sem_I_2023.pdf (Accessed: 1 October 2023).

Ministry of Labour and Social Solidarity-National Authority for the Protection of Children's Rights and Adoption (n.d.) 'Prezentare generală' [Online]. Available at: https://copii.gov.ro/1/prezentare-generala/ (Accessed: 5 December 2023).

Ministry of Labor, Family, Youth and Social Solidarity - National Authority for the Protection of the Rights of Persons with Disabilities (2024) 'Statistică trimestrul IV 2024 – Evoluţii în domeniul protecţiei persoanelor cu dizabilităţi', p. 2 [Online]. Available at: https://anpd.gov.ro/web/transparenta/statistici/ (Accessed: 16 May 2025).

Ministry of Labour and Social Solidarity - National Authority for the Protection of the Rights of Persons with Disabilities (2024a) 'Prezentare sistem de protecție specială decembrie 2024' [Online]. Available at: https://copii.gov.ro/1/date-statistice-copii-si-adoptii/ (Accessed: 12 March 2025).

Ministry of Labour and Social Solidarity (2024b) 'Evoluții în domeniul asistenței sociale în semestrul I 2024', [Online]. Available at: https://mmuncii.ro/j33/images/buletin_statistic/Asist_sem_I_2024.pdf [Online]. (Accessed: 16 May 2025).

Ministry of Labor, Family, Youth and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption (2024c) 'Evoluţii în domeniul protecţiei copilului', p. 1 [Online]. Available at: https://copii.gov.ro/1/wp-content/uploads/2025/04/Buletin-statistic-copii-31-dec-2024.pdf (Accessed: 16 May 2025).

Ministry of Labor, Family, Youth and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption (2024d) 'Prezentare sistem 2024 - Situație protecţia drepturilor copilului' [Online]. Available at: https://copii.gov.ro/1/date-statistice-copii-si-adoptii/ (Accessed: 16 May 2025).

Ministry of Family, Youth and Equal Opportunities - National Authority for the Protection of Children's Rights and Adoption (2024e) 'Situaţie copii cu dizabilităţi aflaţi în evidenţele Serviciilor de Evaluare Complexă ale DGASPC' [Online]. Available at: https://copii.gov.ro/1/date-statistice-copii-siadoptii/ (Accessed: 16 May 2025).

Ministry of Labour, Family and Social Solidarity - National Authority for the Protection of Children's Rights and Adoption (2024f) 'Situații de abuz, neglijare, exploatare a copilului' [Online]. Available at: https://copii.gov.ro/1/date-statisticecopii-si-adoptii/ (Accessed: 16 May 2025).

Moloman, B.D., Ureche, L.C. (2022) *Cod Civil, Comentarii - Explicații. Jurisprudență. Cartea a II - a. Despre familie. Art. 258-534.* 2nd edn. Bucharest: Universul Juridic.

Munteanu, C., Cercel, S. (eds.) (2020) *Persoanele – Fișe de Drept civil*. Bucharest: Universul Juridic.

Neamț, I.I. (2021) 'Interesul superior al copilului versus rolul activ al judecătorului', *Revista de Dreptul familiei supplement,* 2021/2, pp. 201–247.

Nicolae, M. (ed.) (2016) *Drept Civil – Persoanele*. Bucharest: Universul Juridic.

Nicolescu, C. (2023) *Dreptul familiei.* 2nd edn. Bucharest: Solomon.

Onica-Chipea, L. (2014) *Dreptul securității sociale*. Bucharest: ProUniversitaria.

Roth, M., Antal, I., Călian, D. (2019) *Sistemul protecției copilului în România, în vol. Principii versus practici în sistemul de protecție a copilului.* Cluj-Napoca: Presa Universitară Clujeană.

Salvati Copiii (n.d.) 'Promovarea drepturilor copilului', *salvaticopiii.ro* [Online]. Available at: https://www.salvaticopiii.ro/ce-facem/drepturile-copilului/promovarea-drepturilor-copilului (Accessed: 15 May 2025).

Save the Children (2022) 'Poverty and unequal access to education expose vulnerable children to educational exclusion: Save the Children Romania goes into communities to implement an integrated model to stimulate participation in education and prevent the phenomenon of early school leaving' [Online]. Available at: https://www.salvaticopiii.ro/sci-ro/media/Documente/41,5-dintre-copiii-din-Romania-in-risc-de-saracie-sau-excluziune-sociala-Modelul-propus-de-Salvati-Copii.pdf. (Accessed: 25 October 2023).

SOS Children's Villages Romania (2022) 'Management de caz în domeniul protecției copilului. Suport de curs (iunie 2022)' [Online]. Available at: https://copii.gov.ro/1/wp-content/uploads/2023/01/Suport-curs-management-de-caz.pdf (Accessed: 30 November 2023).

Stănculescu, M.S., et al. (eds.) (2016) *Romania: Copiii din sistemul de protecție a copilului - 2014*. Bucharest: Alpha MDN.

Guvernul României (2023) *Strategia națională pentru protecția și promovarea drepturilor copilului 'Copii protejați, România sigură' 2023–2027.* ('*National Strategy for the Protection and Promotion of Children's Rights "Protected Children, Safe Romania*" 2023–2027'), Official Gazette, Part I No. 942bis of 18 October 2023 [Online]. Available at: https://copii.gov.ro/1/wp-content/uploads/2023/11/Monitorul-Oficial-Partea-I-nr.-942Bis.pdf, (Accessed: 28 September 2024).

Toth, A., Mita, D. (2020) S*urvey on the Situation of Young People who Leave the Special Protection System in Romania – Research Report.* Bucharest: Sociometrics [Online]. Available at: https://www.sos-satelecopiilor.ro/wp-content/uploads/2020/08/Studiu-tineri-iesiti-english-web-1.pdf (Accessed: 26 September 2023).

Ungureanu, O., Munteanu, C. (2013) *Drept civil – Persoanele*. Bucharest: Hamangiu.

UNICEF (n.d.) 'Garanția Europeană pentru Copii – Împreună pentru construirea unui viitor incluziv și prietenos pentru copiii din România', *unicef.org* [Online]. Available at: https://www.unicef.org/romania/ro/garan%C8%9Bia-european%C4%83-pentru-copii (Accessed: 15 May 2025).

United Nations Committee on the Rights of the Child (2005) 'General comment No. 6, Treatment of unaccompanied and separated children outside their country of origin CRC/GC/2005/6' [Online]. Available at: https://www2.ohchr.org/ (Accessed: 2 December 2023).

Zamfir, C. (ed.) (1997) *Pentru o societate centrată pe copil – Institutul de Cercetare a Calității Vieții*. Bucharest: Alternative, pp. 7–10.

| Chapter 7 |

Child-Protection Systems – Serbian Perspective

Veljko Vlašković

ABSTRACT

It is in the best interests of the child that he or she grows up with both parents who take care of him or her jointly within a functional family. However, certain situations necessitate support and assistance for the child and the family from society and the state for the child to continue to exercise his or her rights within the primary family environment. If such support and assistance is sufficient, the child may be temporarily or permanently deprived of a family environment, states are obliged to provide the child with alternative care. Through the structure of a country-report, this paper presents the main features of the child protection system in Serbia and the way in which Serbia respects the obligation to provide the child at risk with the right to special protection and assistance in accordance with Art. 20 of the UN Convention on the Rights of the Child and the UN Guidelines for the Alternative Care of Children. Although the outlook provided is general, it is an integral overview of the child protection system in Serbia, including the normative framework of protection, guiding principles that are applied when providing support and protection, the structure of the child protection system, followed by a review and consideration of a wide range of welfare services and protective measures that are available to children and families in crisis situations. Special attention is paid to the child's participation within the protection system, as well as the position of children with disabilities and children in street situations, who are extremely vulnerable groups.

KEYWORDS

child rights, child protection system, Serbia, support, social services, measures of protection, alternative care

1. Introductory Notes

The results of the population census conducted in 2022 shows that the Republic of Serbia has 6,647,003 inhabitants.[1] Serbia is an old country in terms of the average age structure of its population, which is close to 44 years, while the largest share of its population (29.20%) comprises residents over 60 years of age.[2] The share of children

1 Statistical Office of the Republic of Serbia, 2023.

2 Republic Institute for Social Protection, 2023; see also: Statistical Office of the Republic of Serbia, 2023.

Veljko VLAŠKOVIĆ (2025) 'Child-Protection Systems – Serbian Perspective' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 227–259. https://doi.org/10.71009/2025.njmb.cps_6.

in the total population of Serbia is only 17.4%, which is a consequence of its extremely negative natural growth.[3] All these indicators emphasise the greater need to establish an adequate and efficient national child protection system.

In 2022, the share of children in the social protection system in relation to total number of children was 14.5%.[4] In the same year, in relation to the total number of children in the social protection system, 7.32% of them were children with disabilities, although this share is significantly higher when considering services from the domain of social protection, especially residential accommodation service.[5]

2. The Core Aim of the National Child Protection System

The normative framework for the national child protection in Serbia was primarily established by the Constitution of the Republic of Serbia (2006),[6] Family Act (2005)[7], Social Welfare Act (2011)[8] and the Act on Financial Assistance for Families with Children (2017),[9] being further developed by a series of appropriate by-laws adopted by the Government or the Ministry responsible for family and social protection.[10] Furthermore, Serbia has ratified all major global and regional international treaties on human rights and child rights that involve economic, social and cultural rights.[11] Some of the child rights recognised and formulated in the United Nations Convention on the Rights of the Child (hereinafter: CRC)[12] have been incorporated into the Family Act, but even without this, the CRC, as ratified international treaty, may be directly applied by the courts and administrative authorities in Serbia, whose position in the

3 Republic Institutute for Social Protection, 2023, p. 5.
4 Ibid., p. 6.
5 Ibid., p. 45.
6 Constitution of the Republic of Serbia, 'Official Gazette of the RS', No. 98/2006 and 115/2021.
7 Family Act, 'Official Gazette of the RS', No. 18/2005, 72/2011 and 6/2015.
8 Social Welfare Act, 'Official Gazette of the RS', No. 24/2011 and 117/2022 - decision of the Constitutional Court.
9 Act on Financial Assistance for Families with Children, 'Official Gazette of the RS', No. 113/2017, 50/2018, 46/2021 - decision of the Constitutional Court, 51/2021 - decision of the Constitutional Court, 53/2021 - decision of the Constitutional Court, 66/2021, 130/2021, 43/2023 - decision of the Constitutional Court and 62/2023.
10 For example, Rulebook on Detailed Requirements and Standards for the Provision of Social Services, 'Official Gazette of the RS', No. 42/2013, 89/2018 and 73/2019; Rulebook on Foster Care, "Official Gazette of the RS", No. 66/2022, Rulebook on the Organization, Norms and Standards of the Work of the Social Work Centre, 'Official Gazette of the RS', No. 59/2008, 37/2010, 39/2011 - other Rulebook, 1/2012 - other Rulebook, 51/2019, 12/2020 and 83/2022.
11 For example, Serbia ratified the following United Nations treaties in the years listed below: International Covenant on Economic, Social and Cultural Rights (1971), Convention on the Rights of the Child (2001), Convention on the Rights of Persons with Disabilities (2009). When it comes to the international human rights treaties of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms was ratified in 2004, as well as the European Social Charter (revised) in 2009.
12 The United Nations, Convention on the Rights of the Child, 20 November 1989.

hierarchy of legal acts is just below the Constitution and above any other national source of law.[13]

According to the Constitution, every family and child in Serbia enjoys special protection in accordance with the law, with particular reference to the protection of children with physical or psychological disabilities.[14] Simultaneously, individuals and families that need social assistance and support in order to overcome social and life difficulties and create conditions for meeting basic life needs have the right to social protection.[15]

A family is recognised as the fundamental social unit in the Family Act and, hence, is entitled to the special protection of the state.[16] This provision should be interpreted extensively in terms of protecting and providing support to the family environment in which the rights of each and every child is exercised to the greatest extent possible. In this context, the principle of the best interests of the child implies that a child should grow up and develop within stable family surroundings that include a functional family with adequate parental care.

Consequently, the state's obligations include enabling the broader social and legal preconditions for the establishment of a functional and supportive family, protecting a stable and nurturing family environment, providing assistance and support to a family in crisis in order to strengthen family and parental capacities as much as possible, or providing the child with alternative family-based surroundings or family-like environment whenever required.

Thus, according to the Family Act, the state is under the obligation to provide a child bereft of parental care with protection in a family environment whenever the need arises.[17] Such an approach reflects a family-oriented policy in which priority for the protection of a child without parental care is given to the family or a family-like environment, while residential care is seen as an exception or the last resort.

However, protection is provided not only to a child without parental care, but also to a child who is at risk of losing parental care, as well as to other vulnerable categories of children whose development is jeopardised due to various psychological, health, moral or financial issues concerning themselves, their caregivers or relationships within the family or wider social surroundings.[18] Therefore, social protection of the child involves not only the provision of alternative care services, but primarily and, above all, ensuring that families and parents 'have the access to adequate forms of assistance and support in their caregiving role'.[19] These measures and assistance services are provided both by the Family Act and the social welfare law aimed at

13 Constitution of the Republic of Serbia, Art. 194 paras. 4–5.
14 Ibid., Art. 66 paras. 1, 3.
15 Ibid., Art. 69 para. 1.
16 Art. 2 para. 1 of Family Act.
17 Art. 6 para. 6 of Family Act.
18 In that context, see the Social Welfare Act, Art. 41, para. 2.
19 The United Nations, Resolution adopted by the General Assembly on 18 December 2009, 64/142 Guidelines for the Alternative Care of Children (Hereinafter: UN Guidelines), para. 3.

preventing the breakup of the family, elimination or reducing the deficiencies in the exercise of parental responsibility, strengthening parental capacities and enabling the appropriate exercise and protection of the child's rights. Family law measures are fully child-oriented, including preventive and corrective measures over the exercise of parental responsibility. Social protection and welfare services, as well as measures of material support provided by the Social Welfare Act, are more diverse and family-oriented with the aim of having impact on the very causes that led to the endangerment or violation of the rights of the child.

Considering that a family is 'the natural environment for the growth, well-being and protection of children',[20] one of the key proclaimed goals of the national child protection system in Serbia is to preserve and improve family relationships.[21] Therefore, various measures of personal and material support for the family are legally recognised and provided by a normative framework in order to ensure that the child is not to be separated from his or her parents and remains in their care whenever possible. Thus, efforts are made to prevent disturbing the child's emotional attachment to his or her parents or caregivers. In this context, competent state authorities are the ones to decide on alternative care only if the previously implemented family support measures and services did not lead to adequate protection of the child's rights. Unfortunately, in certain cases, alternative care becomes a necessity, for instance, situations where parents are no longer alive or when they are unknown or deprived of parental responsibility in accordance with the law.

In recent decades, Serbia has been making significant efforts to improve the child protection system, making it more efficient and ready to respond to various challenges and problems in the protecting child rights. However, significant problems persist, making it difficult to implement rules effectively in the field of child protection, which inevitably has a negative effect in the achievement of the proclaimed and desired goals in this area. The general causes of the problems lie primarily in the insufficient availability of material and personnel resources, a relatively low national income, prevailing social prejudices, as well as the increased need for the inclusion of children and their families in the social protection system due to global and local crises, financial insecurity and pandemics that adversely affect the mental health of the population and individuals.

For example, some of the specific problems observed in the domain of alternative care concern reducing the number of children under the age of three, including those with disabilities, in residential care institutions;[22] strengthening support to children leaving alternative care;[23] and raising awareness to combat stigmatisation and dis-

20 UN Guidelines, para. 3(4).

21 Art. 3 para. 1(4) of Social Welfare Act.

22 The UN Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, 7 March 2017, para. 40(a). Hereinafter: CRC/C/SRB/CO/2-3.

23 CRC/C/SRB/CO/2-3, para. 40(f).

crimination of children in alternative care.[24] Further, it has been shown that children in foster care stay too long in foster families, which contradicts the goals of this temporary form of child care that aims to reintegrate the child into his or her family of origin or have the child adopted.[25] Another unfavourable trend is the transfer of children within the child protection system from one foster family to another or from one residential care institution to another facility.[26]

3. Guiding Principles of the National Child Protection System

Respecting the CRC, other international treaties on human rights, the UN Guidelines and other relevant international documents, the child protection system in Serbia is based on the following guiding principles: the best interests of the child,[27] prohibition of discrimination,[28] the right of the child to have his or her views duly taken considered in accordance with the child's age and maturity,[29] respect for the integrity and dignity of the child and his and her family members,[30] providing services in the least restrictive environment,[31] provision of timely and comprehensive protection[32] and accessibility and individualisation of social protection.[33]

As pointed out in legal theory, the obligations of the States Parties to guarantee the best interests of the child represent the central idea of the CRC.[34] Considering the child's best interests is one of the general principles of the CRC, according to which the scope of all rights of the child is interpreted and determined.[35] In accordance with the Family Act, 'everyone is obliged to be guided by the best interests of the child in all activities concerning the child'.[36]

The entire system of child protection rests on the idea of appropriate application of the concept of the child's best interests. Therefore, this principle is applied when choosing the type of support and assistance for the child and his or her parents or caregivers, regarding all decisions concerning alternative care, as well as on determining the most suitable measures for the child leaving alternative care. The child

24 Ibid., para. 40(g).
25 Thus, according to one conducted research, children between the ages of 5 and 12 have the least chance of leaving foster care. Žegarac, 2014, p. 16.
26 Republic Institute for Social Protection, 2023, p. 14.
27 Art. 6 para. 1 of Family Act; Art. 26 of Social Welfare Act.
28 Ibid., Art. 25.
29 Art. 65 para. 3 of Family Act.
30 Art. 24 of Social Welfare Act.
31 Ibid., Art. 27.
32 Ibid., Arts. 29–30.
33 Ibid., Art. 33.
34 Schmahl, 2021, p. 71.
35 Art. 3 para 1 of CRC and the UN Committee on the Rights of the Child, General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44 para. 6), 27 November 2003, para. 12. Hereinafter: CRC/GC/2003/5.
36 Art. 6 para. 1 of Family Act.

protection system in Serbia involves some by-laws, whose contents regarding the best interests of the child are more closely determined by specifying certain elements or by providing guidelines for its interpretation based on adopted international standards in this area. Thus, the Rulebook on Foster Care from 2022 provides the elements and guidelines for determining the content and interpretation of the best interests of the child in this form of alternative care. For example, these elements and guidelines, among others, include giving preference to kinship foster families if the child's relatives meet the legal requirements for foster parents, choosing foster parents primarily from the child's original environment, non-separation of siblings, limitation on the number of children in the same foster family (maximum of three children or two in the case of children with disabilities), preserving the identity on the child and review of the eligibility of foster parents on a regular basis.[37]

The UN Committee on the Rights of the Child also singles out the prohibition of discrimination as one of the general principles of the CRC.[38] As a generally and widely recognised legal standard from international human rights treaties, non-discrimination is guaranteed by the Constitution of Serbia,[39] Act on the Prohibition of Discrimination (2009)[40] and through a series of legal sources from various fields, including the Social Welfare Act.[41] The Act on the Prohibition of Discrimination defines the concept of discrimination and its forms and types besides providing mechanisms of protection against discrimination (lodging a complaint with the Commissioner for the Protection of Equality, initiation of special proceedings before civil court and so on).[42] In accordance with the highly detailed and comprehensive definition provided by this Act:

> 'the terms 'discrimination' and 'discriminatory treatment' mean any unjustified distinction or unequal treatment, i.e. omission (exclusion, limitation or priority), in relation to persons or groups as well as members of their families, or persons close to them, on an open or covert manner, based on race, colour, ancestry, citizenship, national or ethnic origin, language, religious or political beliefs, sex, gender, gender identity, sexual orientation, sexual characteristics, income level, property status, birth, genetic characteristics, state of health, disability, marital and family status, convictions, age, appearance, membership in political, trade union and other organisations and other real or assumed personal characteristics.'[43]

37 Art. 11of Rulebook on Foster Care.
38 CRC/GC/2003/5, para. 12.
39 Art. 21 of the Constitution of the Republic of Serbia.
40 Act on the Prohibition of Discrimination, 'Official Gazette of the RS, No. 22/2009 and 52/2021.
41 Art. 25 of Social Welfare Act.
42 Arts. 2, 5–7, 35–40, 41–46 of Act on the Prohibition of Discrimination. It is not within the competence of the Commissioner to decide on the rights and obligations of the individuals and legal entities, but to issue appropriate warnings and recommendations, or to submit legal initiatives, See: Petrušić and Grubač, 2014, p. 73.
43 Art. 2 para. 1 of Act on the Prohibition of Discrimination.

Regarding discrimination of children, it is expressly forbidden to treat them differently solely upon

> 'their state of health, disability, sexual orientation, gender identity, sexual characteristics, ethnic origin, nationality, marital or illegitimate birth, public appeals to give preference to children of one gender over children of the other gender, as making a difference according to the state of health, disability, sexual orientation, gender identity, gender characteristics, ethnic origin, nationality, property status, profession and other characteristics of social position, activities, expressed opinion or belief of the child's parents, i.e. guardians and family members.'[44]

One of the examples of discrimination faced by the child in Serbia is related to the problem of removing a child from parental care solely due to the financial or material poverty of his or her parents. This deeply disturbing malpractice that occurred occasionally was opposed strongly by the issued opinion of the Commissioner for the Protection of Equality[45].

When it comes to the possible grounds of discrimination against a child or other users of services in the social protection system, the Social Welfare Act also prohibits its discrimination based on 'the nature of social exclusion'.[46] Social exclusion does not necessarily involve discrimination, but it is often its consequence.[47] Hence, it is important to provide every child with access to social protection services, regardless of the grounds of discrimination that resulted in his or her social exclusion.

All decisions concerning child care and protection should take into account the child's right to express his or her own views freely in all matters in accordance with the child's age and maturity.[48] The principle of child participation is recognised by making each decision about the child in the social protection system by referring to the provisions of Family Act, the Social Welfare Act and the CRC and in accordance with the best interests of the child.[49] In certain cases, the views of the child have decisive importance (e.g. a child who has attained the age of 10 and who is able to reason has to give his or her consent to the establishment of foster care).[50]

Furthermore, the national system of child protection is also based on the principle of respect for the identity and dignity of the child and his or her parents. This principle implies respect not only for the physical and psychological integrity of the child,

44 Ibid., Art. 22.
45 Opinion of the Commissioner for the Protection of Equality regarding the complaints of A.Ž.C. against centres for social work due to discrimination on the basis of financial status in the field of social protection, No. 07-00-401/2013-02 from 15 October 2013.
46 Art. 25 of Social Welfare Act.
47 Jelić and Kolarević, 2016, p. 215.
48 Art. 65 paras. 1, 3 of Family Act.
49 See also: Art. 35 para. 3 of the Social Welfare Act.
50 Art. 116 of Family Act.

but also for the moral, cultural and religious beliefs of the child and his or her parents and family in accordance with the child's best interests.[51]Further, authority measures and social services should be provided to the child in the least restrictive environment by choosing measures and welfare services that allow the child to remain in his or her family or family-based surroundings whenever possible.[52] The principle of 'the least restrictive environment' corresponds to the principle of proportionality, which is recognised in family law when deciding on measures of corrective supervision and, in particular, when making decisions on the deprivation of parental responsibility.[53]

The child protection system in Serbia also follows the principle that services and forms of child protection must be available, accessible, adjusted to the individual child and provided in a timely manner. The national child protection system must be flexible, since the need for social protection and child welfare services may often arise suddenly when it is necessary to act urgently in order to protect the rights of the child. In this context, it is extremely important that the child's needs are recognised in a timely manner and appropriate care and protection are provided to the child as soon as possible. The timely provision of social protection measures and services comes to the fore especially in extreme cases of domestic violence, child abuse or gross neglect, child abandonment, situations when the child lives on the street and all other cases where the safety or health of the child is directly endangered. To deal with such situations, various forms of protection and social services are available, such as immediate accommodation in a shelter, urgent kinship placement, urgent foster care and emergency placement in residential care.[54]

4. Maintenance of the Child Protection System

The child protection system in Serbia is based on preventive, corrective and other protection measures, social welfare services and material support for the child and his or her family. Protection measures are taken by the competent administrative or judicial authorities in cases where state intervention is required due to deficiencies in the exercise of parental responsibility or to decide on the care of a child without parental custody. These measures mainly involve the decisions of the state authorities in the domain of family law protection. Social welfare services and material support include assistance and various forms of social support for a child and his or her family in order to preserve or improve family relations, create opportunities for independent living, social inclusion and development of a child to the extent possible, as well as ensure his or her safety.

51 Art. 24 of Social Welfare Act.
52 Ibid., Art. 27.
53 The principle of proportionality is the international standard by which courts must be guided when restricting certain qualified human rights. See: Vujović, 2019, p. 55.
54 Arts. 47 and 49 para. 1(3), Art. 53 para. 1(3) of Social Welfare Act, as well as the Rulebook on Foster Care, Arts. 5, 8.

In accordance with the Social Welfare Act, the child, in addition to other beneficiaries, realises his or /her right to social protection through appropriate social welfare services and by providing material support aimed at ensuring the existential minimum and support for social inclusion of the child as a beneficiary.[55] The social welfare services provided to the child by the social protection system of Serbia can be divided into assessment and planning services, day services in the community, support services for independent living, counselling and therapy services, socio-educational services, as well as child placement services.[56]

Social protection of the child is organised at the national, regional or local level, which implies the obligation of the state, regional or local authorities to ensure provision of appropriate social welfare services.[57] Most of these services may be provided by private licensed organisations, or can be entrusted to them by the Republic of Serbia; an autonomous province or local self-government can sign a contract with the best licensed service provider that responded to the announced public tender.[58]

Funds for social welfare activities are provided in the budget of the Republic of Serbia, by the autonomous province or local self-government unit, as well as through the performance of activities of social welfare institutions.[59] These funds can be obtained through donations, as well as by assigning property or establishing endowments and foundations in accordance with the law.[60] Funds for social welfare services are also provided by the user or his or her family members who have the duty of maintenance established by law, as well as third parties who have taken on the obligation to bear the service costs for the child.[61]

In the domain of social welfare services, Serbia has decentralised social protection in terms of decision-making and financing, but not in the field of providing material support, which, with the exception of providing one-time assistance, is the responsibility of the central government.[62] In terms of financial support significant for child protection, the state allocates the most funds for compensation of earnings during maternity leave and leave from work to carry out child care (54.7%), followed by expenses for parental allowance (19.9%).[63] It should be noted that these two mentioned measures are not from the field of social policy, but their primary goal is the protection of parental employment rights, as well as the implementation of the pronatal population policy (e.g. the parental allowance usually belongs to the mothers for the birth of the first four children).[64] The expenses for the accommodation of children in the social protection system, as of 2021, the state bears 64.9% of the share

55 Ibid., Art. 4 para. 2; Art. 5 para. 2.
56 Ibid., Art. 40.
57 Jovanović, 2020, p. 8.
58 Art. 64 of Social Welfare Act.
59 Ibid, Art. 22 para. 1.
60 Ibid., para. 4.
61 Ibid., para. 6, along with Art. 212, para. 21.
62 Matković, 2014, p. 16 and p. 25.
63 The given data refer to 2021: Republic Institute for Social Protection, 2023, p. 58.
64 The given data refer to: Ibid., p. 57.

of expenses for family accommodation (kinship care and foster care) while it bears 35.1% of the share in the expenses for residential accommodation.[65]

Regarding the responsibility for providing child welfare services, the competence is divided among central, provincial and local authorities. Thus, the central or provincial government is responsible for assessment and planning.[66] Unlike these services, day welfare services in the community, involving activities that support the child's stay in the family and in his or her close environment, are provided by the local self-government.[67] Local self-governments also provide services in terms of supported housing to adolescents who are leaving the social protection system. However, the central government is obliged to provide supported housing to a child or a young person with disability, unless the child is under the jurisdiction of a local self-government, which is above the national average, according to the degree of development.[68]In such cases, more developed local self-governments finance these services. Local authorities provide counselling and therapeutic services and socio-educational services, with the exception of counselling and training of foster and adoptive parents.[69] In this context, local self-governments can also provide the services of a family assistant, which is not the standardised welfare service, but it is recognised through the systematic interpretation of the Social Welfare Act. A family assistant is a social welfare professional, who, with the support of an expert team, cooperates with the family aiming to prevent the removal of the child from the family of origin, providing support for the child's return to the family and preventing child neglect or abuse.[70]

Finally, for the provision of the child accommodation services, the responsibility is divided among the central government, regional authorities and local self-governments, in accordance with the Social Welfare Act.[71] Thus, central and regional authorities provide family accommodation (kinship care, foster care) and residential accommodation services, while local self-governments are responsible for the

65 The given data refer to: Ibid., p. 58.

66 Assessment welfare services include assessment of the condition, needs, strenghts and risks of the beneficiary and other persons important to him/her, as well as the assessment of guardians, foster parents and adoptive parents, while planning services involve adoption of individual plans for the protection of child and his or her family (e.g. a plan for the independent life of a child who, before turning 14, was deprived of parental care, or he or she did not live with the parents). See: Art. 43 of the Social Welfare Act.

67 Art. 44 of Social Welfare Act. Those day welfare services include: day care, home assistance, drop-in services or service of the child's personal assistant. See: Art. 44 para. 2 of the Social Welfare Act and the Rulebook on Detailed Requirements and Standards for the Provision of Social Services, Arts. 67–87.

68 Art. 209, para. 3 of Social Welfare Act.

69 Ibid., Art. 45 para. 2, in relation to Art. 209 paras. 2–3.

70 Miloradović et al., 2016, p. 11. After the implementation of the pilot project in 2014 and 2015, the family assistant service survived in the largest cities of Serbia (Belgrade, Kragujevac, Novi Sad and Niš). See Matković and Stranjaković, 2020, p. 17.

71 Art. 47 para. 2. of Social Welfare Act.

services of providing shelters for children, shelters for victims of violence, as well as respite accommodation.[72]

In general, local self-governments finance those child welfare services that they are required by law to provide. However, a local self-government unit whose level of development is below the national average may finance welfare services within its jurisdiction through dedicated transfer sources from the budget of the Republic of Serbia.[73]

According to a comprehensive survey that ended in 2018, about 17% of social welfare services at the local level were financed from dedicated transfers.[74] Nevertheless, the importance of financing local welfare services through dedicated transfers is much greater than the previous data shows because the share of the city of Belgrade in the total expenditures of local government units is over one third, although this city has not used dedicated transfers.[75] Consequently, over 60% of local self-government units used dedicated transfer sources to a lesser, greater or almost exclusive extent in order to provide social welfare services.[76]

Among the child welfare services provided by local self-governments, the most widespread services are those for the child's personal assistant, day care and counselling.[77] In terms of overall social welfare services provided to children, the most prevalent are family accommodation services. However, the accommodation services under the competence of local self-governments are significantly less available. Thus, during 2018, shelters for victims of violence existed in 10% of municipalities and cities in Serbia, while respite services were organised in 5% of local communities.[78] Regarding the most widespread daily service in the community, a personal assistant for the child was available in 52% of local self-government units, whereby service providers were in 92% cases private for-profit or non-profit licensed organisations.[79] The service of a child's personal assistant is 74% financed from the budget of local self-governments, 24% through dedicated transfers, and around 2% from other sources.[80]

In terms of support service for independent living, supported child housing is financed entirely from the funds of local self-governments and user participation, but

72 Ibid., Art. 45 in relation to Art. 7 of the Regulation about the Network of Social Protection Institutions, 'Official Gazette of the RS', No. 16/2012, and Art. 206 paras. 5, 7 of the Social Welfare Act. In addition, see: Matković and Stranjaković, 2020, p. 17.
73 Art. 207 para. 1(1) of Social Welfare Act.
74 Matković and Stranjaković, 2020, p. 34.
75 Ibid., p. 30.
76 Ibid., p. 34.
77 Ibid., p. 15 and p. 17.
78 Ibid., 2020, p. 17.
79 Ibid., 2020, p. 61.
80 Ibid., p. 62.

this service has been available in only 10% of local self-governments, and it has been rarely used in practice so far.[81]

5. Defining a Child at Risk

In terms of rules on social welfare, a child at risk may be defined as a child 'whose health, safety and development are jeopardised due to a family situation and other life circumstances, or if it is certain that he or she cannot reach the optimal level of development without the support of the social protection system'.[82] The 'optimal level of development' should be understood as the maximum possible level of development of an individual child.[83]

Various reasons and circumstances may place the child or his or her parents or other caregivers in a disadvantaged situation, thereby requiring social protection measures and social welfare services. These situations may be the result of the absence of the child's family environment or an interruption in the child's relationship with his or her parents or other caregivers, as well as the insufficiency of parental capacities to adequately care for the child or their abuse or neglect of parental responsibilities.

The Social Welfare Act provides examples when a child is considered at risk and he or she or his or her family needs assistance, support or protection within the social welfare system.

Accordingly, a child is considered to be at risk if[84] the child is without parental care or at risk of losing it; the parent, guardian or any other person who directly takes care of the child is unable to care for him or her without the support of the social protection system, owing to health reasons, mental illness, intellectual difficulties or unfavourable socio-economic circumstances; the child has developmental disabilities (physical, intellectual, mental, sensory, speech-language, socio-emotional, multiple), and his or her needs for care and material security exceed the family's capacities; the child is in conflict with his parents, guardian and the community and his or her behaviour endangers himself or herself and the environment; the child faces difficulties due to abuse of alcohol, drugs or other intoxicants; the child may be at risk of becoming a victim of abuse, neglect, violence and exploitation, i.e. if his or her physical, psychological or emotional well-being and development are threatened by the actions or omissions of parents, guardians or other persons who directly take care of the child; the child is a victim of human trafficking; the child is a foreign citizen or a person without citizenship, unaccompanied; the child's parents are in

81 Ibid., p. 16 and p. 41. Furthermore, the Republic Institute for Social Protection found that supported housing welfare service was provided the previous year in a single case to a boy between the age of 15 and 17 by only one licensed service provider: Republic Institute for Social Protection, 2023, p. 14.
82 Art. 41 para. 2 of Social Welfare Act.
83 Art. 6 para. 2 of CRC.
84 Art. 41 para. 2 (1–10) of Social Welfare Act.

dispute over exercising parental responsibilities; the child has other needs for using social protection.

Relying on the social welfare legislation, the Republic Institute for Social Protection recognises several categories of children at risk, involving children without parental care, children who are victims of domestic violence, those with behavioural problems, children from families in crisis, children with disabilities and materially vulnerable children.[85] In the most disadvantageous position is the child who falls under more than one category of children at risk, such as a child with disability who is without parental care. Such a child is provided with measures of intensive support and protection, along with special programmes of training and preparation for those who take care of the child (e.g. foster care with intensive and additional support).[86]

Family Act provides an exhaustive list of situations in which a child is considered to be without parental care, involving following cases:[87]a child who has no living parents; a child whose parents are unknown or their dwelling place is unknown; a child whose parents are fully deprived of parental responsibility or active legal capacity; a child whose parents have not yet acquired full active legal capacity; a child whose parents are deprived of the right to protect and raise or educate the child; a child whose parents fail to take care of the child or take care of the child in an inappropriate manner.

Such a child is placed under guardianship and provided with alternative care. However, it does not necessarily mean that a child without parental care is directly eligible for adoption.[88]

6. Children With Disabilities in the Child Protection System

According to the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD), 'persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others'.[89]Making a sharp turn in the understanding of the concept of disability, the CRPD abandons the medical model of disability, replacing it entirely with the social approach according to which persons with disabilities do not need isolation and separation from the family environment for the purpose of treatment, but support and assistance in order to integrate them into society, overcoming the social barriers with the support of their family and local community services.[90] In Serbia, a Special

85 Republic Institute for Social Protection, 2023, p. 4.
86 Art. 7 of the Rulebook on Foster Care.
87 Art. 113 para. 3 of Family Act.
88 Thus, a child who is without parental care for the reasons listed under 4, 5 and 6 is not eligible for adoption. See: Ponjavić and Vlašković, 2022, p. 307.
89 Art. 1 para. 2 of CRPD.
90 Vlašković, 2021, p. 573.

Act on Preventing Discrimination of Persons with Disabilities (2006), was adopted to fully embrace the social model of disability.[91] However, the national child protection system rests on measures and welfare services that represent a combination of medical and social approaches to disability, struggling to reduce the importance of the former in practice.

In 2022, 13163 children with disabilities were registered within the social protection system in Serbia, which is 7.32% of the total number of children from the records of social welfare authorities.[92] A child with disability and his or her parents or caregivers are provided with increased material support, financial assistance and appropriate social welfare services.

The rights to material support and financial assistance are recognised and regulated by the Social Welfare Act and the Act on Financial Assistance for Families with Children. Thus, a child with disability has the right to increased allowances for the help and care of another person, which is usually the child's parent.[93]Furthermore, one of the parents who directly takes care of a child with disability is entitled to an increased child allowance under the conditions stipulated in the Act on Financial Assistance for Families with Children.[94]Further, preschool children with disabilities have the right to be reimbursed for the costs of their stay in preschool institutions. It should be noted that one of the parents or other caregivers of the child with disability has the right to "leave from work" until the child attains the age of five, in accordance with the rules of labour law,[95] as well as the right to compensation for special care of the child with disability.[96]

A child with disability is provided a range of welfare services including primarily day services in the community, accommodation services and support services for independent living. Regarding day services in the community, children with disabilities may be beneficiaries of the day care service; they might be provided with home assistance, as well as the services of a personal assistant. First, day care is available to a child with disability who needs daily care, supervision and support in maintaining and developing his or her potential in a way that does not interfere with the child's schooling.[97] Day care service includes developmental, educational and therapeutic types of support and activities for the child with disability in order to improve quality of his or her life in the social environment where the child lives, providing parents and

91 Act on Preventing Discrimination of Persons with Disabilities,'Official Gazette of the RS', No. 33/2006 and 13/2016, Art. 3 para. 1.

92 Republic Institute for Social Protection, 2023, p. 46.

93 Art. 94 in conjuction with Art. 92 para. 1 of Social Welfare Act.

94 Art. 26 paras. 1 and 11; and Art. 31 para. 2 of Act on Financial Assistance for Families with Children.

95 Labour Act, 'Official Gazette of the RS', No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - decision of the Constitutional Court, 113/2017 and 95/2018 - authentic interpretation, Arts. 96–97.

96 Act on Financial Assistance for Families with Children, Arts. 12–16.

97 Art. 68, para. 1. of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.

other caregivers free time for work and other life activities.[98] In 2022, the share of children with disabilities in the total number of the day care service users was 16.5%.[99]

Home assistance service is also oriented towards the social model of disability, being available for the child and his or her family members who, due to various forms of disability, are unable to live independently in their homes performing usual life activities (e.g. preparing meals, maintaining personal hygiene and apartment hygiene, paying utility bills and everything else needed for the maintenance and functioning of the household).[100] Home assistance service is provided by a professional and specially trained caregiver-housewife, but sometimes informal caregivers help a certain child and a family free of charge; hence, it is desirable that employers consider introducing flexible working hours or enable work from home for these persons.[101] The home assistance service is used by an extremely small number of children with disabilities; in the last five years, the share of these children among the total number of users of home assistance was only 0.7%.[102]

Unlike day services, the service of a personal assistant is available only and exclusively to a child with disability. The personal assistant service is a typical example of the social understanding of disability, and it is primarily designed to enable a child with disability to exercise his or her right to education on an equal basis with other children. In other words, the purpose of a personal assistant is to provide the child with disability appropriate individual practical support for inclusion in regular schooling and activities in the community in order to establish the highest possible level of independence.[103] The activities of a child's personal assistant involve providing help to the child at home (in dressing, feeding, preparing books and school supplies) and providing assistance within the community (help in using public transport, helping the child to move easily, provide support and facilitate the child's communication with the third parties).[104] Among the daily services in the community, the personal assistant is by far the most prevalent child welfare service, showing a constantly increasing trend.[105]

A child with disabilities may also use accommodation services that provide protection and support both to children without parental care and to children under parental care. Thus, a child with disability without parental care can be provided with alternative care in a kinship or foster family (family-based accommodation) or,

98 Ibid., Arts. 69–70.
99 Republic Institute for Social Protection, 2023, p. 45.
100 Arts. 73–75 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services
101 Urdarević, 2020, p. 200.
102 Republic Institute for Social Protection, 2023, p. 46.
103 Art. 84 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
104 Ibid., Art. 86.
105 In 2022, 2869 children with disabilities used the personal assistance service, which is an increase of 193,9% compared to the five years ago. See: Republic Institute for Social Protection, 2023, p. 45.

as the last resort, he or she may be cared for in an institution (residential accommodation). On the contrary, children with disabilities who are under parental care and their parents may use the welfare services of occasional foster care and respite accommodation.

Family-like accommodation of a child with disabilities without parental care is implemented as kinship or foster care with intensive and additional support, while its content and duration are regulated by the child support plan made by competent welfare authorities (social work centres and centres for family accommodation and adoption).[106] If the child with disability without parental care cannot be placed in kinship or a foster family, he or she is referred to residential accommodation in appropriate institutions. The Social Welfare Act prohibits the provision of residential accommodation for children under the age of three, except for particularly justified reasons, whereby the child cannot stay in such accommodation longer than two months, except with the consent of the minister responsible for family protection.[107] The law also stipulates that an institution for accommodation of children cannot have capacity exceeding 50 users.[108] It is also possible to organise a special form of residential accommodation in small home communities of up to 15 children.[109]

Although Serbia has made significant progress in reducing the number of children in residential care, this is not the case with children with disabilities. Thus, in 2022, children with disabilities still comprised an overwhelming majority of the total number of children in residential care (66.4%).[110] In addition, the reports of some non-governmental organisations indicate serious omissions and violations of the rights of children with disabilities in residential care in certain institutions, especially in terms of inadequate health care.[111] Furthermore, the UN Committee on the Rights of Persons with Disabilities has expressed deep concerns regarding the number of children with disabilities living in institutions, as well as the fact that despite legal prohibition, children under the age of three are still placed in institutions, some even directly from the maternity ward.[112]

Occasional foster care and respite accommodation for a common goal offer support and assistance to the biological family and the child's parents in order to preserve their capacities for further care of the child and to maintain the functionality of

106 Art. 7 para. 2 of Rulebook on Foster Care.
107 Art. 52 paras. 2–3 of Social Welfare Act.
108 Ibid., Art. 54 para. 2.
109 Art. 54 para. 1 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
110 Republic Institutute for Social Protection, 2023, p. 45.
111 Rosenthal et al., 2021, p. 2.
112 The UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Serbia, 23 May 2016, para. 13. Hereinafter: CRPD/C/SRB/CO/1. In 2022, children under the age of three accounted for 6.8% of the total number of children in residential care: Republic Institute for Social Protection, 2023, p. 13.

the family.[113] Occasional foster care may last several hours a day, from one to 15 days continuously, and on annual basis up to 60 days.[114] This type of foster care is primarily intended for children with disabilities who are under parental care, but it can also be used as an aftercare measure for children over 10 years of age who have been in residential care for a longer period of time in order to prepare them for independent living and to enable them to gain life experience in a family-like environment.[115] Respite accommodation is a welfare service that provides daily, weekend or multi-day accommodation for children with disabilities, supporting both the child and the child's family in maintaining and improving the quality of their life with the aim of the child remaining in the family of origin.[116] A child must be older than five years in order to use the respite accommodation service, which can last no longer than 45 days within a calendar year and no longer than 20 days in a row.[117] In 2022, children made up 24.2% of the total number of respite accommodation users, and they were mostly boys between the ages of 15 and 17.[118]

7. Definition of Necessary Intervention

In the broadest sense, necessary interventions are protective measures taken by the competent state authorities for a child at risk in order to protect his or her right to life, survival and development. Thus, if family support measures do not or cannot provide the desired outcomes, the competent welfare authorities are obliged to intervene, take protective measures involving separation of the child from the family, provide the least restrictive accommodation and alternative care, undertake guardianship measures and place the child under guardianship.[119] A child has the right to live with his or her parents and to be cared for by them, which can be limited only exceptionally by a court decision in the child's best interests (reasons for deprivation of parental responsibility could be domestic violence).[120] This rule of family law should be interpreted in the context of the CRC in the sense that the decision of the competent authorities to separate the child from his or her parents does not necessarily have to be made by the judicial authority, but that such decision must be subject to judicial review.

Necessary interventions sometimes include especially urgent measures and services taken by competent welfare authorities in order to ensure the safety of the child

113 Art. 9 of Rulebook on Foster Care; Art. 28 para. 1 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
114 Art. 9 para. 2 of Rulebook on Foster Care.
115 Ibid., para. 7.
116 Art. 28 para. 1 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
117 Ibid., Art. 27.
118 Republic Institute for Social Protection, 2023, p. 46.
119 On child protection measures, see: Žegarac, 2014, p. 94.
120 Art. 60 paras. 2–3 of Family Act.

in situations where his or her life, health and development are directly endangered,[121] or when there are justified reasons that failure to take those measures and services would endanger the life, health and development of the child in need of protection.[122] Urgent interventions are provided by the centre for social work as a social welfare institution that decides on the use of the social welfare services. If there is a need for urgent intervention, the procedure for using the urgent intervention service is carried out by the centre for social work in whose territory the child who requiring this kind of intervention lives.[123] The measures and services in the form of urgent interventions are provided 24 hours a day.

A professional social worker is obliged to evaluate each submission from the point of view of the priority of action and if it is assessed that urgent action is needed, the social worker will organise emergency intervention.[124] The undertaking of urgent interventions is further elaborated in the General Protocol for the Protection of Children from Abuse and Neglect (Hereinafter: GPPC).[125] Thus, if circumstances of the case dictate that the child should be separated from the parents as soon as possible, the centre for social work will appoint a temporary guardian for the child, in accordance with family law, ensuring the immediate and short-term protection of the child's rights until the decision is made by the court.[126] In this process, the centre for social work, as a welfare institution, will decide on the urgent placement of the child, that is, its removal from a dangerous environment at the latest within 24 hours of learning about the need to separate the child from the family. These emergency interventions are aimed at providing a safe environment for the child in the shortest possible time until the child is placed under guardianship.

Furthermore, the establishment of urgent (emergency) foster care is also based on the goals of urgent interventions. This type of foster care is applied in situations when there has been abandonment of a child by parents or other caregivers, domestic violence, gross neglect or abuse, and in cases when parents or caregivers are prevented from taking care of the child.[127] Urgent foster care lasts until the resolution of the crisis situation in the family or until the appropriate measure of protection is applied in accordance with the best interests of the child, for a maximum of 60 days; after this, it may continue as a standard form of foster care or foster care with intensive or additional support.[128]

121 Art. 56 para. 1 of Social Welfare Act.
122 Art. 51 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
123 Art. 68 para. 5 of Social Welfare Act.
124 Art. 49 para. 1 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
125 General Protocol for the Protection of Children from Abuse and Neglect, adopted by the decision of the Government of the Republic of Serbia in the form of conclusion, No. 011-5196/2005.
126 Section V(2), para. 2 of GPPC.
127 Art. 8 para. 1 of Rulebook on Foster Care.
128 Ibid., Art. 8 para. 2.

8. Structure of the Child Protection System

The structure of the child protection system in Serbia and the services and measures it includes have already been discussed in previous parts of this report. Thus, only a brief review of the structure of the child welfare system will be described here, involving the social welfare services that have not been considered more closely so far.

The structure of the child protection system rests on family law measures and the implementation of services and measures of support in the field of social protection. Family law measures involve decisions made by competent state authorities that include preventive and corrective measures regarding the exercise of parental responsibility and, as the last resort, a decision on partial or full deprivation of parental responsibility. The latter decision is within the competence of court, while decisions on preventive and corrective supervision over the exercise of parental responsibility are within the jurisdiction of the centre for social work as an administrative body. Unlike corrective measures, the measures of preventive supervision are not explicitly enumerated in the Family Act. Nevertheless, examples of these measures may be found in family law, such as the case when the centre for social work determines the name of the child because the parents cannot decide on the child's personal or family name within a certain period.[129]

As mentioned earlier, the child social protection system includes material and financial support and various other social welfare services. Material support and financial assistance intended for children and their families reflect the social or population policy, as well as the rights that parents enjoy in the domain of labour relations. In terms of the Social Welfare Act, the child and family may under certain conditions be entitled to the following forms of material support: financial social assistance, an allowance for assistance and care of another person, an increased allowance for assistance and care of another person, assistance for training for work, as well as one-time assistance in money or in kind, which is the only material benefit within the competence of the local self-government.[130] Furthermore, the child and his/her family may exercise the right to financial support based on the rules of the Act on Financial Assistance for Families with Children, which aims to provide material support to parents not only to beget the desired number of children, but also to improve their financial situation overall, including families with disabilities.[131] Benefits are paid based on birth and child care or special care of the child as salary compensation during maternity leave, leave from work for child care and leave from work for special child care, parental allowance, the right to funds for construction, participation in the purchase or purchase of the first apartment, children's allowance, one-time allowance for the birth of the second and third child, compensation for the

129 Art. 344 para. 4 of Family Act.
130 Art. 79 and 110 para. 3 of Social Welfare Act.
131 Art. 1 of Act on Financial Assistance for Families with Children.

costs of staying in a preschool institution for children without parental care, compensation for the costs of staying in a preschool institution for children with disabilities, compensation for the costs of staying in preschool institutions for children receiving financial social assistance and regressing the costs of staying in these institutions for children from materially disadvantaged families.[132]

It has already been pointed out that social welfare services are divided into the following groups: assessment and planning services, day services in the community, support services for independent living, counselling and therapy services, socio-educational services, as well as services of accommodation.[133] Assessment services involve not only evaluation of the needs, risks, abilities and interests of the child at risk and other persons important to him or her, but also assessment of the capacities of service providers.[134] Upon the results of the assessment, the level of support for the user is determined and an individual service plan is made.[135] Each individual service plan concerning the child is reviewed at least once every six months.[136]

Day services in the community are primarily available to children, including children with disabilities, mainly to support the child's stay in the family and close environment strengthening parental capacities. However, the day service of drop-in centres is intended to be temporary and occasional, but a comprehensive protection of children in street situations, as one of the most vulnerable categories of children at risk. This protection involves mostly the provision of accommodation, meals and personal hygiene.[137] Simultaneously, the drop-in centres play a significant role in connecting children with other forms of protection in the community (health care and more permanent forms of social protection). Thus, the drop-in centre is obliged to inform the centre for social work about the admission of the child without delay, no later than the next working day after the first admission.[138]

According to the General Comment No. 21 of the UN Committee on the Rights of the Child, children in street situations are those 'who depend on the streets to live and/or work, whether alone, with peers or with family'[139] and 'children who periodically, but not always, live and/or work on the streets, as well as children who do not live or work on the streets but who regularly accompany their peers, siblings or family in the streets'.[140] In 2022, Serbia adopted the Plan for the protection of children in street situations from violence, neglect and exploitation in an effort to implement the CRC/GC/21. In this context, the Plan envisages tasks for the centres for social work,

132 Ibid. Art. 11.
133 Art. 116 of Family Act.
134 Art. 13 para. 1 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
135 Ibid. Art. 13 para. 7.
136 Ibid. Art. 17 para. 2(1).
137 Ibid. Art. 79.
138 Ibid. Art. 82 para. 1.
139 The UN Committee on the Rights of the Child, General Comment No. 21 (2017) on children in street situations, 21 June 2017 (Hereinafter: CRC/GC/21), para. 4.
140 CRC/GC/21, para. 4.

police departments, public prosecutor's offices and the city of Belgrade in order to coordinate the protection of this extremely vulnerable category of children. Despite this, a major problem is the extremely limited number of licensed drop-in service providers within the local self-government units.

The service provided by drop-in centres has certain similarities with the service of a shelter, which belongs to the group of accommodation welfare services. However, shelters are available primarily to victims of domestic violence, abuse and human trafficking. In those shelters, a separate room must be provided for a mother with children, while a maximum of three unaccompanied children who have been victims of abuse may be in one room.[141] Vulnerable persons, most often a mother with a child or children, sometimes come to shelters without instructions from competent welfare authorities. In such cases, the shelter service provider is obliged to inform the competent centre for social work about the admission of the vulnerable persons within three days.[142]

In addition to respite accommodation, the shelter is the only accommodation service that is under the jurisdiction of local self-governments.[143] Thus, local authorities more closely regulate the way a shelter service is used, in terms of financing and conditions for exercising the right to accommodation. This service usually includes accommodation, food, health care, legal aid, counselling, psychosocial support, referral to training for work, as well as connection with other social welfare authorities and institutions.[144] Accommodation in shelters is temporary and lasts until other social welfare services are provided or until a safe return to the family home is enabled. Considering the acts of local self-governments on social protection, it may be concluded that accommodation in shelters can last no longer than six months, although examples can be found of exceptions made to vulnerable persons to stay in a shelter for up to a year, as is the case with the city of Niš.[145]

9. Guardianship of Those Under Child Protection Care

Guardianship always includes children without parental care, while certain measures of guardianship protection can be taken to protect the rights and interests of a child under parental care in particular situations. In the latter cases, the child is not formally placed under guardianship, but a special and temporary guardian is appointed

141 Art. 58, para. 2 of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
142 Ibid. Art. 60 para. 1.
143 Matković and Stranjaković, 2020, pp. 16–17.
144 Todorov, 2022, pp. 22–24.
145 Ibid.

in order to protect certain rights and interests of the minor ward or to undertake specific legal acts in the name and on behalf of the child (minor ward).[146]

First, a child without parental care must be placed under guardianship by a decision of the competent welfare authority, whereby the child's guardian will also be appointed by the same decision.[147] In Serbia, the function of guardianship authority is performed by the centre for social work as an administrative body founded by the local self-government unit.[148] A full and permanent guardian is appointed for a child without parental care in order to ensure his or her comprehensive legal protection until the end of the need for guardianship (reaching majority, adoption of a child, return of the child to the biological family). Furthermore, the decision on a child's placement under guardianship simultaneously contains the care plan for the child and the decision on the accommodation of the minor ward.[149]

According to family law provisions, there is no obligation of a relative or any other person to accept the role of a child's guardian. However, a child's relative or foster parent is primarily appointed as guardian, unless the ward's interests are otherwise.[150] A minor ward who has attained the age of 10 and who is able to reason has the right to propose the person to be appointed as his or her guardian.[151]

If a relative or foster parent cannot be appointed as the child's guardian, either because he or she does not want to accept that role, or because the guardianship authority (centre for social work) finds that such an appointment is not in the interest of the minor ward, the centre for social work may decide to perform the duty of the guardian directly. In that case, the guardianship authority will appoint its own social welfare expert to perform the activities of the guardian on its behalf, and the concerned person is then called a direct guardian according to the Family Act.[152] It should be noted that in 2022, experts of the guardianship authorities performed the duties of child's guardians in 45.8% of total cases, which is a substantial share.[153]

The guardian is under obligation to take care of his or her minor ward conscientiously, whereby taking care of the ward includes, taking care of the child's personality, representing the minor ward, acquiring assets to support the ward and managing and disposing of the ward's property in accordance with the law.[154] The guardian is obliged to take care of the personality of the minor ward in a way that will lead to his/her ability to have an independent life, although there is no obligation of the guardian

146 Art. 132 para. 1 of Family Act. For example, a temporary guardian ('collision guardian') will be appointed for a child if his or her interests are in conflict with the interests of the child's parent or if it is judged that he or she has not been adequately represented by the parent in family proceedings.
147 Art. 124 para. 3 of Family Act.
148 Art. 14 para. 2 of Social Welfare Act.
149 Ibid., Art. 125 paras. 2–3.
150 Ibid., Art. 126 para. 2.
151 Ibid., Art. 127.
152 Ibid., Art. 131 paras. 1–2.
153 Republic Institute for Social Protection, 2023, p. 12.
154 Art. 134 of Family Act.

to live with the ward. However, it is also possible for a minor ward to live with a guardian in cases where the child is at the same time in family-based accommodation with a relative (kinship care) or a foster parent (foster care), who is also appointed as his or her guardian. Simultaneously, the guardian legally represents the minor ward the same way a parent represents his or her child.[155] However, unlike the parents, the guardian cannot independently decide on certain issues that significantly affect the child's life, but he or she needs the prior consent (permission) of the guardianship authority (centre for social work) to do so.[156]

A guardian may perform activities that exceed the regular management of the minor ward's property only with the permission of the guardianship authority (e.g. leasing real estate owned by the minor ward). [157]Furthermore, the guardian disposes of the minor ward's property that was not acquired through work only with the prior consent of the guardianship authority (movable property of greater value and immovable property).[158] The guardian may use the principal of the minor ward's property only for the child's support or when so required by another important interest of the minor ward.[159]

10. Aftercare

The Social Welfare Act provides for the aftercare of the child, which involves the creation of a plan for leaving social protection and becoming independent, as well as the provision of support services for independent living, including supported housing.[160] The main goal is to enable a child (adolescent), who leaves the system of alternative care and whose return to the biological family is not possible, to be included in society on as equal basis as possible with other children. Such children remain under guardianship until they reach majority.

First, a plan for leaving social protection and becoming independent is made for all children in alternative care (kinship care, foster care, residential care), at the latest when the child attains 14 years of age.[161] The plan for leaving alternative care and becoming independent is prepared by the case manager with the participation of the child himself or herself, his or her parents, relatives, foster carers and other

155 Ibid., Art. 137 para. 3.
156 Kovaček-Stanić, 2014, p. 399; Art. 137 para. 4 of Family Act. For example, a guardian can consent to medical treatment of a child under the age of 15 only with the permission of the guardianship authority.
157 Art. 139 para. 3 of Family Act.
158 Ibid.
159 Ibid., Art. 140 paras. 1–3.
160 Art. 40 paras. 1–2 of Social Welfare Act.
161 Art. 75 para. 1 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.

appropriate services and institutions, as well as other persons the child identifies as important.[162]

Support services for independent living are provided to children and young persons between the ages of 15 and 26 who, upon termination of family-like accommodation (kinship or foster care) or after leaving residential accommodation, are unable or unwilling to return to their biological family, and nor are they able to start living independently.[163] Among these services, the supported housing service stands out in particular. Supported housing can last for a maximum of two years, and this service may also be provided to victims of human trafficking for a maximum of one year.[164] This service is realised through the implementation of programme activities, in accordance with the assessment of individual needs of the child with the aim of ensuring a safe environment in which the safety of users will be monitored. Furthermore, service providers should provide help and support in meeting the daily life needs of the users, including the provision of an environment in which a variety of social, educational, health and cultural services are available.[165] Supported housing involves activities aimed at developing and preserving the potential of the minor user, as well as providing assistance for continued education or employment. At the same time, each child or young person should have a professional worker available as a counsellor for independent living.[166]

11. Institutional and Procedural Background

The child protection system encompasses a network of institutions and licensed providers of social welfare services that cooperate with educational and health institutions, the police, judicial authorities, local self-governments, as well as other legal entities and citizens. The Social Welfare Act recognises various institutions that carry out the activities of social protection of children, including the centre for social work, centre for family accommodation and adoption, and institutions for education of children and young people who have been sentenced to certain educational measures.[167] Further, the protection of the rights and interests of the child is decided in court proceedings governed by the Family Act.

The main pillars of the child and family protection system are the centres for social work as organisations established by local self-governments, but that exercise the most diverse and numerous public powers in the field of child protection entrusted to them by the state. Thus, the centre for social work makes decisions on

162 Ibid., Art. 75 para. 2.
163 Art. 88 para. 2(1) of Rulebook on Detailed Requirements and Standards for the Provision of Social Services.
164 Ibid. Art. 88 paras. 2–3.
165 Ibid. Art. 90.
166 Ibid. Art. 94 para. 2.
167 Arts. 119–133 of Social Welfare Act.

the realisation of the child's rights in the domain of social protection, as well as in the provision of welfare services to children. This body also performs a wide variety of other tasks in which it provides support and assistance to other authorities and persons in the social protection system.

Exercising its public powers, the centre for social work, among other issues, makes decisions on establishing alternative care for children (foster care, kinship care and residential accommodation).[168] The competence of this body to carry out adoption procedures and make decisions on the establishment of parental legal relationship through adoption is also highly important. The centre for social work also imposes measures of preventive and corrective supervision on the child's parents and decides on placing the child under guardianship. This expert and professional body also decides on the realisation of the child's right to material support.[169] In court proceedings that decide on the exercise or deprivation of parental responsibility, or on the rights of the child, the centre for social work may have the procedural position of the party, intervener, legal representative, specific expert or an auxiliary body of the court that assists in gathering evidence.[170]

The centre for social work carries out the procedure for using social welfare services, whereby the procedure may be initiated *ex officio* or at the request of the service user.[171] The need to initiate the procedure for using social welfare services can be indicated by any other legal entity (e.g. health care institutions, non-governmental organisations, local self-government units) or a natural person. The centre will initiate the proceedings *ex officio* when it is necessary to take a decision on measures of guardianship of children, measures on corrective supervision over the exercise of parental responsibility, as well as in other cases determined by law.[172] Unlike these situations, the procedure for realising the right to material support can be initiated only at the request of the beneficiary.

The procedure for using social welfare services is according to the rules that apply to the administrative procedure in accordance with the case management standards prescribed by the ministry responsible for family and social protection. The local jurisdiction of the centre for social work is determined according to the user's place of residence.[173]

According to the case management standards, the expert worker of the centre first receives the submission of the applicant or the person who reported the case

168 Art. 4 para. 1 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
169 Ibid., Art. 4 para. 1(1).
170 Vujović, 2018, pp. 310–321.
171 Art. 68 para. 1 of Social Welfare Act.
172 Art. 48 para. 2 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
173 Art. 68 para. 3 of Social Welfare Act.

or the incident and checks the admissibility of the submission.[174] Then, based on an interview with the applicant and considering the pieces of information from the submission, the expert worker decides whether to refer the applicant to other competent authorities or forward the submission to the appropriate head of the service. The submission will be forwarded to the head of the service if the available information indicates that it may be a case of a) child abuse or neglect, b) a child who does not have parents or whose parents are unable to take care of him or her, c) a child who has behavioural problems, d) a child whose parents argue about exercising parental responsibility, as well as e) a child with disability.[175]

The expert worker who receives the submission is obliged to make the assessment from the aspect of priority and if he or she judges urgency in the situation, action must be undertaken to organise an emergency intervention.[176]

The head of the service assigns the case to a specific expert of the social work centre who is assigned as the case manager. The case manager together with the supervisor decides on the opening of work on the case.[177] In certain cases, the head of the service will have to form an expert team comprising supervisor, case manager and experts from different areas so that the centre for social work can take a decision on the use of social welfare services or social protection measures. For example, an expert team must be formed to decide on adoption or foster care, or giving consent to the parents for the disposal of the child's property.[178]

In order to decide on the choice of adequate welfare services or protection measures, the case manager, with the support of the supervisor, must assess the condition, needs, strengths and risks of the beneficiary and other significant persons in his or her environment. If the case manager or the expert team of the social work centre assesses that the individual user needs appropriate social welfare service, the centre for social work issues to the user the instruction for using that service. The instruction is an authentic instrument that directs the user to use the social welfare service in a social welfare institution or with a licensed service provider.[179] If the user needs more services, a separate instruction is issued for each service.[180]An integral part of the instruction for using the service can also be the individual service plan drawn up in the centre for social work.

If the case manager or the expert team assesses that the user does not need the service, the request for using the social welfare services will be rejected by the

174 Submissions are considered to be requests, electronic submissions, petitions, appeals, complaints, initiatives and other communications addressed to the centre by the user or another natural person or institution. Art. 45 para. 2 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
175 Art. 46 para. 5 of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
176 Ibid., Art. 49 para. 1.
177 Ibid. Art. 32 para. 1(6).
178 Ibid., Art. 38 para. 3.
179 Art. 70 para. 1 of Social Welfare Act.
180 Ibid., para. 2.

decision of the centre for social work. An appeal may be filed within 15 days against the decision rejecting the use of social welfare service and a decision on appeal must be made within 30 days.[181] The jurisdiction of the appeals authority depends on whether the specific service is provided by the Republic of Serbia, an autonomous province or a local self-government unit. Thus, in the first case, the ministry responsible for social protection will decide on the appeal against the decision of the centre for social work.[182] In the second case, the competent authority of the autonomous province will decide on the appeal, while in the last situation the decision on the appeal will be made by the competent authority of the local self-government unit.[183] If they are dissatisfied with the decision of the second instance authority, the parties can initiate an administrative dispute before the Administrative Court.

12. Participation of Children in the Child Protection System

As previously mentioned and explained in the part of this report that refers to guiding principles of the national child protection system, the general formulation of the child's right to express his or her views is given in the Family Act.[184] Hence, the child has the right to freely express his or her views in the procedures in which decisions are made about the provision of social welfare services concerning the child and his or her family, as well as in the procedures in which child protection measures are adopted. In this context, the child has the right to duly receive all the information necessary to form his or her own views.[185] A child who has attained the age of 10 may address the court or an administrative body by himself or herself or through another person or institution, and request assistance in realisation of his or her rights to free expression of views.[186]

Furthermore, the court is always obliged to consider how the child will express his or her views in all the proceedings concerning the rights of the child (proceedings in a dispute for the protection of the rights of the child, proceedings for the exercise of parental responsibility, proceedings for the deprivation of parental responsibility). If the court finds that the child is not adequately represented in these disputes, it is obliged to appoint a temporary representative for the child or to request the appointment of a collision guardian from the centre for social work.[187] This type of temporary guardian is especially obliged to ensure that the child receives all the information

181 Art. 73 para. 1–2 of Social Welfare Act.
182 Ibid., Art. 73 para. 2(1).
183 Ibid., Art. 73 para. 2(2-3).
184 Arts. 2, 5–7, 35–40, 41–46 of Act on the Prohibition of Discrimination. It is not within the competence of the Commissioner to decide on the rights and obligations of the individuals and legal entities, but to issue appropriate warnings and recommendations, or to submit legal initiatives, See: Petrušić and Grubač, 2014, p. 73.
185 Art. 65 para. 2 of Family Act.
186 Ibid., Art. 65 para. 5.
187 Ibid., Art. 266 para. 2.

in a timely manner in a way that he or she can understand to be able to form and express his or her views, then to provide the child with information about the possible consequences of the actions he or she undertakes, as well as to inform the court of the child's views if the child is not able to directly express them before the court.[188]

In procedures for the use of social welfare services or when adopting child protection measure implemented by the centre for social work, a particularly important role is played by the case manager. This social welfare specialist constantly maintains communication with the child, ensuring the child's active participation during his or her numerous activities on the case and informs the child about the results of his or her work and the prepared reports and decisions in accordance with the age and maturity of the child.[189] The case manager must also enable the child's participation in creating the plan of services and measures for the child and his or her family, in accordance with the age and maturity of the child.[190]

Serbia has ratified the CRPD according to which:

> 'States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.'[191]

Considering the provisions on the prohibition of discrimination, the child's right to express his or her views from the Family Act also includes a child with disability. In this context, when taking any decision on the protection of the rights and interests of the child, it is necessary to consider the views of the child with disabilities, the scope of which is determined in accordance with the child's best interests. In the procedure for using social welfare services, the case manager and the supervisor must ensure that the best interests of the child with disabilities are protected in every phase of the procedure. In this context, the case manager must provide access to persons with disabilities, including children, to all courts, administrative authorities and other bodies where the right and interests of the child with disability are decided. [192]Furthermore, the case manager can make a proposal to the supervisor or head of the service to form an expert team if he or she judges that additional assistance is needed in order to determine the views of the child with disabilities, which is necessary in order to

188 Ibid., Art. 267.
189 Art. 53 para. 4, Art. 57, para. 2. of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.
190 Ibid., Art. 68 para. 1.
191 Art. 7 para. 3 of CRPD.
192 Art. 32 para. 1(13) of Rulebook on the Organisation, Norms and Standards of the Work of the Social Work Centre.

assess the user's needs, to plan activities or for providing social welfare services and undertaking legal protection measures.[193]

13. Adoption Overview

The Family Act recognises only full adoption as a way of establishing parental legal relationship by which the child is fully integrated into the family. A minor child who has reached the third month of life and whose parents are not alive, are not known or whose place of residence is unknown, can be adopted, as well as a child of parents who are fully deprived of their parental responsibility or active legal capacity.[194] Further, a child may be adopted if his or her parents gave their consent to adoption.[195] Parents give their consent to adoption with or without designating the prospective adopters.[196] Giving consent to adoption with the designation of specific adoptive parents is not a transfer of parental responsibility, since the eligibility of designated adopters must be determined in the adoption procedure, as well as whether such adoption is in the best interests of the child.

Only a person who possesses established personal characteristics upon which it may be concluded that he or she will exercise parental responsibility in the best interests of the child may adopt a child.[197] In most cases, spouses and cohabitees may adopt together. Exceptionally, a child can be adopted by an individual if he or she is the spouse or the cohabitee of the child's parent, or if the minister responsible for family protection has granted adoption for a person who lives alone due to particularly justified reasons.[198] A foreign citizen may adopt a child if the adopters cannot be found among domestic citizens within the period specified by law, and if the minister responsible for family protection gives his or her consent to adoption.[199]

A blood relative in a straight line may not be adopted, and among relatives in a lateral line, a brother, a sister, or a brother or sister of the same mother or father may not be adopted.[200] Further, the difference in age between the adopter and the adoptee must not be less than 18 years nor more than 45 years, although the effect of

193 Ibid., Art. 38 para. 2.
194 Art. 91 paras. 1-4 of Family Act.
195 Ibid., Art. 91 para. 5.
196 Ibid., Art. 95 para. 2.
197 In this context, the following persons are not eligible for adopting a child: a person fully or partially deprived of parental responsibility, a person fully or partially deprived of active legal capacity, a person suffering from an illness that may have detrimental effects on the adoptee, as well as a person convicted for criminal act belonging to the group of criminal acts against marriage and family, against sexual freedom and against life and body. Art. 100 para. 2. of Family Act.
198 Ibid., Art. 101 paras. 2–3.
199 Ibid., Art. 103 para. 1.
200 Ibid., Art. 92.

this adoption obstacle can be removed as an exception by the decision of the minister responsible for family protection if it is in the best interests of the child.[201]

The general and special eligibility of the adopters and adoptee for adoption is determined by the centre for social work in cooperation with the centre for family accommodation and adoption. The decision on establishing adoption is made by the competent centre for social work, and the adoption is established on the day the ruling on adoption is issued.[202]

14. Concluding Remarks

Over the last decades, Serbia has been making significant efforts to reform the child protection system adjusting it as much as possible to the international human rights treaties it has ratified. The reform began with the adoption of the child rights-based Family Act in 2005, and later the new Social Welfare Act and the Act on Financial Assistance for Families with Children were adopted, which were further elaborated by highly important by-laws.

In general, the child protection system rests on family law protection measures, available social welfare services and the right of the child and his and her family to obtain material and financial support. Child protection is carried out through cooperation among several institutions, organisations and individuals, judicial and administrative authorities, central, provincial and local self-government bodies and licensed service providers, which are meant to provide support and protection to the child and his and her family. Thus, a child at risk is enabled under the conditions stipulated by law to use various social welfare services (assessment and planning services, day services in the community, support services for independent living, counselling and therapy services, as well as services of accommodation).

In addition to courts, which decide on the protection of the child's rights in family disputes, the key authorities in the child protection system are the centres for social work, as social welfare expert bodies established by the local self-governments but entrusted with significant and numerous public powers by the state. The centres for social work make decisions on implementing the right to material support, decisions on the use of social welfare services, including the decisions on the alternative care for the child, and they also adopt measures of preventive and corrective supervision over the exercise of parental responsibility in accordance with the rules of family law.

Despite the efforts made in the domain of child welfare services, Serbia still faces considerable problems in certain segments of child protection. Thus, there are problems with insufficient and uneven distribution of most day services in the community. Further, the state cannot yet eliminate the placement of children under the age of three in residential care. At the same time, a huge problem is that the vast

201 Ibid., Art. 99.
202 Ibid., Art. 320 para. 2.

majority of children in residential care are children with disabilities, who, in practice, face various forms of discrimination according to the reports of non-governmental organisations.

Bibliography

Jelić, S., Kolarević, V. (2016) 'Fenomen socijalne isključenosti u periodu tranzicije u Srbiji', *Sociološki pregled,* 50(2), pp. 209–228; https://doi.org/10.5937/socpreg1602209J.

Jovanović, V. (2020) *Vodič za obezbeđenje usluga socijalne zaštite u jedinicama lokalne samouprave.* 1st edn. Belgrade: Deutsche Gesellschaft für Internationale Zusammenarbeit.

Kovaček-Stanić, G. (2014) *Porodično pravo: partnersko, dečje i starateljsko parvo*. 5th edn. Novi Sad: Faculty of Law University of Novi Sad.

Matković, G. (2014) *Decentralizacija socijalne zaštite u Srbiji*. 1st edn. Belgrade: Centar za liberalno-demokratske studije.

Matković, G., Stranjaković, M. (2020) *Mapiranje usluga socijalne zaštite i materijalne podrške u nadležnosti jedinica lokalnih samouprava u Republici Srbiji.* 1st edn. Belgrade: Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia.

Miloradović, S., et al. (2016) *Pilotiranje usluge 'porodični saradnik' i evaluacija rezultata pružene usluge.* 1st edn. Belgrade: Republic Institute for Social Protection.

Petrušić, N., Grubač, M. (2014) 'Uzajamni odnos postupka pred Poverenikom za zaštitu ravnopravnosti i drugih antidiskriminacionih', *Zbornik radova Pravnog fakulteta u Nišu,* 66(2), pp. 72–90.

Ponjavić, Z., Vlašković, V. (2022) *Porodično parvo.* 7th edn. Belgrade: Službeni glasnik.

Republic Institute for Social Protection (2023) *Deca u sistemu socijalne zaštite 2022.* [Online]. Available at: http://www.zavodsz.gov.rs/media/2587/deca-u-ssz-2022-final-2672023.pdf (Accessed: 20 November 2023).

Rosenthal, E., et al. (2021) *Zaboravljena deca Srbije*. Disability Rights International [Online]. Available at: https://www.mdri-s.org/public/documents/upload/tortura-i-zlostavljanje/Zaboravljena%20deca%20Srbije.pdf (Accessed: 30 November 2023).

Statistical Office of the Republic of Serbia (2023) 'Serbia census 2022: census of households, population and dwellings' [Online]. Available at: https://www.stat.gov.rs/ (Accessed: 20 November 2023).

Todorov, D. (2022) *Specijalizovana usluga sigurne kuće u Srbiji: potrebe, kapaciteti i sredstva za stabilno, dugoročno i nesmetano funkcionisanje.* 1st edn. Belgrade: UN Women office publishing: Serbia Country Office.

Urdarević, B. (2020 'Pomoć u kući kao usluga iz oblasti socijalne zaštite' in Vujisić, D. (ed.) *Zbornik radova: XXI vek – vek usluga i uslužnog prava.* Kragujevac: Institute of Legal and Social Sciences of the Law Faculty, pp. 193–202; https://doi.org/10.46793/XXIv-11.193U.

Vlašković, V. (2021) 'Osvrt na prava dece sa invaliditetom sa težištem na pristup zdravstvenim uslugama' in Vujisić, D. (ed.) *Usluge I vladavina prava.* Kragujevac: Institute of Legal and Social Sciences of the Law Faculty, pp. 569–585; https://doi.org/10.46793/UVP21.569V.

Vujović, R. (2018) 'Procesni položaj organa starateljstva u sudskom parničnom postupku u vezi sa porodičnim odnosima' in Draškić, M., Šarkić, N., Arsić, J. (eds.) *Porodični zakon – 12 godina posle.* Belgrade: Union University Law Faculty – Službeni glasnik (Official Gazette), pp. 307–325.

Vujović, R. (2019) *Lišenje roditeljskog prava*. 1st edn. Belgrade: Službeni glasnik (Official Gazette).

Žegarac, N. (2014) 'Rezime' in Žegarac, N. (ed.) *U lavirintu socijalne zaštite: Pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju,* pp. 371–386 [Online]. Available at: https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-08/U_lavirintu_socijalne_zastite.pdf https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-08/U_lavirintu_socijalne_zastite.pdf (Accessed 25 November 2023).

Žegarac, N. (2014) 'Sistem Zaštite Dece uSrbiji' in Žegarac, N. (ed.) *U lavirintu socijalne zaštite: Pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju,* pp. 77–114 [Online]. Available at: https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-08/U_lavirintu_socijalne_zastite.pdf (Accessed 25 November 2023).

| Chapter 8 |

Child-Protection Systems – Slovakian Perspective

Peter Koromház

ABSTRACT

The protection of minors and the safeguarding of their best interests constitute a fundamental principle of family law in the Slovak Republic. This chapter examines the relevant substantive and procedural legal frameworks that embody this principle within the Slovak legal system. The analysis is primarily focused on the current legislative provisions governing the protection of minors and the family, with particular emphasis on the legal regulation of alternative care for minors, the institution of adoption, and the structural organization of the system of social and legal protection of children and social guardianship. Further attention is devoted to the system of state-provided support for children, families, and persons with disabilities, particularly in the form of financial allowances and benefits granted not only to parents and children but also to persons entrusted with the provision of alternative care for minors. The chapter concludes with an examination of the Commissioner for Children's Office, which serves as the institutional authority responsible for monitoring the observance and enforcement of children's rights within the Slovak Republic.

KEYWORDS

the best interests of the child, alternative care, adoption, urgent measure, contribution

1. Introduction to the Issue and Primary Sources of National Legislation of Family Law

The Slovak Republic, recognising its commitments arising from international treaties and from its membership in international organisations, respects and protects children's rights, as evidenced by its legal regulation. The special importance of child rights protection is emphasised in Art. 41 para. 1 of the Constitution of the Slovak Republic, which declares the need for special protection of children and adolescents. In this context, Drgonec states that the Constitution of the Slovak Republic guarantees, in the relevant article, general protection to all persons who have not reached the age of majority in those legal relationships where there is a public interest in protecting

Péter Koromház (2025) 'Child-Protection Systems –Slovakian Perspective' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 261–294. https://doi.org/10.71009/2025.njmb.cps_7.

individuals under the age of 18.[1] Concurrently, in Para. 4 of the same article of the Constitution, the legislator specifically states that the care and upbringing of children is the right of the parents to which children are entitled. However, it also adds that parental rights can be limited, and minors may be separated from parents by a court decision based on the law. Respecting the opinion of Drgonec, it can be agreed that such a separation may occur only due to the existence of a public interest and because it is, as a rule, necessary for the protection of the minor child himself or herself. The court may do so regardless of the parents' will, even if they disagree with such a decision. It is thus essential to highlight that the Constitution of the Slovak Republic allows for the separation of children from their parents against their will only based on a court decision. Considering the hierarchy of legal regulations and their legal force, it is necessary to bear this in mind, especially when analysing the provisions of individual acts that further specify the substantive and procedural prerequisites for separating children from their parents and for the subsequent implementation of alternative care for these children. The Constitution of the Slovak Republic also establishes that parents taking care of children have the right to state assistance. This provision of the Constitution clearly and expressly points to the importance of fulfilling the social function of the state of providing necessary assistance to parents taking care of their children to ensure the social or economic background of the family as the basic unit of society. Special state assistance is also provided to those who take care of children in cases where the parents are unable to do so, but this is stipulated by the provisions of special acts that, in accordance with the Constitution, establish details about the rights guaranteed and recognised by the Constitution.

The area of family law has been comprehensively regulated since 2005 by Act No. 36/2005 Coll. on Family, as amended, which includes both the definition of fundamental principles applicable to family law and the regulation of family law relationships. These fundamental principles essentially represent the pillars on which Slovak family law is built.[2] However, it this Act is not the only legal regulation that can and should be applied in analysing family law issues. The Family Act contains substantive legal regulation, followed by Act No. 161/2015 Coll., Civil Non-Contentious Procedure, as amended, which provides the procedural legal regulation of so-called non-contentious proceedings, among which some family law matters fall. The protection of the family and, particularly, of the rights of children is guaranteed by the legal regulation contained in Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Guardianship and in the amendments and supplements to certain acts. This Act is focused on the social and legal protection of children and social guardianship, primarily aiming to ensure the prevention of the emergence of crisis situations in the family, the protection of children's rights and legally protected interests and the prevention of the deepening and repetition of disorders in psychological development,

1 Drgonec, 2019, p. 859.
2 Pavelková, 2019, p. 2.

physical development and social development of children. The legal framework is supplemented primarily by Act No. 448/2008 Coll. on Social Services and on amendments to Act No. 445/1991 Coll. on Trade Licensing, as amended, which address the issue of providing social services aimed at assisting individuals and families and the issue of securing necessary care for a child due to adverse family circumstances. The organisation of public administration in the field of social affairs and the family is based on Act No. 453/2003 Coll. on Public Administration Bodies in Social Affairs, Family and Employment Services and on amendments to certain acts, as amended. It is also essential not to overlook Act No. 627/2005 Coll. on Contributions to Support Alternative Care for a Child, which regulates the provision of contributions by which the Slovak Republic supports alternative care for a child and ultimately contributes to the protection of children's rights and legally protected interests.

2. Fundamental Principles of Family Law Protecting Children and the Family

Slovak family law is based on fundamental principles explicitly stated in the preamble of the Family Act. In this Act, the first five articles define the fundamental principles that must be applied cross-sectionally in addressing any family law issues. We agree with Pavelková, who believes that the purpose of these fundamental principles lies primarily in the fact that they serve as common interpretative rules of family law.[3]

Focusing on child protection, it is crucial to note that the legislator in the current wording of the Family Act highlights the special role of the family founded by marriage, which, according to Art. 2 of the Family Act, is the basic unit of society. However, the legislator emphasises in the same article that society comprehensively protects all forms of the family. This undoubtedly confirms that protection is not only accorded to families founded by marriage but to all its forms, regardless of their composition or the manner of their constitution. Therefore, the Slovak legal order does not exclusively recognise protection only for families legally established by marriage but also for all other forms resulting from the factual cohabitation of persons in a family bond without formal confirmation through marriage. Respecting Králičková's[4] assertion that, based on the case law of the European Court of Human Rights, it is necessary to guarantee protection not only to the family life founded on marriage but also to de facto unions and other forms of cohabitation, we are of the opinion that the relevant legal regulation of the Family Act is in accordance with international protection standards in this area. However, the legal order of the Slovak Republic does not recognise the legal regulation of unions other than marriage, with marriage being possible only between partners of different genders. In this context, we are of the opinion that the adoption of a law on registered partnerships or the adoption

3 Ibid.
4 Králičková, 2022, p. 25.

of another legal regulation governing the factual cohabitation of two persons of the same sex would contribute to the protection of the right to family life, which we perceive as a fundamental human value.[5] At the same time, in our view, the adoption of the proposed legal regulation would in no way represent a threat to the institution of marriage, which, according to the legal framework, could still only be entered into by persons of different sexes, as explicitly stipulated in the Constitution of the Slovak Republic.

Art. 3 of the Family Act further highlights the role of the stable environment of a family formed by the child's father and mother, considered most suitable for the child's comprehensive and harmonious development. It also emphasises the need to protect parenthood by society and the need to provide the necessary care for parenthood, particularly through support and assistance for exercising parental rights and responsibilities. This is reflected in the legal regulation, which modified several institutions aimed at protecting the family as a whole and its individual members, with special protection provided to minors. These institutions are regulated both by the Family Act and other legal regulations, such as the aforementioned Act on Social and Legal Protection of Children and Social Guardianship, which regulates the way of securing material assistance for the family through economic incentives in the form of financial contributions or control mechanisms that lead to direct intervention in the family's functioning and, if necessary, even to the removal of the child from the parents and securing his or her alternative care.

The institution of alternative care for a child and the need for its provision is justified by another principle of family law defined in Art. 4 of the Family Act. This article, among other things, states the parents' obligation to ensure a peaceful and safe environment for the family. If this obligation is not fulfilled by the parents, respecting the duty of society to provide the necessary care for the family, it is the task of society, represented by the state, to apply all legal mechanisms leading to the protection of the family and the child, which in some cases means removing the child from an unsuitable environment and securing care for the child by someone other than the parents.

The most essential from the perspective of protecting the rights of the child is Art. 5 of the Family Act, which, in accordance with international legal regulation and decisions of international courts, directs attention to the interest of the minor child, which must be the primary criterion in deciding in all matters concerning the child. This principle is most often identified with the general clause of the Convention on the Rights of the Child, specifically Art. 3 para. 1, which imposes an obligation, in all actions concerning children – whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies – to take into account the best interests of the child as a primary consideration.[6]

5 On this, see: Bačárová, 2023, p. 146.
6 Pavelková, 2019, p. 6.

We can talk about the so-called best interest of the minor child, which must always be assessed considering the peculiarities and specifics of the circumstances under which decisions concerning the minor child are made, as these circumstances vary and differ in individual cases. The Constitutional Court of the Slovak Republic has repeatedly stated that the assessment of the best interests of a minor must be carried out by the deciding court regarding the specifics of a particular case. In ruling No. II. ÚS 101/2022 of May 10, 2022, the Constitutional Court of the Slovak Republic, among other things, noted that an objectively and explicitly established legal criterion for decisions regarding the regulation of parental rights towards minors is "the best interests of the minor child," which the general court must evaluate and justify not merely mechanically and formally, but specifically, considering the circumstances of the case. It is thus possible to agree with Löwy, who argues that the concept of the best interests of the child is flexible and adaptable and, as such, it must always be defined according to the particular situation of the child concerned, considering the child's personal context, circumstances and needs.[7]

For this reason, in our opinion, the legislator correctly provides only an illustrative list of circumstances that must be considered when deciding on matters concerning the minor and assessed so that the final decision is in the best interest of the minor. According to Art. 5 of the Family Act, it is necessary to consider and consider especially: the level of care for the child; the safety of the child, as well as the safety and stability of the environment in which the child resides; the protection of dignity, as well as the mental, physical and emotional development of the child; circumstances related to the health condition of the child or the child's disability; threats to the child's development from interventions into his or her dignity and threats to the development of the child from interventions into the mental, physical and emotional integrity of a person close to the child; conditions for maintaining the child's identity and for developing the child's abilities and talents; the child's opinion and his or her possible exposure to a conflict of loyalty and subsequent feelings of guilt; conditions for creating and developing relational bonds with both parents, siblings and other close persons; the use of possible means to preserve the child's family environment when considering intervention in parental rights and responsibilities.

These criteria will have to be assessed and considered also in cases concerning the minor, which also involve decisions on alternative care.

3. Temporary Alternative Care for a Child – Forms

The Slovak legal order distinguishes, respecting the provision of Art. 44 of the Family Act, three forms of alternative care for a child, which are characterised as temporary measures substituting the personal care of parents for their minor child. Such substitute care is considered when the parents of a minor child do not provide the necessary

7 Löwy, 2022, p. 117.

care for the child despite the fact that they could objectively do so by fulfilling their legal obligations, as well as in cases where the child's parents cannot provide personal care for objective reasons independent of their will and effort. The Family Act differentiates between the following forms of alternative care: entrusting a minor child to the personal care of another physical person other than the parent – also known as substitute personal care; foster care; institutional care.

For each of these forms of alternative care, application can only occur based on a court decision[8] and does not lead to a complete severance of ties between the parents and the child. Indeed, a court decision to entrust the child to one of the above three forms of alternative care creates new legal relationships between the minor child and another person; yet, the relationship between the minor child and his or her parents remains preserved. As a result of entrusting the child to alternative care, parents lose part of their parental rights, especially the right to personally care for the child. However, some of their rights and obligations remain, particularly the obligation to contribute to the maintenance of the minor child. In the Slovak Republic, this obligation is limited only by setting a minimum amount of maintenance, which is determined by an amount corresponding to 30% of the subsistence minimum for a dependent minor child.

It is necessary to focus on the temporary nature of these institutions. Alternative care lasts only for the necessary time. As soon as the court finds that the continuation of any form of alternative care is no longer in the minor child's interest but rather his or her return to the care of the parents is in his or her best interest, it must decide accordingly. Such a procedure by the court presupposes regular verification of the factual situation and assessment of what is in the best interest of the minor and whether the condition requiring alternative care for the minor continues to exist. This demands cooperation between the courts and bodies of social and legal protection of children and social guardianship, whose scope will be the subject of analysis in a special section of this chapter.

The temporariness of the duration of alternative care is a fundamental distinguishing criterion compared to the institution of adoption, for example, which leads to the permanent replacement of previous family law relationships with new family law relationships between the adopters and the minor child. Of course, this applies provided that the adoption is not annulled, which is possible only within a certain

8 In this context, it may be noted that, in the past, there were legislative efforts to enable legal provisions allowing decisions on the placement of a child into temporary pre-adoptive care to be made by the authority for the social and legal protection of children. After the adoption of such a legal regulation, the Constitutional Court of the Slovak Republic ruled on its compliance with the Constitution of the Slovak Republic. By its judgment of October 18, 2006, ref. No. PL. ÚS 14/05-48, the Court decided that the legal regulation, as conceived, was not in accordance with Art. 41 para. 4, second sentence, of the Constitution of the Slovak Republic. This decision of the Constitutional Court of the Slovak Republic confirmed that the restriction of parental rights can, in accordance with the Constitution of the Slovak Republic, occur only on the basis of a court decision, not by any other authority.

time frame and under strict legal prerequisites, which will be discussed in the section dealing with adoption.

Before analysing the individual forms of alternative care for a minor child in Slovak legal order, it is necessary to add that the forms of alternative care are based on their hierarchical arrangement. Pavelková speaks of a systemic priority, by which she refers to the sequence of seeking an appropriate solution for substitute care, based on the order of its forms, as stipulated in the Family Act.[9] This means that, if the court concludes that it is necessary according to the law to entrust a minor child to alternative care, it must subsequently examine whether entrusting the child to substitute personal care is possible. If not, the court can decide on entrusting the child to foster care and, only if entrusting the child to foster care is also not possible, can the court decide on entrusting the child to institutional care. In our opinion, such a sequence of decision-making and the analysis of possible solutions to the negative life situation that the minor child and his or her family have encountered aims to preserve the best interest of the minor child. The legislator assumes that it is in the best interest of the minor child to grow up in an environment that is as familiar to him or her as possible or in an environment that mimics the environment of his or her family to the greatest extent possible. Therefore, according to the legal regulation, substitute personal care, usually provided by a close relative of the minor child, or foster care by a foster couple are preferred over institutional care provided in specially created facilities.

4. Entrusting a Minor to the Personal Care of Someone Other Than a Parent

A court can decide to entrust a minor child to the substitute personal care of someone other than a parent, according to Art. 45 of the Family Act, only if it is in the interest of the child. The interest of the minor child, with reference to the general provisions of the Family Act on substitute care, is considered when the parents do not provide sufficient care for the child or cannot provide care due to the existence of objective obstacles. In this context, the Constitutional Court of the Slovak Republic took a clear position, stating in its ruling of January 19, 2021, case No. I. ÚS 26/2021, that the necessity of ordering substitute care cannot be justified merely by the fact that the substitute parent has better qualifications for raising the minor child than the biological parent if there are no proven serious circumstances on the part of the biological parent that demonstrably exclude them from providing personal care. Moreover, the Constitutional Court of the Slovak Republic, in the cited ruling, stated that the inability or unwillingness of a parent to care for a minor child must be persistent or current at the time the court decides on placing the child into substitute care; thus, the court cannot justify its decision based on a situation established in the past. This position is fully agreeable and it is necessary to emphasise that it is desirable for general courts to decide with the utmost precision in such sensitive matters as proceedings on

9 Pavelková, 2019, p. 262.

placing a minor into substitute care. This is because reversing a final court decision by a ruling of the Constitutional Court of the Slovak Republic is usually associated with an inevitable time gap to the commencement of the substitute personal care arrangement.

In deciding to entrust a minor child to substitute personal care, the current legal framework gives priority to entrusting the child to a relative, if possible, and if there is no special reason why such a procedure would not be in the best interest of the minor. The legislator prefers the relatives of the minor child on the assumption that they would better care for the child. Additionally, close relatives are presumed to be sufficiently familiar with the child and having been in frequent personal contact before the child's entrustment to substitute personal care. This presumption also stems from geographical realities, considering the relatively small size of the Slovak Republic, where it is common for relatives to live in close proximity and have frequent personal contact.

Although the law explicitly prefers the relatives of the minor child, the child can also be entrusted to the substitute personal care of someone other than a relative. Typically, this would be a person who has a special relationship with the minor child and, thus, expresses interest in taking the child into their personal care. This person is not someone registered in a special registry with a general interest in taking any minor child into personal care. Such persons are classified as foster parents under the valid legal regulations and the entrustment of a child to their substitute care falls under foster care.

The legislator allows for the entrustment of a minor child to the care of one person or the joint substitute care of two persons, who must unequivocally be married. In Slovakia, it is not possible to entrust a minor child to the substitute personal care of two persons living together in cohabitation without these persons being married. If only one spouse is interested in taking over the responsibility for substitute personal care of a minor child, the legislator allows entrusting the child to the personal substitute care of one of the spouses, but the other spouse must necessarily consent. The consent of the other spouse can be omitted only if the spouses do not live in a common household, if the other spouse does not have full legal capacity or if obtaining their consent would involve insurmountable obstacles.

Regardless of whether a minor child is to be entrusted to the substitute personal care of a relative or another person, such a person must have full legal capacity, which in the Slovak Republic, according to Art. 8 of Act No. 40/1964 Coll., the Civil Code, as amended, arises with adulthood.[10] Adulthood is attained upon reaching the age of 18 or, before reaching eighteen, by entering marriage with the court's consent.[11]

Another prerequisite the court must examine is the permanent residence of the person to whom the child is to be entrusted with substitute personal care on the territory of the Slovak Republic. This condition is not required for grandparents, siblings

10 On this, see: Vojčík, 2021, pp. 127–128.
11 On this, see: Strapáč cited in Števček, 2019, p. 56.

of the minor child or siblings of the child's parents, provided they have permanent or other similar residence in a member state of the European Union.

Furthermore, the court must examine the personal prerequisites, lifestyle and life of the persons living in the household with the person to whom the minor child is to be entrusted with substitute personal care, to assess whether such a person will perform the necessary care in the child's interest in the event of entrusting the minor child to their personal care. The legislator specifies by demonstrative enumeration what is meant by personal prerequisites, specifically mentioning health, personality, and moral prerequisites. For personality and moral prerequisites, it is clear what qualities the person to be entrusted with the personal care of the minor child should have, but health prerequisites might not be as apparent at first glance. Respecting the opinions of the professional community and the jurisprudence of the courts, health prerequisites are understood as a health condition that would not directly endanger the minor child or a condition that objectively allows for physically providing personal care to the minor child. A serious illness in the terminal stage, which could lead to the person's death in the near future, can also be a barrier from a health standpoint. The reason why the existence of such a disease could be a barrier to entrusting a minor child to substitute personal care is both the fact that this could represent an increased psychological burden for the minor child in an already complex life situation when he or she is to be separated from his or her parents, as well as the fact that it is not in the minor child's interest to be potentially entrusted to the substitute personal care of another person in the near future. According to Pavelková, an applicant should document their state of health at least based on a preventive medical examination; alternatively, the court may request the applicant's health insurance records for a certain period, from which it will be evident what illnesses the applicant has been treated for, whether they are permanent or temporary, with what results and, based on this, evidence regarding the applicant's health condition can be supplemented.[12] We are of the opinion that, when there is no justified doubt about the applicant's health condition, requiring a preventive medical examination would represent an unreasonable burden on the applicant, imposing an obligation not explicitly provided for by the law.

The court decides on entrusting a minor child to substitute personal care by a judgment in which, besides entrusting the minor child to the substitute personal care of a specific person, it also decides on the obligation of the parents or other legally obliged persons to provide maintenance to the minor child to the extent of their maintenance obligation, which they must pay during the duration of substitute care to the office of labour, social affairs and family. The obligation to pay maintenance to the office of labour, social affairs and family lasts only until the child reaches adulthood, after which this obligation is fulfilled by paying maintenance directly to the child.

In the case of substitute personal care for a minor child, the person entrusted with the child's care has the obligation to perform personal care to the extent that parents

12 Pavelková, 2019, pp. 277–278.

usually do. The only limitation on performing such personal care concerns traveling abroad for a period longer than three months. In such a case, the person entrusted with the minor child's substitute personal care must notify the court of their intention at least 30 days before traveling and include in the notification the place, purpose and duration of the stay abroad. A particularity is that the person entrusted with the minor child's substitute personal care is entitled to represent the child and manage his or her property only in ordinary matters. Regarding representing the minor child and managing his or her property beyond ordinary matters, this right remains legally granted to his or her parents and the decision to entrust the minor child to the substitute personal care of another person does not change this. Therefore, if a situation arises where the minor child's parents cannot or are unable to not only personally care for the child but also represent him or her or manage his or her property, then the court must decide separately on appointing a guardian according to Arts. 32 and/or 33 of the Family Act or decide on appointing a guardian according to Art. 56 of the Family Act. If it becomes necessary to appoint a guardian for the minor child, it is, of course, possible for the court to appoint the same person to whom the minor child is entrusted with substitute personal care as guardian. However, according to the law, this is not a necessity, and the court may appoint another person as guardian if such a procedure would be in the best interest of the minor child. In this context, the legislator gives a special authorisation to the person who has the minor child entrusted into substitute personal care; if they believe that the decision of the minor child's legal representative is not in his or her interest, they can seek to have the court review this decision.

The parents of the minor child have the right to contact the child, the extent of which they can either agree upon with the person to whom their minor child is entrusted for substitute personal care or, if they cannot reach such an agreement, the court can decide on the arrangement of contact with the minor child.

In line with the previously mentioned temporariness of the duration of substitute personal care for a minor child, which lasts only for the necessary time, the law establishes the obligation of the court to examine at least once every six months whether the continuation of substitute personal care is necessary and in the interest of the minor child. The court determines this with the cooperation and assistance of the social and legal protection of children bodies, which will be the subject of analysis in a special section of this chapter. Similarly, at least once every six months, the court must examine and verify the quality of the care for the minor child and, if it finds that substitute care is not being carried out in the interest of the minor, it is obliged to decide on the cancellation of the substitute personal care of the designated person and on subsequently entrusting the minor child to the substitute personal care of another person, or consider entrusting it to one of the other two forms of substitute care.

The Family Act in Art. 47 lists the following reasons for the termination of substitute personal care for a minor child: the minor child reaching the age of majority; the death of the minor child; the death of the person to whom the minor child was entrusted with substitute personal care; legally binding court decision on the

cessation of the reason for which the minor child was entrusted to substitute personal care; legally binding court decision on the cancellation of substitute personal care, for example, due to deficiencies in carrying out personal care for the minor child or at the request of the person to whom the minor child was entrusted with personal care, in which case the court is obliged to always comply with the request of this person for the cancellation of the substitute personal care they are carrying out; the divorce of the spouses to whom the minor child was entrusted with joint substitute personal care, provided that neither of them requests the court to leave the child in their personal care after the divorce.

5. Foster Care

The legal framework for foster care in the Family Act aligns closely with that of substitute personal care for a minor child in many respects. The same applies when a minor child is placed in foster care, as there is an interference with the exercise of the parental rights and duties of the child's parents. Such an interference must be justified by the public interest in protecting the child and ensuring his or her best interests.[13] We agree with Polák and Westphalová, who emphasise that this should be an exceptional measure in situations where the private duty or right of the parents has failed or has not been exercised.[14] The most significant difference is that the child is not entrusted to a person who has a special relationship with the minor child or has expressed interest in being entrusted exclusively with this specific child. Instead, the child is entrusted to a foster parent who has previously shown interest in providing personal care to one or more minor children without preferring any child for any specific reasons. In Slovakia, a natural person can become a foster parent if they meet the following criteria: have permanent residence in Slovakia; possess full legal capacity; meet personal prerequisites, especially in terms of health, personality and morals, to the same extent as required for entrusting a minor child to substitute personal care of someone other than the parents; ensure through their lifestyle and the lifestyle of those living in their household that they will perform foster care in the interest of the minor child; are registered on the list of applicants managed according to the Act on Social and Legal Protection of Children and Social Guardianship, where registration presupposes meeting specific prerequisites defined by this Act.

The Act on Social and Legal Protection of Children and Social Guardianship governs the management of applications from individuals interested in becoming foster parents or adopters. The decision to register on this list, referred to in the law as the list of applicants, is made by a designated body of social and legal protection of children and social guardianship, which is the competent office of labour, social affairs and family located in the county seat, within 15 days from the receipt of the

13 Zmenková cited in Löwy, 2022, p. 96.
14 Polák and Westphalová, 2018, p. 242.

final report on the preparation of an individual for substitute family care. Substitute family care, according to this Act, includes both foster care and adoption. The conditions for registration on the list of applicants are the same for those interested in becoming foster parents and those interested in adoption.

A crucial and limiting condition for registration on the list of applicants and, thus, for entrusting a minor child to foster care, is the requirement of the individual's integrity. This requirement is not imposed on a person to whom a minor child is to be entrusted with substitute personal care. The law defines integrity for the purposes of registration on the list of applicants with a negative enumeration, outlining the conditions under which a person is not considered to have integrity. An individual is not considered to have integrity for the purpose of registration on the list of applicants if they: have been convicted of an intentional criminal act to an unconditional imprisonment of more than one year, even if the conviction for such a criminal act has been expunged or is regarded as if they had not been convicted according to a special regulation; or have been convicted of an intentional criminal act for any of the crimes against life and health, freedom and human dignity, against family and youth, against other rights and freedoms, against peace and humanity or have been convicted for any of the crimes of terrorism and extremism, even if the conviction for such a criminal act has been expunged or is regarded as if they had not been convicted according to a special regulation.

A prerequisite for registering an applicant on the list is the completion of preparation for substitute family care, which the applicant must finish within one year from the application for registration on the list of applicants. This preparation lasts at least 26 hours according to Art. 38 para. 3 of the Act on Social and Legal Protection of Children and Social Guardianship and can be conducted in individual, group or combined forms. The preparation provides basic information about substitute care for a child, child development and his or her needs, the rights of the child and the rights and obligations of his or her parents. The law also emphasises information about the child's rights to maintain and develop sibling bonds, which in the case of substitute care that leads to the separation of siblings protects family bonds. The outcome of the preparation is the drafting of a final report, which includes a characterisation of the individual interested in being listed as an applicant, an assessment of their potential to raise a child and their motivation to become a foster parent. This final report is part of the documentary evidence based on which the suitability of the individual of performing substitute family care for the purposes of registration on the list of applicants is assessed. The body of social and legal protection of children and social guardianship also evaluates the health report of the applicant and reports on their housing, family and social conditions when deciding about the registration on the list of applicants. Therefore, even at the stage of registration on the list of applicants, the criteria that must subsequently be verified by the court before deciding to entrust a minor child to foster care are assessed.

An individual cannot be registered on the list of applicants if a court decision has limited or deprived them of the exercise of their parental rights and obligations

according to Art. 38 of the Family Act or if, at the time of the proceedings for their registration, the exercise of their parental rights and obligations is suspended by a court decision.

Just as in the case of substitute personal care for a minor child, only a court can decide on entrusting a minor child to foster care. It must be established that the parents of the minor child do not or cannot provide personal care for their minor child and that it is in the child's best interest to be entrusted to foster care. Foster care can be performed by a single individual or one spouses provided the other spouse has given written consent to undertake personal care of the minor child to be entrusted to them by a court decision. The consent of the other spouse is not required if they do not live in the same household, if the other spouse does not have full legal capacity, or if obtaining consent would be associated with insurmountable obstacles. It is also essential to note that foster care can be performed as joint foster care by the spouses.

The obligations and rights of a foster parent towards the entrusted minor child are the same as those of a person to whom a minor child is entrusted for substitute personal care. Therefore, a foster parent is obligated to provide personal care to the minor child to the extent that parents usually do. They have the right to represent the minor child and manage his or her property only in ordinary matters and have a notification obligation to the court in case of traveling abroad for more than three months, at least 30 days before departure, and inform the court of the place, purpose and duration of the stay abroad, or other significant circumstances related to the trip. Similarly, a foster parent has the right to submit a proposal to the court to decide whether the actions of the minor child's legal representative in substantial matters are in the best interest of the minor child. A foster parent is also entitled to receive a foster care allowance, as provided by Art. 53 of the Family Act, which refers to the provisions of a special regulation – the Act on Contributions to Support Substitute Care for a Child.

Over the duration of foster care, the parents of the minor child exercise their parental rights and obligations to the extent that they do not belong to the foster parent or the appointed guardian or custodian. During the foster care of their minor child, the parents have the right to contact the child to the extent agreed upon with the foster parent or determined by the court. During foster care, the parents or other legally obligated individuals are required to provide maintenance for the minor child, which is also paid to the office of labour, social affairs and family in this case.

The Family Act specifically regulates the obligation in relation to a minor child in foster care, who, according to Art. 50 para. 4 of the Family Act, is required to contribute personal assistance and, if they have an income from work, must also contribute from this income to the common needs of the family. Such an obligation is not given by law to a minor child entrusted to substitute personal care.

Foster care also has the character of temporary substitute care for a minor child and thus the court, in cooperation with the bodies of social and legal protection of children and social guardianship, is obligated to verify at least once every six months

the necessity of entrusting the minor to foster care. With the same frequency, the court is required to verify the quality of foster care for the minor child.

The Family Act in Art. 52 lists the following reasons for the termination of foster care for a child: the child in foster care reaching age of majority, except in cases where, with the consent of the foster parent and the child, the court extends foster care for important reasons, for no longer than one additional year; death of the child in foster care; death of the foster parent; placement of the minor child in protective education or commencement of serving a sentence of imprisonment; legally binding court decision on the cancellation of foster care, for example, due to neglect of care by the foster parent or at the request of the foster parent for cancellation of foster care, in which case the court is obliged to comply with such a request; divorce of the spouses to whom the minor child was entrusted with joint foster care, provided that neither of them requests the court to leave the child in their personal care after the divorce.

Considering the above, only a minor child can be entrusted to foster care, but foster care can exceptionally continue even after the child reaches adulthood, for no longer than one additional year past majority. The Family Act does not allow for such an extension in the case of substitute personal care.[15]

6. Institutional Care

Institutional care represents the last form of substitute care delineated by the Family Act. It can be implemented only under the condition that the court concludes, prior to ordering institutional care, that the child cannot be entrusted to either substitute personal care or foster care. This rule means that institutional care serves as an option ultima ratio.

The court's decision to order institutional care presupposes the existence of a serious threat to the child's upbringing or the direct presence of its disruption, along with at least one of the following conditions: the child is eligible for adoption but cannot be entrusted to prospective adopters or to the care of an individual according to a special regulation; the child's parents are deceased or are facing a significant obstacle that prevents them from caring for the child; the child's parents have been deprived of parental rights; the child was previously subjected to a corrective measure according to Art. 37 para. 3 of the Family Act, but this measure did not lead to improvement.

Regarding the mentioned corrective measure under Art. 37 para. 7 of the Family Act, for protecting the minor child, it presupposes his or her temporary removal from the personal care of his or her parents or other persons to whom it was entrusted for substitute care, with the aim of conducting professional diagnostics in a designated facility, securing professional assistance in a facility for up to six months or ensuring the resocialisation of drug and other dependencies by staying in a facility

15 On this, see: Pavelková, 2019, p. 333.

conducting resocialisation programs. This indicates that institutional care, ordered after previously imposed corrective measures failed to reform the child, primarily has an educational function. Issues related to, for example, drug use by minors may relate to or result from their improper upbringing. However, situations may arise where, despite parents' appropriate attention to upbringing, their child still faces behavioural problems such as substance abuse. In such cases, respecting the conditions for placing a child in institutional care, the temporary removal from the parents' care and placement in institutional care may be justified by arguing that the child's behaviour threatens or disrupts his or her upbringing. Therefore, when formulating the legal prerequisites for entrusting a minor child to institutional care, the legislator considers two scenarios. The first is that the child's upbringing is seriously threatened or disrupted due to negative behaviour by his or her parents. The second scenario assumes a series of events indicating that the upbringing of the minor child is threatened or disrupted due to the child's own negative behaviour, which could not be corrected by the parents and previously applied corrective measures according to Art. 37 para. 3 of the Family Act. If the court orders institutional care according to the second scenario, it must set an appropriate deadline for the parents to adjust their family and social circumstances, so that the ordered institutional care can be terminated after the deadline expires and the child can be returned to the personal care of his or her parents.

The Family Act includes another crucial provision intended to clearly define the rules and limits for removing a minor child from his or her family environment and subsequently entrusting it to institutional care. Art. 54 para. 3 specifies the conditions that cannot be considered grounds for a court to declare a serious threat or significant disruption to the upbringing of a minor child. These conditions cannot include inadequate housing or the financial circumstances of the parents.

If the court decides to order institutional care without appointing a guardian for the minor child, the child's parents continue to be obligated and entitled to represent their child as legal representatives and manage his or her property.

The court's decision to order institutional care must specify the particular facility where the child is to be placed, ensuring, as far as possible, that this facility is located as close as possible to the minor child's residence and his or her family members. These requirements aim to maintain the familial and emotional relationships between the child and his or her close relatives, confirming that the purpose of institutional care is not to sever family bonds but to secure the possibility of remedying the family environment and/or the minor child himself or herself.

To fulfil the purpose of institutional care and protect the minor child subjected to such care by a court decision, it is essential for the court's decision to be reassessed at regular intervals to reevaluate the necessity of its continuation. According to the law, the court must do this at least twice a year for evaluating the effectiveness of the ordered institutional care. However, the legislator explicitly requires the court to continuously monitor the execution of institutional care, thus obligating it to intervene if the manner of its execution contradicts the best interest of the minor child. The court

assesses the execution and effectiveness of institutional care in collaboration with the social and legal protection of children bodies, the municipality and the facility where the minor child was placed by the court decision. Therefore, in the case of institutional care, the legislator formulates the obligation to reassess its decision to order institutional care slightly differently compared to the other two forms of substitute care. Specifically, the legislator mentions explicitly monitoring and evaluating the effectiveness of institutional care and sets the interval for such monitoring at least twice a year, not once every six months.

The reasons for a court to terminate the ordered institutional care are not exhaustively listed in the Family Act. Art. 55 para. 3 of the Family Act provides an illustrative list of cases in which the court will cancel institutional care. Considering the Family Act as a whole, especially when the reasons for ordering institutional care, it can be concluded that it will be terminated if: the parents fail to rectify their family and social circumstances within the deadline set by the court, and the child can be entrusted to substitute personal care or foster care; the child, due to a change in circumstances, can be entrusted to prospective adopters; the child, due to a change in circumstances, can be entrusted to substitute personal care or foster care, especially when institutional care was ordered because the child could not be entrusted to substitute personal care or foster care; the reasons for its ordering cease to exist, for example, if institutional care leads to the reform of the minor.

Institutional care terminates by law, without the need for a court decision to cancel it.

This occurs if the child, who was subjected to institutional care, reaches adulthood or dies.

7. Urgent Measures of the Court Entailing the Placement of a Child Into Temporary Substitute Care

The Family Act does not specifically address urgent measures. This topic is regulated in the Civil Non-Litigious Procedure, which includes some provisions on urgent and other court measures in its third part. The concept of urgent measures issued by the court is based on the provisions of the Civil Litigious Procedure,[16] which must and necessarily be applied whenever the legal regulation of the Civil Non-Litigious Procedure is not comprehensive. We agree with Čollák in that, even in the case of urgent measures under the Civil Procedure Code, the speed and effectiveness of judicial protection take precedence over other elements of non-contentious proceedings such as the proper establishment of the actual state of affairs or the hearing of the case in a court session.[17] At the same time, such decision-making places high demands on the court, which must, within a short period and based on a limited amount of evidence,

16 In this, see: Števček, 2022, p. 444.
17 Čollák, 2024, p. 72.

decide on the need for an urgent adjustment of circumstances that directly affects a minor child. We believe that it is essential that, when issuing urgent measures in family law matters, the court acts with emphasis on the protection of the minor and, at the same time, strives – despite the short procedural deadlines – to ascertain the actual state of affairs as thoroughly as possible before making a decision.

In general, the court can order an urgent measure even when required by public interest, such as when protecting a minor child. The Civil Non-Litigious Procedure specifies two types of urgent measures in protecting a minor child, resulting in entrusting the minor child to substitute care by someone other than his or her parents. The first type is an urgent measure in the matter of protecting a minor and the second is an urgent measure in matter of personal care for a minor.

In the case of an urgent measure in protecting a minor, the court can order the temporary entrustment of the minor child to the care of an individual or legal entity, specified in the ruling part of the court's decision. The court can only issue such an urgent measure if it is proven that the minor child is without any care or that his or her life, health and favourable development are seriously threatened or disrupted. Additionally, it must be necessary to issue the urgent measure, and the situation cannot be resolved otherwise. Temporary entrustment of the minor child to the care of a specific person designated by the court can last up to six months based on the urgent measure. This time limit does not apply in cases where the proceedings on the matter itself were initiated within six months from the urgent measure's ordering, if a decision was made to entrust an unaccompanied minor child or if it was not possible to reunite a minor child, who is not a citizen of the Slovak Republic, with his or her family within the six-month deadline. Procedurally, it is essential that the court must decide on the proposal to issue the urgent measure no later than 24 hours from the receipt of the proposal for issuance. Within the same timeframe, the court is obliged to issue the urgent measure if it concludes that the proposal is justified. The legislator protects the minor child and his or her interests by making the court-issued urgent measure executable upon its issuance or declaration, should the court opt for declaration. To prevent the urgent measure from lasting unreasonably long due to the original petitioner's inactivity, the law stipulates that the court can initiate proceedings on the matter itself without a proposal if no proposal for such proceedings has been submitted within six months from the urgent measure's ordering.

In the second case, the court can order, by an urgent measure in matters of personal care for a minor, that whoever has the minor child with them temporarily should hand over the child to the exclusive or alternating care of the person designated by the court. This person can also be a legal entity – a special facility, in which case the urgent measure can last a maximum of six months. In the case of a proposal to issue this urgent measure, the court must decide on the proposal within seven days from the receipt of the proposal. Similarly, if the court agrees with the proposal, it is obliged to issue the urgent measure within the same seven-day period. Additionally, in the case of this urgent measure, the court can initiate proceedings on the matter without

receiving a proposal for initiating proceedings if no proposal for such proceedings has been submitted within six months from the urgent measure's ordering.

The Constitutional Court of the Slovak Republic addressed the legal question of whether the procedure of a court is in accordance with the law when it decides to modify a previously ordered urgent measure, instead of first deciding on the cancellation of the previously issued urgent measure and subsequently ordering a new urgent measure.

In this context, the Constitutional Court of the Slovak Republic, in its Resolution of April 14, 2022, case No. I. ÚS 213/2022, stated that

> 'the special regulation of urgent and other court measures concerning minors is contained in §§ 360 to 369 of the Civil Procedure Code; however, it is not entirely exhaustive. (...) The appellate court has full decision-making power; it can change, confirm, or annul the resolution. Therefore, if the regional court, in a family matter where the best interests of the minor child are the central focus, prioritised changing the decision over annulling it, its procedure, based on the relevant legal provision, cannot be considered arbitrary, unlawful, or contrary to the applicable legal framework. On the contrary, its procedural approach demonstrates a clear effort to effectively achieve the purpose of the urgent measure, which is to swiftly and flexibly resolve the situation concerning the regulation of the parties' relations.'

This decision of the Constitutional Court of the Slovak Republic highlights that, when ruling on applications for urgent measures, courts are obliged to act quickly and efficiently to fulfil the fundamental requirement of protecting the interests of the minor. This view is agreeable.

8. Permanent Substitute Care for a Child – Adoption

In the Slovak legal system, the institution of adoption is not regulated within the second part of the Family Act, which includes the regulation of substitute care in its third chapter. Instead, the legislator incorporated the legal regulation of adoption into the fourth part, addressing the determination of parenthood and adoption simultaneously. By choosing this structure for the Family Act, the legislator emphasises that adoption creates legal relationships between the adopters and the adopted minor child equivalent in content to those between a parent and a child. Indeed, as a result of adoption, the original legal relationships of the adopted minor child with his or her previous parents and other family members cease to exist, and new relationships with the adopters, who become his or her new parents, are established. At the same time, adopters' relatives become relatives of the adopted minor child. For this reason, it is logical to include the regulation of the adoption institution in the part governing the determination of parenthood, as it determines the creation of other kinship

relationships. However, it can also be stated that, by its nature, adoption represents a form of permanent substitute care for a child in the Slovak legal order, considered when the child's previous biological parents, for various reasons, are unable or unwilling to personally care for and remain the child's parents. Adoption cannot be annulled after a period of six months from the legal validity of the court's decision on adoption. Before the expiration of this period, the annulment of the adoption is possible only for serious reasons that are in the child's interest.

Only a physical person with full legal capacity, who also meets personal prerequisites, especially health, personality and moral conditions, including the existence of an appropriate age difference between the adopter and the adopted minor child, can become an adopter. This person must also be registered on the list of applicants for adoption, managed according to the Act on Social and Legal Protection of Children and Social Guardianship. The applicant for adoption must guarantee through their lifestyle and the lifestyle of those living in their household that the adoption will be in the minor child's interest. The applicant must also meet the condition of integrity, meaning they have not been previously convicted of an intentional criminal act to an unconditional imprisonment of more than one year and have not been convicted of crimes against life and health, freedom and human dignity, against family and youth, against other rights and freedoms, against peace and humanity or for any of the crimes of terrorism and extremism. The Slovak legal system does not require the adopter to be in a marital union, but from the wording of the Family Act, it can be inferred that the legal regulation prefers the adoption of a minor child either by a married couple or by one of the spouses, assuming this spouse adopts the child of the other spouse. The Family Act does not exclude the adoption of a minor child by a single person, but explicitly states that such adoption can occur exceptionally, provided it is in the best interest of the minor child.

The Family Act specifically regulates the situation if a minor child is to be adopted by adopters abroad, in which case the consent granted by the Ministry of Labor, Social Affairs and Family of the Slovak Republic or by a state administration body designated by this ministry is a necessary prerequisite for a valid adoption. The Act on Social and Legal Protection of Children and Social Guardianship further specifies the conditions for inter-country adoption, which proceeds with the assistance of the Center for International Legal Protection of Children and Youth.

According to the legal order of the Slovak Republic, only a minor child in whose best interest it is to be adopted can be adopted. A minor child is adoptable provided his or her parents have given explicit consent to the adoption or if the granting of such parental consent is not required according to the Family Act. Parental consent for the adoption of their minor child is not required under the conditions specified in Art. 102 of the Family Act, such as if the parents have not shown interest in their minor child for at least two months from his or her birth, unless a serious obstacle prevents them. The situation differs if the minor child's parents are deceased; in this case, the minor child must have an appointed guardian who subsequently must consent to the child's adoption by the adopters.

The adoption must be preceded by pre-adoption care, as decided by the court. Specifically, the court entrusts the minor child to the prospective adopters for pre-adoption care, intended to provide an opportunity for getting to know the minor child, deepening mutual relationships with the minor child and gradually leading the prospective adopters to submit a proposal for the child's adoption to the court. However, a proposal for adoption can only be submitted after nine months of pre-adoption care, during which time the prospective adopters personally care for the minor child. During this time, they have the same rights and obligations as a person to whom a minor child is entrusted for substitute personal or foster care. The law also recognises an exception where it is not necessary to undergo at least nine months of pre-adoption care before adopting a minor child. This applies if the minor child is to be adopted by a person who has had the child in foster care for at least nine months.

The Family Act allows for the adoption of a minor child abroad; however, in this case, a necessary condition for adoption is the prior consent of the Ministry of Labour, Social Affairs and Family or a state administrative authority designated by the Ministry of Labour, Social Affairs and Family of the Slovak Republic. According to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, this procedure also applies in cases where the prospective adoptive parent is a citizen of the Slovak Republic but has his or her habitual residence abroad.[18]

9. Protection of the Interests of the Minor Secured by a Guardian and Custodian While Maintaining the Personal Care of the Parents for the Child

In the interest of protecting a minor, the court may appoint a guardian. The court will delineate the scope of rights and duties of the guardian based on the circumstances justifying the appointment. Parental rights and duties determine the legal relationships between parents and their minor children.[19] As a result of appointing a guardian for a minor child, there is necessarily a change in the scope of parental rights and duties. However, the appointment of a guardian does not infringe upon the rights of parents to personally care for the minor child. Therefore, a guardian does not perform personal care for the minor, allowing for a legal entity such as the municipality where the minor resides to act as a guardian. The appointment of a guardian for a minor child is mandatory in cases where the court decides to restrict the parental rights and duties of either or both parents, or the sole surviving parent. The appointment of a guardian can also serve as a temporary measure for the minor child until a custodian is appointed or until the previously appointed custodian assumes their role.

The Family Act specifically regulates the institution of property and conflict guardian, where the legislator defines the conditions under which these guardians are appointed in the text of the law. Their role is not personal care and upbringing

18 Pavelková, 2019, p. 606.
19 Cirák, Pavelková and Števček, 2010, p. 95.

of the minor but rather the fulfilment and execution of other tasks that, for various reasons, cannot be ensured by the parents within the exercise of their parental rights and duties.

A property guardian may be appointed for a minor child by the court in cases of endangering the minor's interests related to the management of their property. A property guardian is appointed under the assumption that the parents are incapable of taking the appropriate measures to protect the minor's property or refuse to do so for various reasons. While the appointment of a so-called general guardian was previously mentioned to be occurring in connection with the restriction of parental rights and duties, it a property guardian can be appointed for a minor child even without the parents' parental rights and duties being restricted by a court decision. Therefore, a property guardian can manage the minor's property even when the parents have full parental rights and duties but the appointment of a property guardian de facto limits their exercise.

The property guardian has the duty to manage the minor's property without taking on undue property risks. The imposition of this legal duty is significant, considering that the property guardian is motivated to generate profit from managing the property as they are entitled to a reasonable remuneration from the proceeds of the minor's property after their role concludes. The property guardians are subject to court supervision, which assesses their performance, and may even require the court's consent for the validity of the property guardians' actions. If a breach of duties is discovered, they are liable to the minor for any damage caused according to the general provisions on compensation for damage under civil law regulations. To assess the conduct of the property guardian, they must submit a final account of the minor's property management to the court within two months of concluding their role. The court may also specify any special duties beyond the law, such as the obligation to submit interim reports on their role or limit the role of the property guardian to a specific part of the minor's property. This may be considered, for example, in cases where there is a need to manage the property of the minor that requires specific knowledge or experience, such as owning a business share in a company, which also involves decision-making rights regarding the company's operations.

A property guardian can be either a natural or legal person who consents to being appointed as a property guardian. A condition for obtaining this role is full legal capacity and demonstrating that their role will be performed in the minor's interest.

The role of the property guardian terminates upon: the minor reaching the age of majority; the death of the minor; the death or dissolution of the property guardian; a final court decision on the cessation of the reason for the appointment of the property guardian; a legally binding court decision on relieving the property guardian of their role (initiated by the property guardian) or their dismissal.

Unlike the property guardian, whose role is to manage the minor's property and represent them to the necessary extent, the role of a conflict guardian, although also involving representation of the minor, aims to protect the general interests of the child, not just property interests. A conflict guardian may be appointed by the court

for a minor if their legal representative cannot represent them. Under Slovak law, the legal representatives of a minor are primarily their parents unless a different representative is designated by a court decision. The inability of the legal representative to represent the minor can be due to factual impossibility or when the legal representative could objectively represent the minor but would face a conflict of interest in doing so. A conflict of interest might not only involve the interests of the legal representative and the child but also any conflicts between the interests of different children represented by the same legal representative.

Therefore, the court can appoint a conflict guardian for a minor if: the minor has no legal representative; the minor's legal representative cannot represent the minor due to a serious reason; the interest of the legal representative conflicts with the interest of the minor; the legal representative represents several minors whose interests are in conflict.

A conflict guardian can be either a natural or legal person whose interests do not conflict with those of the minor and who has full legal capacity. If the court appoints the authority for the social and legal protection of children as a guardian ad litem, this authority is obliged to provide the parties to the legal relationship or the court proceedings with social counselling and assistance to eliminate or mitigate the consequences of the conflict of interests.[20]

In its decision on appointing a conflict guardian, the court must also consider whether it is necessary to appoint this guardian only for the purpose of a specific legal act or for representation in an ongoing proceeding that can be delimited or precisely identified. Depending on this decision, the role of the conflict guardian will also terminate, either by the conclusion of the proceeding in which the minor is to be represented by the conflict guardian or by the performance of the legal act for which the conflict guardian was appointed.

A minor child can be appointed not only a guardian but also a custodian by court decision. Therefore, with the exception of the legal regulation of property and conflict guardians, the Family Law allows the court to appoint a guardian for a minor child whenever it deems it necessary for the protection of the minor's interest. This implies that the appointment of a guardian can be and is a relatively universal option for addressing situations where there is a reasonable concern that the interests of the minor are at risk and a specifically designated entity needs to oversee his or her protection. At the same time, it must be true that the legal prerequisites for using another legal institution, that of custodianship, are not met.

The Family Act explicitly identifies cases in which the court must appoint a custodian for a minor child. This should occur if one of the following conditions is met: both parents of the minor child have died; both parents of the minor child have been suspended from exercising their parental rights and duties; both parents of the minor child have been deprived of their parental rights and duties; neither parent of the minor child has full legal capacity.

20 Jurčová, 2021, p. 150.

In principle, a guardian is appointed for a child when the child has no legal representative.[21] The duty of the appointed custodian is to ensure the upbringing of the minor child, represent them and manage their property. A guardian is responsible for the upbringing of the child to the same extent as the parents.[22] However, ensuring the upbringing of a minor child under the Family Law does not necessarily mean that the custodian has the minor in his or her personal care. The law allows this but does not mandatorily require it. Therefore, a situation may arise where a minor child has a custodian appointed but is entrusted to the personal care of a person other than the custodian. In such a case, the role of the custodian is to oversee the extent and manner of care provided to the minor.

As the Slovak legislation also anticipates a situation where the custodian provides personal care to the minor, it is logical that spouses who will perform the custodian role together can be appointed as custodians by the court. This possibility is not offered in the case of a guardian and thus the court, bound by the wording of the law, cannot decide on it. Similarly, it is stipulated that a legal person can be appointed as a custodian for a minor child, which logically occurs if the custodian does not provide personal care to the minor. We can summarise that, if the custodian also provides personal care to the minor, it ultimately leads to the provision of substitute personal care for the minor. This corresponds to Art. 56 para. 3 of the Family Act, according to which, in the case of personal care for a minor child, the custodian is entitled to contributions according to a special regulation provided for persons performing substitute care for a minor child.

Given the broad range of rights and duties of the custodian, they are required to submit reports to the court on the management of the minor's property and on the minor, with information about his or her education, health status, and special needs. The court reviews and evaluates the performance of the custodian at least twice a year, in cooperation with the municipality and the body for social and legal protection of children.

A significant difference compared to, for example, a conflict guardian, is that the custodian can decide for the minor only in ordinary matters. For decisions involving any significant matter of the minor, it is necessary for the custodian's decision to be approved by the court. Furthermore, regarding the management of the minor's property, the Family Act explicitly refers to the Civil Code regulation, according to which the court's consent is always required for dealing with the representer's property unless it concerns an ordinary matter. Moreover, unlike a property guardian, the custodian is not entitled to remuneration from the proceeds of the managed property of the minor after their role ends. However, they are liable for any damage caused to the minor during the performance of their role. For this reason, they are required to submit a final account of the property management to the court within two months of the termination of their role.

21 Pavelková, 2019, p. 360.
22 Jurčová, 2021, p. 145.

As the court appoints a custodian for a minor child also in cases when the parents are deprived of their parental rights and duties, it is necessary to emphasise that this does not terminate the parents' obligation to provide maintenance to the minor child. Therefore, this one obligation remains intact for the parents, and there is no room for considerations that someone else should fulfil the maintenance obligation towards the minor child. To eliminate any doubts, the legislator explicitly stated in the Family Act in the regulation of custodianship that the custodian does not have a maintenance obligation towards the minor child.

The custodianship of the appointed person terminates upon: the child reaching the age of majority; the death of the minor child; the death of the custodian if they are a natural person or the dissolution of the custodian if they are a legal person; the cessation of the reason for which the custodian was appointed (e.g. the cancellation of the restriction of the exercise of parental rights and duties of the parents of the minor child); a final court decision on relieving the custodian of their role or their dismissal; the reaching of the age of majority by the parent of the minor child, assuming that the custodian was appointed for the minor child due to neither of his or her parents being of legal age.

10. Contributions to Support Substitute Care

Slovakia supports alternative care for minors not only through legal norms that set the conditions for alternative care, but also by providing economic incentives. These are ensured through a system of various contributions available to both minors and the individuals providing personal care for them. The legal regulation in this area is centralised in Act No. 627/2005 Coll. on contributions to support alternative care for children, as amended (hereafter, Contributions Act). According to this act, the state supports alternative care carried out based on a court decision by a physical person other than the child's parent. Contributions provided according to this act are considered social benefits.

For the purposes of the Contributions Act, alternative care includes: substitute personal care; foster care; custodial care, if the custodian personally takes care of the minor child and also if it is not personal care by a custodian for a child whose parents are minors; pre-adoptive care by prospective adoptive parents; personal care for a child based on an urgent court measure entrusting the child to the care of a physical person, which precedes a subsequent court decision on entrusting the child to substitute personal care, foster care, personal care by a custodian or to pre-adoptive care.

It is evident from the above list that the Contributions Act considers essentially any form of personal care for a child carried out by a physical person other than the child's parent, which is regulated or presupposed by the Family Act or the Civil Non-Contentious Proceedings Code, as a form of alternative care for the purposes of social benefits. However, some contributions may not be available to eligible individuals in some of the aforementioned forms of alternative care, especially care based on urgent

measures and pre-adoptive care. The Contributions Act specifically addresses this for each contribution.

According to the Contributions Act, contributions can be divided into those for which the child himself or herself is the eligible recipient and those for which the individuals providing personal alternative care for minors are direct recipients. The first group includes a one-time contribution to the child upon being entrusted into alternative care, a one-time contribution to the child upon the cessation of alternative care, a recurring contribution to the child entrusted to alternative care and a contribution to the child for covering increased expenses. The second group, for which the direct recipients are individuals providing alternative care, includes a recurring contribution to the substitute parent, a special recurring contribution to the substitute parent and a contribution for the education of the substitute parent.

The one-time contribution to the child upon being entrusted into alternative care is intended to support the provision of basic personal equipment for the child, primarily for securing clothing, footwear, hygiene products, necessary furniture and other essential items for the child. A child is entitled to this contribution if it concerns substitute personal care, foster care or custodial care, and if the child was in institutional care or protective upbringing before this care. The amount of this contribution is determined by reference to the amount of the contribution at the birth of a child for the first to the fourth births; in 2024, it amounted to 829.86 euros.

The one-time contribution to the child upon the cessation of alternative care is intended to support the child's independence and is conditional on the child having been in substitute personal care, foster care or custodial care for at least one year before reaching adulthood. The amount of this contribution is determined as 10.2 times the living minimum for an unsupported child, which was 1,252.25 euros in 2024. This contribution is not paid in cases of personal care based on urgent measures or pre-adoptive care.

The recurring contribution to the child entrusted to alternative care is primarily intended to cover the child's expenses for food, education and accommodation. Eligibility for this contribution is conditional on the child being an unsupported minor entrusted to substitute personal care, foster care or custodial care. An unsupported adult child, who was entrusted into any form of alternative care according to the Contributions Act before reaching adulthood and currently lives with a physical person who was their substitute parent until adulthood, is also eligible for this contribution, provided the unsupported child has no income or an income lower than the amount specified in Art. 5 para. 3 point a) of the Contributions Act. Income does not include wages, but court-ordered child support, substitute maintenance, orphan's pension, survivor's accidental rent and orphan's pensions or similar benefits paid abroad are considered income. The amount of the contribution is specifically determined by the law as a multiple of the living minimum for an unsupported child, differently for children under 10, between 10 and 15 and older than 15 years.

The contribution to the child for covering increased expenses is a special contribution intended to cover the increased expenses related to the child's health

condition and associated special needs or related to their artistic or sports activities. This contribution applies only to children entrusted to substitute personal care, foster care or custodial care; the child or their representative must objectively prove the payment of increased expenses for the above reasons. The amount of the contribution is determined as the amount of actual expenses for the aforementioned purposes, but the Contributions Act specifies its maximum amount at 500 euro per calendar year.

The recurring contribution to the substitute parent is intended to support the performance of personal care for the child. The condition for eligibility is the entrustment of the child to substitute personal care, foster care, or personal care by a custodian. Additionally, the substitute parent must have permanent residence in Slovakia and must not be providing alternative care in a foster care facility. Eligibility for the contribution is excluded if the substitute parent or their spouse/partner is entitled to maternity, parental contribution or a similar benefit abroad, as well as if the entrusted child is their relative in a direct line. The amount of the contribution depends on the number of minors the substitute parent has in personal care, with the contribution for one child set at 0.975 times the living minimum for an unsupported child per month. The highest contribution is for the care of seven or more children, set at 5.85 times the living minimum for a dependent child per month.

The special recurring contribution to the substitute parent is tied to alternative care for a child who is a citizen with severe disabilities. This contribution belongs to the eligible person who performs substitute personal care, foster care, personal care as a custodian, or to the person to whom the minor child was entrusted based on an urgent measure while proceedings for entrusting the child to one of the mentioned forms of alternative care are ongoing. In this case, the eligible person must have permanent residence in Slovakia. The contribution is incompatible with receiving a care allowance for the child, a contribution for personal assistance and performing a caregiving service. The amount of the contribution is set at 2.4 times the living minimum for an unsupported child per month.

The contribution for the education of the substitute parent is intended to support the lifelong education of the substitute parent aimed at supplementing, renewing, or expanding their knowledge about the needs of the child, his or her rights and conflict resolution in the family. Eligibility for this contribution requires proving the actual payment of expenses for the purpose of enhancing the education of the substitute parent, with the contribution for one calendar year set at a maximum of 100 euro. This contribution can be awarded to a substitute parent performing substitute personal care, foster care or personal care for a child as a custodian.

11. Additional Contributions Aiding the Protection of Children's Rights (Not Limited to Alternative Care)

Act No. 571/2009 Coll. on Parental Contributions and the amendments to certain acts regulate the conditions for granting another state social benefit through which the

Slovak Republic contributes to ensuring proper care for a child. This pertains to the parental contribution eligible to the child's parent, as well as any natural person to whom the child has been entrusted in the of parental care, including the spouse of the child's parent if living with the parent in a common household. This contribution is disbursed for the care of children up to three years of age or up to six years for children with long-term adverse health conditions. For children placed in alternative care, the contribution may be paid for care up to the child's sixth year of age, albeit the payment period can last no longer than three years from the legal effectiveness of the decision by which the child was placed in alternative care. Only one of the parents can receive the parental contribution at any time, and eligibility does not arise during periods when one of the parents receives maternity benefits or a similar benefit in a member state of the European Union. The amount of the parental contribution depends on whether the eligible person was previously receiving maternity benefits The amount of the parental allowance in 2024, in cases where it was preceded by the payment of maternity benefits, was 473.30 euros per month. The rate without prior maternity benefits in 2024 was 345.20 euros. The disbursement of maternity benefits is conditional upon the person being insured for sickness for at least 270 days in the two years preceding childbirth.

Upon the birth of a child, in specific cases stipulated by Act No. 383/2013 Coll. on the Contribution at Childbirth and the Contribution for multiple simultaneous births, a contribution is provided by the state to the mother to cover expenses associated with securing the essential needs of the newborn. According to this act, entitlement to a yearly recurring contribution also arises in cases of simultaneous birth of three or more children, or if two children are born to the same parents within two years. For this contribution covering the increased expenses related to the care of multiple simultaneously born children, not only parents but also the physical persons taking these children into care replacing parental care are eligible. For the purposes of this act, any form of alternative care according to the Family Act, guardianship in the case of personal care by a guardian, pre-adoptive care, care based on the court's provisional measure and even protective upbringing of the child imposed by the Criminal Code are considered as care replacing parental care. The contribution at childbirth was, in 2024, 829.86 euros for children born from the first to the fourth birth, and 151.37 euros for children born from the fifth birth onwards. The contribution for multiple simultaneously born children is 110.36 euros per child annually, with the law stipulating the contribution be granted until the fifteenth year of the child's life.

Furthermore, a special state contribution in the form of a social benefit is regulated by Act No. 600/2003 Coll. on Child Allowance and the amendments to Act No. 461/2003 Coll. on Social Insurance. This act distinguishes between providing a child allowance and additionally supplementing this allowance. The allowance is a state contribution towards the upbringing and nutrition of a dependent child and is intended to partially cover the school supplies of the child. For the purposes of this act, a dependent child is understood to be a child until the completion of compulsory schooling, up to a maximum of 25 years of age if the child is continuously preparing

for a profession through study, or if due to illness or injury, the child cannot prepare for a profession. A dependent child under this act also includes a child exempt from compulsory schooling, educated in a basic school for students with health disadvantages, or incapable of continuous preparation for a profession or performing gainful activity due to a long-term unfavourable health condition up to the attainment of majority. The eligible person to claim this allowance is the parent of the dependent child, as well as the person to whom the dependent child has been entrusted in care replacing parental care by a court decision and, under certain conditions stipulated by the law, also the dependent child themselves if of legal age. The current allowance rate is 60 euros per month, increasing by 110 euros from the calendar month in which the dependent child first attends the first grade of basic school.

The allowance to the child allowance, according to the specific law, serves to ensure the upbringing and nutrition of the dependent child for whom the application of a tax bonus according to Act No. 595/2003 Coll. on Income Tax is not possible, with the eligible person also needing to meet other criteria stipulated by the law, namely that they do not perform gainful activity. The supplement amount was, in 2024, 30 euros per month. For completeness, the tax bonus amounts to 50 euros per month in 2024 if the supported child has reached 15 years of age, or 100 euros per month if the supported child is younger than 15 years. Concurrently, the tax bonus can be claimed up to a maximum set percentage of the income tax base depending on the number of supported children, with this limit of the tax base determined from 20% for one supported child up to 55% for six and more supported children.

The protection of the dependent child from the perspective of public authority is ensured not only by the analysed legal regulation specifically providing the allowance but also by securing the disbursement of substitute maintenance in cases where the obligated person does not voluntarily pay maintenance. Act No. 201/2008 Coll. on Substitute Maintenance elaborates on the legal prerequisites for the claim to the disbursement of substitute maintenance, which is paid by the relevant Office of Labor, Social Affairs and Family. One of the possible prerequisites for the claim of the entitled person to substitute maintenance is that a proposal for the execution of enforcement to collect the claim for maintenance was submitted to court due to the fact that the parent of the entitled person or another physical person, who was obliged by a court decision to pay maintenance to the entitled person, does not fulfil this maintenance obligation in full amount, within the deadline and in the manner determined by the court decision. According to the currently valid legal regulations, the amount of the disbursed substitute maintenance is the amount of maintenance recognised by the court without any restriction as the upper limit of the substitute maintenance amount.

The contribution for care for a child up to three years of age or up to six years in the case of a child with a long-term adverse health condition can be requested upon fulfilling the conditions in Act No. 561/2008 on the Contribution for Child Care. The contribution is provided either to the parent or the physical person to whom the child has been entrusted in care replacing parental care. This contribution is intended to

cover the expenses incurred for securing care for the child at times when his or her parent or substitute parent is engaged in gainful activity or studies at secondary or higher education institutions. One of the conditions for granting this contribution is that the parent or substitute parent has at least a temporary residence in the Slovak Republic. A similar condition is required for the child's residence. The contribution is paid monthly, its amount depending on several case circumstances; however, in 2024, it could amount to a maximum of 280 euros.

The Slovak Republic provides special financial support to persons with severe disabilities. This support directly concerns not only minors with disabilities but also their families. The legal relationships for providing monetary contributions to compensate for the social consequences of severe disabilities are regulated by Act No. 447/2008 Coll. on Monetary Contributions to Compensate for Severe Disability. According to this act, a severe disability is considered to be a disability with a degree of functional impairment of at least 50%. Functional impairment is understood as a lack of physical abilities, sensory abilities or mental abilities of a physical person, which, in terms of the expected development of the disability, will last longer than 12 months. The act regulates the following repeatedly disbursed contributions serving to compensate for the social consequences of the person's disability: monetary contribution for personal assistance; monetary contribution for transport; monetary contribution to compensate for increased expenses; monetary contribution for care.

Additionally, it regulates the following one-time contributions serving the same purpose as the previously mentioned repeatedly disbursed contributions: monetary contribution for the purchase of aids; monetary contribution for training in the use of aids; monetary contribution for the adjustment of aids; monetary contribution for the repair of aids; monetary contribution for the purchase of lifting equipment; monetary contribution for the purchase of a personal motor vehicle; monetary contribution for the modification of a personal motor vehicle; monetary contribution for the adjustment of an apartment;monetary contribution for the adjustment of a family house; monetary contribution for the adjustment of a garage.

The financial support for persons with severe disabilities is complemented by providing social services aimed, among other things, at preventing the occurrence of an unfavourable social situation, solving it or mitigating it if it arises. An unfavourable social situation, according to the specific legal regulation of Act No. 448/2008 Coll. on Social Services, is a situation in which a physical person is endangered by social exclusion or limitation of their abilities to socially integrate and independently solve their problems, among other reasons, due to their disability, if it concerns a child up to seven years of age or in the case of older persons due to their severe disability or unfavourable health condition. Among social services, according to the specific legal regulation are, for example, nursing care in special facilities, stimulation of the comprehensive development of a child with a disability, as well as social counselling or professional assistance in exercising rights and legally protected interests.

12. Organisation of Social and Legal Protection of Children and Social Guardianship

The social and legal protection of children refers to a set of measures to ensure the protection of a child, which is essential for his or her well-being and respects his or her best interest, to ensure upbringing and comprehensive development of the child in his or her natural family environment and, lastly, to provide an alternative environment for a child who cannot be raised by his or her own family. Social guardianship, according to specific legal regulation, constitutes a set of measures to eliminate, mitigate and prevent the deepening or recurrence of disorders in the psychological, physical and social development of a child and an adult physical person, providing assistance depending on the severity of the disorder and the situation in which the child or adult physical person is found.[23]

The social and legal protection of children and social guardianship are ensured by the execution of measures of social and legal protection of children and social guardianship in the Slovak Republic by state administration bodies, municipalities, higher territorial units, accredited entities, social workers performing independent social work practice, as well as various legal and physical persons without accreditation in organising and mediating the various activities to support the suitable use of children's free time, or various programs and trainings aimed at supporting the fulfilment of parental rights and obligations.[24] The Ministry of Labour, Social Affairs and Family decides on the granting of accreditation after the prior expression of the accreditation commission. The decision of granting accreditation to a specific entity includes, in addition to the identification of the entity, the definition of measures, methods, techniques and procedures for which accreditation is granted, as well as the form and place of their execution. It also includes the determination of the target group of clients, the number of places in the facility designated for conducting activities in a residential form and the period of validity for the accreditation.

The state administration bodies in the sector of social and legal protection of children and social guardianship are the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter, the Ministry), the bodies of social and legal protection of children and social guardianship, which are the central office of labour, social affairs and family, as well as individual offices of labour, social affairs and family. The last state administration body executing measures of social and legal protection of children and social guardianship is the Centre for International Legal Protection of Children and Youth, which has jurisdiction throughout the territory of the Slovak Republic, and whose director is appointed and dismissed by the minister of the aforementioned Ministry.

23 On this, see: Hovanová and Šlosár, 2020, p. 17.
24 On this, see: Pavelková, 2016.

The Ministry inherently leads, controls and methodically directs the execution of state administration in the field of the social and legal protection of children and social guardianship and the Centre for International Legal Protection of Children and Youth, decides on granting accreditation, as well as coordinates the activities of other bodies that operate in the field of the social and legal protection of children and social guardianship.

The central office of labour, social affairs and family leads, controls and methodically directs the execution of state administration in the field of the social and legal protection of children and social guardianship; the execution of counselling-psychological services carried out by offices of labour, social affairs and family; further develops the concept of ensuring the execution of measures according to this law in facilities; coordinates the provision of assistance to unaccompanied minors. Among other tasks, it also establishes centres for children and families, controls and methodically directs them and approves their internal organisational structure and controls and methodically directs the centre, which carries out measures based on the granted accreditation.

The offices of labour, social affairs and family decide on the imposition of educational measures according to the Law on Social and Legal Protection of Children and Social Guardianship, and performs, among others, the function of a guardian ad litem, guardian, as well as custodian for an unaccompanied minor or a guardian for a child in criminal proceedings. It also prepares physical persons who are interested in becoming foster parents or adopters, as well as counselling-psychological services for children, adult physical persons and families. A substantial task is also the authority to submit proposals to the court, for example, for ordering a provisional measure in matters concerning minors, proposals for ordering institutional care or its cancellation. Among the special functions of the offices is keeping records of persons interested in becoming foster parents and providing an overview of children who need to be provided alternative family care.

Municipalities primarily carry out measures aimed at preventing the occurrence of disorders in the psychological, physical and social development of children and adult physical persons, as well as cooperate with bodies of social and legal protection of children and social guardianship or participate in the execution of educational measures. Their obligation arising from the law is also to provide assistance to the child in urgent cases, especially if his or her life, health or favourable psychological, physical and social development are endangered.

Higher territorial units within the exercise of their self-governing competence ensure the creation and fulfilment of social programs aimed at protecting the rights and legally protected interests of children and preventing and limiting the increase of socio-pathological phenomena in their territory. They may also establish centres for children and families.

In the Slovak Republic, all aforementioned bodies execute measures of social and legal protection of children and social guardianship, so that these are carried out in the natural family environment, in the alternative family environment of the

person to whom the court has entrusted the child, in an open environment or in an environment created and arranged especially for the execution of these measures. An open environment is thereby understood as any public space, public object or communication that are natural social environments for individuals and groups, where they usually stay and mobile or permanent spatial backgrounds of individuals and groups.

Significant entities cooperating in the process of social and legal protection of children and social guardianship are centres for children and families, which are established as budgetary organisations by the Central Office of Labour, Social Affairs and Family. According to the law, they can be established by a municipality, a higher territorial unit or another legal or physical person. If established by a municipality or a higher territorial unit, they do not carry out residential measures of the court or outpatient educational measures. In case of establishment by a physical or legal person, the centres can only carry out measures according to the granted accreditation to the persons who established them.

The centres for children and families carry out individual measures in a residential form, outpatient form or field form. In the case of residential measures, these also include measures carried out based on the court's decision on ordering a provisional measure, on imposing an educational measure and on ordering institutional care as one of the forms of alternative care for a child. Residential measures are thereby carried out in a professional foster family, which provides care for a designated number of children and young adults in a family house or apartment provided by the centre or in a family house or apartment that the professional foster parent has a legal right to use. Alternatively, these measures are carried out in separately arranged groups established in a family house, apartment or another building of the centre with separate dining, economy and allocated budget. In a professional foster family, care for children and young adults is provided by a professional foster parent, who can be spouses, employees of the centre or a physical person who is an employee of the centre. The centre provides financial resources for the care of children and young adults to the professional foster family to cover expenses for the child, up to a maximum of three times the subsistence minimum for a dependent child.

The purpose of centres for children and families is mainly to carry out: measures temporarily replacing the child's natural family environment or alternative family environment based on the court's decision on ordering institutional care, ordering a provisional measure or imposing an educational measure; selected educational measures; measures to prevent the occurrence, deepening and repetition of crisis situations of the child in the natural family environment or in the alternative family environment; a re-socialisation program to support the social integration of the child or adult physical person dependent on alcohol, drugs or pathological gambling.

Measures of social and legal protection of children and social guardianship are executed by state administration bodies almost exclusively on a reimbursable basis; however, exceptions must arise from the law. As such, it is essential that measures of social and legal protection of children and social guardianship are financed from the

state budget, the budget of municipalities, the budget of higher territorial units and the budgets of accredited entities. The support of municipalities, higher territorial units and accredited entities is also ensured by subsidies provided directly by the Ministry. Financial contributions are also entitled to be provided by the Central Office of Labour, Social Affairs and Family, as well as individual offices of labour, social affairs and family. These contributions are provided to centres carrying out measures based on granted accreditation.

13. The Commissioner for Children's Office

Under law No. 176/2015 Coll. on the Commissioner for Children and the Commissioner for Persons with Disabilities, and on amendments to certain laws, the Slovak Republic established two independent bodies whose roles, separate from other bodies enforcing the protection of fundamental human rights, are to participate in supporting and promoting children's rights, as well as to contribute to fulfilling the tasks of the national preventive mechanism according to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Pursuant to this law, the Slovak Republic has a Commissioner for Children and, simultaneously, a Commissioner for Persons with Disabilities.

The Commissioner for Children primarily assesses the observance of children's rights, both of their own initiative and based on individual submissions. For this purpose, the Commissioner monitors compliance with the rights of the child, especially by conducting independent investigations into the fulfilment of obligations arising from international treaties to which the Slovak Republic is bound, performing systematic visits to special education facilities and facilities of social and legal protection of children and social guardianship or other places where children restricted in their freedom by public authorities may be found. Furthermore, the Commissioner collaborates directly with children or through organisations active in the field of children's rights. This cooperation currently proceeds according to published memoranda of cooperation with the General Prosecutor's Office of the Slovak Republic, the civil association Protect Me, Trnava University, UNICEF, and the organisation Smile as a Gift. Among the special rights of the Commissioner is the right to speak without the presence of third parties to a child placed in a location where detention, imprisonment, detention, protective treatment or educational measures are executed. The Commissioner also has the right to participate in court proceedings. A special obligation of the Commissioner for Children is the duty to submit an annual report on their activities to the National Council of the Slovak Republic.

The Commissioner for Children is elected for a term of six years by the National Council of the Slovak Republic from candidates nominated by its relevant committee. A proposal for a candidate for the Commissioner can be submitted to the relevant committee of the National Council of the Slovak Republic only by a member of the National Council of the Slovak Republic.

Bibliography

Bačárová, R. (2023) *Ochrana ľudských hodnôt v súkromnom práve.* Košice: Typopress,
Cirák, J., Pavelková, B., Števček, M. (2010) *Rodinné právo*. Šamorín: Heuréka.
Čollák, J. (2024) *Procesné parvo – Civilné mimosporové konanie a správne súdne konanie.* Plzeň: Aleš Čenek.
Drgonec, J. (2019) *Ústava Slovenskej republiky.* 2nd. edn. Bratislava: C.H. Beck.
Hovanová, M., Šlosár, D. (2020) *Sociálnoprávna ochrana detí a rodiny v pomáhajúcich profesiách*. Košice: UPJŠ v Košiciach, ŠafárikPress.
Jurčová, M. (2021) *Zastúpenie v súkromnom práve.* 2nd edn. Praha: C.H. Beck.
Králičková, Z. (2022) *Rodinné právo.* 3rd edn. Praha: C.H. Beck.
Löwy, A. (2022) *Najlepší záujem dieťaťa ako hodnotové kritérium pri rozhodovaní v konaniach vo veciach starostlivosti súdu o maloletých.* Bratislava: C.H. Beck.
Pavelková, B. (2016) 'Sociálnoprávna ochrana detí kontra právo rodičov na starostlivosť o dieťa', *Súkromné právo*, 2016/1 [Online]. Available at: https://www.legalis.sk/sk/casopis/sukromne-pravo/socialnopravna-ochrana-deti-kontra-pravo-rodicov-na-starostlivost-o-dieta.m-129.html (Accessed: 10 February 2025).
Pavelková, B. (2019) *Zákon o rodine – Komentár.* 3rd edn. Bratislava: C.H. Beck.
Polák, V., Westphalová, L. (2018) 'Interdisciplinární spolupráce vo věcech péče soudu o nezletilé', *Právní rozhledy*, 2018/7, pp. 240–248.
Števček, M. (2019) *Občiansky zákonník I. § 1 – 450. Komentár.* 2nd edn. Praha: C.H. Beck.
Števček, M. (2022) *Civilné právo procesné – Úvod do civilného procesu a sporové konanie.* Praha: C.H. Beck.
Vojčík, P. (2021) *Občianske právo hmotné*. Vol. 1. 3rd edn. Plzeň: Aleš Čenek.

| Chapter 9 |

Child-Protection Systems – Slovenian Perspective

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ABSTRACT

This report describes the state of child protection system in Republic of Slovenia after the new Family Code entered into force in 2019. Children's best interests can be protected by the following procedures: measures to protect the best interests of the child (in a strict sense), adoption and annulment of the adoption, granting parental responsibility to a relative, placing a child under guardianship, placing a child in foster care, deciding on the custody of a child, maintenance of a minor child (and of an adult child for as long as there is a maintenance obligation), the child's contact with its parents and issues relating to the exercise of parental responsibility, which have a significant impact on the child's development. The report also discusses the measures for protecting the best interests of children like urgent removal of a child, interim measures and measures of a more permanent nature (there are 6 of them and they are comprehensively regulated) in detail. It then highlights the unique Protocol of recommended practices for the execution of a decision on the removal of a child by direct extradition, which is a working tool prepared by a group of academics and experts from practice. Finally, we point out some interesting procedural aspects and accentuate some problems that arise in practice.

KEYWORDS

best interests of the child, interim injunction, measures of a more permanent nature, adoption, foster care, guardianship, granting parental responsibility to a relative

1. Introduction

In the Republic of Slovenia, family law comprises the legal principles and rules governing: different forms of relationships between partners; relations between parents and children; forms of state assistance for problems in partnership and family life; measures for protecting the best interests of the child, by which the State protects children at risk; maintenance obligations; and adoption, granting parental responsibility to a relative, fostering, guardianship (for children and adults in need of special protection).[1]

1 Novak, 2022, pp. 15–17.

Lina BURKELC JURAS and Frida BURKELC (2025) 'Child-Protection Systems – Slovenian Perspective' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 295–329. https://doi.org/10.71009/2025.njmb.cps_8.

Regarding different forms of relationship between partners, Slovenian legislation regulates the conditions for the creation, legal consequences and the way of termination of marriage and cohabitation. In the context of parent–child relations, family law mainly covers rules on determining parenthood, parental responsibility or care, upbringing and maintenance of the child.[2] By also regulating adoption, guardianship and foster care, the legislator provides alternative care for children who are not cared for by their parents. For children who no longer have living parents, it also provides additional care through the institution of granting parental responsibility to a relative (e.g. grandparent, aunt or uncle).[3] In addition, the legislator addresses the protection of adults who are unable to provide for their own rights and interests, as they can be placed under guardianship, and provides for the possibility of appointing a guardian only in special cases.[4] With the exception foster care, the subject is fully regulated in the Slovenian Family Code (hereinafter, FC), which came into effect on 15 April 2019.[5]

As in other European legal systems, in the Republic of Slovenia, family law is considered a branch of civil law.[6] The legal regulation of family relationships is based on constitutional provisions,[7] several international treaties and, of course, Slovenian legislation. As mentioned above, most family relationships are governed by the Family Code, but in certain cases also by other rules.[8] The most important procedural questions in the field of Family Law are regulated in the Non-Contentious Civil Procedure Act, which came into force on 15 April 2019.[9]

The concept of family, which gives family law its name, is of constitutional value, being protected by Art. 53 of the Constitution of the Republic of Slovenia. The Family Code, as the legislative provision that concretises the above-mentioned constitutional norm, defines family in Art. 2(1) as the living union of a child with his or her parents, with both of them, with one of them or with another adult, provided that the latter takes care of the child and has certain rights and obligations in relation to the child in line with the provisions of the Family Code.[10] In Art. 3(2), the Family Code clarifies

2 Ibid., p. 16.

3 Art. 231. of the Family Code (Official Gazette No. 15/17 with amendments). Prior to the entry into force of the Family Code, the rules of family law regulated only the relationships between parents and children and not also the ones between children and other relatives. Novak, 2017, p. 20.

4 Arts. 267–296 of the Family Code.

5 Regarding foster care, see the Provision of Foster Care Act (Official Gazette No. 110/02 with amendments). Cohabitation between partners of the same gender has been equated with cohabitation between partners of different genders quite recently, following a decision of the Slovene Constitutional Court U-I-91/21-19, Up-675/19-32, dated 16 June 2022. The Family Code now defines cohabitation as a relationship between two partners and does not mention gender anymore.

6 Novak, 2017, p. 21.

7 Arts. 53–56 of the Constitution of the Republic of Slovenia (Official Gazette No. 33/91-I with amendments).

8 These sources are further divided into fundamental and complementary sources in the narrow and broad sense.

9 Non-Contentious Civil Procedure Act (Official Gazette No. 16/19).

10 Art. 2 para. 1 of the Family Code.

that a family enjoys special protection for the best interests of the children. If there is no child, there is no family and, according to the legislator, there is no need for special protection of the family. The concept of a child is not defined in the Constitution of the Republic of Slovenia, but is defined by the Family Code, which also considers the provisions of international instruments.[11] In Art. 5, the Family Code defines a child as a person who has not yet reached the age of 18, unless he or she has previously acquired full legal capacity.[12] The Non-Contentious Civil Procedure Act defines a child similarly.[13]

The rights and interests of children are primarily the responsibility of their parents. The Family Code has enshrined the principle of best interest of the child.[14] It follows from this principle that parents have the main and equal responsibilities for the care, upbringing and development of their child and that the best interests of the child are their main concern. They are assisted by the state in the implementation of this responsibility. In line with Art. 6 of the Family Code, parents are given parental responsibility, which belongs jointly to both parents and represents the totality of the obligations and rights of the parents to create conditions that will ensure the full development of the child in accordance with their capabilities.[15] The best interests of the child are defined by the Family Code as a fundamental principle that obliges parents to take care of the best interests of the child in all activities related to the child and to educate the child with respect for their person, individuality and dignity. Art. 7 para. 3 of the Family Code further provides a positive definition of the principle of best interest of the child by defining that parents

> 'shall act in the best interests of a child if, considering the child's personality, their age, level of development and aspirations, they adequately satisfy their material, emotional and psycho-social needs, through conduct which demonstrates their concern and responsibility for the child, and provide them with adequate guidance and support for their development.'

11 Novak, 2022, p. 79.

12 This would be possible, for example, if the child got married or was granted legal capacity by the court because it became a parent. Namely, it is considered that a minor who is able to take care of himself or herself no longer needs special protection granted to the child (Novak in Korošec et al., 2009, p. 36); therefore, the milestone between a child and an adult is the acquisition of legal capacity, not the age of majority (Zupančič, 1999, p. 17). It is worth noting that, as a rule, parents are obliged to support their children until they reach the age of majority but, exceptionally, the duty to support can also be extinguished earlier or later.

13 Art. 6 para. 3 of the Non-Contentious Civil Procedure Act.

14 Arts. 7 and 135 of the Family Code.

15 Parental responsibility also consists of the right to custody of the child. Where parents live together, they exercise custody rights together and, in the event of separation, they may agree on custody or refer the matter to the court of justice. Joint care and upbringing or the assignment of a child to care and upbringing by one of the parents is possible. In this case, it is also essential to ensure adequate contact of the child with the other parent.

Of course, situations can arise (unfortunately, all too often) where parents are unable or unwilling to provide for their children's rights and best interests and ensure the adequate conditions for their development. This has led to the development of regulation on different measures for protecting the child's best interest, adoption, foster care and guardianship, which will be further discussed below. This report thus focuses on the basic elements of the child protection system in Slovenia.

1.1. Protection of the Child's Best Interest

A child's best interests can be protected in the following procedures: measures to protect the best interests of the child (in the strict sense); adoption and annulment of the adoption; granting parental responsibility to a relative; placing a child under guardianship;placing a child in foster care; deciding on the custody of a child;[16] maintenance of a minor child (and of an adult child for as long as there is a maintenance obligation); a child's contact with its parents; and issues relating to the exercise of parental responsibility, which have a significant impact on a child's development.[17]

In this report, we mainly focus on the measures to protect the best interests of the child in the narrow sense (and some of the specificities within them, such as The Protocol on the removal of a child from his or her parents), and present the institutions of adoption, guardianship, foster care and granting parental responsibility to a relative.

As parents have the right and the obligation to protect the rights and best interests of their child above all others, it is only when parents do not exercise their rights and obligations or do not exercise them in the best interests of the child that the state will take measures to protect the best interests of the child.[18] The state confers the power to protect the best interests of the child on the court and the social work centres, which must take the necessary actions and measures required for the protection and upbringing of the child as well as for the protection of the child's property and other rights.[19]

2. Measures for Protecting the Best Interests of the Child

Art. 180 of the Family Code imposes everyone, but particularly national authorities, bodies of self-governing local communities, public authority holders, public service

16 Cf. VSL IV Cp 430/2024, the legal decision to place a child in care is based solely on the best interests of the child. It is a value-laden synthesis of two principles – the principle of the accelerated development of the child and the principle of continuity of care and education. For instance, the child can be placed into a petitioner's care because who lives in the environment where the family lived before the parents separated.

17 Novak, 2022, p. 303.

18 Measures for protecting the best interest of the child may be implemented until the child becomes fully legally capable.

19 Art. 153 of the Family Code.

providers and non-governmental organisations, but also health care professionals and staff in child-care centres, educational institutions and social institutes, with the obligation to immediately notify either the social work centre or the court if they become aware of circumstances which may lead to the conclusion that a child is at risk.

The condition for interfering with parental responsibility by imposing one of the measures for protecting the child's best interests is therefore the finding that a child is at risk. According to Art. 157(2) of the Family Code, a child is endangered:

> 'when they suffer or are very likely to suffer damage, or where the damage or the likelihood of damage is the consequence of action or lack of action of parents or the consequence of the child's psychosocial problems that manifest themselves as behavioural, learning and other difficulties in growing up.'

Harm may include damage to the child's physical or mental health and development or harm to the child's property. The origin of the risk to the child is most often the conduct of the parents, which may be manifested either actively (e.g. all forms of violence against the child, disposing of the child's property contrary to the child's best interests) or passively, by omission (e.g. failure to take adequate care of the child, neglect of the child, exposing the child to danger). Parents do not have to put their child at risk with their conscious conduct for measures to be taken to protect the best interests of the child; there may be situations in which they are simply unable to provide adequately for their child because of their weak parental capacity, their illness or their dependence. Alternatively, the child's vulnerability may also be due to his or her own psychosocial problems, manifested as behavioural, emotional, learning or other difficulties during growing up, some of which may also be due to inadequate parental care.[20]

When deciding on a measure to protect the best interests of the child, the court needs the social work centre's assessment of the child's vulnerability whenever the social work centre acts as an applicant, while the court must objectify the assessment by taking appropriate evidence and justify the choice of measure by means of an evidentiary assessment.[21] In most cases, even if the social work centre is not the applicant for the measure, the court will ask the centre to assess the risk because it acts as a legal party to the proceedings and as an expert assistant to the court in the procedure for deciding on measures to protect the best interests of the child. The court

20 More on this in Čujovič in Novak et al., 2019, p. 486.

21 Cf. VSL IV Cp 559/2017. Also see VSL IV Cp 441/2024, where the court pointed out that the social work centre's assessment of the threat, which is based largely on the petitioner's unilateral information and her experience, cannot constitute evidence of a probable basis for the extension of a court measure. The assessment also cannot be based only on the best interest of the applicant, as it must address the best interests of the children. It also provided that a complete and prolonged interruption of personal contact leads to a weakening or alienation of the relationship between the father and the children, which is clearly not in their best interests.

must always assess in its decision whether the child is at risk, determine the degree of risk and, based on the findings, justify the choice of the measure to be imposed.

The Family Code specifically mentions that the imposition of measures for the protection of the best interests of the child is within the competence of the court and also provides measures for the protection of the best interests of the child, which, in addition to interim orders and measures of a more permanent nature imposed by the courts, also include the urgent removal of the child, which is an action by the social work centre and must then be justified by the issuance of an interim court order for the removal of the child within a short period of time that cannot be extended. The Family Code also provides measures for protecting the best interests of the child, which include the removal of the child in a more permanent way. The provision of measures for protecting the best interests of the child also apply *mutatis mutandis* in cases where the child is placed with another person, in foster care or in an institution (i.e. where the child does not live with his or her parents in the primary family).[22]

Among the procedures for the protection of the best interests of the child, Non-Contentious Civil Procedure Act specifically defines the procedure for deciding on measures for protecting the best interests of the child, which the court must consider when conducting such proceedings.[23] It follows from the provision of Art. 107 para. 5 of the Non-Contentious Civil Procedure Act, as well as from Art. 170(1) of the Family Code, that before imposing a measure of a more permanent nature, the court must obtain a plan of assistance for the family and the child from the social work centre.[24] This aims to provide support and help in building relationships, solving family problems and personal difficulties, learning and choosing appropriate parenting approaches, and is prepared together with the family and the child whenever possible. It contains a description of the situation, the needs of the children, the possibilities of the family, the method of follow-up, the forms of assistance and a description of the implementation of the measure. The social work centre may include a family therapy programme, psychiatric treatment, treatment for alcohol or illicit drug dependence, as well as other health, educational and psychosocial programmes in the family and child assistance plan, if it appears that the parents will be able to take up the child's upbringing and custody again after the therapy or treatment, or in cases where it is in the best interests of the child to do so.

In choosing the measure to protect the best interests of the child, the court must then consider the principle of the least restrictive measure, which requires the court to impose the measure that will least restrict the parents' exercise of parental

22 Art. 181 of the Family Code.

23 More about this procedure in the chapter "Postopek za varstvo koristi otrok" in Kraljić et al., 2022, pp. 447–477.

24 The content of the plan of assistance is determined in Art. 170 of the Family Code.

responsibility, provided that it can sufficiently protect the best interests of the child.[25] The court must thus select the appropriate measure in a graduate manner, on a scale from the mildest to the most severe, with the additional criterion that the chosen measure will sufficiently protect the child at risk.[26] The principle of the least restrictive measure also provides that the court should, if possible, impose a measure that does not overly deprive the parents of the child, considering, of course, that the child is sufficiently protected. In addition, the principle of the least restrictive measure is also linked to provisions on the limitation of the duration of measures provided in Art. 160 para. 3 of the Family Code in conjunction with the provisions on individual measures of a more permanent nature, and the possibility of prolonging the measures if the protection of the child's best interests requires. The principle of the least restrictive measure is also put into practice by the strict monitoring of the implementation of the measures provided in Art. 160 of the Family Code. The court sends the final decision to the competent social work centre to monitor the implementation of the measure. While monitoring the measure, the court may decide to terminate the measure if the grounds for it have ceased to exist, impose another measure to protect the best interests of the child, extend the measure imposed or reimpose the measure if, during the implementation of the measure, it appears that it has a negative impact on the child's health, development or property.

In accordance with Art. 108 of the Non-Contentious Civil Procedure Act, the social work centre is considered a legal participant in proceedings for the adoption of measures for the protection of the best interests of the child and is thus involved in the proceedings even when it is not the one who proposed the measure. The opinion of the social work centre has a special weight in proceedings for the protection of the best interests of the child and constitutes an expert basis for the decision of the court.[27] The social work centre participates in the proceedings as an expert and in the public interest, and its statements in the proposal, the opinion, other documents and the hearing of the expert from the centre may be equated with the testimony of a person who has special expertise on the facts (an "expert witness").

In deciding on the measures, the court shall consider the child's opinion,[28] expressed by the child himself or through a person whom he or she trusts and whom he or she has chosen, provided that the child is capable of understanding its meaning and consequences.[29] The child has the right, but not the duty, to express his or her

25 Art. 156 of the Family Code determines that, when deciding on a measure to protect the child's best interests. two restrictions shall be considered:
"1) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should be the least restrictive for the parents in the exercise of their parental responsibility, and 2) if the adopted measure is able to provide adequate protection of the child's best interests, such measure should not seek to take the child away from their parents."

26 More about this in Čujovič in Novak et al., 2019, pp. 476–612.

27 Cf. VSRS II Ips 56/2019; VSC I Cp 149/2021.

28 The fact that the court must obtain and consider the opinion of the child when deciding on its rights and interests follows from Art. 143(1) and 96 of the Non-Contentious Civil Procedure Act.

29 Art. 158 of the Family Code.

opinion, which must be specifically communicated to him or her. The right of the child to express an opinion also means that he or she has the right not to express it.[30] If he or she is unwilling or unable to do so, he or she cannot and should not be forced to do so.[31] The court's decision to obtain the child's opinion is not based on the child's age, but rather on an assessment of the child's maturity and assessment of sufficient understanding and reasoning. The child's will and the best interests of the child are not synonymous, and respect for the child's will does not mean that the court must always decide in accordance with the child's opinion, but it must give it due consideration. The child can express his or her views either at the social work centre, in an interview with a child advocate,[32] in an informal discussion with the judge, possibly with the cooperation of a professionally qualified person, but always without the parents being present. However, the court may also take note of the child's opinion by obtaining the opinion of an expert, in which case the child's opinion shall be obtained with the assistance of the expert who is also best placed to shed light on the circumstances relating to the authenticity of the child's opinion.

In practice, the child is most often interviewed by the social work centre with the parents' consent. However, in the procedure for deciding on the measures, the Family Code grants the social work centre the discretion to interview the child without the consent of the parents if it considers it to be in the best interests of the child. To protect the best interests of the child, the social work centre may even refuse to allow the parents to see the record of the interview with the child.[33]

The following sections will look at available measures for protecting the best interests of the child in a narrower sense. The Family Code provides for three types of measures to protect the best interests of the child: emergency removal of a child; interim injunctions; and measures of a more permanent nature.

2.1. Emergency Removal of a Child

The Family Code has introduced a uniform system of measures to protect the best interests of the child, including emergency removal of the child,[34] although this is an action in fact carried out by experts at the social work centre. This measure is intended to protect the child quickly when there is a serious and acute degree of danger (higher level than the danger that is a precondition for most other measures), which requires

30 In accordance with Art. 158 para. 2 of the Family Code, the court may, however, issue an interim order without the child's previously obtained opinion, which makes sense mainly due to the emphasised speed and in cases where there are reasons on the part of the child for not obtaining an opinion (e.g. lack of judgment on the part of the child, unwillingness of the child to declare his opinion).

31 VSRS II Ips 658/2007.

32 Advocacy for children is regulated in Art. 25a of the Human Rights Ombudsman Act (Official Gazette No. 69/17).

33 Art. 177 of the Family Code.

34 The types of measures are stipulated in Art. 159 of the Family Code, the measure of urgent removal of the child and actions of the social work centre are regulated by Arts. 167–168 of the Family Code.

the immediate physical removal of the child from the (family) environment and placement with another person, in a crisis centre, foster care or an institution even before the court has ruled on the application for an interim injunction. In practice, the cases that require such urgent action to protect the child are most often those of domestic violence and severe neglect of the child. In the act of immediate removal of the child from the parents, the social work centre may also be assisted by the police, in accordance with the Police Tasks and Powers Act.[35] When carrying out the emergency removal of a child, the social work centre shall only fill in a special form, which shall either be handed directly to the person from whom the child has been removed and to the parents or guardian of the child or shall be sent to them by post. The form must contain details about the social work centre and the official who carried out the removal, details of the person from whom the child was removed, the date and exact time of the urgent removal of the child and a brief explanation of the further course of the procedure (e.g. indication of the court to which the application for an interim injunction will be submitted).

The measure of the emergency removal of a child following an action by the social work centre can only take effect for 12 hours. In this time, the social work centre must apply to the court for an interim injunction and the court must decide on the application immediately, at the latest within 24 hours of receiving the application. If the social work centre does not file a motion for interim relief within the stated time limit and if the court does not rule on such a motion within the further 24 hours (or if the court rejects the motion for interim relief), the child must be immediately returned to the person from whom he was removed.

An interim injunction, issued by the court pursuant to Art. 168 of the Family Code, is an interim order issued prior to the commencement of proceedings and must thus be justified by the commencement of appropriate proceedings within a period of seven days at the latest.

2.2. Interim Injunction

Interim injunctions are issued by the court if it is likely[36] that the child is at risk. They are designed to deal with exceptional situations where the child is at risk and needs to be protected quickly. Therefore, it is necessary to establish the child's endangerment on a balance of probabilities, as it is not sufficient for an interim order to be granted simply because the interim decision is in the child's best interests. The purpose of an interim measure in family law proceedings is solely to protect the child, to alleviate the child's situation where he or she is in such danger that it is not possible to await the final conclusion of the proceedings. The need to carry out the procedure for determining the conditions for the interim order expeditiously does not justify the

35 Police Tasks and Powers Act (Official Gazette No. 15/13 with amendments).

36 To issue an interim order, the degree of probability is sufficient, which means that the reasons that speak in favour of the existence of a certain fact must be stronger than the reasons that speak against its existence.

court for failing to weigh all allegations and the evidence adduced or gathered that are relevant for issuing the interim order. To satisfy the standard of proof that there is a likelihood that the child is at risk, allegations alone are not sufficient; the parties must offer relevant evidence.[37]

The best interests of the child are also a key criterion when it comes to the interim measures for regulating family relations, which is why, when deciding on such matters, the court is obliged to do everything of its own motion[38] to maximise the best interests of the child in the given situation, although a temporary order may also be granted by the application of the rightful applicant.[39] The granting of an interim order must be approached restrictively.[40] Art. 162 para. 1 of the Family Code only mentions interim injunctions by way of example. For example, a court may issue an order removing a child from his parents and placing him or her with another person, a crisis centre, a foster parent or an institution, designating the other person, crisis centre, foster parent or institution, but may not place the child with a person who cannot be the child's guardian.[41] However, an order may also be made for entry into a dwelling or other premises against the parents' wishes, where the child is present; an order can be issued for prohibiting or restricting the contact of a certain person or persons with the child or for regulating the manner in which contact is to be exercised; an order can be issued on the upbringing and care of the child, maintenance of the child, prohibiting the crossing of the State border with the child, the eviction of a violent member from the shared home, for forbidding the child to approach persons who endanger him or her, for security over the property of the parents or the child, for medical examination or treatment etc. The court can also issue any other order which, in a particular case, may be more effective in protecting the child at risk. To ensure the effective interim protection for the child, the court may issue any one or more interim orders but must also consider the principle of the least restrictive measure when choosing which interim measure to grant.

Interim injunctions are issued by the courts on the application of the rightful applicants, but the courts may also issue an interim order of their own motion during the proceedings for protecting the best interests of the child. Such injunctions are issued under the conditions laid down in the Family Code, in accordance with the

37 VSL IV Cp 1625/2021.

38 The court must comply with Arts. 6 and 7 of the Non-Contentious Civil Procedure Act and take all measures to protect the rights and interests of children ex officio.

39 Persons eligible to submit proposals for the imposition of certain types of measures are defined in Arts. 106 and 107 of the Non-Contentious Civil Procedure Act.

40 The decision of the Slovenian Constitutional Court No. Up-410/01, dated 14 February 2002. In its decision, the Constitutional Court pointed out that interim orders in family law cases have a significant direct impact on the final decision, which can have significant and lasting impacts on the interests of both parents and, in particular, the child, and that their issuance should be approached restrictively. Cf. also VSM III Cp 270/2024.

41 The guardian may be a person who consents to be a guardian and has the personal qualities and abilities necessary to perform the duties of a guardian.

procedure laid down in the Law on Enforcement and Security.[42] The need to temporarily regulate interpersonal family relations may arise at any time, and thus interim orders may be issued both before the initiation, during and after the conclusion (until the decision has become final) of proceedings for protecting the best interests of the child.[43]

It is worth highlighting the interim injunction on supervised contacts,[44] which is limited in time, that is, for contact to be carried out in the presence of a professional person from the social work centre or the institution where the child is placed, where the court determines both the place and the time of the contact. Supervised contacts are exceptional, must be issued in a restrictive manner, may be carried out for a maximum of two hours per week and may last for a maximum of nine months. This period may not be extended or reissued. The latter means that, after the expiry of the interim injunction, the contacts may either be released and continued unsupervised or, if the child's best interests would still be at risk, the court may decide to restrict or withdraw the right of access by means of a measure of a more permanent nature.[45] The court can primarily decide to temporarily arrange supervised contact when the child may be at risk from the contact (e.g. suspected sexual abuse), but also often in situations where it is necessary to establish (for the first time or again) contact between the child and parents, when the assistance of a professional is needed to prepare and carry out the contact, in particular to establish contact and to gain the child's sympathy and trust to establish the (broken) bond between them so that contact can be carried out independently in the future.

There is also a specialty interim injunction for medical examination or treatment.[46] If a child is capable of consenting to a medical procedure under the law governing patients' rights, this interim injunction may only be issued with his or her consent.

42 Enforcement and Security Act (Official Gazette No. 3/07 with amendments).

43 The types of procedures for the protection of the interests of children are defined in Art. 93 of the Non-Contentious Civil Procedure Act. These include, in addition to procedures for deciding on measures for the protection of the interests of child, procedures in marital disputes where spouses have underage children, paternity disputes, procedures in which decisions are made on the care and upbringing of the child, on the maintenance of the child, on the child's contacts, on issues of the implementation of parental responsibility that significantly affect the child's development, as well as on placing the child under guardianship, placing the child in foster care, granting parental responsibility to a relative, adopting a child and annulling the adoption of a child, as well as procedures in which decisions are made on the maintenance of adult children. as long as there is a maintenance duty under the Family Code (when the child is still in school, but no longer than until the age of 26).

44 Art. 163 of the Family Code.

45 Art. 173 of the Family Code determines the conditions for imposing a measure of more permanent nature for the restriction or deprivation of the right to access.

46 Art. 165 of the Family Code.

2.3. Measures of a More Permanent Nature

The Family Code sets out measures of a more permanent nature in exhaustive terms. This means that only the measures predicted by law can be issued. The least restrictive measure is the restriction of parental responsibility, followed by decisions on medical examination and treatment, the restriction or deprivation of the right of contact, removal of the child from the parents, placement of the child in an institution. Finally, the most severe measure is the withdrawal of parental responsibility.[47] As their name suggests, these measures have a more lasting effect than the previously mentioned interim injunctions, some of them lasting for up to three years, with the possibility of renewal, and some of them having an unlimited duration. A higher standard of proof (at least conviction) is required to decide on these measures. In addition to the measures listed above, the court may also protect a child who is the victim of violence by means of special measures for the protection of the child, which are imposed in proceedings under the Act on the Prevention of Domestic Violence.[48]

Before deciding on a measure of a more permanent nature, the court obtains a family and child assistance plan drawn up by the social work centre and, after the measure has been issued, the court monitors its implementation, in particular through social work centre reports on the implementation of the assistance plan, which it sends to the court at least once per year.

2.3.1. Restriction of Parental Responsibility

The restriction of parental responsibility is the mildest of the more permanent measures, whereby the court prohibits one or both parents from exercising the individual rights of parental responsibility if the child is at risk and the best interests of the child will be sufficiently protected by the measure itself, considering the circumstances of the case.

There are two basic forms of the limitation of individual parental rights, often used in the context of representation, where the court may prohibit parents from representing their child before the court or other authorities, prohibit parents from enrolling their children in school or kindergarten, prohibit parents from overburdening them with additional activities etc. This type of measure can also be used regarding the management of the child's property. The court may prohibit the parents from managing the child's maintenance, other assets or only from disposing of or encumbering the child's property. It is the latter that is crucial under the current family regime, where parents no longer need the consent of the social work centre to dispose of their children's property. However, if the child's best interests require

47 Ibid., Arts. 171-176.

48 Arts. 19–21 of the Domestic Violence Prevention Act (Official Gazette, No. 16/08 with amendments); Novak, 2022, p. 338.

greater protection due to the parents' conduct, the court may decide that the parents have the status of trustees in respect of the management of the child's property.[49]

Usually, the court is informed of the parental mismanagement of the child's property by the social work centre and, after considering evidence, it must determine whether the parents (or one of them) have disposed of the child's property. If the court considers that this disposition endangers the child's best interests, it must impose an appropriate measure in a form that will ensure effective protection.

Art. 171. para. 3 of the Family Code provides for another form of this measure of a more permanent nature – supervision of the exercise of parental responsibility by the social work centre. The choice and content of the supervision is tailored by the court to cater for the needs of the individual family, the parents and the child, with the primary task of the social work centre of assisting the family; the centre already has a duty to help parents to rectify their mistakes and improve the quality of care and upbringing of their children under the provisions of the Social Welfare Act.[50] The court imposes a parental responsibility supervision measure when it finds that the child is not in such danger that the parents should be deprived of him or her and that the best interests of the child will be sufficiently protected by the supervision.[51] The supervision of parental responsibility is thus decided by the court and exercised by the social work centre in the manner defined by the court, which adapts the choice of measure to the circumstances of the case. The reasons for the need for assistance in exercising parental responsibility may originate both from the child (e.g. special needs, educational complexity) and from the parents themselves (e.g. mental disorders, dependence on psychoactive substances).

The child is then placed under guardianship to the extent that the parental responsibility is limited. The court appoints a guardian.[52] The duration of the measure limiting parental responsibility is limited to a maximum of one year, but may be longer, up to a maximum of three years, when it is imposed in conjunction with a measure of removing the child from the parents or a measure of placing the child in an institution. If the court, when monitoring the implementation of the measure, finds that it is not effective and that it does not provide sufficient protection for the child, it can impose a more severe measure of a more permanent nature.

2.3.2. Decision on Medical Examination or Treatment

The court will decide to impose a medical examination or treatment measure when the child's life is at risk or his or her health is seriously endangered, and the parents do not consent or object to examination or treatment. When a child is able to consent

49 Art. 171 para. 2 of the Family Code. Where parents hold the position of guardians, they must not do anything beyond the ordinary course of business or the management of the child's property and their full and continuous supervision is necessary.

50 Social Assistance Act (Official Gazette, No. 3/07 with amendments).

51 Končina-Peternel in Zupančič et al., 2009, p. 262.

52 The purpose of child custody is defined in Art. 239 of the Family Code. For more details, see also: Kraljić and Križnik, 2021, pp. 95–98.

to a medical procedure or treatment under the law governing patients' rights, this measure can only be carried out with the child's consent. Art. 35 para. 2 of the Patients' Rights Act[53] provides that a child under the age of 15 shall not be deemed to have the capacity to consent unless a doctor assesses the child's maturity and considers that the child has the capacity to do so, in which case he or she shall, as a general rule, consult the parents/guardian on the circumstances relating to the capacity of the child to make decisions for himself or herself. A child, who is already 15 years old, shall be presumed to be competent to consent unless the doctor, in the light of the child's maturity, considers that the child is not competent, in which case the doctor shall consult the parents or guardian in respect of the circumstances relating to the child's capacity to make decisions for himself or herself.

This measure is intended to replace parental decision/consent when it comes to more extensive treatment in circumstances where medical treatment or examination of the child needs to be decided immediately and an interim order is more appropriate. However, it is not appropriate where the dispute is between the parents who cannot agree on the examination or treatment, as this constitutes a dispute over the exercise of parental responsibility.[54] The duration of the measure is not defined in time.

2.3.3. Restriction or Withdrawal of the Right to Contact

Using this measure, the court may restrict or withdraw the right to contacts of one or both parents, or of a person who has acquired the right of access by a court decision or a court settlement, if the child is at risk as a result of the access and the child's best interests can only be sufficiently safeguarded by the restriction or withdrawal of the right of access. Contact with parents or other persons[55] must be in the best interests of the child and cannot be based solely on the wishes and expectations of those who wish to have contact with the child.

The court will impose this measure if the child is endangered by contact with his or her parents or one of them, or if he or she is endangered by contact that has already

53 Patients' Rights Act (Official Gazette No. 15/08 with amendments). Art. 2 para. 19 of the Patients' Rights Act provides: 'The ability to decide on oneself is the ability of the patient to independently exercise the rights under this act, in particular to decide on the implementation of medical intervention or medical treatment. The patient is able to make decisions about himself if, in view of age, maturity, state of health or other personal circumstances, he is able to understand the meaning and consequences of exercising the rights provided for in this act, in particular consent, refusal or revocation of refusal of medical intervention or medical treatment.'

54 Art. 151 of the Family Code determines different ways of exercising parental responsibility.

55 According to Art. 142 of the Family Code, the child has the right to contact, insofar as it is in his or her favour, other persons with whom he or she is family-related and personally attached. These can be, for example, siblings, grandparents, former foster parent, previous or current spouses or partners of his parents.

been established with another person by a previous court order.[56] The Family Code specifically provides that the practice of supervised contact cannot be imposed as a measure of a more permanent nature.[57]

2.3.4. Removal of a Child From the Parents

Under the current legislation in Slovenia, the term "deprivation of a child" is used in family law when referring to a measure of a more permanent nature of the deprivation of a child under Art. 174 of the Family Code, that is, a type of an interim order removing a child from his parents and placing him or her with another person, in a crisis centre, in foster care or in an institution under Art. 162(1)1 of the Family Code and the provision on the enforcement measure of direct delivery under Art. 238e of the Enforcement and Insurance Act.

This measure is one of the more severe among those of a more permanent nature, as it results in the child being physically removed from the family in which he or she is at risk of harm or danger of harm. This is the case where the court finds that the parents do not provide adequate conditions for the child's normal physical and psychological development, where the parents neglect the child's care and upbringing, expose the child to danger, fail to protect the child from the other parent or from third parties, are irresponsible and where the family environment may also be a mental burden for the child. Therefore, it is not a condition for the imposition of this measure that the parents are guilty or negligent, but it is sufficient that the child's development with the parents is in itself endangered.[58] It is essential that there is a positive prognosis that the parents will be able to resume custody of the child at the end of the measure, that there is a realistic prospect of their parental capacity improving and that the conditions for the child's reintegration into the family are fulfilled. In cases where positive expectations cannot be realised, the imposition of this measure is not appropriate and a more severe measure of permanent nature should be resorted to.

When imposing this measure, the court also decides whether the child at risk should be placed with another person, in foster care or in an institution. The other persons are most often the child's relatives or other trustworthy persons to whom the child is attached and who are willing to take care of him or her. The court may also place the child in an institution following the proposal of the social work centre if such placement is the most appropriate in the light of the child's psychosocial difficulties. The court may not place a child with a person who cannot be a guardian.[59] The provisions of the Provision of Foster

56 Depending on the degree of threat to the child, it is possible to limit contact both in terms of place, time, duration or method of carrying out contact and to determine it in such a way that it takes place in the best interests of the child. The court may also decide that contact is not carried out by personal meeting and socialising, but in other ways, such as by various means of telecommunications or by written communications and other means appropriate to the child's needs. See also: Kraljič, 2019, p. 573.

57 This is only admissible by an interim order under Art. 163 of the Family Code with a maximum duration of nine months.

58 Cf. VSRS I Up 1139/2005; VSRS X Ips 477/2004, UPRS I U 1084/2017-9.

59 According to Art. 240 of the Family Code, a person who has the personal qualities and abilities necessary for the performance of the duties of guardian and who agrees to be a guardian may be appointed as a guardian. However, the conditions for a guardian are set out in Art. 241 of the Family Code.

Care Act shall apply *mutatis mutandis* regarding the obligations of the other person with whom the child is placed and the supervision of placement.

Removal of the child does not terminate the parents' other obligations and rights towards the child,[60] unless the court limits parental responsibility at the time of the measure. If the court does not also impose a measure restricting parental responsibility, other parental rights will remain intact (e.g. representation of the child, disposal of property, decision-making on schooling). If, after the removal of the child, the parents exercise their remaining rights as to endanger the child, consideration should be given to withdrawing parental responsibility.

As removal results in the physical separation of the parents and the child and they no longer live together, it is also necessary to regulate the contact between them in such a way that it is of maximum benefit to the child. If the child's contact with the parents or with one of them would endanger the child, the court may limit or withdraw the parents' right of contact with the child.[61] When withdrawing this right, the court also decides on the parents' maintenance obligation.[62]

The maximum duration of this measure is limited to three years and, as with other measures of a more permanent nature, the court, with the help of the social work centre, monitors the implementation of the assistance plan and, if necessary, modifies, abolishes, replaces or, exceptionally, decides to extend the measure.[63]

2.3.4.1. Protocol of Recommended Practices for the Execution of a Decision on the Removal of a Child by Direct Extradition

Art. 238c of the Enforcement and Security Act requires the court, considering all circumstances of the case as to ensure that the best interests of the child are safeguarded, to decide that the enforcement of a decision on the custody of a child shall be effected by imposing a fine on the person to whom the enforcement order relates, or by removing the child and handing him or her over to the person entrusted with the child's custody or guardianship. Therefore, pursuant to Art. 238e, the court will enforce the court decision in cases where indirect enforcement by imposing fines[64] would not be successful or, in particularly justified cases, immediately. Pursuant to Art. 238e of the Enforcement and Security Act, the court shall decide that enforcement shall be carried out by removing the child from the person with whom the child is kept at the time of enforcement and by handing the child over to the person entrusted with the child's care and custody. The enforcement shall be carried out by

60 Art. 174 para. 2 of the Family Code.

61 Art. 173 of the Family Code.

62 The obligation to support children is defined in Art. 183 of the Family Code. Parents must support their children until they reach the age of majority and, in the case of further education, no longer than until they are 26 years old. Art. 184 of the Family Code determines the duty of the parents to support the child even in the event of an imposed measure.

63 Art. 160 of the Family Code.

64 Art. 238d of the Enforcement and Security Act defines indirect enforcement through the imposition of financial penalties as provided by Art. 226 paras. 1–3 and para. 5.

the enforcement officer in the presence of a professionally qualified worker appointed by the court. The executor may, depending on the circumstances of the case, request the assistance of the police in carrying out the execution. Then, the person to whom the child is entrusted for care and protection shall be informed of the time and place of the enforcement by removal and given the opportunity to be present during the enforcement. The court may, depending on the circumstances of the case, provide in the enforcement order that the child is to be handed over immediately, in which case the enforcement order shall be served to the person from whom the child needs to be removed at the time of the first enforcement action, or subsequently, if he or she is not present at that time. The absence of the person from whom the child is to be removed is not an obstacle to enforcement. If the child is in the custody of a person not named in the enforcement order at the time the enforcement is carried out, the enforcement order and the enforcement record shall be served on that person at the time the enforcement is carried out.

Enforcement by direct extradition will be carried out by the court both based on court decisions on measures (interim injunctions, measures of a more permanent nature) and on other court decisions concerning the custody of children,[65] even if they do not refer to the extradition of the child. However, only in exceptional and specifically justified cases can the enforcement of a decision on personal contact also be ensured under direct extradition rules.[66] In criminal law, we also encounter unlawful removals of children (e.g. the offence of deprivation of a minor under Art. 190 of the Criminal Code),[67] but such removals are not dealt with in this report.[68] Whatever is the origin of the legal basis of the specific decision to remove a child from his surroundings, it is impossible to ignore that the fundamental problem lies in the very way in which this stressful and painful interference with the child's previous way of life is carried out. The removal of a child is thus undoubtedly emotionally and professionally extremely demanding.

After the new family legislation came into force in 2019, the need for a protocol on child removal was recognised and an inter-institutional work group established. In May 2020, the work group drafted a Protocol of Recommended Practices in the Case of Execution of a Decision on the Removal of a Child by Direct Extradition.[69] The purpose of the Protocol is to protect the best interests of the child during removal. All participants are obliged, after a preliminary assessment of the factual circumstances and a risk assessment, to draw up a detailed plan for the implementation of the removal of the child and define the role and conduct of all participants from the different

65 For more about the removal and placement of a child, see: Čujovič, 2019, pp. 71–92.
66 Art. 238f para. 2. of the Enforcement and Security Act.
67 Criminal Code (Official Gazette No. 50/12 with amendments).
68 For details about the removal of a child, see: Burkelc and Burkelc Juras, 2018, pp. 75–97.
69 Vrhovnega sodišča Republike Slovenije (2020) Su 1829/2016 z dne 13. maja 2020 pripravila 'Protokol priporočenega ravnanja v primeru izvršitve odločbe o odvzemu otroka z neposredno izročitvijo' [Online]. Available at: https://www.iusinfo.si/download/razno/protokol_odvzem_otroka_z_neposredno_izrocitvijo_nov2020.pdf (Accessed 15 December 2023).

institutions in the different stages to ensure that the individual actions are the least burdensome for the child and that the best interests of the child are best served.

This Protocol is extremely useful as a working tool and provides for a normal course of action and the distribution of roles of all participants in the various stages of the enforcement procedure, and, in the context of planning the enforcement, it also foresees the possibility of certain special circumstances, in particular with regard to the characteristics of the child and parents, and for the recommended course of action to be followed in such cases. The Protocol is also accompanied by a "Risk Assessment" form to facilitate the identification of risk factors relevant to the planning and execution of the removal of the child.[70] Some of the most important aspects of the Protocol are briefly outlined below.

First, considering the risk factors, a risk assessment is drawn up for assessing whether there is a low, medium or high-risk rating.[71] The protocol then provides for the modalities of action and cooperation in the different phases. Therefore, in Phase 1, the phase prior to the issuance of the enforcement order, an enforcer must be identified. The court may appoint any executor, but when several children are to

70 Therefore, to evaluate the risk, it is necessary to shed light on the circumstances: the parents (defined on a case-by-case basis, considering relationship dynamics); the child (age, developmental characteristics (mental or physical disabilities, other special needs); the child's personality, emotions, mental development, other personality traits, familiarity with the procedure, previous experience, willingness or reluctance to leave the family; whether the child is familiar with the environment; the child's health, any chronic illnesses, special needs (physical, mental), any behavioural peculiarities (e.g. the living conditions (environment, spatial layout); and other features relevant for the implementation of the deprivation (possible dangers, e.g. dangerous dog, legal or illegal possession of weapons, presence of other persons in the home; the social environment in which the family lives, the social network of the family, cultural specificities, language barriers, familiarity of other institutions with the family situation, media etc.).

71 A low-risk assessment is when, given the family situation and the experience of cooperation with the family, it can be expected that the parents will voluntarily surrender the child when the enforcement order is served. In such a case, no further action and no assistance from the police are necessary. A medium-risk assessment is when the parents have no insight into their own difficulties and the child's vulnerability. Based on the known information and experience in cooperation with the family, it is assessed that removing the child from the home would be extremely burdensome for the child. If there are several children in the family, depending on their involvements (e.g. school, kindergarten, activities of interest), it may be possible to carry out the direct removal outside the children's home. School/kindergarten/extracurricular activities staff should be involved in the preparation for enforcement. Police assistance is not necessary. However, a high-risk assessment will be appropriate where parents lack insight into their own problems and the child's vulnerability, if they are uncooperative in the proceedings, refuse to help, make threats and can be expected to try to prevent the children from being handed over. On the basis of known risk factors, an increased risk to the safety of the child or of all those present during the enforcement procedure, or even to the general safety, can be expected. In such cases, additional specific planning and the involvement of additional services are needed to help provide additional security Therefore, to evaluate the risk level, it is necessary to shed light on the circumstances: the parents (defined on a case-by-case basis, considering relationship dynamics), the child, the living conditions and other features relevant for implementation. Due to the paramount importance of coordinated action, a special "action" meeting is organised before the start of the procedure.

be removed at the same time, it may be reasonable to appoint several executors. The court shall, by order, designate a professionally qualified person or a competent professional institution.[72] Criteria for the selection of the proposed professional person are also provided for. The duty of confidentiality of all those involved should be emphasised at this stage. When it is expected that the removal will have to be carried out in a closed room, in particular where this is the result of the risk assessment, it is prudent for the court, at the same time as appointing the executor, to issue an order for entry into the closed room to allow for forcible entry in the event that the debtor is not present or does not wish to provide access to the room.

Once the enforcement order has been issued and served on the executor and professional person, the second phase takes place, namely the preparation and planning phase for the participation of the parties involved in the final removal of the child. The Protocol focuses on ensuring rapid and secure communication. In principle, this is done in writing, by email or other forms of remote communication if their security can be guaranteed, or by telephone (the judge always makes an official note in the file). The court provides the executor with information from the case file that it considers relevant for the planning and execution of the deprivation, as well as its own risk assessment. The meetings shall, if possible, be held live or by videoconference, or, in urgent cases, by telephone. The executor shall contact the expert immediately upon receipt of the enforcement decision. Where the professional person is a social work centre employee, he or she shall obtain up-to-date data and relevant information that helps facilitate the planning of the enforcement and its implementation in advance. It is recommended that an internal consultative team meeting be convened immediately within the social work centre for this purpose, that a preliminary assessment of the level of risk in the direct execution of the court order be made and that a proposal be formulated as to the place, timing and manner of the direct removal of the child. The risk assessment is then jointly made by the enforcement officer and the expert person and, depending on the level of risk, a plan is drawn up, which will include further enquiries and the involvement of other services, if necessary. The minutes of the meeting, together with the risk assessment, shall be forwarded by the executor to the court without delay. In exceptional situations (i.e. when the removal of the child must be carried out so quickly that the meeting cannot be held in person or there are other circumstances that make it impossible to hold the meeting), this communication shall be carried out by telephone or other reasonably secure means. In this case, the executor shall make an official record of the conversation and draw up a report based on this record, which shall be forwarded to the court. In more complex cases, particularly those of medium and high risk, it is advisable to have the judge who ordered the deprivation present at the meeting. If the bailiff or the court considers that police assistance is necessary and urgent action is required, it shall immediately

72 Art. 238e para. 3 of the Enforcement and Security Act, Art. 128 of the Rules on the performance of bailiff services (Official Gazette No. 18/03 with amendments).

inform the competent police station in writing or by telephone.[73] When more resistance is expected, an enforcement plan should be carefully drawn up, specifying the roles of all the people involved. If the judge is not present, the meeting will be chaired by the enforcement officer, who will then forward a copy of the minutes to the court without delay, no later than the day after the meeting. The minutes shall include a joint risk assessment and a final enforcement plan drawn up by the executor with the assistance of the police and a professional.[74]

The removal of the child must be carried out quickly and, to protect the best interests of the child, must not be carried out in public; it can only be carried out in public in exceptional circumstances[75] and, in any case, must be carried out as discreetly as possible. Whenever possible, the child shall not be removed from his or her home or from a place where the person liable for the surrender of the child is present, unless it is clear from the risk assessment that the unhindered and smooth removal of the child is to be expected. The place where the removal will be least burdensome for the child should be chosen. The Protocol foresees more appropriate places than an apartment or a house, such as a school, kindergarten or other institution or facility (e.g. a hospital) where the child is located.

The plan requires a clear definition of who can/should be present at the place of removal. This includes the executor, a professional person, police officers (how many police officers are needed on site, perhaps also criminal investigators), if necessary; a police negotiator should be involved if a greater risk is expected at the time of the removal of the child (depending on circumstances like previous refusal of the obligor,

73 As a general rule, a reasoned request for police assistance shall be made in writing by the executor at least seven days before the scheduled performance of the tasks and shall state the reasons for which the assistance of police officers is necessary and the legal basis for the performance of the tasks and powers that have been resisted, endangered or are reasonably expected by the executor (Art. 12 para. 2 of the Police Tasks and Powers Act). In principle, the enforcer shall arrange a meeting with the commander of the competent police station or a person authorised by him or her, and a professional person shall be present at the meeting. The Protocol specifically provides that the police will provide assistance if there is resistance or endangerment in the performance of the beneficiary's duties or if this is reasonably expected and that police assistance within the meaning of the provision of Art. 238e para. 3 in conjunction with Art. 51 of the Enforcement and Security Act constitutes police assistance within the meaning of Art. 12 of the Police Tasks and Powers Act.

74 At this meeting, the expert and the executor inform police officers about all the data already collected on the family, the parents (e.g. health condition/mental problems, dependence on alcohol, illegal drugs or other psychoactive substances, physical disability, ability to understand) and the child (e.g. whether he or she attends kindergarten, school, what activities he attends, whether he has a decision for additional professional help, what are his or her relationships and contacts with the rest of his relatives (grandparents, aunts, uncles), whether he or she has some person he or she trusts (e.g. educator, teacher, social worker) that may be important for planning the way the enforcement is carried out). They also acquaint themselves with the risk assessment and the estimated time and place of the child's removal (Arts. 238e para. 3, 129 para. 3 of Enforcement and Security Act and Art. 129 para. 3 of the Rules on the performance of bailiff services).

75 Art. 129 para. 4 of the Rules on the performance of bailiff services.

threats, violence), as well as a locksmith, when it is planned to enter a locked room, the fire brigade, when there is a risk of falling from a great height or fire or an explosion is expected etc. Depending on the health state of the child or the person from whom the child is to be removed, a doctor and medical staff might also be present, as well as a psychologist, a teacher or an educator, perhaps some other person trusted by the child.

The Protocol also provides for the procedure to be followed in cases where the removal of a child has to be carried out in an environment where the person from whom the child is to be removed will be present and it is not expected that he or she will hand over the child voluntarily. In such cases, as far as possible, several possible enforcement scenarios should be foreseen as early as possible in the planning phase of the enforcement.[76] The plan should also clearly define the role of each participant and the way in which they will cooperate with each other when the direct enforcement is carried out. The enforcement plan shall also provide that, if the enforcement is resisted or threatened and the police are not present, the enforcer may immediately request the intervention of the police.

The Protocol also sets out how the executor and court will cooperate.[77] The judge who issued the enforcement order must be available to the enforcer by telephone or other means of direct communication, provided that communication security is guaranteed.[78] The court must ensure that the executor has direct contact with the judge at all times until the execution of the measure is completed, including outside the court's office hours. The executor must inform the person to whom the child is to be handed over of the time and place of the removal of the child at least 24 hours before the removal is to take place or, in exceptional cases, within a shorter period.

In Phase 3, the enforcement phase, the Protocol specifies the expected behaviour of each participant. Before arriving at the removal site, each individual involved must know what his or her role is at the scene, who is in charge of the process, and how the process will tentatively unfold. The Protocol clearly defines that the removal of the child shall be conducted by the executor. The executor must act with discretion and consider the child's age, mental development, sensitivity and personal characteristics.[79] The child shall be taken from any person with whom the child is staying at the time of enforcement, even if that person is not named in the enforcement order of the court, and notwithstanding the fact that the person from whom the child must be removed is not present at the time of the removal.[80] The Protocol also provides for

76 In such instances, The Protocol recommends that the area of the house or apartment is checked in advance, if possible, a plan of the apartment with the layout of the premises is obtained (where are, for example, front doors, windows, balconies), if necessary, the help of neighbours is asked for.

77 Art. 129 para. 7 of the Rules on the performance of bailiff services.

78 In the event of a planned stay, the judge must inform the bailiff, the head of the department and the president of the court to ensure the availability of another judge who is ordered to perform urgent acts under the Court Rules (Official Gazette No. 87/16 with amendments).

79 Determined by Art. 129 para. 4 of the Rules on the performance of bailiff services.

80 Art. 130 para. 1 of the Rules on the performance of bailiff services.

the possibility of temporarily suspending the execution of a removal that has already begun if the executor, in cooperation with a professional, determines that the continuation of the removal would endanger the life and health of the child despite police assistance. In this case, the removal shall be resumed as ordered by the judge. The professional person must be always present when the direct enforcement is carried out and the police will use their powers when necessary to take appropriate action in accordance with police duties. If they are unable to carry out the police task successfully by means of a warning, order or other powers, police officers may use coercive means to prevent or deter imminent danger.[81]

If individuals do not comply with the warnings, they must be ordered and required to perform or refrain from performing the acts necessary for the enforcement officer to carry out the tasks within his or her competence smoothly (including coercive measures taken by the police within the scope of police powers).[82] The use of force against a child is not permissible, except if and to the extent necessary to ensure the protection of the child's life and health, or if the special conditions for the use of coercive measures against a child set out in Art. 76 of the Police Tasks And Powers Act are met.[83] In the event of the need for forcible entry, the executor shall order the work of his assistants or the locksmith, considering the instructions of the police when entering the premises.

The child is taken directly by the executor.[84] In doing so, he or she considers the instructions of the professional and, if necessary, other professionals (doctor, paramedics etc.). The professional person must focus his or her care and actions on the child, his or her needs and reactions, with the aim of looking after the child's best interests and reducing traumatisation and victimisation; however, he or she is not responsible for the direct removal of the child.

The Protocol requires the executor, once he or she has started the enforcement action, to complete the action by removing the child, unless he or she is ordered by a judge to stop the action during the removal. The executor shall endeavour to hand over the child to the beneficiary[85] as soon as possible, preferably immediately at the place of removal or at a previously agreed place. The executor shall draw up a Certificate of Delivery of the child and give it to the person to whom the child has been delivered. The enforcement and any assistance shall be completed by the delivery of the child to the beneficiary, of which the enforcer shall inform the court. The court shall also

81 Cf. the Protocol for more details.

82 Police powers are specified in Art. 33 of the Police Tasks and Powers Act.

83 It provides that police officers may not use coercive means against children, visibly ill, old, disabled persons, visibly severely disabled persons and visibly pregnant women, unless they are temporarily restricted in their movement or need to be brought or detained and the police officers cannot otherwise control their resistance or assault, or if they endanger their lives, the lives of other people, property or if other circumstances put their life or health in direct danger.

84 Also in Art. 128 of the Rules on the performance of bailiff services.

85 Under the Protocol, the beneficiary is the person to whom the child is entrusted in accordance with the Family Code (Art. 238e para. 1 of the Enforcement and Security Act, Art. 128(1) of the Rules on the performance of bailiff services).

obtain a report on the child's condition and well-being from the professional who was present at the time of the enforcement, after being informed that the enforcement has been completed.

2.3.5. Placing a Child in an Institution

The court can decide, in agreement with the parents, whether to protect a child at risk by placing him or her in an institution. This is the only measure of a more permanent nature that can be imposed with the consent of the parents. If the parents do not agree to the proposed measure and the court considers that it is necessary to impose a measure to remove the child from the family environment, it will have to impose a measure to remove the child.

The court will order the placement of a child in an institution if it finds that the child has psychosocial difficulties, manifested as behavioural, emotional, learning or other problems, and if it established that these difficulties endanger the child himself or other children in the family, and that only by placing the child in an institution can the child's best interests or the best interests of the other children in the family be sufficiently safeguarded. The child's psychosocial difficulties need not be the result of inadequate parental care. This measure is useful when parents are unable or unwilling to bear the burden of responsibility for the child's day-to-day care and upbringing and to provide a continuum of care in accordance with the child's needs because of their child's intractability, developmental difficulties and special characteristics. The Family Code allows for such a measure to be also imposed for the protection of other children living in a family environment with a child who has psychosocial difficulties.

When imposing this measure, the court appoints the institution where the child will be placed, considering the opinion of the social work centre, as the choice of the most appropriate institution depends on the nature of the child's psychosocial problems and the programme that the institution will implement with the child with the aim of reducing his or her problems. When placing a child in a particular centre, the social work centre must also consider the provisions of the Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education.[86]

Art. 175 para. 2 of the Family Code provides that placing a child in an institution does not terminate the other obligations and rights of the parents towards the child, unless the court limits parental responsibility in accordance with Art. 171 of the Family Code. Parental rights will thus remain unrestricted and the parents will continue to be able to represent their child in legal transactions, decide on the child's schooling and medical treatment, dispose of the child's property and so on. When a measure of placement of the child in an institution is imposed, it is also possible to impose a measure of deprivation or restriction of contact and also decide on the obligation of the parents to support the child.

86 Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (Official Gazette No. 200/20).

The measure of placing a child in an institution lasts for a maximum of three years and, similar to other measures of a more permanent nature, is monitored by the court with the help of the social work centre, which regularly sends reports on the implementation of the family and child support plan and, if necessary, supplements, modifies, abolishes or extends it. As measures to protect the best interests of the child may only be implemented until the child has acquired full legal capacity, the child may remain in the institution after acquiring full legal capacity only if he or she consents in writing.

2.3.6. Withdrawal of Parental Responsibility

The withdrawal of parental responsibility is the most serious interference within the right to family life and is imposed to protect the child, which is why it is of unlimited duration. The court deprives one or both parents of their parental responsibility if, having established that the child is at risk, the court also finds that there is no possibility of the parents being able to resume parental responsibility. The Family Code provides that the lack of capacity to exercise parental responsibility shall be found in cases where parents '*have severely violated their obligations or abused their rights related to parental responsibility or if they abandoned the child or their conduct has manifestly shown that they will not assume custody*'.[87] The court must provide reasons for the choice of measure and explain why a less severe measure cannot be imposed. Deprivation of parental responsibility is not a penalty for the failure to exercise parental responsibility or for the inadequate exercise of it; it is the result of an objective inability to exercise parental responsibility for whatever reason.[88] The court must determine whether there is indeed no possibility of rehabilitating the family, considering the child's right to a stable family life.

As the state is obliged to provide a child with a substitute and permanent family community, parental responsibility can be returned by a court decision if the reason for which it was taken away ceases, but only if the child has not been adopted in the meantime.

When the court decides on the removal of parental responsibility, it also decides on the placement of the child with another person, into foster care or into an institution and on the appointment of a guardian, if a decision has not yet been made. In such cases, the court also appoints the other person, foster parent or institution and the guardian. In the case of the removal of parental responsibility, placement with the purpose of adoption could also be appropriate.

As the right to contact is an independent right, the court must, despite the removal of parental responsibility, arrange contact between the child and the parents, unless it assesses that such contact endangers the child. Upon the removal of parental responsibility, the court also decides on the alimony obligation of each parent. The alimony

87 Art. 176 of the Family Code.
88 VSRS II Ips 161/2013.

obligation of the biological parents ceases if the child is adopted (at the moment of the legal effectiveness of the adoption decision).[89]

3. Forms of Substitute Care

3.1. Adoption

Adoption is the legal process through which a child is legally transferred from the care of his or her birth parents to the care of adoptive parents. Adoptive parents become the child's legal parents and are responsible for his or her care and upbringing. Slovenian law provides for special protection of the child's interests in adoption, which is why it is only available to children. The adoption of an adult is not recognised by Slovenian law.[90] Adoption creates the same legal relationships between the adopted child and their descendants, and the adoptive parent and their relatives, as between relatives. At the same time, is defined the rights and obligations of the child to his or her birth parents and relatives to the child cease. This type of adoption is called complete adoption and is irrevocable.[91] If adoptive parents do not act in the best interests of the child or abuse or neglect the child, the state must protect the child's interests in the same way as it would with biological parents.[92]

The adoption consists of the procedure for determining the conditions for adoption and the procedure for deciding on adoption. The first procedure is carried out at the social work centre and the decision-making process is brought before the court. This procedure is carried out according to the rules of non-contentious procedure and belongs among the procedures for the protection of the best interests of children.[93]

Only a child whose parents have died or a child who cannot be expected to still live with his parents can be adopted (parents are unknown, have been of unknown residence for a year, their parental responsibility has been restricted or have consented to adoption).[94] Parents are understood to be both biological and "social" (the children of adoptive parents or parents who acquired a child with the help of a donated gamete).[95]

Consent for adoption can be given at the social work centre or court. As a rule, both parents must consent to adoption. It is thus problematic when a mother who wants to give up a child for adoption has no interest in establishing paternity on behalf of the child. If the father recognises the child during the adoption procedure and the mother does not give him consent to recognition, he may exercise his paternity in court. However, it is possible that the adoption procedure will be completed before

89 Art. 220 para. 1 of the Family Code.
90 Art. 212 of the Family Code; Novak, 2022, p. 343.
91 Arts. 219–221 of the Family Code.
92 Novak, 2022, p. 344.
93 Art. 93 paras. 1–9 of the Non-Contentious Civil Procedure Act.
94 VSRS II Ips 161/2013.
95 Novak, 2022, p. 344.

paternity is established, as the law does not prohibit the adoption of a child at the time when the procedure for establishing paternity is underway.[96]

The law does not prescribe the nature of the declaration of consent to adoption. In principle, consent can be withdrawn as long as the child is not yet adopted, which is generally not earlier than six months from the fulfilment of the conditions for adoption.[97] Consent cannot be given by a guardian instead of a parent. As only a child can be adopted, consent to "blanco adoption" is not valid (i.e. no consent to adoption is possible before the child is born). Consent is also not allowed immediately after the birth of the child, but rather after reaching the eighth week of the child's age. If it is given before, it must be confirmed later with a new consent.[98] Biological parents have the right to give consent for the adoption of a child to adoptive parents who are clearly indicated in the decision by name and surname, as the law does not stipulate that the competent authority leads the adoptive parents only by number (incognito adoption) or that the biological parents give consent without knowing who will adopt the child (blanco adoption).[99] The latter is the opinion in theory, but in practice most courts (not all) try to ensure the secrecy of the process and anonymity of the data even among adoptive parents and parents to prevent possible future complications. Interestingly, in the event that the child is already able to reasonably assess his or her situation (i.e. he or she understands the meaning and consequences of his consent), he or she must also consent to the adoption. The opinion can be expressed by the child or with the help of a confidant.[100]

Regarding adoptive parents, certain conditions must be met. The adoptive parent must be at least 18 years older than the adoptee. With this provision, Slovenian law wants to ensure that the relationship of adoption is as similar as possible to the relationship between parents and children. The court may withdraw from this rule and allow adoption even by an adoptive parent who is not 18 years older than the child, if this is in the child's favour.[101] It is not possible to adopt a relative in a straight line, nor a brother or sister (instead of granting; in certain cases, the Institute of granting parental responsibility is available). The adoptive parent must have the appropriate characteristics to ensure that the best interests of the child will not be jeopardised

96 Novak, 2022, p. 345.
97 Art. 218. para. 3 of the Family Code.
98 Novak, 2022, p. 346.
99 Due to this fact, there is also the risk that the biological parents could later impermissibly invade the privacy of the adoptive family or the child can later find out who his biological parents were. In this regard, some special rules are in force (e.g. after the adoption decision has become final, the biological parents no longer have the right to know the personal data of the child they gave up for adoption – a new personal name or place of residence). Some exceptions are possible. This arrangement does not apply if the child is adopted by the spouse or common-law partner of the biological parent (Novak, 2022, p. 347.).
100 Novak, 2022, p. 348.
101 Art. 215 para. 1 of the Family Code.

and must be a Slovenian citizen.[102] The adoptive parent cannot be a person deprived of parental responsibility, a person who has reason to believe that he or she will use the adoption to the detriment of the adopted child, a person who does not provide a guarantee that he or she will exercise parental responsibility for the benefit of the child, a person who is deprived of legal capacity or who is so mentally disabled or ill, a person that has committed a crime against life or body or against sexual inviolability, for which the offender is prosecuted on motion, as well as a person living with such a person.[103]

A child can only be adopted jointly by spouses or partners in cohabitation.[104] This is also true for same-sex partners[105] and stems from the belief that the child will benefit more if adopted by both partners.[106] When a child is adopted by a partner of a parent, it does not matter in what way parenting has been established between the child and the adoptive parent. A person who is not in a marriage or cohabitation can only adopt a child in exceptional cases.[107]

If the conditions for adoption that stem from Arts. 212–218 of the Family Code are not fulfilled, the adoption is not valid. The annulment shall be done in a non-contentious procedure, which should be initiated by either one of the biological parents, an adopted child who has reached the age of 15 if he or she is able to understand the meaning and legal consequences of these actions, the adoptive parent or the social work centre.[108]

3.2. Granting Parental Responsibility

In Slovenia, several calls have been made to the legislator in recent years to respond to situations where a child no longer has living parents but has other relatives or members of the extended family who could take care of him or her. The legislator answered these calls by adding the possibility of granting parental responsibility to a relative, which is regulated in Art. 231 of the Family Code.

The court grants parental responsibility to a relative in non-contentious proceedings. These proceedings are initiated either on the proposal of the social work centre, a child who has reached the age of 15 or a relative who is willing to take care of the child.[109] Parental responsibility is granted to the relative by court and only if the child no longer has living parents and this is in his or her favour and best interest. A relative

102 A foreigner may only adopt a child if it is not possible to find an adoptive parent among Slovenian citizens or if he or she obtains the appropriate permission from the minister responsible for family matters. This does not apply to foreign adoptions, where the adoptive parent is the partner of the child's parent or the child's relative as per Art. 217 of the Family Code.

103 Art. 216 of the Family Code.

104 Art. 213 para. 1 of the Family Code.

105 The decision of the Slovenian Constitutional Court U-I-91/21-19; Up-675/19-32, dated 16 June 2022.

106 Zupančič in Zupančič et al., 2009, p. 290.

107 Art. 213 para. 2 of the Family Code.

108 Art. 121 para. 3 of the Non-Contentious Civil Procedure Act.

109 Art. 119 of the Non-Contentious Civil Procedure Act.

who is ready to take on parental responsibility must meet the conditions of age difference and appropriate personality traits for adoptive parents. The Family Code further defines who is the relative to whom parental responsibility can be granted: persons who are related to the child in a direct line up to two times removed included or collaterally up to four times removed (e.g. grandfather, grandmother, brother, sister). This provision also applies in case of half-siblings (between half-brothers and half-sisters).[110] In certain cases, similar to adoption, parental responsibility can only be granted to two relatives together (e.g. relatives who are married or cohabitate, even if the partner is not a relative of the child).

In each case, the court must assess whether, in the particular circumstances of the case, it is more advantageous for the child to entrust his or her relative with the task of foster care or to grant him or her parental responsibility, as this may be important to ensure the means to maintain the child.[111]

When parental responsibility is granted, relatives acquire the same obligations and rights that parents have on the basis of parental responsibility – they are obliged to take care of the person and property of the child and also represent the child.[112] They, like the parents, are also obliged to maintain the child.[113] The provisions on measures for protecting the best interests of the child shall apply in the event of a threat to the child.[114]

3.3. Guardianship

The Family Code regulates three types of guardianship: guardianship for children, for adults and for special cases. In this report, we focus solely on child custody, as this replaces parental responsibility for the child if the child does not have parents or if they do not care for him or her.[115] Guardianship is thus a substitute, successive and subsidiary measure.[116] The placement of the child under guardianship and the appointment of a guardian is decided by the court in non-contentious proceeding.[117]

110 Novak, 2022, p. 361.
111 Novak, 2022.
112 The Family Code does not regulate the legal consequences that the granted parental responsibility entails in other areas of the law, in particular the field of inheritance. Since the right to inheritance in the relationship between the person with the granted parental responsibility and the child is not provided for so far in Slovenian legislation, it must be considered that the child is currently not considered as a legitimate heir (so far) (Novak, 2022, p. 361). See also Kraljič, 2021, p. 238.
113 Art. 231 para. 3 in relation to Art. 183 od the Family Code.
114 Art. 231 para. 4 of the Family Code.
115 Art. 257 of the Family Code. The purpose of childcare is to ensure that, with care, upbringing and education, the child's personality is fully developed and the child is trained for independent living and work (Art. 239 of the Family Code).
116 Kraljič, 2021, p. 238.
117 Art. 257 of the Family Code and Art. 93 paras. 1–6 of the Non-Contentious Civil Procedure Act.

The procedure for placing a child under guardianship is initiated *ex officio* or following the proposal of an eligible petitioner.[118] The social work centre is a participant in the proceedings even when it is not the one who proposed the commencement of the proceedings (legal participant).[119]

The guardian has most of the rights and duties that the child's parents have, but is not obliged to keep the child with him or her[120] or is obliged to maintain the child.[121] If the guardian does not have the child with him or her (the child does not live with him or her), the child is placed in foster care, in an institution or with another person. The guardian is not obliged to take care of the child's accommodation, as it is exclusively a measure of the state ordered by a decision of the competent authority.[122] In his work, he is obliged to act conscientiously and carefully (good master standard), but when he or she is a trustee of the social work centre (the social work centre usually further authorises a professional worker as the person responsible for the implementation of guardianship), the standard of a good specialist will be applied.[123] He or she is autonomous with regard to the decisions regarding the child, unless it is a decision that the law provides that he or she can take only with the consent of the social work centre.[124] A child under guardianship who reaches the age of 15 can get a job and dispose of his or her salary, but he or she is obliged to contribute to his or her maintenance and education.[125]

Guardianship ceases with the acquisition of the full legal capacity of the child, the adoption of a child by a court decision if the grounds for guardianship have ceased (e.g. when parental responsibility is granted to a relative),[126] as well as if the withdrawn parental responsibility is returned to the parent, its implementation is revived or if the child dies.

It is worth noting that, for children with disabilities in the protection system under the new regime, there is no longer the possibility of extending parental rights as it was under the previous system. Children with disabilities are placed under adult custody in the same way as the rest of the adult population when reaching the age of 18. Art. 6(2) of the Non-Contentious Civil Procedure Act imposes the courts with the obligation to *ex officio,* of its own motion, take all measures necessary to protect the rights and legal interests of children and persons who, due to intellectual disability

118 These are social work centre, a child, who has reached the age of 15, if he or she is able to understand the meaning and legal consequences of his or her actions, or a relative of the child in a direct line or collaterally up to two times removed. In certain cases, also other persons (Art. 113 of the Non-Contentious Civil Procedure Act).
119 Art. 114 of the Non-Contentious Civil Procedure Act.
120 Art. 258 of the Family Code.
121 For more differences between a parent and a guardian, see: Kraljič, 2021, pp. 251–252.
122 Novak, 2022, p. 387.
123 Kraljič, 2021, p. 253.
124 For example, enrolling or dropping a child out of school, changing the type of his education, deciding on the child's profession, etc. (Art. 260 of the Family Code).
125 Art. 150 of the Family Code.
126 Ibid., Art. 261.

or mental health problems or other circumstances, are not capable of taking care of their own rights and interests.

3.4. Foster Care

Foster care is an institution that allows a special form of care and upbringing of a child. It is regulated both in the Family Code, where we can find some general provisions, and in the Provision on Foster Care Act, which offers more detailed provisions. The purpose of foster care is to enable healthy growth, upbringing, education, harmonious personal development and training for independent life and work of the child. It is intended for children who are, for one reason or another, temporarily unable[127] to reside with their biological families, and the concept of temporality as a legal standard is filled by the court with content in each specific case.[128]

The foster parent must have appropriate characteristics that ensure that the best interests of the child are not compromised.[129] A person wishing to carry out foster care applies to the competent social work centre. The latter, after examination, forwards the application to the ministry responsible for family, which, if conditions are met, issues a permit for carrying out foster care activities and records that in the Register of issued permits.[130] The foster parent is allowed to carry out foster activity in addition to his profession or as the only profession.[131] He or she can be a relative of the child if the court finds that it is in the child's favour.[132] A relative does not need to apply for the permit. Exceptionally, the court may also decide on the placement of a child in foster care with a person who is not authorised to carry out foster care and is not a relative of the child if that person otherwise fulfils the conditions for carrying out foster care and consents to carrying out of foster care and, in view of the child's needs, it is the only possible way to provide the child with care and upbringing in his best interests.[133] However, a foster parent may have only up to three foster children placed at the same time, exceptionally more if it concerns the placement of siblings or the pursuit of a child's special interests.[134]

The court decides on placement in foster care in non-contentious proceedings (as does on the termination of foster care).[135] The court may place the child in foster care

127 For example, if they temporarily do not have their own family, they are temporarily unable to live with their parents for various reasons, if their physical and mental development in the environment in which they live is transiently compromised (Novak, 2022, p. 363).

128 Research have shown that, in practice, despite the temporality of foster care, there is a permanent and unpromising practice of providing foster care for children who are unlikely to ever be able to return to their parents again. For such children, it would be more beneficial to establish a relationship between them permanently through adoption. VSRS II Ips 161/2013.

129 More in Art. 6 of the Provision of Foster Care Act.

130 Ibid., Arts. 9 and 13.

131 Ibid., Art. 18.

132 Ibid., Art. 7.

133 Art. 118 para. 3 of the Non-Contentious Civil Procedure Act.

134 Art. 23 of the Provision of Foster Care Act.

135 Art. 93 para. 7 of the Non-Contentious Civil Procedure Act.

as a result of an action taken to protect the best interests of the child, but it may also be an independent proceeding if the child does not have his or her own family or is unable to live with the parents for various reasons.[136] In practice, a combination of an institution measure and foster care is also possible. The placement of the child in foster care is not a reason for the termination of the maintenance obligation of the parents. When the court decides on accommodation, it also decides on the maintenance obligation of each parent.

After the decision is final, the social work centre concludes a written foster care contract with the foster parent, which shall specify the duration of the contract, the scope of care of the foster parent, other obligations and the amount of monthly foster care payment to which the foster parent is entitled.[137] The foster care payment includes payment for care and labour remuneration.[138] The foster contract is terminated if foster care has ceased, with the expiration of time, with the dismissal of the foster parent or with the death of the foster parent or child.[139] However, foster care itself also ceases if the reasons for which the placement of the child in foster care was necessary cease, if the child is of legal age, qualified for independent living before the age of majority or if he or she has become a parent and has been granted full legal capacity.[140]

During the implementation of foster care, the foster parent is the one who carries out the day-to-day care of the foster child and is also entrusted with certain tasks that go beyond day-to-day care (e.g. representation in the process of issuing an identity card, obtaining information and making decisions regarding the school). All other important issues regarding foster care and upbringing must be regulated by the foster parent or guardian and social work centre in their agreement.[141] The foster parent is not obliged to maintain the child; instead, the parents are obliged to maintain him or her (even if they have been deprived of parental responsibility)[142] and funds for the child's maintenance can also be provided by the state. Children still have the right to contact their parents, unless such contact would not benefit them, in which case the parents' right to contact their child may also be revoked.[143]

136 Čujovič in Novak et al., 2019, pp. 763–776.
137 Art. 45 of the Provision of Foster Care Act.
138 Payment to the foster parent is not due if parental allowance is due for the same child (Art. 54 of the Provision of Foster Care Act). In addition to the payment for foster care, in certain cases, the foster parent may also receive a one-time benefit for the equipment of the newborn (Art. 50 para. 2 of the Provision of Foster Care Act). The care allowance is represented by funds for material costs for the foster child and a cash receipt, which is guided by the amount of the child allowance. Novak, 2022, p. 370.
139 Art. 47 of the Provision of Foster Care Act.
140 Art. 237 of the Family Code.
141 Novak, 2022, p. 373.
142 VSC Cp 484/2016.
143 Art. 173 of the Family Code.

4. Select Procedural Aspects

As explained in light of the individual institutions, Slovenian courts mainly decide on family law matters in non-contentious proceedings. Prior to the initiation of legal proceedings in which the court decides on the protection, upbringing, maintenance, contacts of the child and essential issues on the exercise of parental responsibility, to protect the child's best interests, parents must attend a preliminary counselling at the social work centre to determine whether they can agree on any of these issues.[144] The parents must take part in counselling prior to the initiation of proceedings for the protection of the best interests of the child. The social work centre also informs the participants about the possibility of a mediation procedure for a peaceful settlement of the dispute. Mediation can also exceptionally be carried out during legal proceedings.[145]

The Family Code determines that a child who has not reached the age of 15 or has not yet been adjudicated should be represented in the proceedings by a legal representative (usually, the parents). If the legal representative has initiated the proceedings, he or she may perform actions in the proceedings only until the child, who has reached the age 15 and is capable to understand his or hers own actions and the consequences of such actions, declares that he or she will independently perform procedural actions.[146] In the civil proceedings, the child is also guaranteed the right to a special representative (conflict-of-law representative) when the parents or a guardian, as legal representatives, cannot adequately protect the best interests of the child.[147] At the same time, the child has the right to express his or her opinion during a certain proceeding with the help of a confidant or defender (attorney).[148] He or she has this right, but not also the duty (if he or she wishes to do so, he or she does not have to express his or her will).[149] A confidant is a person chosen by the child because the child trusts him or her, and a defender is a person assigned to the child under the Human Rights Ombudsman Act with the consent of the parents, unless they are deprived of parental responsibility or if the court, upon application by the Ombudsman, deems the confidant to be in the child's favour.[150]

In more complex cases, it may not be sufficient for the court to obtain merely the opinion of the social work centre, so it also obtains the opinion of a relevant court expert. In these cases, Slovenian family judges have great difficulties due to the lack

144 Novak, 2022, p. 340.
145 This procedure is carried out in line with the Act on Alternative Dispute Resolution in Judicial Matters (Official Gazette No. 97/09 with amendments).
146 Art. 45 para. 3 of the Non-Contentious Civil Procedure Act.
147 Arts. 269 paras.1–2 of the Family Code, Art. 45 para. 5 of the Non-Contentious Civil Procedure Act.
148 Art. 69 para. 3 of the Non-Contentious Civil Procedure Act.
149 For details, see: Končina-Peternel, 2019, p. 93.
150 Novak, 2022, p. 308.

of court experts, especially psychological (clinical psychology and family psychology) and pedopsychiatric experts. Unfortunately, the lack of an expert also leads to procedural setbacks and, consequently, to a longer duration of legal proceedings, which is not in the best interest of the child. The Ministry of Justice is working intensively to find solutions and interinstitutional trainings have also been carried out, but the key is to ensure a greater number of competent court experts in the family field. In addition to the chronic lack of experts, the reason for the extension of court proceedings some district courts in Slovenia is also the too high workload of family judges. In Slovenia, many of providers of various forms of support and professional assistance to the family (both parents and children) have a too high workload, which leads to long queues for their services (especially for psychological treatment, pedopsychiatric treatment within public health care etc.) and makes it very difficult to provide adequate professional assistance, which could significantly help eliminate or at least improve poor family conditions and inter-family relations.

5. Conclusions

In Slovenia, children's best interests can be protected in the following procedures: measures to protect the best interests of the child (in the strict sense), adoption and annulment of adoption, granting parental responsibility to a relative, placing a child under guardianship, placing a child in foster care, deciding on custody of the child, maintenance of a minor child (and of an adult child as long as there is a maintenance obligation), the child's contact with parents, and issues relating to the exercise of parental responsibility, which have a significant impact on the child's development.

After the entry into force of the Family Code (which has been fully applicable since 15 April 2019 and has brought many changes) courts issue measures for protecting the best interests of children such as urgent removal, interim measures and measures of a more permanent nature (there are six of them and they are comprehensively regulated). In light of the measures of a more permanent nature, we particularly highlight the Protocol of recommended practices in the case of execution of a decision on the removal of a child by direct extradition, which is a working tool prepared by a group of academics and experts from practice, and was proven to be extremely important and necessary in practice to ensure the effective cooperation of all stakeholders involved in child removal.

Upon review of the Slovenian regulations, we can conclude that the current substantive legal and procedural regulation in Slovenia for decision-making on the child, in light of the fact that the newer regulations from 2019 are already well used in judicial practice, offers adequate protection of children's rights. In addition to the fact that the legislation offers a comprehensive set of measures for protecting the best interests of a child and on forms of alternative protection, which are also properly regulated and in relation to which the legislator has also provided an appropriate working aid to facilitate practical implementation, it also provides for the possibility

of the child's involvement in the proceedings in a way that burdens the child as little as possible and yet allows his or her opinion to be heard and considered. Therefore, the child is guaranteed the opportunity to participate in the proceedings when deciding on his or her rights and benefits (often at the age of 15 or when he or she is able to understand the meaning of a statement), to give an opinion and express his or her wishes; in short, he or she has the right, but not the duty, to declare his or her vision of the appropriate arrangements for the future, if he or she is able to understand the meaning of the procedure and its consequences. Slovenian law also provides adequate assistance to children in declaring their will in the form of a special representative, confidant, or defender.

In more complex cases, where it is insufficient for the court to obtain merely the opinion of the social work centre, the court also obtains the opinion of a relevant court expert. In these cases, Slovenian family judges face great difficulties due to a lack of court experts. Unfortunately, this lack of experts also leads to setbacks and, consequently, to longer durations of legal proceedings. It is not beneficial for this situation that family judges in Slovenia tend to be overwhelmed by the number of cases in which they decide. In addition to overburdening court experts and judges, families are also faced with long queues at the providers of various forms of support and professional assistance.

Bibliography

Burkelc, F. (2023) 'Mnenja in izkušnje prvostopnih sodnikov o sodelovanju s sodnimi izvedenci ter opažanja iz prakse na družinskem področju', *Pravosodni bilten*, 44(3), pp. 53–72.

Burkelc, F., Burkelc Juras, L. (2018) 'Odvzem otroka', *Pravosodni bilten*, 39(3), pp. 75–97.

Čujovič M. (2019) 'Odvzem in namestitev otroka v postopku odločanja o varstvu in vzgoji', *Pravni letopis*, pp. 79–92, pp. 284–285.

Juhart, M. (ed.) (2011) *Uvod v civilno pravo*. Ljubljana: Uradni list RS.

Končina Peternel, M. (2019) 'Postopki za varstvo koristi otroka in vloga otroka v teh postopkih', *Pravosodni bilten*, 2019/1, pp. 93-105.

Korošec, D. (ed.) (2009) *Zakon o pacientovih pravicah s komentarjem*. Ljubljana: GV Založba.

Kraljić, S. (2019) *Družinski zakonik s komentarjem*. 1st edn. Maribor: Poslovna založba MB.

Kraljić, S., et al. (2022) *Zakon o nepravdnem postopku s komentarjem*. Maribor: Založba WD.

Kraljić, S., Križnik, A., (2021) *Pravni izzivi skrbništva*. Maribor: Založba WD.

Novak, B. (2022) *Družinsko pravo po družinskem zakoniku in Zakonu o nepravdnem postopku*. Ljubljana: Uradni list RS.

Novak, B. et al. (ed.) (2019) *Komentar Družinskega zakonika*. Ljubljana: Uradni list RS.

Novak, B. (2017) *Družinsko pravo – 2. spremenjena in dopolnjena izdaja*. Ljubljana: Uradni list RS.

Šelih, A. (ed.) (1992) *Pravni vidiki otrokovih pravic*. Ljubljana: Uradni list RS.

Zupančič, K. (1999) *Družinsko pravo*. Ljubljana: Uradni list RS.

Zupančič, K. (ed.) (2009) *Reforma družinskega prava – predlog novih predpisov s komentarjem – 2. spremenjena in dopolnjena izdaja*. Ljubljana: Uradni list RS.

Chapter 10

Child-Protection Systems – Summary

Nóra Jakab, Márta Benyusz

ABSTRACT

In this comparative chapter we identify the best practices at the European and international level regarding child protection systems and conduct an in-depth and transparent analysis of these would provide an opportunity for countries to improve their child protection system. Such a multidimensional approach can lead to the removal of inefficient practices and the creation of an integrated, functional system. The child protection system shall be based on preventive, corrective and other protection measures adopted by the competent state authorities in terms of social welfare services and material support for the child and his/her family. Protection measures are taken by the competent administrative or judicial authorities in cases where state intervention is required owing to deficiencies in the exercise of parental responsibility or in order to take a decision on the care of a child without parental custody. The entire system of child protection shall rest on the idea of appropriate application of what is in the child' best interests. This principle is applied when choosing the type of support and assistance for the child and his or her parents or caregivers, regarding all decisions concerning alternative care, as well as for determining the most suitable measures for the child leaving alternative care.

KEYWORDS

child protection system, alternative care, best practices, country specific issues, integrated system

1. Introduction

Child protection can be ensured only if the subjectivity of the child is recognised by law. The child's subjectivity lies at the heart of the child's right. The notion of the child's legal subjectivity should be perceived as any qualification for legally relevant behaviour in the sense of being the recipient or administrator or the point of attachment of rights or obligations.[1] The capacity to act in proceedings aimed at granting rights or imposing obligations must be determined by the prerequisites of subjectivity deriving from substantive law. The child's subjectivity is the child's entitlement, which implies protecting its autonomy. Another definition of this concept would be to

1 Filipek, 1995, p. 223.

Nóra Jakab and Márta Benyusz (2025) 'Child-Protection Systems – Summary' in Jakab, N., Benyusz, M. (eds.) (2025) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 331–371. https://doi.org/10.71009/2025.njmb.cps_9.

refer to being someone or having an identity that allows one to be distinguished from others. Adopting this approach, the legislator has assigned the child the status of a subject who exists, functions in society and remains in relation to it, and anyone who takes action towards the child is obliged to recognise that the child is an autonomous subject who is entitled to protection under the norms of the basic law.[2]

The child, as an autonomous subject, has rights granted by the law, which include the right to protection from arbitrary or unlawful interference in his or her life. This implies that decisions taken in relation to the child by entities applying legal norms cannot overlook the child' s right to object.[3] The fundamental and natural, and at the same time primary, right of a child is the right to be brought up in a family. Further, if it is necessary for the child to be brought up outside his or her family, it is the right of the child to be cared for and brought up within family foster care forms, if this is consistent with the child's welfare. Furnishing the child with the above right also means that the child placed in foster care has the right to return to his or her biological family. Ensuring that it is possible for the child to return to his or her family is one of the child's natural rights, and this implies that the authorities tasked with this are obliged to undertake actions that will enable the child to return to his or her family. The catalogue of rights includes the rights connected with the upbringing process. Within this group of rights, the focus is to be first on the right to a stable environment for the child's upbringing. In other words, changes to the environment of the child's upbringing should be made only in situations that warrant it, namely, when the natural family or the established form of foster care fails to manage the child's upbringing problems or is no longer able to perform such a function. In addition to the presented rights, the child has the right to protection against degrading treatment and punishment. This right is of a universal nature and applies to all.[4]

However, protection is provided not only to a child without parental care, but also to a child who is at risk of losing parental care, as well as to other vulnerable categories of children whose development is jeopardised due to various psychological, health, moral or financial issues concerning themselves, their caregivers, or relationships within the family or the wider social cricle[5] Therefore, social protection of the child involves not only the provision of alternative care services, but primarily, and above all, ensuring that families and parents 'have access to adequate forms of assistance and support in their caregiving role'.[6] These measures and assistance services are provided both by family acts and the social welfare law, aimed at preventing the breakup of the family, eliminating or reducing deficiencies in the exercise of parental

2 Nitecki, 2022, pp. 696–697.
3 Tryniszewska, 2012, p. 27.
4 Based on: Kornel, 2025, pp. 71–100.
5 In this context, see, for example, the Serbian Social Welfare Act, Art. 41, Para. 2. Based on the Serbian report.
6 The United Nations, Resolution adopted by the General Assembly on 18 December 2009, 64/142 Guidelines for the Alternative Care of Children (hereinafter: UN Guidelines), para. 3. BaBased on: Vlašković, 2025, pp. 227–259.

responsibility, strengthening parental capacities and enabling the appropriate exercise and protection of the child's rights. Family law measures shall be fully child-oriented, including preventive and corrective measures over the exercise of parental responsibility. Social protection and welfare services, as well as measures of material support provided by the Social Welfare Act, shall be more diverse and family-oriented, aiming to make an impact on the very causes that led to the endangerment or violation of the rights of the child.

As pointed out in legal theory, the obligations of the States Parties to guarantee the best interests of the child represent the central idea of the Convention on the Rights of the Child (CRC).[7] Ensuring the child's best interests is one of the general principles of the CRC, based on which the scope of all rights of the child is interpreted and determined.[8] In accordance with the Family Act, 'everyone is obliged to be guided by the best interests of the child in all activities concerning the child'.[9]

Identifying the best practices at the European and international level and conducting an in-depth and transparent analysis of these would provide an opportunity for countries to improve their child protection system. Such a multidimensional approach, which can lead to the removal of inefficient practices and the creation of an integrated, functional system, must be achieved by adoption of some policies and a few useful programmes; increasing the quality of child-centred services and their protection; identification of risk categories; creation of services to prevent children from being separated from their families in order to avoid institutionalisation; deinstitutionalisation of children and provision of care in the community; establishment of social, medical, educational, rehabilitation and psychological counselling services; creation of unitary work methodologies; allocation of sufficient financial resources; and involvement of community and non-governmental organisations.[10]

The entire system of child protection shall rest on the idea of appropriate application of what is in the child' best interests. Therefore, this principle is applied when choosing the type of support and assistance for the child and his/her parents or caregivers, regarding all decisions concerning alternative care, as well as for determining the most suitable measures for the child leaving alternative care. The child protection system includes some by-laws in which the content of what is in the best interests of the child is more closely determined by specifying certain elements or by providing guidelines for its interpretation based on the adopted international standards in this area. Thus, a Rulebook on Foster Care shall provide the elements and guidelines for determining the content and its interpretation for the best interests of the child regarding the form of alternative care. For example, these elements and guidelines,

7 Based on: Vlašković, 2025, pp. 227–259.

8 See: the CRC, Art. 3, Para. 1 and the UN Committee on the Rights of the Child, General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6), 27. November 2003, para. 12; hereinafter: CRC/GC/2003/5, based on: Vlašković, 2025, pp. 227–259.

9 Art. 6 para. 1 of Family Act, based on: Vlašković, 2025, pp. 227–259.

10 Based on: Mihăilă, 2025, pp. 159–225.

among others, include giving preference to kinship foster families if the child's relatives meet the legal requirements for foster parents, choosing foster parents primarily from the child's original environment, ensuring non-separation of siblings, limiting the number of children in the same foster family (maximum of three children or two of them in the case of children with disabilities), preserving the identity of the child and reviewing the eligibility of the foster parents on a regular basis.[11]

The child protection system shall be based on preventive, corrective and other protection measures adopted by the competent state authorities in terms of social welfare services and material support for the child and his/her family. Protection measures are taken by the competent administrative or judicial authorities in cases where state intervention is required owing to deficiencies in the exercise of parental responsibility or in order to take a decision on the care of a child without parental custody. These measures mainly involve the decisions of the state authorities in the domain of family law protection. Social welfare services and material support include assistance and various forms of social support for a child and his/her family in order to preserve or improve family relations and create opportunities for independent living, social inclusion and development of the child to the extent possible, as well as for ensuring his/her safety.

According to the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD), 'persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others'.[12] Making a sharp turn in the understanding of the concept of disability, the CRPD abandons the medical model of disability, replacing it entirely with the social approach according to which persons with disabilities do not need isolation and separation from the family environment for the purpose of treatment, but support and assistance in order to integrate them into society, overcoming the social barriers with the support of their family and local community services.[13] The CRPD[14] recognises in Art. 19 'the equal right of all persons with disabilities to live in the community, with equal opportunities as others'. It also reinforces 'the need to promote and protect the human rights of all persons with disabilities, including those who need more support'. According to the provisions of the CRPD, the right to independent living and community integration must be ensured for all persons with disabilities, regardless of their level of intellectual capacity, autonomous functioning or support requirements.

Regarding children with disabilities, Art. 23 para. 5 of the UN Convention, states that the 'States Parties shall make every effort to provide alternative care within the extended family and, failing that, within the community in a family setting'.

11 See: Art. 11 of Rulebook on Foster Care, based on: Vlašković, 2025, pp. 227–259.
12 Art. 1 para. 2 of CRPD.
13 See: Vlašković, 2021, p. 573.
14 Convention on the Rights of Persons with Disabilities, 13 December 2006, Art. 23 para. 5, ratified by Romania through Law No. 221/2010, Official Gazette No. 792 of 26 November 2010.

Non-family care (e.g. residential care) 'should be limited to cases where such a setting is specifically appropriate, necessary and constructive for and in the best interests of the individual child concerned'.[15]

Art. 17 of the European Social Charter[16] stipulates the following: the states 'shall take all appropriate and necessary measures designed to ensure protection and special assistance from the state for children and young people temporarily or permanently deprived of the support of their families'. Children who belong to vulnerable categories, such as children with disabilities, should not be placed in children's centres, but in alternative forms of non-institutional and family-type care systems. (The European Committee for Social Rights deems it a violation of Art. 17 of the European Social Charter if they are placed in children's centres.)[17]

According to the Council Recommendation (EU) 2021/1004 of 14 June 2021[18] establishing a European Child Guarantee, member states must identify children in difficulty, and within this group of children consider developing integrated national measures for the specific forms of disadvantage they face, such as homeless children or children facing severe homelessness; children with disabilities; children with mental health problems; children from a migration context or who have a minority ethnic origin, especially those from Roma; children in alternative care, especially those who are institutionalised; and children in vulnerable family situations.

The Committee on the Rights of the Child, in its General Comment No. 13 (2011) [19] on the right of the child to freedom from all forms of violence, stresses the importance of an integrated and rights-based child protection and support system.

One of the most important measures for the protection of the child is the prompt appointment of a guardian, when necessary, as set out in General Comment No 6 (2005) of the Committee on the Rights of the Child.[20] The choice of placement is compatible with Art. 8 of the Convention only when it is in accordance with the law, pursues a legitimate aim, is in the best interests of the child and is considered a necessary measure in a democratic society.

> 'Placement of a child should be the exception and should have as its primary objectives the best interests of the child and the child's successful social integration or reintegration as soon as possible; placement should guarantee full exercise of the child's fundamental rights.'[21]

15 United Nations, General Assembly, 2011, para. 21.
16 Council of Europe, 1996, Art. 17 para. 1 point c).
17 *European Committee of Social Rights, European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, Complaint No. 157/2017, 17 June 2020 [Online]. Available at: https://hudoc.esc.coe.int (Accessed: 27 October 2023).
18 OJEU L 223/14 22 June 2021.
19 UN, Committee on the Rights of the Child, 2011.
20 UN, Committee on the Rights of the Child, 2005.
21 Committee of Ministers, 2005.

The above is the statement from Recommendation Rec(2005)5 of the Committee of Ministers to member states of the Council of Europe on the rights of children living in residential institutions.

Art. 12.1 of the Convention on the Rights of the Child (CRC), 'States Parties shall guarantee the child capable of discernment the right to freely express his/her opinion on any issue that concerns him/her, the child's opinions to be taken into account considering his/her age and degree of maturity', regards both the child's capacity as a legal subject and the legal and social status of the child, who has full autonomy, like that of adults. The child has the right to be heard and informed in relation to all administrative or judicial proceedings in which he/she participates.

Similarly, Art. 24 of the Charter of Fundamental Rights of the European Union stipulates the following:

> 'Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.'

According to Art. 6 of the European Convention on Human Rights, compliance with specific requirements must be ensured when the minor is a party to a criminal trial. In any procedure, the age and degree of maturity of the child will be considered, with the guarantee that the minor understands the implications of each procedure concerning him/her. Hearings must be held behind closed doors, publicity must be limited and access to a lawyer for the minor must be ensured.

The 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice'[22] stipulate that a child-friendly judicial system is characterised by a number of fundamental principles: participation, the best interests of the child, dignity, protection against discrimination and the rule of law.

Regarding the child's participation, the following must be respected: access to justice, consultation, listening to the child, valuing the child's opinion, considering the child's maturity and possible communication challenges. The best interests of the child are paramount and the best interests of all children involved in the same proceeding or case should be assessed and weighed separately in order to reconcile the possible conflicting interests of the children. In order to ensure the dignity of the child, he/she must be treated with care, sensitivity, fairness and respect through all procedures, without being subjected to torture or any other cruel, inhuman or degrading treatment and punishment. The child must be protected against discrimination by ensuring the rights of the child for not being discriminated based on sex, race, colour or ethnic origin, age, language, religion, political or other beliefs, national or social origin, socioeconomic context, status of the parent or parents, association with a national minority, property, birth, sexual orientation, sexual identity or any other

22 Council of Europe, 2011.

status. The principle of the rule of law aims to ensure procedural guarantees, such as the principles of legality and proportionality, presumption of innocence, right to a fair trial, right to legal advice, right of access to justice and the right to appeal. Based on the above, the country reports are structured as shown:

1. What is the core aim of the national child protection system?
2. What are the guiding principles of the national child protection system? (e.g. realisation of children's rights, non-discrimination, best interests of the child, cooperation, separation of services and measures of authority, etc.)
3. Who and in what percentage is responsible for the maintenance of the child protection system? (state, municipality)
4. Who is a child at risk? (Disadvantaged and cumulatively disadvantaged situation)
    a. Child at risk, as a result of a family in need
    b. Child at risk as a result of abuse
    c. risk from financial factors
    d. risk from moral factors
    e. risk from health factors
    f. risk from the factors of upbringing (e.g. parental neglect)
5. What is the definition of "necessary intervention"?
6. Structure of the child protection system
7. Monetary and in-kind benefits (e.g. regular child protection discount; child feeding; advance payment of child support; home building support)
8. Basic child welfare services within the framework of personal care (e.g. child welfare services; daycare for children; temporary care of children; children's opportunity-enhancing services)
9. Special child welfare services within the framework of personal care (e.g. care provided at home; aftercare care; regional child protection specialist service)
10. Authority measures
    a. taking under protection
    b. welcoming by a family that is named by the blood parent
    c. temporary placement
    d. placing under foster care
    e. ordering under supervision
    f. aftercare
    g. order of preventive
11. Guardianship of those under child protection care
12. What is the institutional background?
    a. institutions providing services
    b. institutions operating as authorities
13. What is the procedural background?
    a. client
    b. initiation procedure

c. representation
d. deadlines
e. social study
f. hearing
g. appointment of an expert
h. decision of guardianship authority
i. remedies
l. enforcement

14. Participation of children in the child protection system (role of the representative of children's rights if any).

2. What Is the Core Aim of the National Child Protection System?

In Croatia, protection of children is guaranteed by the Constitution of the Republic of Croatia (hereinafter: Constitution). Thus, according to Art. 62 of the Constitution, 'The state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life'. Special protection is guaranteed to particularly vulnerable groups of children; therefore, according to Art. 63 of the Constitution, 'Physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare. The state shall devote special care to orphans and minors neglected by their parents'. When it comes to children without (adequate) parental care, the institute of guardianship, regulated by the Family Act[23], is intended for their protection and care. The goal of guardianship is to replace parental care in circumstances when the child is without parents or legal or factual reasons prevent them from taking care of the child[24]. In cases when child's rights in the family are endangered or violated, several different preventive or repressive measures can be imposed to protect the rights and welfare of the child. The measures imposed must correspond to the degree of endangerment of the child's rights established in each individual case. In other words, one of the fundamental principles that must be respected when determining child protection measures is the principle of proportionality, meaning the state authorities are required to intervene by proportionate means, as provided by law[25], only in exceptional cases where parents or other family members endanger the welfare of the child by their actions or omissions. By acting in accordance with the above principle, the state assures that interference in the sphere of family life will be reasonable, proportionate and necessary for the protection of the welfare of the child.[26]

23 Official Gazette, No. 103/15, 98/19, 47/20, 49/23. – hereinafter: FA
24 Art. 219, para. 1, Arts. 224-225, Arts. 227-228 and Art. 230 of FA
25 Ibid., Art. 7, Art 128 and Art. 485, para. 3
26 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.

The child protection system in the Czech Republic is assessed as a risk-oriented system, which implies that the threshold for intervention in a family to protect children against harm is high. On paper, ensuring a stable home and meeting children's basic needs for safe and continuous attachment to their caregivers is a key goal of the system. In practice, achieving this goal requires further efforts. As an illustration, some studies indicate that the Czech Republic is considered among the least child-friendly of the OECD countries, with a history of discriminating against groups of children. Individual protection of children's rights and of children themselves has been the focus of attention only recently, and arguably mostly on a linguistic level, not so much in practice. Literature demarcates three main waves of transformation of child protection in the Czech Republic: combating residential (institutional) care and attempting to replace it with substitute family care in the 2000s; focusing on the empowerment of biological families after 2008; and conducting campaigns against domestic violence, including maltreatment of children.[27]

In Hungary, Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship (Gyvt.) (Act IX of 2002 and Act IV of 2003, as amended) defines child protection as follows. Child protection is an activity aimed at promoting the upbringing of children in the family, preventing and eliminating their vulnerability and providing substitute protection for children leaving parental care or other care. The following subdivision of child protection – based on its purpose – is derived from the legal definition. General child protection refers to supporting the upbringing of children in the family and preventing them from becoming vulnerable. This preventive action is mainly carried out within the network of educational, health and social institutions (sometimes with the involvement of NGOs) and is based on a complex cooperation between the various sectors. Special child protection guarantees special protection for orphans, abandoned children and children at risk (who may be delinquent). The full care of children who have been abandoned, or who are in priority, is provided by the so-called institutional child protection. Specialised territorial child protection services, children's and residential care homes, professional foster parents, family and aftercare services and reformatories play a key role in according this kind of care.[28]

In Poland, the current legal regulations on family support entail working with the biological family of the child to facilitate the child's return to the family. When this fails to produce a positive result, measures for the adoption of the child are undertaken. When the child does not get the requisite care in the natural family or through adoption, a foster environment must be entrusted with the custody of the child. The sequence of the presented operations seems rational because the legislator seeks to normalise the legal situation of the child so that it derives a sense of stability and

27 Kornel, 2025, pp. 71–100.
28 Jakab and Benyusz, 2025, pp. 101–126.

security. The above considerations demonstrate that the legislator has introduced a priority, which amounts to all measures aimed at returning the child to the family.[29]

In Romania, the child protection system is aimed at protecting the child from violence, abuse, neglect or exploitation. This goal can be achieved only by developing appropriate legal regulations, adopting policies and establishing the necessary services to ensure the education, health and wellbeing of the child. Special protection of the child involves a set of measures, benefits and services intended for the care and development of the child deprived temporarily or permanently of the protection of his parents or of those in whose care the child cannot be left in order to safeguard the child's interest. Following the UN guidelines on alternative care for children, which recommend that removing a child from family care should be the last resort and, whenever possible, only a temporary measure and as short as possible, Romania has adopted a series of legal regulations to ensure effective protection of the child.[30]

In Serbia, considering that the family is 'the natural environment for the growth, well-being and protection of children', one of the key proclaimed goals of the national child protection system is to preserve and improve family relationships. Therefore, various measures of personal and material support for the family are legally recognised and provided through normative frameworks to enable the child to remain in parental care and not be separated from the parents as far as possible. Thus, efforts are made to prevent disturbing the child's emotional attachment to his/her parents or caregivers. In this context, competent state authorities will decide on alternative care only if the implemented family support measures and services have not enabled adequate protection of the child's rights. Unfortunately, in certain cases, as decreed by the law, alternative care becomes necessary, for example, in situations where parents are no longer alive or when they are unknown or lack parental responsibility.[31]

In Slovakia, Art. 41, para. 1 of the Constitution of the Slovak Republic, emphasises the importance of child rights protection. It declares the need for special protection of children and adolescents. Concurrently, in para. 4 of Art. 41, the legislator specifically states that the care and upbringing of children is a right of the parents to which children are entitled. However, it also adds that this parental right can be limited, and minors may be separated from them by a court decision based on the law. The court may do so regardless of the parents' will, even if they disagree with such a decision. It is essential to highlight here that the Constitution of the Slovak Republic allows for the separation of children from their parents against their will based only on a court decision.

The Constitution of the Slovak Republic also establishes that parents taking care of children have the right to state assistance. This provision expressly points to the importance of fulfilling the social function of the state, which is interested in

29 Nitecki, 2025, pp. 127–158.
30 Mihăilă, 2025, pp. 159–225.
31 Vlašković, 2025, pp. 227–259

providing necessary assistance to parents taking care of their children to ensure the social or economic background of the family as the basic unit of society.[32]

In Slovenia, the rights and interests of children are primarily the responsibility of their parents. The Family Code enshrines the principle of best interests of the child. It follows from this that parents have been vested with the main and equal responsibility for the care, upbringing and development of their child, in the best interests of the child, and they are assisted by the state in the implementation of their responsibility.[33]

3. What Are the Guiding Principles of the National Child Protection System?

In Croatia, the guiding principles of the national child protection system are the best interest of the child, child participation and non-discrimination; the primary right of parents to take care of the child and the duty of the state to provide them with assistance; the principle of proportionate and mildest intervention into family life; principle of guardianship protection; principle of urgency in resolving family law matters related to the child, duty of notification and cooperation with the goal of child protection; and duty of cooperation between authorities and persons in matters of guardianship.[34]

In the Czech Republic, the guiding principles are the best interest of the child, family protection, respect for children's right to participation, non-discrimination, free accessibility, accessibility to all children, positive obligation of the state to safeguard children from physical or psychological violence and other risk, prevention, special protection of children without family care, biological family rehabilitation and preference. Cultural sensitivity refers to the choice of actions aimed at continuity in the child's upbringing and respecting his or her ethnic, religious, cultural and linguistic background. Voluntary participation of other persons in the socio-legal protection of children refers to natural or legal persons' voluntary participation in social protection activities defined by law, subject to authorisation. Certain activities with significant impact are reserved for state authorities or delegated public administration bodies.[35]

In Hungary, the guiding principles are to serve the best interests of the child, the principle of family autonomy and remaining in the family, principle of appropriateness, principle of least coercion, voluntariness, non-discrimination and non-abuse of benefits, guaranteeing the right to self-identity, protection of the child's personal and property interests, preparing for reintegration into the family environment, special

32 Koromház, 2025, pp. 261–294.
33 Burkelc Juras and Burkelc, 2025, pp. 295–329.
34 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
35 Kornel, 2025, pp. 71–100.

care adapted to needs and priority of foster care. Permanency planning refers to child protection intervention to resolve the fate of a child in care as early and permanently as possible.[36]

In Romania, priority for respecting and promoting the best interests of the child, equal opportunities and non-discrimination; respecting the child's dignity, ensuring individualised and personalised care for each child, ensuring protection against abuse, neglect, exploitation and any form of violence against the child; listening to the child's opinion and valuing it, considering the age and degree of maturity of the child, ensuring stability and continuity in care, upbringing and education of the child and considering the child's ethnic, religious, cultural and linguistic origin when undertaking protective measures.[37]

In Serbia, the guiding principles of child protection system, based on respecting the CRC, other international treaties on human rights, the UN Guidelines and other relevant international documents involve the following: the best interests of the child, prohibition of discrimination, right of the child to have his/her views duly considered based on the child's age and maturity, respect for the integrity and dignity of the child and his/her family members, provision of services in the least restrictive environment, provision of timely and comprehensive protection and accessibility and individualisation of social protection.[38]

In Slovakia, the guiding principles followed are a stable family environment, protection of parenthood by society, and provision of necessary care for parenthood, particularly through providing support and assistance in exercising parental rights and responsibilities. The institute of alternative care for a child and the need for its provision is justified by another principle of family law defined in Art. 4 of the Family Act. The legislator provides only an illustrative list of circumstances that must be considered and assessed when deciding on matters concerning a minor so that the final decision is in the best interests of the minor.[39]

In Slovenia, the Family Code enshrines the principle of best interest of the child. It follows from this principle that parents have the main and equal responsibility for the care, upbringing and development of their child and that the best interests of the child are their main concern. They are assisted by the state in the implementation of their responsibility.[40]

36 Jakab and Benyusz, 2025, pp. 101–126.
37 Mihăilă, 2025, pp. 159–225.
38 Vlašković, 2025, pp. 227–259.
39 Koromház, 2025, pp. 261–294.
40 Burkelc Juras and Burkelc, 2025, pp. 295–329.

4. Who and in What Percentage Is Responsible for the Maintenance of the Child Protection System? How Is the System Financed?

In Croatia, no precise scientific research has been conducted to confirm the percentage or share of state funds in the financing of the child protection system, but it is roughly estimated to be around 65%, while the rest is from the funds of cities, counties and municipalities, which comes to around 35%.[41]

In the Czech Republic, social-legal protection is provided by social-legal protection bodies (regional authorities, municipal authorities, the Ministry of Labour and Social Affairs, the Office for International Protection of Children and the Labour Office) (SLPB). The competencies are divided among these authorities; yet, the primary workload (and the highest number of employees) is with the municipal authorities. Data from 2018 show that the state covers approximately 73% to 100% of the cost of the municipal social-legal protection authorities (non-governmental funding is based on an estimate).

In Hungary, the state and the municipal governments are responsible for the maintenance of child protection systems. Child protection is provided by a system of institutions encompassing the whole country, the two main bodies being the Child Protection Service and the Guardianship Authority.[42]

In Poland, the substantive tasks within the field of family support and foster care are assigned to individual local government units.[43]

In Romania, various organisations and institutions finance the social services for the protection and promotion of children's rights: the central state budget, local budget, contributions of beneficiaries according to legal provisions and other sources, such as donations, sponsorships, refundable and non-refundable external funds; the National Authority for the Protection of Children's Rights and Adoption, National Authority for the Protection of the Rights of Persons with Disabilities and Commissions for the protection of the child; the General Directorates of Social Assistance and Child Protection and Public Social Assistance Services; consultative community structures, departments of social assistance with the Child Protection Service and the Guardianship Authority; private organisations; the Ombudsman, Ministry of Labour and Social Solidarity and the Ministry of Family – Youth and Equal Opportunities.[44]

In Serbia, social protection of the child is organised at the national, regional or local level, which implies the obligation of the state, regional or local authorities to ensure providing appropriate social welfare services. Most of these services may be provided by private licensed organisations or can be entrusted to them by the Republic of Serbia, an autonomous province or local self-government, by signing a contract

41 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
42 Jakab and Benyusz, 2025, pp. 101–126.
43 Nitecki, 2025, pp. 127–158.
44 Mihăilă, 2025, pp. 159–225.

with the best licensed service provider that responds to the announced public tender. Serbia excels in the domain of providing social welfare services, but not in the field of providing material support, which, with the exception of providing one-time assistance, is the responsibility of the central government. When it comes to the expenses for the accommodation of children in the social protection system for 2021, the state bears 64.9% of the share in the expenses of family accommodation (kinship care and foster care) and 35.1% of the share in the expenses of residential accommodation.[45]

In Slovakia, social and legal protection of children and social guardianship are ensured by implementing measures of social and legal protection of children and social guardianship by state administration bodies, municipalities, higher territorial units, accredited entities, social workers performing independent social work practice, as well as various legal and physical persons without accreditation in organising and mediating various activities to support the suitable use of children's free time, or various programmes and training to support the fulfilment of parental rights and obligations.[46]

5. Who Is a "Child at Risk"?

In Croatia, a child at risk is any child whose rights, welfare and development are endangered or whose rights and welfare have been violated. A child at risk can also be a child who has certain developmental difficulties, i.e. a child who has some form of disability.[47]

In the Czech Republic, the legislation does not provide a comprehensive definition of a child at risk, a matter that has drawn criticism from legal and care professionals. Children at risk for receiving socio-legal protection could be categorised, at least, into four groups.[48]

In Hungary, the special protection of the state and the local authority is based on whether a threat exists to the physical, mental, emotional or moral development of the child, regardless of whether it is material, environmental, behavioural or health-related.

In Poland, the legislation does not outline the premises that may cause danger to the child and that may justify taking actions to restrict the role of natural parents and possibly place the child in the foster care system. The Family and Guardianship Code includes a provision according to which, if the welfare of the child is at risk, the guardianship court will issue appropriate orders.[49]

In Romania, the child protection system mainly addresses the following categories: children from poor communities; at risk of separation from their parents;

45 Vlašković, 2025, pp. 227–259.
46 Koromház, 2025, pp. 261–294.
47 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
48 Kornel, 2025, pp. 71–100.
49 Nitecki, 2025, pp. 127–158.

separated from their parents, including those whose parents are away or working abroad; who are abandoned in health facilities; and who are abused, neglected or exploited, including those trafficked, labour-exploited and sexually exploited.

Any situation, measure or inaction that affects the physical, mental, spiritual, moral or social development of the child, in the family or in the community, for a determined period of time is considered a risk situation.[50]

Serbian rules on social welfare define a child at risk as a child 'whose health, safety and development are jeopardised due to the family situation and other life circumstances, or it is certain that he/she cannot reach optimal level of development without the support of the social protection system'. The Social Welfare Act, Art. 41, para. 2 (1-10) provides a list of conditions when a child can be considered at risk.[51]

In Slovakia, the institutions of Social and Legal Protection of Children and Social Guardianship are to provide assistance to the child in urgent situations, especially if the child's life, health, or favourable psychological, physical, and social development is endangered[52]

In Slovenia, the condition for interfering with parental responsibility by imposing one of the measures for protecting the child's best interests is finding that the child is at risk. According to Art. 157(2) of the Family Code, a child is considered to be endangered

> 'when they suffer or are very likely to suffer damage, or where the damage or the likelihood of damage is the consequence of action or lack of action of parents or the consequence of the child's psychosocial problems that manifest themselves as behavioural, learning and other difficulties in growing up.'

The harm may include damage to the child's physical or mental health and development or harm to the child's property.[53]

6. "Children With Disabilities" in the Child Protection System

The Constitution of Croatia deems that physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare[54].

The increased material needs because of the child's disability will be considered when determining the amount for child maintenance during court proceedings. In the social welfare system, as per the Social Welfare Act (hereinafter: SWA), special allowances and social services are provided for this vulnerable category of children. Children with disabilities can also be beneficiaries of other compensations and

50 Mihăilă, 2025, pp. 159–225.
51 Vlašković, 2025, pp. 227–259.
52 Koromház, 2025, pp. 261–294.
53 Burkelc Juras and Burkelc, 2025, pp. 295–329.
54 Art. 64, para. 3 of the Constitution of Croatia.

social services in the social welfare system (e.g. residence – Art. 104, organised housing – Art. 106, accommodation – Art. 109 SWA); however, these are for what we consider particularly important for this group of children. Within the national education system, Early Childhood Education and Care Act (hereinafter: ECECA) and the Elementary and Secondary Schools Education Act (hereinafter: ESSEA) regulate the status and benefits of children with disabilities (e.g. teaching assistant, professional communication mediator), thus specifying certain mechanisms for the protection of their right to upbringing and education as prescribed by Art. 94 of the FA in connection with Art. 64, para. 3 of the Constitution. Several different national legal sources (e.g. Health Protection Act, Mandatory Health Insurance Act, Maternity and Parental Subventions Act) regulate the status and certain benefits of children with disabilities and their parents as primary caregivers within the national health care system, thus specifying the mechanisms for the protection of the right to health, development, care and protection of the aforementioned category of children, as prescribed by Art. 93 of the FA in connection with Art. 64, para. 3 of the Constitution.[55]

In the Czech Republic, social services for families caring for a child with a disability (sec. 32 and seq. SSA) include, among others, early care, nursing care, personal assistance, relief service (field and outpatient) and social activation services. Recent research on early care accessibility indicates potential challenges in the accessibility of the service, with variations depending on the region and the type of disability. A child with a disability should be entitled to support measures in education, which include a teaching assistant in school or kindergarten and counselling assistance. Further, adjustments have to made by the organisation in terms of content, evaluation, forms and methods of education; conditions for admission to education and for leaving education; compensatory aids, special textbooks and special teaching aids; expected learning outcomes within limits set by the framework education programmes and accredited education programmes; individual education plans; use of an additional pedagogical worker; and provision of education or school services in premises that are structurally or technically adapted to the child's special needs.[56]

Care allowance is provided monthly to individuals unable to manage basic life needs without assistance (sec. 7-30 SSA). Mobility allowance (sec. 6-8 Act on providing benefits to persons with disabilities) is provided to any person older than a year who holds a so-called disability card and needs transportation to school, cultural and social activities, medical appointments, etc. on a regular basis.

Special assistance allowance (sec. 9-12 Act on providing benefits to persons with disabilities) is a comprehensive benefit that enables persons with disabilities to obtain funds for the purchase of various types of compensatory aids.[57]

In Poland and Hungary, a complex legal situation prevails for children with disabilities. This complexity stems from the fact that disabled children are covered

55 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
56 Kornel, 2025, pp. 71–100.
57 Ibid..

by regulations that cover all children and, in addition, the legislator has introduced norms that regulate the legal situation of disabled children or grant additional rights to persons caring for such children in a different way. It should be noted that the additional benefits provided for disabled children or their guardians do not guarantee that the needs of these children will be met.[58]

In Romania, the child protection system is beset by problems related to children with disabilities; these children are not provided for uniformly throughout the country, nor do they obtain the necessary resources, technical means or personnel resources that they should for their rights to be respected (public social assistance services lack staff and specialised training). Promoting and respecting the rights of children with disabilities, continuing the deinstitutionalisation of children with disabilities and providing an easy transition through the protection system from institutional care to care and integration in the community, remain essential. It is absolutely necessary to ensure a minimum income in the form of financial benefits for children with disabilities, together with access to health, education and protection services.[59]

In Serbia, a child with disability and his/her parents or caregivers are provided increased material support, financial assistance and appropriate social welfare services. The rights to material support and financial assistance are recognised and regulated by the Social Welfare Act and the Act on Financial Assistance for Families with Children. Thus, a child with disability has the right to increased allowance for the help and care of another person, which is usually the child's parent. A child with disability is provided a range of welfare services including primarily day services in the community, accommodation services and support services for independent living.[60]

The Slovak Republic provides special financial support to persons with severe disabilities. This support directly concerns not only minors with disabilities but also their families. The legal relationships for providing monetary contributions to compensate for the social consequences of severe disability are regulated by Act No. 447/2008 Coll. on Monetary Contributions to Compensate for Severe Disability. The Act regulates the following: repeated disbursal of contributions to compensate for the social consequences of the person's disability, such as monetary contribution for personal assistance, monetary contribution for transport, monetary contribution for increased expenses and monetary contribution for care.[61]

In Slovenia, under the new regime, for children with disabilities it is no longer possible to extend parental rights in the protection system, as could be done in the previous system. Children with disabilities are placed under adult custody in the same way as the rest of the adult population when they reach the age of 18. Art. 6

58 Jakab and Benyusz, 2025, pp. 101–126; Nitecki, 2025, pp. 127–158.
59 Mihăilă, 2025, pp. 159–225.
60 Vlašković, 2025, pp. 227–259.
61 Koromház, 2025, pp. 261–294.

para. 2 of the Non-Contentious Civil Procedure Act imposes on courts the obligation to ex officio, of its own motion, take all measures necessary to protect the rights and legal interests of children and persons who, due to intellectual disability or mental health problems or other circumstances, are incapable of taking care of their own rights and interests.[62]

7. What Is the Definition of Necessary Intervention?

In Croatia, intervention is a response to an essential social need and is proportional to a certain legitimate aim – the protection of the rights and welfare of the child. Proportionality refers to imposing a measure that is appropriate to the degree of threat to the child's rights, as derived from the assessment of the competent body.[63]

In the Czech Republic, the SLPB must intervene in situations that endanger the child's proper upbringing and favourable development (sec. 9a (1) SLPA, i.e. Act No. 359/1999 Coll., on the social-legal protection of children). The intervention measures must be such that they build on each other and influence each other. In the execution and implementation of these measures, priority shall be given to those that ensure the proper upbringing and favourable development of the child in his or her family environment and, if this were not possible, in a foster family environment; this shall be done by using methods of social work and procedures corresponding to current scientific knowledge (sec. 9a (2) SLPA).[64]

In Hungary, when drafting the legislation, the legislator bore in mind that a child protection system based on special intervention by the authorities should always be preceded by a child welfare system based on voluntary benefits. One of the important principles of the Gyvt. is the principle of least coercion (voluntariness), considering that using the benefits provided for by the legislation is generally voluntary. A child's parent or other legal representative can claim a benefit only in cases specified by law. Official intervention in family life is allowed only if it is unavoidable and in the best interests of the child.[65]

Poland does not provide a specific definition of necessary intervention; Art. 109 para. 1 of the Family and Guardianship Code stipulates that appropriate actions are to be taken if a child's welfare is at risk, and this notion is the only specific definition of necessary intervention.[66]

In Romania, state intervention is considered necessary when children are at risk or are victims of any form of violence within or outside the family. They are offered information, social, psychological, family and legal counselling and monitoring

62 Burkelc Juras and Burkelc, 2025, pp. 295–329.
63 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
64 Kornel, 2025, pp. 71–100.
65 Jakab and Benyusz, 2025, pp. 101–126.
66 Nitecki, 2025, pp. 127–158.

services. All suspicions or situations of child abuse and/or neglect must be reported to the General Directorate of Social Assistance and Child Protection.[67]

In Serbia, necessary interventions are, broadly, protective measures taken by competent state authorities for a child at risk in order to protect his/her right to life, survival and development. Thus, if family support measures do not or cannot provide the desired outcomes, the competent welfare authorities are obliged to intervene, take protective measures involving separation of the child from the family, provide the least restrictive accommodation and alternative care, undertake guardianship measures and place the child under guardianship.[68]

In Slovenia, the state has conferred the power to protect the best interests of the child on the court and social work centres, which must take the necessary actions and measures required for the protection and upbringing of the child as well as for the protection of the child's property and other rights.[69]

8. Structure of the Child Protection System

The Croatian legislator uses several different instruments to form an inherent monetary child protection framework as part of the child protection system to provide for monetary and in-kind benefits. Thus, the Value Added Tax Act (hereinafter: VAT Act) prescribes tax benefits for certain groups of products and services primarily intended to meet the needs of children and their families. Another instrument used by the Croatian legislator is the government subsidy housing loan programme prescribed by the Act on Subsidising Housing Loans. The child maintenance system is also used as an instrument of the monetary child protection framework. Regarding basic child welfare services within the framework of personal care, local and regional self-government units organise, implement and co-finance preschool education programmes within their territorial areas. Compulsory education in the Republic of Croatia is free of charge, as prescribed by the Constitution. In 2023, the Government of the Republic of Croatia decided to finance a programme from the state budget offering one free meal for all children in elementary schools for ensuring access to quality nutrition, which is essential for the optimal development of children. When parents lack sufficient parental competencies to protect children from inappropriate actions of third persons or they themselves endanger the upbringing, development and welfare of the child, competent state authorities need to intervene. Procedures and measures undertaken by the state authorities are in the form of assistance to children, parents and the family[70]. Croatian legal order is above all based on the Constitutional obligation of the state to provide special protection to the family[71], and in doing so, it offers a wide

67 Mihăilă, 2025, pp. 159–225.
68 Vlašković, 2025, pp. 227–259.
69 Burkelc Juras and Burkelc, 2025, pp. 29–329.
70 Art. 18, para. 2 in accordance with Art. 9 CRC, Art. 6 and Art 129, paras. 3–5 of FA.
71 Art. 61, para. 1.

range of preventive measures and programmes, focusing mainly on the social welfare framework and family law framework. In Croatian legal order, special attention is given to the integration of the spirit and letter of relevant provisions of the CRC[72] into the provisions of the FA regulating the institution of the separation of the child from the family[73]. Therefore, the separation of a child from the family is considered a judicial or administrative measure based on which the child is separated from the family and placed with another person who meets the requirements stipulated for a guardian, with a foster family, with a social welfare institution or with another individual or legal entity that performs social services within the social welfare system.[74,75]

The Czech Republic has a complex structure for monetary benefits, which can be distinguished into the following groups: a) the state social support system benefits are child benefit, parental allowance, housing allowance, substitute maintenance, subsistence allowance, material distress benefits, foster care benefits, recurrent maintenance allowance, care allowance[76], for individuals unable to manage basic life needs without assistance, mobility allowance and special assistance allowance; b) pension system benefits include orphan's pension; and c) tax system benefits refer to dependent child tax credit.

Child welfare services within the framework of personal care are social activation services for families with children, low threshold facilities for children and minors, respite care, accompanying organisations, and daily residential care centre. In terms of authority measures, the substantive law thus allows the placing of children by court order into another environment in the following order of preference: care of guardian (péče poručníka)[77], care of another person (typically a relative)[78], foster care and pre-foster care[79].

Within institutional care[80], the child can be placed in child centres (nursery homes, educational institutions (diagnostic institutions), children's homes, children's home with a school), homes for people with special needs and facilities for children requiring immediate assistance. A court may also issue interim measure orders. The law regulates the following options: general interim measure order[81] and special interim measure orders regarding minor children.[82]

Parents, in general, can entrust the care and protection of the child, the exercise of his or her upbringing, or certain aspects thereof, or the supervision of the child to another person; the agreement of the parents with that person need not affect the

72 Art. 9, para. 1, Art. 20 and Art. 25.
73 Art. 129 of FA.
74 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
75 Art. 129, para. 2 of FA.
76 Arts. 7–30 of SSA.
77 Arts. 928–942 of CC.
78 Ibid., Arts. 953–957.
79 Ibid., Arts. 958–970.
80 Ibid., Arts. 971–975.
81 Sec. 74 et seq. of CPC.
82 Sec. 452 et seq. of SCPA; Kornel, 2025.

duration or extent of parental responsibility[83]. Parents may also[84] entrust a child to the care of a facility for children requiring immediate assistance, especially in situations where the child's favourable development is threatened, the child has educational problems that the parents cannot cope with or they are temporarily unable to provide care for the child themselves.[85]

In Hungary, benefits in cash and kind include regular child protection benefit, child feeding, advance payment of child support and home building support. Basic child welfare services within the framework of personal care are child welfare services, day care for children, temporary care of children and children's opportunity-enhancing services. Specialised child protection services under the personal care framework are care provided at home and aftercare. Measures taken by public authorities for child protection involve identifying a disadvantaged or severely disadvantaged situation for a child, taking the child into protection, family reunification, temporary placement, fostering, ordering educational supervision, ordering aftercare and ordering preventive detention. The system of child protection includes care of juveniles who have been remanded by the court to a correctional institution or those who have been arrested. Juvenile correctional education is governed by a separate law.[86]

Poland has a proper form of effective public law, namely, the institution of foster care. Guardians of children in the Polish legal system receive benefits from two sources. The first is a benefit provided on the grounds of their function as a foster family or a person running a family orphanage, i.e. a benefit that supports these persons in performing their function. The second source refers to cash benefits granted on general terms to all children, irrespective of whether they are growing up in a natural family or are in foster care. Separate regulations apply only to those running a family-type foster home. Such persons receive funds for the maintenance of the living premises in a multi-family building or a single-family house in which the family-type foster home is run, to an amount corresponding to the costs incurred by the family-type foster home for rent, rental fees, cost of electricity and heat, fuel, water, gas, solid and liquid waste collection, a passenger elevator, a collective aerial, television and radio subscriptions, telecommunication services and related operating costs.[87]

In Romania, according to the legislation in force regarding basic and special services for the welfare of children in personal care, children have the right to social assistance and social insurance. Law No. 272/2004 on the protection and promotion of children's rights establishes not only the types of services intended to prevent the separation of the child from the parents, but also the types of special protection services for the child who has been temporarily or permanently separated from the parents. These include day services, family services and residential services.

83 Art.881 of CC.
84 Art. 42 of ASLP.
85 Kornel, 2025, pp. 71–100.
86 Jakab and Benyusz, 2025, pp. 101–126.
87 Nitecki, 2025, pp. 127–158.

The legislation in force has 11 social protection schemes governing family/children's social benefits: state child allowance; social protection for children in difficulty; social grants and other entitlements; kindergartens and nurseries; assistance and social protection provided by non-profit organisations; social protection in the form of pensions and other social security entitlements; free and reduced transport; health insurance; family support allowance; maternity protection in the workplace; and foster parents' accommodation allowance.[88]

Art. 12 of the Social Assistance Law No. 292/2011, establishes the following benefits for child and family support for the birth, education and maintenance of children: child allowances; allowances for children temporarily or permanently deprived of parental care; child-raising allowances; and facilities in accordance with the law. Where the child cannot be cared for by parents (parental authority), the best interests of the child necessitate the right to alternative care. Art. 106, para. 1 of the Civil Code, under the marginal heading of Protective Measures, states that 'the minor's care shall be provided by the parents, by the establishment of guardianship, by placement or, where appropriate, by other special protective measures provided for by law'.[89]

In Serbia, the child social protection system includes material and financial support and various social welfare services. Material support and financial assistance intended for children and their families can reflect the social or population policy, as well as the rights that parents enjoy in the domain of labour relations. Social welfare services are divided into the following groups: assessment and planning services, day services in the community, support services for independent living, counselling and therapy services, socio-educational services, as well as services of accommodation.[90]

The Slovak legal order distinguishes three forms of alternative care for a child that are temporary measures substituting the personal care of parents for their minor child: entrusting a minor child to the personal care of another physical person other than the parent – also known as substitute personal care – foster care and institutional care. A court can decide to entrust a minor child to the substitute personal care of someone other than the parent, according to Section 45 of the Family Act, only if it is in the interest of the child. The legal framework for foster care in the Family Act aligns closely with that of substitute personal care for a minor child in many respects. The most significant difference is that the child is not entrusted to a person who has a special relationship with the minor child or has expressed interest in being entrusted exclusively with the specific child. Instead, the child is entrusted to a foster parent who has previously shown interest in providing personal care to one or more minor children fundamentally without preferring any specific child for any reason. The Family Act does not specifically address emergency measures. This topic is regulated in the Civil Non-Litigious Procedure, which includes some provisions on urgent and other court measures in its third part. The concept of urgent measures issued by the

88 Mihăilă, 2025, pp. 159–225.
89 Ibid.
90 Vlašković, 2025, pp. 227–259.

court is based on the provisions of the Civil Litigious Procedure, which must and necessarily be applied whenever the legal regulation of the Civil Non-Litigious Procedure is not comprehensive. Slovakia supports alternative care for minors not only through legal norms that set the conditions for alternative care but also through economic incentives. These are ensured through a system of various contributions available to both minors and individuals providing personal care for them. The legal regulation in this area is centralised in Act No. 627/2005 Coll. on contributions to support alternative care for children. For the purposes of the Contributions Act, alternative care includes a) substitute personal care, b) foster care, c) custodial care (if the custodian personally takes care of the minor child and also if it is not personal care by a custodian for a child whose parents are minors), d) pre-adoptive care by prospective adoptive parents and e) personal care for a child based on an urgent court measure entrusting the child to the care of a physical person, which precedes a subsequent court decision on entrusting the child to substitute personal care, foster care, personal care by a custodian, or to pre-adoptive care.

Act No. 571/2009 Coll. on Parental Contributions and amendments to certain acts regulates the conditions for granting another state social benefit through which the Slovak Republic contributes to ensuring proper care for a child. Furthermore, a special state contribution in the form of a social benefit is regulated by Act No. 600/2003 Coll. on Child Allowance and amendments to Act No. 461/2003 Coll. on Social Insurance.[91]

In Slovenia, the Family Code has introduced a uniform system of measures to protect the best interests of the child, including emergency removal of the child, although this is in fact an action carried out by experts at the social works centre. This measure is intended to protect the child quickly when there is a serious and acute degree of danger to the child (of a higher level than the danger that is a precondition for most other measures), which requires the immediate physical removal of the child from the (family) environment and placement with another person, in a crisis centre, foster care or an institution, even before the court has ruled on the application for an interim injunction. The Family Code sets out measures of a more permanent nature in exhaustive terms. This means that only the measures prescribed by law can be issued. The least restrictive measure is the restriction of parental responsibility, followed by the decision on medical examination and treatment, restriction or deprivation of the right of contact, removal of the child from the parents and placement of the child in an institution. Finally, the most severe measure is the withdrawal of parental responsibility. Art. 238.c of the Enforcement and Security Act requires the court, considering all the circumstances of the case in such a way as to ensure that the best interests of the child are safeguarded, to decide that the enforcement of a decision on the custody of a child shall be effected by imposing a fine on the person to whom the enforcement order relates, or by removing the child and handing him or her over to the person entrusted with the child's custody or guardianship. Therefore, pursuant to Art. 238.e,

91 Koromház, 2025, pp. 261–294.

the court will enforce the court decision in cases where indirect enforcement by imposing fines would not be successful, or, in particularly justified cases, immediately. The court will order the placement of a child in an institution if it finds that the child has psychosocial difficulties, manifesting as behavioural, emotional, learning or other problems, and if it finds that these difficulties endanger the child himself or other children in the family, and that only by placing the child in an institution can the child's best interests or the best interests of the other children in the family be sufficiently safeguarded. Forms of substitute care are adoption, granting parental responsibility, guardianship and foster care.[92]

9. Guardianship, Aftercare and Institutional Background

In Croatia according to Art. 132, paras. 1-2 of the FA, every citizen is tasked with the legal duty to report a potential violation of the child's personal and property rights to the Croatian Institute for Social Work (hereinafter: CISW), whose duty it is then to investigate the case and take measures to protect the rights of the child. Guardianship tasks regarding children are carried out by the CISW, a guardian, a special guardian from the Center for Special Guardianship, as well as a temporary representative outside the system appointed by a decision of a court or authority before which proceedings are conducted and who also has the authority of a special guardian[93]. Besides the above-mentioned individual guardianship for the child, FA distinguishes guardianship for special cases. Although it is common in theory and legislation to associate the institution of individual guardianship with special guardianship, it is necessary to emphasise that the content of protection is fundamentally different[94]. CISW is an institution that, on behalf of the state and society, applies professional social work procedures and provides special care for children whose development and upbringing is endangered. CISW workers directly provide social services such as first social service, counselling service and family-mediation service. Thus, CISW is also an institution providing services[95]. Through the CISW's assistance, the family can receive high-quality and timely professional support and, in cooperation with experts and parents, ensure sufficiently good conditions for the child to grow. Certain forms of care for children are also provided in foster families and in institutions for children, such as institutions for children with developmental disabilities, care institutions for the upbringing and re-education of children and children's homes. The state provides a social housing service for children who cannot be cared for in his or her own home, which can be institutional care in a social care home or with other service providers, or non-institutional care in a foster family.[96]

92 Burkelc Juras and Burkelc, 2025, pp. 295–329.
93 Art. 222 of FA.
94 Ibid., Arts. 240–246.
95 Art. 71 in connection with Art. 74, para. 2 of SWA.
96 Art. 74, para. 4 of SWA; Šimović, Margaletić and Preložnjak, 2025.

In the Czech Republic, Czech law differentiates two institutions that traditionally characterise the meaning of guardianship. Guardianship of children under protection is generally regulated by CC[97] with some specific rules included in the SLPA (e.g. sec. 17). Regarding procedural rules, CPC[98] and SCPA outline the regulations. The first institution (poručenství) is invoked when no parent holds or exercises full parental responsibility for the child[99]. This typically arises in scenarios where both parents are deceased, or their parental responsibility has been terminated by a court order. In such cases, a court-appointed guardian (poručník) exercises parental responsibility rights and duties entirely instead of the parents. The second option (opatrovnictví) is used to resolve specific situations as provided by law. Specifically, a court shall appoint such a guardian (opatrovník) to a minor when there is a risk of conflict of interests between a child and a person exercising parental responsibility; the legal representative does not sufficiently protect the child's interests; or the child's interests require it[100]. Moreover, guardian ad litem is appointed to the child in almost all civil proceedings if a minor is a party. In some cases of institutional care, a social curator (social worker) is assigned to monitor the child's rights in institutional care. The main job of this social worker is to work with the child, the child's family and other entities involved in case cooperation, be in direct contact with the child, monitor the influences on the child, identify the causes and seek measures to reduce the adverse influences. Moreover, the director of the institutional care facility is obliged (sec. 24 ICEA) to inform the competent municipal authority at least six months before the child's discharge from the institution and enable the child to meet with a social worker – social curator. After the end of institutional care, young adults may stay in an institution based on a contract between the institution and the young adult, but no longer than until the age of 26[101]. Moreover, social service so-called halfway houses are also accessible to young adults who are transitioning from institutional care. These are temporary residence services for individuals up to 26 years and encompass accommodation (in principle for up to 12 months), facilitation of social connections, therapeutic activities and support in advocating for rights and interests. The services here are charged. Another possibility for temporarily providing housing to young adults is an asylum house.[102]

In Hungary, the Civil Code refers to the guardianship of persons under child protection guardianship as 'child protection guardianship'. The scope of child protection under child protection guardianship in the new Civil Code was meant to be the same as it was previously; but the institution of child protection guardianship changed and a unified foster placement has replaced temporary and permanent foster placement. In the Gyvt. according to Art. 84, the guardianship authority shall appoint a child

97 Arts. 465-471 and 943–952.
98 Art. 29.
99 Art. 928 of CC.
100 Ibid., Art. 943.
101 Art. 2 Para. 6, Art. 24 para. 4 of ICEA.
102 Kornel, 2025, pp. 71–100.

protection guardian for the child, irrespective of the child's place of care, on the basis of a proposal by the regional child protection service. As a general rule, neither the head (or an employee) of the children's home and foster care network nor the foster parent of the child may perform the duties of a guardian; however, the Gyvt. allows the guardianship authority to appoint a foster parent as a guardian in addition to the child protection guardian to perform certain guardianship duties specified in the Act. However, the care of the child will not be provided by the child protection guardian, but by a child protection foster parent. Due to these changes, child protection guardianship is even more strongly characterised by the predominance of public law elements over private law elements. The child protection guardian monitors and promotes the child's physical, intellectual, emotional and moral development and education, and supervises the child's full care. The child protection guardian shall have the right to meet the child in person, without the presence of the head of the child protection service or of a member of staff, including the foster parent, at a time of his or her choosing. Child protection and guardianship administration are closely related concepts, with child protection care overlapping the two, which is also part of the child protection system under the Gyvt. The Gyvt. – as mentioned above – clearly separates the activities of public authorities from those of service providers. Child protection (service provision) is the responsibility of the municipal (capital district) and county governments. The notary or the guardianship office may take official measures in the field of guardianship administration. The minister is responsible for sectoral management and professional supervision.[103]

In Romania, where the child cannot be cared for by parents (parental authority), the child has the right to alternative care to serve its best interest. Art. 106, para. 1 of the Civil Code, under the marginal heading of "Protective Measures", states that 'the minor's care shall be provided by the parents, by the establishment of guardianship, by placement or, where appropriate, by other special protective measures provided for by law'.[104]

In Serbia, the function of guardianship authority is performed by the centre for social work as an administrative body founded by the local self-government unit. A full and permanent guardian is appointed for a child without parental care in order to ensure his/her comprehensive legal protection until the end of the need for guardianship (reaching majority, adoption of a child, return of the child to the biological family). Furthermore, the decision regarding a child's placement under guardianship simultaneously contains the care plan for the child and the decision on the accommodation of the minor ward. The Social Welfare Act provides for the aftercare of the child, which involves the creation of a plan for leaving social protection and becoming independent, as well as the provision of support services for independent living, including supported housing. First, the plan for leaving social protection and becoming independent is made for all children in alternative care (kinship care, foster

103 Jakab and Benyusz, 2025, pp. 101–126.
104 Mihăilă, 2025, pp. 159–225.

care, residential care) by the time the child attains the age of 14. Support services for independent living are provided to children and young persons between the ages of 15 and 26, who, upon termination of family-like accommodation (kinship or foster care) or after leaving residential accommodation, are unable or unwilling to return to their biological family, nor are they able to start independent life. Among these services, the supported housing service stands out in particular. The child protection system encompasses a network of institutions and licensed providers of social welfare services that cooperate with educational and health institutions, the police, judicial authorities, local self-governments, as well as other legal entities and citizens. The Social Welfare Act recognises various institutions that carry out the activities of social protection of children, including the centre for social work, centre for family accommodation and adoption, and institutions for education of children and young people who have been sentenced to certain educational measures. Further, the protection of the rights and interests of the child is decided in court proceedings governed by the Family Act. The head of the service assigns the case to a specific expert of the social work centre who is assigned as the manager of the case. The case manager, together with the supervisor, decides on starting work on the case. The main pillars of the child and family protection system are the centres for social work, as organisations established by local self-governments, but exercising the most diverse and numerous public powers in the field of child protection entrusted to them by the state.[105]

In Slovakia, social and legal protection of children and social guardianship are ensured by the execution of measures of social and legal protection of children and social guardianship in the Slovak Republic by state administration bodies, municipalities, higher territorial units, accredited entities, social workers performing independent social work practice, as well as various legal and physical persons without accreditation in organising and mediating various activities to support the suitable use of children's free time, or various programmes and trainings aimed at supporting the fulfilment of parental rights and obligations. The Central Office of Labour, Social Affairs, and Family leads, controls and methodically directs the execution of state administration in the field of social and legal protection of children and social guardianship. It also implements counselling-psychological services, ensuring the execution of measures according to this law in terms of facilities, and coordinates the provision of assistance to unaccompanied minors. Among other tasks, it also establishes centres for children and families, controls and methodically directs them, and approves their internal organisational structure, Further, it controls and methodically directs the centre, which implements the measures based on granted accreditation. Other significant entities cooperating in the process of social and legal protection of children and social guardianship are centres for children and families, which are established as budgetary organisations by the Central Office of Labour, Social Affairs, and Family. According to the law, they can be established by a municipality, a higher territorial unit, or another legal or physical person. If established by a municipality

105 Vlašković, 2025, pp. 227–259.

or a higher territorial unit, they do not carry out residential measures of the court or outpatient educational measures. If established by a physical or legal person, the centres can implement measures only according to the accreditation granted to the persons who established them.[106]

In Slovenia, the Family Code regulates three types of guardianship: guardianship for children, guardianship for adults and guardianship for special cases. The procedure for placing a child under guardianship is initiated ex officio or following the proposal of an eligible petitioner. The social work centre is a participant in the proceedings even when it is not the one that proposed the commencement of the proceedings (legal participant).[107]

10. Participation of Children in the Child Protection System

In Croatia, children are considered legal subjects (not de facto objects) who should actively participate and make autonomous decisions in all judicial and administrative proceedings in which their rights and interests are decided, thus exercising the rights prescribed by global and regional international legal sources – Art. 12 of the CRC, Art. 3 of the European Convention on the Exercise of Children's Rights (hereinafter: ECECR), Art. 8 of the ECHR, Art. 24 of the Charter of Fundamental Rights of the European Union (hereinafter: Charter). The child's right to be informed and to be able to express his/her opinion has a pivotal position within the participation rights and is prescribed by both substantive and procedural provisions of the FA. The substantive provision of Art. 86, para. 1 of the FA prescribes how this right of the child should be realised in everyday life, referring to family, school, health, diet, sports, religious, cultural and upbringing issues. This provision also prescribes the primary obligation of the parents to respect the child's right to be heard and help him/her realise this right in practice. Therefore, parents have an obligation to talk to their children and try to reach an agreement while exercising their right to parental care, always considering the age and maturity of the child.[108]

The substantive provision of Art. 86, para. 2 of the FA prescribes how this right of the child should be realised in all judicial and administrative proceedings in which his/her rights or interests are decided, emphasising the child's right to be informed and obtain advice, before eventually deciding to exercise the right to express his/her opinion. This provision is the legal basis of all considerations regarding participation of children in judicial and administrative proceedings, implying that it is the duty of society, represented by judicial and administrative bodies, to protect children's right to be 'visible'. The logic underlying this standpoint is that if the child's opinion

106 Koromház, 2025, pp. 261–294.
107 Burkelc Juras and Burkelc, 2025, pp. 295–329.
108 Art. 91, para. 3 in connection with Art. 86, para. 1 of FA; Margaletić, Preložnjak and Šimović, 2025.

is not established because he/she was not given the opportunity to express his/her considerations, thoughts, wishes etc. then the child cannot be protected as it will be impossible to determine what is in the child's best interest and how to protect it! Therefore, proper exercise of the child's right to be informed and heard is somewhat of a precondition for the correct assessment and protection of the best interest of the child within the domestic judicial and administrative child protection system. This is particularly reflected in the provision of Art. 130, para. 1. of the FA, which provides the child the right to participate and express his/her opinion in all procedures of assessment and determination of the need to impose preventive or repressive measures to protect his/her personal or proprietary rights and welfare.[109]

The procedural provision of Art. 360, para. 1 of the FA confirms that the right to be heard is solely a right and never the obligation of the child; however, at the same time, it imposes an obligation to inform the child that he/she can decide not to participate at any point in the proceeding. If the child decides to participate, the court is obligated to enable him/her to express his/her opinion in an appropriate place and in the presence of a professional if it considers this necessary for obtaining the authentic opinion of the child. In connection with this, the competent court is not obligated to obtain a child's opinion in cases where there are particularly important reasons that need to be explained in the decision (e.g. if the child is exposed to a conflict of loyalty or a high amount of stress or manipulation by parents, household members or third persons).[110]

In the Czech Republic, the effective participatory rights of children are, on a textual level, strongly embedded in Czech national law[111] and are structured across the following four levels; they vary depending on the matter and circumstances of the individual child: right to information; right to express their views; right to be given their views due weight; right to decide (give consent, veto right).[112]

First, parents must enable their children to participate in decision-making, and the general rule[113] dictates that the child must be provided information, allowed to express his/her views and these views must be given due consideration. Similarly, according to Art. 946 of CC, before the guardian proceeds on behalf of the child to the legal act he has been appointed to perform, he shall ascertain the opinion of the parent or guardian, if applicable, and the opinion of the child and, if appropriate, the opinion of other persons.[114]

On the substantive law level, the general rule regarding children's participation in a judicial proceeding is stipulated in sec. 867 CC: 'before making a decision affecting the child's interests, the court shall provide the child with the necessary information

109 Šimović, Margaletić and Preložnjak, 2025, pp. 29–70.
110 Ibid.
111 Hoblíková and Kropáčková, 2019, pp. 951–954; or Kissová, n.d.
112 Kornel, 2025, pp. 71–100.
113 Art. 875 para. 2 of CC.
114 Kornel, 2025, pp. 71–100.

to enable him or her to form his or her own opinion and to communicate it' (para 1), and,

> 'if, in the court's opinion, the child is unable to receive the information, or is unable to form his or her opinion, or is unable to communicate that opinion, the court shall inform and hear the person who is able to protect the interests of the child, provided that the person is one whose interests do not conflict with the interests of the child; a child over the age of twelve shall be presumed to be able to receive the information, form his or her own opinion and communicate that opinion. The opinion of the child shall be given due weight by the court (para 2).'[115]

In Hungary, according to Art. 2 (a) of Government Decree 149/1997 (IX. 10.) on guardianship authorities and child protection and guardianship procedures, a child who has the capacity to judge is a minor who, in accordance with his or her age and intellectual and emotional development, is able to understand the essential content of the facts and decisions affecting him or her and to understand the expected consequences. The rules governing the hearing of such a child are described in the previous section.[116]

Pursuant to Art. 2 para. 1 of 15/1998 (IV. 30.) NM Decree on the professional duties and conditions of operation of child welfare and child protection institutions and persons providing personal care, personal care shall be provided in a manner that respects the rights of children and parents and ensures their enforcement. Pursuant to para. 2, in order to ensure the widest possible exercise of children's rights, providers of child welfare and child protection services (the service providers) shall ensure that children have access to the name and telephone number of the children's representative and the place and time of his or her appointments. Para. 3 states that service providers shall ensure that the children's rights representative a) has a suitable room within the premises of the institution, which is easily accessible and suitable for children to have a private conversation during their visit; b) is aware of the possibility of being informed on the spot and is able to consult the documents; c) to be informed in advance regarding the date of the meeting of the representative forum.[117]

The children's council elected by more than 50% of the children may represent all the children in the residential childcare institution. The children's council decides on its own functioning after consulting the head of the institution. Its rules of organisation and operation are adopted by the elected children's council and approved by the head of the institution. Approval may be withheld only if the rules are unlawful or contrary to the institution's rules of organisation and operation or its rules of procedure. The children's self-governing body may express its opinion to the head

115 Ibid.
116 Jakab and Benyusz, 2025, pp. 101–126.
117 Ibid.

of the institution on all matters relating to the operation of the residential childcare institution and to the children, which the head of the institution shall consider.[118]

In Romania, children can participate in various civil, administrative and criminal procedures; therefore, they must be helped to be aware of the importance of participation in decision-making that concerns them and to understand why some of their opinions or wishes cannot be considered.[119]

Whether it is applications related to the establishment of guardianship, civil status records, applications for inheritance, divorce, adoption or procedures before public administration authorities for the provision of services or benefits, situations in which children are arrested or convicted, or are witnesses in legal proceedings, a child-friendly infrastructure must be ensured as stated in the National Strategy for the Protection and Promotion of Children's Rights "Protected Children, Safe Romania" 2022-2027.[120]

Children entering the special protection system should know and be informed about all the steps taken from the preparation of the move to the alternative protection system to knowing some details about siblings, school or place of placement. However, studies carried out in Romania show that 2 out of 3 children in the special protection system are not consulted about their opinions and preferences. The children who were consulted prefer the living conditions of the special protection system, stating that they want their families to be free of violence, alcohol or other substance use, and also to have good living conditions.[121]

In Romania, Standard 5 from the Order of the Minister of Labour and Social Justice no. 25/2019, on the approval of minimum quality standards for residential social services intended for children in the special protection system, supports the permanent involvement of children in processes and decisions regarding their own lives, as well as their active participation in all aspects of social life. The same document requires residential centres to carry out, at least once a year, periodic information and training sessions for children. Further, the staff of the centres must train and inform the children on the ways in which they can express and communicate their opinions/wishes/proposals regarding the living environment, the services received and the activities in which they are involved.[122]

The child must be informed about the procedure in which he/she is participating and which concerns him/her, and information given to him/her must be according to his/her age and level of maturity. He/she must also know about the consequences of the decisions that concern him/her.

The guardianship court cannot decide without hearing the minor if he/she has reached the age of 10. According to Art. 264 of the Civil Code, in the administrative or judicial procedures that concern him/her, the hearing of the child who has reached

118 Ibid.
119 Mihăilă, 2025, pp. 159–225.
120 Ibid.
121 Ibid.
122 Ibid.

the age of 10 is mandatory. However, a child who has not reached the age of 10 can also be heard if the competent authority considers that this is necessary for the resolution of the case. The child can request to be heard, and the rejection of the request by the competent authority must be reasoned. In principle, the court considers the child's opinion, valuing it according to age and degree of maturity.

The hearing of the minor happens in the council room. In principle, only the judge and the clerk participate in the hearing of the minor, but depending on the situation, the court can also admit the participation of other people (parents, guardians, psychologist). Recently, special rooms have been set up for hearing children, but they are present only in few places in the country.[123]

According to the provisions of Art. 57, para. 3 of Law 272/2004 on the protection and promotion of children's rights, special protection measures for children who have reached the age of 14 are established only with their consent. In cases where the child refuses to give his/her consent, the protective measures are established by the court itself, which, in well-reasoned situations, can override his/her refusal to express his/her consent to the proposed measure.[124]

A child who has reached the age of 10 will give his/her consent to adoption in front of the court, in the adoption approval phase, according to Art. 15 of Law 273/2004 on the adoption procedure. It does not involve merely listening, it is a requirement of consent that cannot be met otherwise.

In Art. 2 of the Pre-University Education, Law no. 198/2023 states that the pre-university education system is based on the following values: r) 'respecting the student's right to opinion...', and in Art. 116 letter r), it is stated that the county directorates of pre-university education/the Bucharest Municipality Directorate of Pre-University Education keep in touch with the representative organisations of students, teachers and parents and ensure their participation in the process of drawing up and implementing educational policies at the county level and in the process of decision-making aimed at the school community.[125]

The National Student Council is an important mechanism for children's participation in decision-making in the field of education. Art. 7 of the Student Statute provides for the right of student children to be consulted and to express their opinions regarding the established curriculum, in accordance with the students' learning needs and interests. Children and young people with special educational needs integrated in mainstream education have the same rights as other students (Art. 8.1). Student representation in schools is implemented through the student council and their representative associations (Art. 30). In 2019, more than 20,000 children from all branches of the organisation were involved through the programme initiated by the "Save the Children" organisation, "We have rights, too" n.t, with more than 600 volunteers, teachers and schools as partners. This programme aimed to

123 Ibid.
124 Ibid.
125 Ibid.

> 'inform children in order to make them aware of their rights and responsibilities, in accordance with the UN Convention on the Rights of the Child, through peer-to-peer education techniques and stimulating their participation in social programmes and actions, increasing the degree of respect of the rights of the child, the involvement of children and young people in non-formal education activities, which will develop their knowledge about the rights of the child and at the same time skills and attitudes in accordance with them.'[126]

In Serbia, hence, the child has the right to freely express his/her views in the procedures in which decisions are made about the provision of social welfare services concerning the child and his/her family, as well as in procedures in which child protection measures are adopted. In this context, a child has the right to duly receive all the information necessary to form his/her own views. Further, a child who has reached 10 years of age may address the court or an administrative body by himself/herself or through another person or institution and request assistance in realisation of his/her rights to free expression of views.[127]

Furthermore, the court is always obliged to consider how the child can be enabled to express his/her views in all the proceedings concerning the rights of the child (proceedings in a dispute for the protection of the rights of the child, proceedings for the exercise of parental responsibility or proceedings for the deprivation of parental responsibility). If the court finds that the child is not adequately represented in these disputes, it is obliged to appoint a temporary representative for the child or to request the appointment of a collision guardian from the centre for social work. This type of temporary guardian is especially obliged to ensure that the child receives all the information in a timely manner in a way that he/she can understand in order to be able to form and express his/her views; provide the child with information about the possible consequences of the actions he/she undertakes, as well as inform the court of the child's views if the child is not able to directly express them before the court.[128]

In procedures for the use of social welfare services or when adopting child protection measures implemented by the centre for social work, the case manager plays a particularly important role. This social welfare specialist constantly maintains communication with the child, ensuring the child's active participation during his/her numerous activities on the case and informs the child about the results of his/her work and prepares reports and decisions in accordance with the age and maturity of the child. The case manager must also enable the child's participation in creating the plan of services and measures for the child and his/her family in accordance with the age and maturity of the child.[129]

126 Ibid.
127 Vlašković, 2025, pp. 227–259.
128 Ibid.
129 Ibid.

11. Country-Specific Issues

In the Czech Republic, the first problem addressed by professional and international bodies, such as the UN Committee on the Rights of the Child, is the abovementioned fragmentation of responsibilities among many different actors cooperating only to a limited extent (e.g. the agenda of services for at-risk children and their families belongs to three ministries, namely, Ministry of Health, Ministry of Education, Youth and Physical Education, and in part to the Ministry of Labour and Social Affairs). Second, the excessive institutionalisation of care for children at risk and the involuntary removal of children from parental care have drawn vast criticism. Notably, the European Court of Human Rights recognised, on a couple of occasions, that the Czech Republic violated fundamental human rights in specific cases of involuntary removal of children. Third, the schizophrenic role of the SLPCB serving not only as a guardian representing children in court proceedings but also as a public body controlling (and punishing) families or providing family services is criticised by experts. Preparing young people for leaving institutions happens throughout their stay; yet, research shows its limited impact. Any child in foster care or institutional care is considered an endangered child. As such, an individual protection plan must be prepared for any such child. The plan's goal is to support young people in becoming independent, activate them and gradually prepare them to take responsibility for fulfilling their own goals. The plan's objectives relating to empowerment likely include critical areas of securing housing, preparing for future employment and/or a career, material provision, and possibly various other forms of support.[130]

In Serbia, significant progress has been noted in reducing the number of children in residential care; however, this is not the case regarding children with disabilities. Thus, in 2022, children with disabilities still made up an overwhelming majority of the total number of children in residential care (66.4%). According to the General Comment No. 21 of the CRC, children in street situations involve 'children who depend on the streets to live and/or work, whether alone, with peers or with family' and 'children who periodically, but not always, live and/or work on the streets, as well as children who do not live or work on the streets but who regularly accompany their peers, siblings or family in the streets'. In 2022, Serbia adopted the "Plan" for the protection of children in street situations from violence, neglect and exploitation in an effort to implement the CRC/GC/21. In this context, the Plan envisages tasks for the centres for social work, police departments, public prosecutor's offices and the city of Belgrade in order to coordinate the protection of this extremely vulnerable category of children. Despite this, a major problem is the extremely small number of licensed drop-in service providers within the local self-government units.[131]

130 Kornel, 2025, pp. 71–100.
131 Vlašković, 2025, pp. 227–259.

In Croatia, a child's placement is frequently determined by 'the available place and the accommodation capacity of the institutions themselves, so the placement of a child is often conditioned by the location of an available place, which is frequently not close to the child's previous place of residence'. In the Republic of Croatia, children's homes continue to be the most common type of accommodation for children who do not have adequate parental care, indicating that work should be done on their transformation in terms of content (activities, equipment) and professionals (diverse and educated professional staff) for this form of care to reach the highest possible level. Foster care is being increasingly chosen as the first choice of placement for a child as part of the deinstitutionalisation process. In 2022, the Ombudsperson for Children requested information on the children entrusted to care from all institutions on the trend in the number of children and young people in accommodation, residence and organised housing. The numbers supplied imply a minor increase in the number of children in foster care and organised housing in 2022, although the number of children in foster care is much more. The problems in securing accommodation in foster families are comparable to those encountered in institutions. Although the number of new foster care licenses in 2022 was approximately 20% higher than in 2019, the number of foster families remains insufficient when considering the needs for care of children outside their home. In addition to insufficient capacity in institutions and foster families and many requests for child placement, issues persist regarding uneven territorial representation of foster families, lack of professional foster care, lack of foster families in urban areas, as well as a lack of specialised foster parents who are additionally educated to care for children with behavioural disorders or specific physical or mental disabilities. Difficulties also persist in terms of foster parents' structure and needs (e.g., age, lower educational structure of foster parents; insufficient professional support for foster parents, children and biological families; insufficient education and supervision of foster parents and professional staff; and uneven quality of services provided by foster families). Deficits are also seen in terms of monitoring over the services offered by foster families, as well as children's non-participation in making decisions about themselves.

12. Best Practices

In Romania, a monitoring and evaluation system known as "Progress in ensuring the transition from care in institutions to care in the community", was developed for ensuring the transition from care in institutions to care in the community, in the framework of the project implemented by the National Authority for the Rights of Persons with Disabilities, Children and Adoptions. The monitoring system allows analysis of the transition of care of children left without parental care in institutions to care in the community, from the perspective of four main objectives: closure of foster care centres, as every child must grow up in a family; development of alternative services to care in placement centres, especially those of the family type, both

numerically and from the point of view of quality; strengthening case management, to ensure the quality and adequacy of protection services; and the development of prevention and support services in the community to reduce entries into the system and stimulate family reintegration. In Romania, the establishment and application of special protection measures for a child is based on an individualised protection plan. This is developed and implemented by the case manager. Thus, children in special protection have a designated case manager (within the General Directorate of Social Assistance and Child Protection or Authorised Private Bodies). A case manager is also assigned for children with disabilities for whom there is no special protection measure. According to the National Authority for the Protection of Children's Rights Order no. 288 of 2006 approving the minimum mandatory standards for case management in the field of child rights protection, 'case management, applied in the field of child rights protection, is a method of coordinating all social assistance and special protection activities carried out in the best interests of the child by professionals from different public and private services or institutions'. Special protection measures for children are placement, emergency placement and specialised supervision.[132]

Under Law No. 176/2015 Coll., on the Commissioner for Children and the Commissioner for Persons with Disabilities, and on amendments to certain laws, the Slovak Republic established two independent bodies whose role, distinct from other bodies enforcing the protection of fundamental human rights, is to participate in supporting and promoting children's rights, as well as to contribute to fulfilling the tasks of the national preventive mechanism according to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Pursuant to this law, the Slovak Republic has a Commissioner for Children and, simultaneously, a Commissioner for Persons with Disabilities.[133]

The Commissioner for Children primarily assesses the observance of children's rights, both on their own initiative and based on individual submissions. To do this, the Commissioner monitors compliance with the rights of the child, especially by conducting independent investigations into the fulfilment of obligations arising from international treaties to which the Slovak Republic is bound, performing systematic visits to special education facilities and facilities of social and legal protection of children and social guardianship, or other places where children who are restricted in their freedom by public authorities may be found. Furthermore, the Commissioner collaborates directly with children or through organisations active in the field of children's rights. This cooperation currently proceeds according to the published memoranda of cooperation with the General Prosecutor's Office of the Slovak Republic, the civil association "Protect Me", Trnava University, UNICEF, and the organisation "Smile as a Gift". Among the special rights of the Commissioner is the right to speak, without the presence of third parties, with a child placed in a location where detention, imprisonment, protective treatment, or educational measures are executed.

132 Mihăilă, 2025, pp. 159–225.
133 Koromház, 2025, pp. 261–294.

The Commissioner also has the right to participate in court proceedings. A special obligation of the Commissioner for Children is the duty to submit an annual report on their activities to the National Council of the Slovak Republic.[134]

The Commissioner for Children is elected for a term of six years by the National Council of the Slovak Republic from candidates nominated by its relevant committee. Only a member of the National Council of the Slovak Republic can submit a proposal for a candidate for the Commissioner's post to the relevant committee of the National Council of the Slovak Republic.[135]

In Poland, the institution of the Ombudsman for Children was introduced into the Polish legal system by the Act of 6 January 2000 on the Ombudsman for Children. Pursuant to the provisions of Art. 1(2) of this Act, the Ombudsman shall safeguard the rights of the child as set out in the Constitution of the Republic of Poland, the CRC and other legal provisions, with observance of the responsibilities, rights and duties of parents. In exercising their powers, they will be guided by the wellbeing of the child and on the principle that the natural environment for the child's development is the family. They will take measures to ensure the full and harmonious development of the child, respecting his or her dignity and subjectivity.[136]

The Ombudsman works to protect the rights of the child, in particular, the right to life and health protection; the right to be brought up in a family; the right to decent social conditions; and the right to education. Moreover, the Ombudsman takes action to protect the child from violence, cruelty, exploitation, demoralisation, neglect and other forms of ill-treatment. The Ombudsman is obliged to provide special care and assistance to disabled children, and promote children's rights and methods of protecting them.[137]

The Ombudsman's term of office lasts five years, counting from the date of taking the oath before the Parliament. The Ombudsman is appointed by the Parliament, with the consent of the Senate, following the proposal of the Speaker of the Parliament, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators. The same person cannot be the Ombudsman for more than two consecutive terms. The Ombudsman is independent of other state bodies in their activities and is accountable only to the Parliament under the terms set out in the law.[138]

The Ombudsman's powers are extensive and include, inter alia, the following. The Ombudsman may

examine, even without notice, any case instantaneously; request public authorities, organisations or institutions to provide explanations, information or access to files and documents, including those containing personal data, for inspection at the Office of the Ombudsman for Children; report and participate in proceedings before the Constitutional Tribunal initiated on the basis of a motion of the Ombudsman or

134 Ibid.
135 Ibid.
136 Nitecki, 2025, pp. 127–158.
137 Ibid.
138 Ibid.

in cases of constitutional complaint, concerning the rights of the child; apply to the Supreme Court with motions to resolve differences in the interpretation of the law as regards the legal provisions concerning the rights of the child; file a cassation or cassation complaint against a final decision in the procedure and on the principles specified in separate regulations; request the initiation of proceedings in civil matters and participate in pending proceedings, in accordance with the rights vested in the public prosecutor; participate in pending proceedings in juvenile matters, in accordance with the rights vested in the public prosecutor; request the initiation of preliminary proceedings by an authorised prosecutor in criminal matters; request the initiation of administrative proceedings; file complaints to the administrative court, as well as participate in such proceedings, in accordance with the rights vested in the public prosecutor; request punishment in misdemeanour proceedings, in accordance with the procedure and principles set out in separate provisions; and order an investigation and the preparation of expert reports and opinions.

It is worth noting that the Ombudsman, guided by the wellbeing of the child and indications of the lack of possibility to provide the child with family foster care, issues an opinion in which they express their opinion on the legitimacy of creating a custodial and educational unit. [139]

Under their operations, the Ombudsman cooperates with associations, civic movements, other voluntary associations and foundations working for the protection of children's rights. They are obliged to submit to the Parliament and the Senate, annually, no later than 31 March, information on their activities and comments on the state of observance of children's rights. Such information is placed in the public domain.[140]

In Slovenia, after the new family legislation came into force in 2019, the need for a protocol on child removal was recognised, and an inter-institutional work group was established. In May 2020, the work group drafted the Protocol of Recommended Practices in the Case of Execution of a Decision on the Removal of a Child by Direct Extradition. The purpose of the Protocol is to protect the best interests of the child during the stage of removal of the child. All participants are obliged, after a preliminary assessment of the factual circumstances and a risk assessment, to draw up a detailed plan for the implementation of the removal of the child and to define the role and conduct of all participants from the different institutions in the different stages in such a way as to ensure that the individual actions are the least burdensome for the child and the best interests of the child are served. The Protocol is extremely useful as a working tool and provides for a normal course of action and distribution of roles of all participants in the various stages of the enforcement procedure, and, in the context of planning of the enforcement, it also foresees the possibility of certain special circumstances, in particular with regard to the characteristics of the child and the parents, and for the recommended course of action to be followed in such cases.

139 Ibid.
140 Ibid.

The Protocol comes with a 'Risk Assessment' form attached to facilitate the identification of risk factors relevant to the planning and execution of the removal of the child. Some of the more important aspects of the Protocol are briefly outlined below.[141]

141 Burkelc Juras and Burkelc, 2025, pp. 295–329.

Bibliography

Burkelc Juras, L., Burkelc, F. (2025) 'Child-Protection Systems – Slovenian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 295–329; https://doi.org/10.71009/2025.njmb.cps_8.

Committee of Ministers (2005) Recommendation of the Committee of Ministers to member states on the rights of children living in residential institutions (Adopted by the Committee of Ministers on 16 March 2005 at the 919th meeting of the Ministers' Deputies) REC(2005)5.

Council of Europe (2011) *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum*. Strasbourg: Council of Europe Publishing [Online]. Available at: https://rm.coe.int/16804b2cf3 (Accessed: 12 December 2023).

Filipek, J. (1995) *Prawo administracyjne, Instytucje ogólne***.** Part I. Kraków: Universitas.

Jabakb, N., Benyusz, M. (2025) 'Child-Protection Systems – Hungarian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 101–126; https://doi.org/10.71009/2025.njmb.cps_3

Kornel, M. (2025) 'Child-Protection Systems – Czech Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 71–100; https://doi.org/10.71009/2025.njmb.cps_2.

Koromház, P. (2025) 'Child-Protection Systems – Slovakian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 261–294; https://doi.org/10.71009/2025.njmb.cps_7.

Mihăilă, C.O. (2025) 'Child-Protection System – Romanian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 159–225; https://doi.org/10.71009/2025.njmb.cps_5.

Nitecki, S.J. (2022) 'Wspieranie rodzin i piecza zastępcza' in Sierpowska, I. (ed.) Pomoc społeczna. Wsparcie socjalne. Warszawa: Meritum.

Nitecki, S.J. (2025) 'Child-Protection Systems – Polish Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 127–158.; https://doi.org/10.71009/2025.njmb.cps_4.

Šimović, I., Čulo Margaletić, A., Preložnjak, B. (2025) 'Child-Protection Systems – Croatian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 29–70; https://doi.org/10.71009/2025.njmb.cps_1.

Tryniszewska, K. (2012) *Ustawa o wspieraniu rodzin i systemie pieczy zastępczej – Komentarz*. Warszawa: Wolters Kluwer.

United Nations General Assembly (2010) *Guidelines for the Alternative Care of Children: resolution – adopted by the General Assembly*, A/RES/64/142, 24 February 2010 [Online]. Available at: https://www.refworld.org/legal/resolution/unga/2010/en/73661 (Accessed: 30 April 2025).

United Nations Committee on the Rights of the Child (2005) General comment No. 6 *Treatment of unaccompanied and separated children outside their country of origin* CRC/GC/2005/6, 1 September 2005. [Online]. Available at: https://www2.ohchr.org/. (Accessed: 2 December 2023).

United Nations Committee on the Rights of the Child (2011) General comment No. 13 *The right of the child to freedom from all forms of violence*, CRC/C/GC/13, 18 April 2011. [Online]. Available at: https://www.refworld.org/docid/4e6da4922.html (Accessed: 2 December 2023).

Vlašković, V. (2021) 'Osvrt na prava dece sa invaliditetom sa težištem na pristup zdravstvenim uslugama' in Vujisić, D. (ed.) *Usluge i vladavina prava.* Kragujevac: Institute of Legal and Social Sciences of the Law Faculty, pp. 569–585; https://doi.org/10.46793/UVP21.569V.

Vlašković, V. (2025) 'Child-Protection Systems – Serbian Perspective' in Jakab, N., Benyusz, M. (eds.) *Child-Protection Systems.* Miskolc–Budapest: Central European Academic Publishing, pp. 227–259; https://doi.org/10.71009/2025.njmb.cps_6.