

Children in Digital Age – Slovakian Perspective

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ABSTRACT

The chapter examines the legal and regulatory frameworks that govern the protection of children's rights in the digital environment in the Slovak Republic. It explores the multifaceted risks children face online, such as cyberbullying, exposure to harmful content, and violations of privacy, while also acknowledging the opportunities for education, socialization, and personal development that the digital space provides. Emphasis is placed on the national strategy for the protection of minors in the digital environment and the analysis of the right to privacy and the right to be forgotten, the right to be heard, the right to information and the right to education.

KEYWORDS

child protection, digital environment, right to be forgotten, right to information, right to be heard

1. Introduction to the Issue

The Slovak Republic guarantees special protection for children and adolescents directly in Article 41 of the Constitution of the Slovak Republic. One may agree with Drgonec, who states that the aforementioned article guarantees general protection to all persons who have not attained the age of majority in the legal relationships with a public interest in protecting persons under the age of 18.¹ This obligation is not further specified in the Constitution of the Slovak Republic, except for a few provisions that do not address issues related to the digital environment and the associated legal challenges. Similarly, the fundamental legal statute governing family-law relationships, Act No. 36/2005 Coll. on Family and on Amendments and Supplements to Certain Acts, as amended (hereinafter, “Family Act”), does not contain provisions that reflect the need to ensure the protection of minors regarding the risks introduced by the digital era. However, special reference may be made to Article 4 of the Family Code, according to which parents have, among other things, a duty to provide a peaceful and

1 Drgonec, 2019, p. 859.

secure environment for the family, which, in the context of today's digital age, should certainly be interpreted in the context of protecting children from the pitfalls lurking in the digital environment.

The Slovak Republic has developed a National Concept for the Protection of Children in the Digital Space, which was approved by Resolution of the Government of the Slovak Republic No. 63 of 12 February 2020 (hereinafter, "National Concept for the Protection of Children in the Digital Space") and pursuant to which tasks are to be fulfilled until the end of 2025. Alongside the adoption of the National Concept for the Protection of Children in the Digital Space, the Government of the Slovak Republic also approved a corresponding action plan for the years 2020 to 2021, based on which tasks of the national concept have been recently accomplished. This procedure was followed in 2022 by Government Resolution No. 382, which approved the Action Plan to the National Concept for the Protection of Children in the Digital Space for the years 2022 and 2023. This process culminated with the approval of an action plan for the remaining period of 2024 and 2025. Fulfilment of this action plan means a conclusion to the ongoing process of legal adjustments as well as securing institutionalised protection for minors from the perils associated with the advent of the digital age. However, the National Concept for the Protection of Children in the Digital Space is not the sole and isolated document defining state responsibilities aimed at protecting minors in the Slovak Republic. It builds upon previously adopted documents and laws, including: a) the Concept of Media Education of the Slovak Republic in the context of lifelong learning approved by Government Resolution No. 923/2009 of 16 December 2009; b) Directive No. 36/2018 of the Ministry of Education, Science, Research and Sport of the Slovak Republic for the prevention and resolution of bullying in schools and educational facilities; c) Act No. 18/2018 Coll. on the Protection of Personal Data and on Amendments and Supplements to Certain Acts, as amended (hereinafter, "Data Protection Act"); d) National Strategy for the Protection of Children from Violence, approved by Government Resolution No. 24/2014 of 15 January 2014, and subsequently by Government Resolution No. 474/2017 of 11 October 2017; e) Act on the Commissioner for Children and the Commissioner for Persons with Disabilities and on Amendments and Supplements to Certain Acts, as amended (hereinafter, "Act on the Commissioner for Children").²

In the Slovak Republic, the media space is specifically regulated by Act No. 264/2022 Coll., on media services and on amendments and supplements to certain acts (hereinafter, "Media Services Act"). This legislation, enacted in 2022, repealed and replaced two previous statutes governing this area, namely, the Act on Digital Broadcasting of Program Services and Provision of Other Content Services through Digital Transmission and the Act on Broadcasting and Retransmission. The consolidation of the legislation in this area into a single code has resulted in clarification of the legislation, which we consider to be beneficial. Given that this law was adopted

2 Bacigál et al., 2020, p. 9.

after the implementation of the National Concept for the Protection of Children in the Digital Space, it reflects the need for special protection of minors.

This fact must be assessed as positive, and the adoption of the law in question may also be considered one of the significant moments in the field of protecting minors in the Slovak Republic. The fact remains, however, that this legislation does not aim to and cannot fully provide a legal framework for the existence of so-called digital platforms and the provision of services through them. Various definitions of digital platforms can be found in the literature.³ Kasenčáková defines online platforms as bilateral or multilateral marketplaces where users and platform operators meet to facilitate mutual interaction, such as the exchange of information or a business transaction, and includes, for example, Amazon, Marketplace, Bing Search, Facebook, Google Play, Google Search, and Uber among the online platforms.⁴ In our opinion, it is thus necessary to adopt further legislation that responds to the specificities associated with the use of the various digital platforms and provides effective means of protection against the pitfalls that lurk on them, particularly for their underage users.

The primary objective of the Media Services Act, as stated by the legislator, was to transpose the revised Directive on Audiovisual Media Services into the legal order of the Slovak Republic, while simultaneously clarifying the legal framework in the affected area.⁵ Respecting the wording of the Act, we conclude that the legislator has achieved the stated objective. The most significant change introduced by this Act into the legal order of the Slovak Republic is the inclusion of video-sharing platforms within the regulatory framework of audiovisual media services. This change brought about a positive qualitative shift in legal regulation, manifesting in the legal regulation of video-sharing platforms in Slovakia, to which special protection of minors secured by said Act also applies. The new legal framework thus governs the rights and obligations related to providers of video-sharing platforms as well as various content service providers in the media environment, which intersects with the digital environment. Among the outcomes of enacting this legislation is that providers of video-sharing platforms are compelled to comply with legal requirements for the protection of minors, particularly in terms of incitement to hatred, violence, or terrorism. The text of the National Concept for the Protection of Children in the Digital Space highlighted the fact that the legal regulation in Slovakia did not reflect the provisions of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018, amending the Directive on Audiovisual Media Services, which introduced protection for minors against programmes, videos, and audiovisual commercial announcements also in relation to providers of video-sharing platforms.⁶ The adoption of the Media Services Act rectified this situation.

3 Kalesná and Patakyová, 2021, p. 26.

4 Kasenčáková, 2016, p. 65.

5 For further reference, see: the explanatory note to the Media Services Act [Online]. Available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=502806> (Accessed: 20 January 2025).

6 Bacigál et al., 2020, p. 5.

The Media Services Act of the Slovak Republic establishes the rights and obligations of content service providers, which include i) broadcasters, ii) providers of on-demand audiovisual media services, iii) retransmission operators, iv) multiplex providers, v) video-sharing platform providers, or vi) other content service providers. Additionally, this Act regulates the rights and obligations of signal distributors and delineates the role and functions of the regulatory authority, namely the Council for Media Services. Broadcasters are defined as radio broadcasting service providers and television broadcasting service providers. A programme service under this law is primarily economic, which excludes those broadcasters who transmit or disseminate programme services for non-economic reasons, specifically not for the purpose of achieving business success. The above-mentioned may represent a way in which some broadcasters deliberately attempt to exclude the application of the given law to their activities. For this reason, it will be necessary to carefully observe how judicial practice addresses the assessment of whether the distribution of a programme service is taking place for economic or other reasons. Moreover, the broadcaster is editorially responsible for the programme service, which is provided via networks with the aim of informing, entertaining, or educating the public. It stipulates that the service is provided as a deliberate temporal arrangement of programmes and other components of such a service, creating a coherent, simultaneously receivable whole.

From the perspective of the legal regulation of the digital environment as it pertains to broadcasting over the Internet, the most significant provision is § 19 (3) of the Media Services Act, according to which broadcasting of programme services via the Internet is the dissemination of programme services exclusively through the Internet, known as webcasting.

Crucial in this context is the definition of an on-demand audiovisual media service. According to § 26 of the Media Services Act, an on-demand audiovisual media service is a service: primarily of an economic nature; whose fundamental purpose, or the fundamental purpose of its separable part, is to enable viewing of programmes at a time chosen by the user; provided upon the specific request of the user based on a catalogue of programmes compiled by the provider of the on-demand audiovisual media service; for which the provider of the on-demand audiovisual media service is editorially responsible; provided through a network; provided with the aim of informing, entertaining, or educating the broad public.⁷

In light of the aforementioned definitional criteria, audiovisual media services, for the purposes of the Media Services Act, can be affirmed to encompass i) services where the user autonomously selects which video or programme to watch online or through an application, and at their chosen time (various streaming services and/or television station archives), and ii) channels on platforms such as YouTube, Facebook, TikTok, Instagram, or OnlyFans, assuming they were established for business purposes or for profit-making, and meet the other previously mentioned conditions.

7 See: Míčudová, 2023, pp. 44–45.

Additionally, the Media Services Act specifically defines the term “multiplex”, which refers to a composite data stream that includes partial data streams of television or radio programming services, or other content services, including voice services configured for collective broadcasting through the appropriate telecommunications equipment. Part nine of the Media Services Act specifically addresses the protection of human dignity and humanity, as well as the protection of minors. This legal provision is an extension of the general legal regulation of personality protection, which is governed by Act No. 40/1964 Coll., the Civil Code, as amended (the “Civil Code”). The Civil Code provides protection against unauthorised intrusions into the privacy of an individual and other components of personality. Within the given legal framework of the Civil Code, a natural person is provided with certain legal remedies through which they can exercise the right to personality protection by means of state enforcement power against third parties.⁸ These are general legal remedies aimed at protecting against unauthorised interferences with personality, which are supplemented by specific legal regulations. In terms of general protection of human dignity and humanity, Section 61 of the Media Services Act prohibits broadcasters and providers of on-demand audiovisual media services from: promoting war or describing cruel or otherwise inhumane conduct in a manner that inappropriately trivialises, justifies or approves of such behaviour; disseminating or making accessible to the public information with the intent to publicly incite the commission of any of the criminal acts of terrorism or publicly approve any of the criminal acts of terrorism; promoting violence and directly or indirectly inciting violence or hatred, disparaging or defaming based on gender, race, skin colour, language, faith and religion, political or other opinion, property, health disability, age, sexual orientation, birth, national or social origin, genetic characteristics, nationality, and affiliation to a nationality or ethnic group; unjustifiably displaying scenes of real violence where the actual process of dying is improperly emphasised or where individuals subjected to physical or psychological suffering are shown, with special consideration for the victims of criminal acts or their relatives in a manner considered to be an unauthorised intrusion into human dignity.

In our opinion, it is positive that the legislator, in the given provision of the Media Services Act, opted for an illustrative (non-exhaustive) list. We believe that it would be neither possible nor practical to provide an exhaustive list of content that should not be made available by an on-demand audiovisual media service provider owing to the protection of human dignity.

For the purposes of the Media Services Act, a minor, who is entitled to special protection, is defined as a person under the age of 18 years. This legal framework thus does not reference the concept of legal majority, which is defined by the Civil Code and associated with an individual’s attainment of full capacity to perform legal acts. According to the Civil Code, legal majority is achieved either by reaching the age of 18 or, in the case of individuals older than 16 but younger than 18, by marriage with

8 Vojčík et al, 2021, p. 131.

judicial consent.⁹This creates a situation where an individual may be considered an adult under Slovak legal norms but is still accorded special, enhanced protection as a minor in terms of the Media Services Act because of their age and corresponding cognitive and volitional maturity, considered particularly vulnerable during their development. The Act primarily aims to protect minors from content in the digital space that could disrupt their physical, psychological, or moral development. In this regard, Section 62(1) of the Media Services Act imposes an obligation on broadcasters and providers of on-demand audiovisual media services to ensure that programmes or other components of programme services or on-demand audiovisual media services that: may impair the physical, psychological, or moral development of minors are accessible only in such a way that minors cannot ordinarily hear or see such programmes or other components; contain pornography or gross, unjustified violence are provided only if technical measures are in place to prevent access by minors, particularly through encryption or effective parental controls.

For content involving pornography or violence, the Media Services Act primarily anticipates maintaining a condition where minors do not have access to such content due to it being password protected. Generally, any content that might negatively have an impact on the development of minors can be broadcast between 10:00 PM and 6:00 AM, when it is assumed that minors will not have access to it. Although this assumption may not always hold true in real life, for the purposes of the Media Services Act, if a broadcaster or provider of an audiovisual media service schedules potentially harmful content during this time, they fulfil the legal obligation requiring them to make such content inaccessible to minors under normal circumstances. Additionally, outside the time frame of 10:00 PM to 6:00 AM, broadcasters of programme services are also required to consider the timing of programme scheduling in accordance with the age suitability and type of potentially harmful content contained within the programmes. However, regardless of the time content depicting pornography or gross violence is broadcast, such specifically defined content must have access blocked by technical measures.

Section 62 (2) of the Media Services Act specifically defines what constitutes the display of unjustified violence. It is understood as the dissemination in the media of reports, verbal statements, or images in such a way that violent content is unduly highlighted relative to the context of these reports, verbal statements, or images.

The Media Services Act in Slovakia also specifically safeguards minors against the processing of their personal data for commercial purposes. If a broadcaster or provider of an on-demand audiovisual media service has collected or otherwise obtained personal data of minors while fulfilling obligations related to protecting them from inappropriate content, these data cannot be processed or subsequently transferred to other parties for commercial purposes, according to Section 62(4) of the Media Services Act. Funta and Horváth rightly point out that personal data serve as a significant input for many of the services and products offered by major online

9 See: Strapáč, 2019, p. 56.

platforms. Consequently, digital businesses aim to collect and process as much of these data as possible.¹⁰ To align services with consumer preferences, personal data are gathered and processed at an unprecedented scale and a remarkable speed.¹¹

For this reason, it is welcome that the legal framework of the Media Services Act provides special protection for the personal data of minors against processing for commercial purposes. Owing to their level of willpower and intellectual maturity, this is especially important given that minors are particularly vulnerable to practices such as targeted advertising. Furthermore, the protection of minors under the Media Services Act is ensured by requiring broadcasters and providers of on-demand audiovisual media services to determine the age suitability of the broadcast or provided programme and the types of potentially harmful content it contains. This is intended primarily to give parents or guardians overseeing the development of minors the necessary information to assess whether to restrict access to specific programmes. For these purposes, a unified labelling system defined in Act No. 40/2015 Coll., on audio-visual media services and on amendments to certain acts, as amended (hereinafter, “Audiovision Act”), is implemented. However, broadcasters or providers of on-demand audiovisual media services may also employ an alternative accepted labelling system, but in such cases, they are required to comply with the requirements set forth by the Audiovision Act. Broadcasters are obliged to publish the age suitability label of the broadcast programme and the type of potentially harmful content it contains not only during the actual broadcasting of the programme but also during the broadcasting of trailers for such programmes, and this labelling must also be included in their own programming offer as well as in programme guides provided to third parties. Similarly, providers of on-demand audiovisual media services must publish the age suitability label of the provided programme and the type of potentially harmful content it contains in the catalogue of programmes of the audiovisual media service on demand.

The legal framework of the Media Services Act is complemented by the Audiovision Act, which further contributes to the protection of minors’ rights. This statute regulates the rights and obligations of entities operating in the field of audio-visual media, and it applies, among other things, to audiovisual works presented to the public in Slovakia on any medium or made available to the public from Slovak territory for a fee. This also applies to multimedia works distributed in Slovakia on any medium or made available to the public from Slovak territory for a fee.

The Audiovision Act specifically defines what constitutes an audiovisual work intended only for adults. According to Section 2(1) of the Audiovision Act, it is defined as a work that could jeopardise the development of a person under 18 years old, who is considered a minor under the law. A minor may be particularly endangered by an audiovisual work if it contains pornography or gross or unjustified violence. This assertion is similarly applicable to sound recordings of artistic performances intended only for adults and multimedia works designated for adults. The Audiovision

10 Funta and Horváth, 2024, p. 284.

11 Funta, 2020, p. 307.

Act thus directly links to the Media Services Act, which also primarily protects minors from pornography and the display of inappropriate violence. Beyond the legal provisions of the Media Services Act, the Audiovision Act creates a specific category of audiovisual works explicitly intended for children. An audiovisual work designated for children is a work that, owing to its content and character, is specifically intended for minors under 12 years old. The Audiovision Act thus creates a unique category of works that must not display gross or unjustified violence or pornography and are explicitly intended for the youngest group of children under 12 years.

In the context of current trends and threats faced by minors in the digital and media environments, the definition of a multimedia work provided by the Audiovision Act, which also extends protections to minors, is significant. According to Section 2 (11) of the Audiovisual Act, a multimedia work is any multimedia audiovisual presentation, especially a computer game or other work, which meets the following criteria: controlled by computer software; allows searching or presentation in various media forms; transformed into digital form, enabling both digital and analogue presentation of information; allows user interactivity through computer interface interaction with the presentation's narrative.

Particularly for multimedia works, Section 12a of the Audiovision Act is crucial as it allows for the use of other recognised labelling systems besides the unified system established by this law. According to Decree No. 78/2023 Coll. by the Ministry of Culture of the Slovak Republic on accepted labelling systems, one such system is the Pan European Game Information (PEGI), which also establishes that the age suitability and type of potentially harmful content of a multimedia work can be determined according to the PEGI content rating system in accordance with the PEGI Code of Conduct. PEGI is a European content rating system for electronic games developed by the Interactive Software Federation of Europe, used since 2003.

The Audiovision Act establishes a specific unified labelling system, which is mandatory for classifying audiovisual works, multimedia works, television programme services, and on-demand audiovisual media services, collectively referred to by the law as a “communication”. This system is designed to protect minors and consists of labelling these communications by: age suitability for age groups under 7, 12, 15, or 18 years in terms of their appropriateness or inappropriateness; descriptors regarding the presence of potentially harmful content contained within them.

The unified labelling system and details of its implementation are specified in a general binding regulation issued by the Ministry of Culture of the Slovak Republic upon the proposal of the Commission for the Protection of Minors. Section 12 of the Audiovision Act specifies that this generally binding legal regulation must establish: assessment criteria for inaccessibility or inappropriateness, which must be used when evaluating content for the protection of minors, particularly the present level of physical, psychological, or verbal violence, depicted sexual relationships or scenes, nudity in a sexual context, vulgar language, depiction of drug use, gambling or other dependencies, as well as the presence of depictions or other manifestations causing feelings of fear, depression, helplessness, or otherwise inappropriate in relation to a

specific age group of minors; assessment criteria for suitability in relation to a specific age group of minors for whom the content is recommended; methods of marking the communication with age suitability in terms of its inappropriateness or appropriateness; assessment criteria that must be considered when evaluating the content of the marked communication in terms of the presence of potentially harmful content types, especially those depicting violence, sex, fear, discrimination, dependency, or vulgar language; methods of marking the communication in terms of the presence of potentially harmful content; details on the application of obligations by persons required to apply the unified labelling system in evaluating content, its categorisation according to age suitability and type of potentially harmful content, labelling, and public presentation; details on the application of obligations established by the Media Services Act.

The Ministry of Culture of the Slovak Republic issued Decree No. 328/2023 Coll. on the Unified Labelling System and the Method of Its Application (hereinafter, “Decree on the Unified System”), which specifies the legal obligations of the unified labelling system designed to protect minors. This Decree classifies various types of potentially harmful content for minors, considering different age categories of minors. It establishes categories for minors under 18, 15, 12, and 7 years, providing the most detailed legal regulation that distinguishes between minors and the legal protection provided to them in the media and digital spaces. According to the Decree on the Unified System, individual audiovisual works, multimedia works, television programming services, and on-demand audiovisual media services, henceforth referred to as “communications”, can be classified with a descriptor that refers to a specific type of potentially harmful content. The descriptors used to label the communications specifically indicate threats to minors from factors such as i) violence, ii) discrimination, iii) fear, iv) dependency, v) sex and nudity, vi) vulgar language. The labelling of communications under this Decree is carried out using a content descriptor that includes a specific letter indicating the presence of content that poses a risk to young individuals, as well as pictograms of the content descriptor, which are distinctively colour-coded. It is stipulated that a television programming service classified as inappropriate for minors under 18 years may only be broadcast between 10:00 PM and 6:00 AM. One classified as inappropriate for minors under 15 years may be broadcast between 8:00 PM and 6:00 AM. Furthermore, the Decree on the Unified System regulates that before, during, and after broadcasting a programme classified as inappropriate for minors under 7 years, or conversely appropriate for minors under 12 years, a programme classified as inappropriate for minors under 15 years or as inappropriate for minors under 18 years cannot be scheduled.

This comprehensive regulatory approach, as stipulated by the Decree on the Unified System, ensures that the content available to minors in Slovakia is monitored and controlled to prevent exposure to inappropriate material, effectively safeguarding their development and well-being in the media landscape. This method of strict scheduling and content classification seeks to balance the availability of diverse

content with the need to protect younger viewers from content that could negatively influence their psychological or moral development.

In the Slovak regulatory framework, the content of communications and media is meticulously classified to protect minors from exposure to potentially harmful materials. The categories set forth by the legislation are designed to ensure that media content adheres to age-appropriate guidelines, recognising the developmental needs and sensitivities of different age groups. Here is an overview of how certain types of content are classified according to the suitability for minors:

Content is classified as inappropriate for minors under 18 if it depicts: violence on human beings that involves cruel injury or cruel violent death without a sense of remorse, or torture of a person, or violence using weapons as a means of assault for entertainment purposes; displays of discrimination, intolerance, or hatred linked with violence or other inappropriate behaviours, if such behaviours are endorsed; displays of pathological behaviour intentionally inducing fear or anxiety; depictions or presentations of the use of narcotics or psychotropic substances, gambling, or other behaviours that could lead to substance or non-substance addiction, if portrayed as entertainment and endorsed, despite such behaviours being socially unacceptable; pornography; sexual scenes or sexual behaviours including promiscuous behaviour, presented as a form of entertainment; sexual scenes associated with expressions of sexual violence or sexual deviance; vulgar expressions, vulgar gestures, obscene expressions, or obscene gestures, where owing to their contextual occurrence, frequency, processing method or depiction, and considering the character, type, and artistic and moral message of the work or programme, they are deemed appropriate only for persons aged 18 and over.

Content is classified as inappropriate for minors under 15 if it contains: detailed and naturalistic violent acts; animal abuse; the use of weapons as a means of assault, where the depiction inappropriately endorses, trivialises, or excessively exploits the use of weapons; displays of discrimination, intolerance, or hatred, if such behaviours are trivialised or highlighted as valuable and commendable; situations inducing feelings of fear or anxiety; behaviours with a high risk of harm to human health presented as attractive or entertaining, without warning of its dangers or presented without impending harmful consequences; depictions or presentations of alcoholism, smoking, consumption of narcotics and psychotropic substances, gambling, or other behaviours that could lead to substance or non-substance addiction, where any form of addiction is endorsed, trivialised, or highlighted as valuable; explicitly depicted sexual scenes that are part of the storyline; expressive or vulgar expressions, vulgar gestures, obscene expressions, or obscene gestures, where owing to their contextual occurrence, frequency, processing method or depiction, and considering the character, type, and artistic and moral message of the work or programme, they are deemed appropriate only for minors aged 15 and over.

Content is classified as inappropriate for minors under 12 years old if it includes: real violence or depiction of the consequences of real violence on a living being, the aftermath of natural disasters, armed conflicts, or traffic accidents; psychological

violence, especially verbal abuse, or instructions for psychological harm; violent acts or depictions of the consequences of violent acts; blood and bodily disfigurement that are not common in nature; behaviour with a risk of injury if the risk is not clearly communicated; risky sports disciplines or situations where an inadequate interpretation relative to age might lead to imitation by minors; depiction of a sexual scene without nudity or sexual behaviour that is part of the storyline; expressive language that, given its contextual occurrence, frequency, and the manner and form of its presentation, as well as considering the character, type, and artistic and moral message of the work or programme, is deemed appropriate for minors from 12 years old; depiction of nudity that is not usual in normal family settings or public places.

Content is classified as inappropriate for minors under 7 years old if it contains: forced violence on helpless beings, especially on children or animals; aggressively attacking living beings or objects that induce fear; depiction of environments in dark and gloomy colours, or scenes with overly loud music or abrupt audio or visual changes; threats to family relationships or the endorsement of dysfunctional interpersonal relationships; depiction of a negative storyline involving a child that could cause a child to experience real-world victim effects; depiction of behaviour with a risk of injury, if the risk is not clearly communicated, or depiction of fantastical ideas about superhuman heroic acts that are outside the real world, where an inadequate interpretation relative to age might lead to imitation by minors.

The protection of minors in accordance with the provisions of the Audiovision Act is particularly secured through the establishment of a commission as a special co-regulation body for the area of minor protection when applying the unified labelling system or another accepted labelling system, such as the previously mentioned PEGI system used for multimedia works. The commission's responsibilities include drafting proposals for general binding legal regulations that establish details about the unified labelling system and the method of its application, which are submitted to the Ministry of Culture of the Slovak Republic, supervising compliance with obligations under the Audiovision Act and the Media Services Act, as well as providing methodical guidance on procedures for determining age suitability by individuals conducting age suitability assessments.

The National Concept of Child Protection in the Digital Realm not only delineates the digital space as encompassing information and communication technologies – including the Internet, mobile and associated technologies and devices, as well as digital networks, databases, contents, and services – but also references additional threats faced by minors in relation to their participation in the digital environment. This Concept highlights terms such as cyberbullying, grooming (characterised by relationship and trust building between a sexual predator and victim, often through the creation of a false digital identity), happy slapping (a form of bullying involving recording an attack on an unsuspecting victim and disseminating the footage via mobile or Internet to ridicule the victim), sexting (the sending of messages, photos, or videos with erotic and sexual content through information and communication technologies), and webcam trolling (a fraud where the perpetrator uses a prerecorded

video, perceived by the victim as a live webcam image, to deceive and extract sensitive data, including nude photos or videos from the victim).¹² Furthermore, the National Concept identifies a significant issue in that the legal regulations of the Slovak Republic do not clearly define how to approach cases of minor abuse in the digital realm.

This conclusion can be agreed with; however, we believe that even under the current state of the law (*de lege lata*), the legal framework provides basic legal remedies for the protection against such abuse of minors. Regarding the creation and potential use of image and sound recordings concerning an individual, such actions may only occur with the person's consent or under what are termed statutory licences. Otherwise, it constitutes an unauthorised intrusion into the personality rights of an individual, warranting consideration of the application of personal rights protections under Sections 11 to 16 of the Civil Code for minors. Exceptions to the principle that the creation and use of personal expressions are only possible with the consent of the affected person are outlined in Section 12 (2 and 3) of the Civil Code, which regulates so-called statutory licences.¹³

Moreover, the National Concept correctly indicates that the actions could fulfil the elements of certain criminal offences anticipated by Act No. 300/2005 Coll., the Criminal Code, as amended.

The Criminal Code, in Section 132, provides legal definitions of notions of pornography and child pornography. Pornography, for the purposes of the Criminal Code, is defined as the depiction of intercourse, other forms of sexual intercourse or similar sexual contact, or the depiction of exposed genital organs intended for sexual purposes. Child pornography is defined as the depiction of actual or simulated intercourse, other forms of sexual intercourse or similar sexual contact with a child or a person appearing to be a child, or the depiction of exposed body parts of a child or person appearing to be a child intended for sexual purposes. A child pornographic performance is a live performance intended for an audience, even using information technology, in which a child is involved in actual or simulated sexual conduct, or in which parts of a child's body intended for sexual purposes are exposed. For the purposes of the Criminal Code, a child is considered a person under 18 years.

The Criminal Code further specifies several provisions that define crimes related to minors, which can also occur within the digital space. Notably, the crime of disseminating child pornography, committed by reproducing, making available, or otherwise disseminating such material, often occurs within the digital realm. Additionally, the crime of possessing child pornography and participating in a child pornographic performance involves actions intentionally aimed at gaining access to child pornography through an electronic communication service. The offence of endangering morals can also occur by offering pornography to a child or at a place accessible to children. Regarding the endangerment of minors in the digital space, it is also worth noting the crime of dangerous stalking, according to Section 360a(1)(c)

12 Bacigál et al., 2020, pp. 2–3.

13 Vozár, 2019, p. 81.

of the Criminal Code, committed by anyone who persistently pursues another in such a way that may reasonably cause fear for their life or health or that of someone close to them, or substantially worsens their quality of life, by contacting them through an electronic communication service, in writing or otherwise against their will. However, we consider it essential to point out that contact must always occur against the will of the harmed party. It is not enough that the contact is simply unpleasant for the harmed party; the harmed party must clearly express opposition to the contact, and the perpetrator must be aware of this.¹⁴

The Criminal Code also defines the crime of dangerous electronic harassment, which, while not exclusively protecting only minors, provides them protection by deeming such conduct criminal. The described criminal offence was incorporated into the Criminal Code only by the 2021 amendment. We believe that this legal change represents a qualitatively significant positive shift, as it responds to the real need for prosecuting a specific unlawful act that perpetrators are increasingly committing in the digital environment. Unfortunately, the victims of such acts are often minors. This offence, according to Section 360b of the Criminal Code, is committed by anyone who, intentionally via an electronic communication service, computer system, or network, substantially worsens another person's quality of life by: persistently humiliating, intimidating, acting unauthorisedly on their behalf, and persistently harassing them, or unlawfully publishing or making accessible to a third party any visual, auditory, or audiovisual recording of their personal expression obtained with their consent, capable of significantly endangering their dignity or causing other serious harm to their rights.

Based on the National Concept of Child Protection in the Digital Space, as well as the prevailing and effective legal framework in the Slovak Republic, it can be summarised that the following entities primarily participate in ensuring institutional and policy support for the protection of children in the digital environment: the Office of the Government of the Slovak Republic; the Office of the Deputy Prime Minister of the Slovak Republic for Investments and Informatisation; the Ministry of the Interior of the Slovak Republic and the Government Council for Crime Prevention; the Ministry of Culture of the Slovak Republic; the Ministry of Justice of the Slovak Republic; the Office of the Commissioner for Children; the Office for Personal Data Protection of the Slovak Republic; the Police Force, prosecution, and courts of the Slovak Republic; the Council for Media Services.

In connection with this topic, the project *Zodpoved.sk*, which operates as the national centre for safe Internet under the civil association *eSlovensko o. z.*, should not be overlooked. This project is funded by the European Union under the Safer Internet community programme. Its partners have included the Ministry of the Interior of the Slovak Republic, the Ministry of Education, Science, Research and Sport of the Slovak Republic, and the Office of the Deputy Prime Minister of the Slovak Republic for Investments and Informatisation. The main objectives of the project

14 Burda et al., 2011, p. 1130.

include: management and operation of the national awareness centre Zodpovedne.sk; increasing awareness and spreading education about responsible internet use, mobile communication and new technologies, and crime prevention; ensuring and operating the help line Pomoc.sk; engagement in international networks, sharing experiences of other national centres and organisations for information technology security; establishment and operation of the national centre for reporting illegal content and activities on the Internet, Stopline.sk.¹⁵

Following the Act on the Commissioner for Children, the Office of the Commissioner for Children was established in the Slovak Republic, which contributes to the support and enforcement of children's rights. Under this law, the Commissioner for Children operates in Slovakia, particularly assessing the observance of children's rights, both as an official duty and based on individual complaints. For this purpose, the Commissioner monitors compliance with the rights of the child, especially by conducting independent investigations to fulfil obligations arising from international treaties to which Slovakia is bound, performing systematic visits to special educational institutions and facilities for social and legal protection of children and social guardianship, and other places where children may be restricted in their freedom by public authorities. The Commissioner also collaborates directly with children or through organisations active in the field of children's rights. Among the special powers of the Commissioner is the right to speak with a child, who is placed in detention, serving a sentence, under protective treatment or educational measures, or in institutional care, without the presence of third parties. The Commissioner has a special right to participate in court proceedings. The Commissioner for Children submits an annual report on his activities to the National Council of the Slovak Republic, in which he also evaluates the state of child rights protection in Slovakia.

2. The Right to Privacy and the Right to be Forgotten

The right to erasure of personal data is legislated under the Personal Data Protection Act. Essentially, this right builds upon the general legal framework for the protection of personality as outlined in the Civil Code, wherein privacy is specifically safeguarded for every individual, including minors, against unauthorised intrusions. Such unauthorised intrusions include the unlawful collection of personal data about an individual, or the subsequent retention of such data despite the individual's objection and the absence of any legal basis permitting such retention without the consent of the concerned individual.¹⁶

Building on this principle, the Personal Data Protection Act imposes an obligation, under legally specified conditions, on data controllers – who are defined in Section

15 For further reference, see: <https://www.zodpovedne.sk/index.php/sk/kontakt> (Accessed: 18 February 2025).

16 See: Vojčik et al., 2021, p. 141.

5(o) of the Act as anyone who alone or jointly with others determines the purposes and means of the processing of personal data and processes personal data in their own name – to erase personal data without undue delay. Data must be erased if one of the following conditions is met: the personal data are no longer necessary for the purpose for which they were collected or otherwise processed; consent by the data subject for the processing of their personal data has been withdrawn, and there is no other legal ground for processing; the data subject objects to the processing of their personal data carried out to perform a task carried out in the public interest or in the exercise of official authority vested in the controller, and there are no overriding legitimate grounds for the processing; the processing of the personal data is unlawful; the personal data must be erased to comply with a legal obligation; the personal data were collected in relation to the offer of information society services.

The definition of information society services is further specified in another piece of legislation, namely, the Electronic Commerce Act (Act No. 22/2004 Coll., as amended), which stipulates that an information society service is a service provided remotely by electronic means at the individual request of a recipient of services, usually for a fee. This encompasses commercial communication, processing, transmission, storage, retrieval, or collection of data and electronic mail except for personal electronic mail. It is also specifically stated that information society services do not include broadcasting and television broadcasting, including teletext, voice telephony services, fax services, and services whose content precludes their provision at a distance.

Regarding the protection of minors, the Personal Data Protection Act specifically considers this group by setting a special age threshold of 16 years, which upon reaching, a minor may independently consent to the processing of personal data related to the offer of information society services. If the individual is under 16 years old, such processing of personal data is lawful only if and to the extent that such consent has been given or authorised by the minor's legal guardian. The law specifically requires that the controller must make reasonable efforts to ensure that the legal guardian has provided or approved the consent for processing the personal data, considering available technology.

3. Freedom of Expression and the Right to Information

The Constitution of the Slovak Republic, in Article 26, guarantees every individual the right to information and freedom of expression. These are fundamental human rights, categorised as political rights. The essence of freedom of expression includes the right to freely express one's opinions in any form, be it verbally, in writing, through print, visually, or through any other means that may be considered appropriate given the advancements and current state of technology. The Constitution of the Slovak Republic also recognises the right of every individual to freely seek, receive, and disseminate ideas and information without regard to state borders, while

ensorship is prohibited. As is the case with other fundamental rights and freedoms, the Constitution of the Slovak Republic stipulates and expressly provides that the freedom of expression, as well as the right to seek and disseminate information, may be restricted by law. However, such restrictions must consist of measures prescribed by law that are necessary in a democratic society for the protection of the rights and freedoms of others, for state security, public order, or the protection of public health and morals. Specifically, the protection of the morality of minors is an objective targeted by legal regulations limiting access to certain broadcast programmes, which was the subject of analysis in the previous section of the text. Such constitutionally anticipated restrictions may occur, for example, under Act No. 69/2018 Coll., on Cyber Security and on amendments to certain laws, as amended, according to which the National Security Authority has the authority to decide on blocking harmful content or activities directed into or from the cyberspace of the Slovak Republic.

In addition to the above, freedom of expression is also limited by the fundamental rights and freedoms of other individuals.¹⁷ The Internet has not only changed the factual way of communication and expression but has also brought changes in the legal understanding of freedom of expression.¹⁸ Public forums, such as blogs, social networks, discussion rooms, and websites, have led to an increase in controversial expressions, primarily due to the lack of communication regulation in virtual space.¹⁹

For this reason, we believe it is essential for the judiciary to reflect these realities and that the decisions must clearly outline the legal limits of freedom of expression, particularly in digital space, especially when directed at a minor recipient. The fact that the right to freedom of expression is not an absolute right, and in certain situations must yield, was confirmed by the Constitutional Court of the Slovak Republic in its Resolution II. ÚS 78/2019 dated 23 May 2019.

In this context, we also refer to the Constitutional Court's ruling III. ÚS 110/2020 dated 24 April 2019, in which the court pointed out that the absolute restriction of freedom of expression in that case was contrary to the law because there was no urgent social need for it. The privacy of the minor could have been effectively protected through other, less intrusive means, such as ensuring her anonymity in the relevant article or prohibiting the publication of her photograph. From this, it follows that disproportionate interference with the rights of others cannot occur and must not be overlooked even in the interest of protecting minors.

17 See: Záhora, 2024, p. 389.

18 Strážnická, 2018, p. 116.

19 Antić, 2023, p. 74.

4. Freedom of Expression and the Right to Be Heard

The right to freedom of expression is closely linked with the right to be heard, which in the case of minors can be directly derived from the Family Act. Article 5 of the basic principles of this Act emphasises that the paramount consideration in decisions involving matters concerning a minor is in the child's best interest. Among other factors, this interest must consider the minor's own opinion, which is reflected not only in substantive law but also in procedural law. Act No. 161/2015 Coll., on Civil Non-Contentious Proceedings, as amended, which governs proceedings concerning minors, specifically states that if a minor capable of independently expressing their opinion is a party, the court must consider this opinion before evaluating what is in their best interest.

This fact is repeatedly confirmed in the case law of the courts of the Slovak Republic. We refer to the Resolution of the Constitutional Court of the Slovak Republic, case no. II. ÚS 56/2017, dated 19 January 2017, in which the court stated that in order to achieve a just decision on the regulation of contact between parents and their minor child, the court must take into account the wishes of the minor child among other things.

The method of ascertaining the opinion of the minor must be appropriate to their age and maturity and may occur without the presence of other individuals. It is noted that for the purposes of civil proceedings, a minor is defined as any person under the age of 18 years. However, the right to be heard for minors is realised not only in civil proceedings during judicial decision-making but also, for example, in the provision of healthcare, where, except in certain situations, the informed consent of the patient is always required. This consideration ensures that the minor's views are considered in contexts that significantly affect their lives, thereby reinforcing the principle that their views matter in decisions that concern them. In the case wherein the patient is a minor child, the legal framework of Act No. 576/2004 Coll. on Healthcare, Services Related to Healthcare Provision, and Amendments and Supplements to Certain Laws, as amended (hereinafter, "Healthcare Act"), grants the right to be informed and to give subsequent informed consent on behalf of the minor child to their legal representative or to the person who provides substitute personal care for the minor child, or who is their guardian or custodial guardian.²⁰

Simultaneously, however, the legal framework requires that when making decisions, the minor patient should participate to the greatest extent possible, and their opinion must be considered.

20 Humeník, 2011, p. 69.

5. The Right to Education and the Right to Information

The Constitution of the Slovak Republic guarantees the right of education to everyone without discrimination, and school attendance is mandatory until the age limit established by law, which is currently 16 years. This means that compulsory education lasts until the end of the school year in which the student turns 16, with the expected duration of compulsory schooling being 10 years. The Constitution also considers citizens belonging to national minorities or ethnic groups, guaranteeing under conditions specified by special laws, the right to education in their language. The right to education entails the duty of minors to cooperate with their parents, enabling them to carry out the care and upbringing of the children. Concurrently, minors have the obligation to fulfil their educational responsibilities commensurate with their abilities.

The Constitutional Court of the Slovak Republic has also commented on the essence of the basic right to education. In its Ruling No. PL. ÚS 11/2013 dated 22 October 2014, the court stated the following:

‘The essence (core) of the basic right to education is the right to access to education. Therefore, in principle, all legally established interventions aimed at limiting access to education raise constitutional concerns and require careful consideration. The right to education, with its key component being the right to access education, is not an absolute right, i.e., the legislator may limit it, but only under the condition that such limitations respect its essence and purpose, and are used only for an established (legitimate) goal (Article 13, Paragraph 4 of the Constitution of the Slovak Republic). The legally established average grade during primary school as a criterion for selecting students applying for study at a secondary vocational school with a high school diploma or at a gymnasium has indisputable relevance, especially because it can serve as a motivational factor for the affected group of students. In the challenged legal regulation, the criterion of not achieving the legally established average grade has a disqualifying character, i.e., it automatically prevents students from accessing studies at gymnasiums and secondary vocational schools with a high school diploma. Under these circumstances, the mentioned criterion, and thus the challenged legal regulation, could withstand constitutional scrutiny only if it were sufficiently objective and excluded clearly unjustified interventions into the right to access complete secondary education.’

In the context outlined above, an important earlier ruling is also the Resolution of the Constitutional Court of the Slovak Republic, case No. II. ÚS 37/94, dated 7 September 1994, in which the court stated that according to Article 42, Paragraph 2 of the Constitution of the Slovak Republic, citizens have the right to education according to their abilities and the possibilities of society, including at universities. Therefore, if the abilities of an applicant for university studies are evaluated in the same legal

manner as those of other applicants, a decision by the dean of the faculty regarding the rejection of an applicant for studies cannot constitute a violation of their rights.

In the context of the digitisation of public environments, it is imperative to consider these aspects in securing children's right to education. Recognising this, Slovakia has enacted laws providing support to citizens during their studies. The Ministry of Investments, Regional Development, and Informatisation of Slovakia, in cooperation with the Digital Coalition- National Coalition for Digital Skills and Professions SR, launched in 2023 the national project "Digital Grant for Pupils of Slovakia (Digital Student)",²¹ which provided selected groups of students with a one-time grant of EUR 350 to purchase a laptop or tablet with a keyboard. The grant aimed to assist students from elementary and secondary schools coming from socially weaker environments, who otherwise lacked access to the devices necessary to take advantage of the benefits associated with digital space. Access to devices that connect to the Internet also ensures access to information, predominantly disseminated and accessible online in the digital era.

6. Summary

Following the adoption of the National Concept for the Protection of Children in the Digital Space, and particularly through the subsequent enactment of the Media Services Act and the Audiovisual Act, Slovakia now possesses a fundamental legal framework regulating the rights and obligations of media content distributors not only offline but also online, thereby ensuring special protection for minors. Slovakia, based on the current wording of its legal regulations, respects the Directive of the European Parliament and of the Council (EU) 2018/1808 of 14 November 2018, which amended the Directive on Audiovisual Media Services. However, the legal protection of minors in the digital space is not only ensured by the requirement for broadcasters or providers of video-sharing platforms to label content that is inappropriate for minors. Their protection is also secured through the Personal Data Protection Act, which includes, among other provisions, the right to be forgotten. Moreover, various public projects institutionally secured by the state in cooperation with the third sector provide education to minors about the dangers associated with using the Internet. Finally, the protection of minors is also ensured by criminal law standards, the application of which, however, is contingent upon meeting the elements of specific criminal offences.

21 For further reference see: <https://digitalnyziak.sk> (Accessed: 18 February 2025).

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