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CHILD PROTECTION SYSTEM – JUST THINK DIFFERENTLY?

Critical analysis of selected models

WUW

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Introduction

This publication, concerning four European models of child and childhood protection, was developed slowly and over a long time. It arose from discussions and sharing of practical experiences at international symposia. We draw on the strengths of these models and aim to inspire the search for new ways to support children on their journey of personal development.

Over the last 200-plus years, we have seen sudden and rapid changes in the lives of families, changes in the roles of children in families, and especially the rise of interest in the childhood of our children. During that time, the optimal solution for helping vulnerable children was sought for within the field of child and childhood protection. The dilemma of choosing between institutional care and upbringing in the family has been known since the 18th century.[1] Meanwhile, helping orphans became the main source of income for some families,[2] which is still the case today.

[1] The question of placing children in institutional care and finding another solution for them had been an issue for a long time. The pressure had to be distributed evenly between orphanages and other forms of alternative care (e.g. foster care, adoption, poorhouses). This problem was addressed for the first time in 1779 by the Society of Arts and Manufactures in Hamburg, which organised a public debate on the topic: "Should priority be given to raising orphans in institutions or in families" (Červinková-Riegrová, 1887, p. 12).

[2] Until the end of the 18th century, the use of wet nurses was a common practice. After birth, babies were given to a wet nurse, who was paid for taking care of them. In 1775, 278 children were raised in this way at the Wallachian Hospital in Prague (Lenderová, Rýdl, 2006). This was sometimes turned into an industry; such was the case in the village of Bulanky, where 270 inhabitants took care of 420 foundlings (Červinková-Riegrová, 1887, pp. 82 ff.).

Despite advances in knowledge about children's needs and the increase in global prosperity, the number of children in need of help from the state and social workers is still high. There are several ways in which this number can drop, such as reduction of the fertility rate, lack of interest of the state and social workers in the fate of children, or preventive work. Our publication aims to help vulnerable children but at the same time to ensure that social workers' procedures are preventive in a broader context.

This book is divided into five independent chapters. Four of them discuss the development of the child and childhood protection systems in the Czech Republic, Slovakia, Poland, and England and Wales. The authors of these chapters are specialists who not only deal with this issue in theory but also address the situation of vulnerable children and families in practice.

The final comparative chapter examines the strengths of the various models presented and their usefulness for working with vulnerable children. The authors based the comparison on Neil Gilbert's (Gilbert, Parton, Skivenes, 2011) paradigmatic view and sought to use the child focus model with proven elements of each system so that they can be applied in practice even without the necessary changes in legal norms in each country.

We hope that social workers and other professionals will derive inspiration for their work from this publication.

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Poland: Between Family and Foster Care

The origins of Polish childcare system: Unification and codification of family law in the years 1945–1964

The post-war era and the sovietisation of the law

In 1945, the legal system of substantive civil law in Poland was very complicated. Apart from the 1933 Code of Obligations, civil law had not yet been unified, despite the advanced work of the Codification Commission established in 1919. Therefore, partition laws were still in force in individual districts. With regards to family law, the draft matrimonial law developed in 1929 was particularly controversial. It was challenged by the Catholic Church due to the proposed optionality of civil weddings and the possibility of divorce. Completing the unification of civil law became the task of the new communist authorities. The problem was pressing due to migration and the change of state borders after the Second World War, and it was decided to carry out this process with haste. Informal unification work began in the spring of 1945 (Fiedorczyk, 2014, pp. 29–30).

By the Decree of the Presidium of the National Council of January 22, 1946 – Family Law entered into force on July 1, 1946. It was a complete unification of those sections of Polish civil law that regulated the relations between parents and children, the institution of adoption and the maintenance obligation between relatives. As Piotr Fiedorczyk (2014, p. 49) emphasises,

> This decree was given the not quite appropriate name of "family law," which, as we know today, encompasses all family relations. Thus, the terminology proposed by the Codification Commission in the Second Polish Republic, according to which the regulation of the discussed sections was to be called "the law on legal relations between parents and children," was not used. The current Family and Guardianship Code includes the discussed sections in Title II: Kinship …

Another legal act that was adopted as part of the unification of civil law and should be mentioned when discussing the origins of family law in Poland was the Decree of the Presidium of the National Council of May 14, 1946 – Guardianship Law, which introduced universal legal protection. According to its provisions, every child who was not under parental authority and every completely incapacitated person needed to have an appointed guardian. Contemporary legal literature greatly appreciated the decree's solutions concerning guardianship over a child conceived but not yet born, emphasising the modern approach to the premises justifying the establishment of this type of guardianship. While the provisions of the decree did not raise any interpretative doubts, its implementation created many problems. This was due to the fact that it required several dozen legal acts of the partitioning states to be repealed, and even the Ministry of Justice did not have full knowledge about some of them. After the new regulations had been in force for six months, it turned out that judges were still not acquainted with them, which meant that the principle of universal guardianship was not implemented.

The proposal to quickly undertake work on the codification of uniform civil law was first put forward in December 1946 by Minister Henryk Świątkowski.[1] In the legal community, however, opinions were voiced that a substantive amendment of the law contained in the Code of Obligations and the unification decrees would be premature and that changes should be limited only to technical aspects, i.e. the introduction of a systematic arrangement of the matter and the elimination of errors. In the years 1947–1949, intensive work was carried out on the creation of a Polish civil code, which was to complete the work of

[1] Henryk Świątkowski (1896–1970) – Polish lawyer, barrister and specialist in ecclesiastical and agricultural law, member of the academic staff of the University of Warsaw, Minister of Justice in the years 1945–1956.

unifying the law by combining previously issued decrees into a single legal act. Even though in February 1947, Minister Świątkowski issued a decree on the establishment of a committee for the organisation of a uniform Polish civil code, the work on the code was never completed, despite the preparation of highly rated drafts. This was due to political circumstances, i.e. the progressing dependence on the USSR and the phenomenon of the sovietisation of the law. For these reasons, the Family Code was the result of cooperation between Polish and Czechoslovak lawyers, which was undertaken after Minister Alexej Čepička's[2] visit to Warsaw in January 1949. At the meeting of the Presidium of the Polish-Czechoslovak Permanent Legal Committee on January 22 of the same year, attended by the Ministers of Justice of both countries, it was agreed that the text of the common Family Code would be drafted in just six weeks. It is noteworthy that after the communist coup d'état in Czechoslovakia in 1948, extensive Polish-Czechoslovak cooperation was established in many areas of political, social and economic life as part of an "imposed friendship."

It should be pointed out that the Czechoslovak draft of the code did not include such an important premise for divorce as the welfare of minor children, which was present in the Polish draft. In turn, the Polish draft did not introduce the institution of extension of parental authority but, in addition to the institution of termination of parental authority, provided for the possibility of its suspension, which was absent from the Czechoslovak code. As for the premise of the welfare of minor children, it should be emphasised that the Czechoslovak side indicated during the course of the work that the public opinion in their country would see this provision as an impediment to divorce, which would consequently lead to the indissolubility of marriage. Meanwhile, the Polish side stressed that the protection of "child's welfare" was a demand of women's organisations. It was assumed, therefore, that the equivalent of the Polish suspension of parental authority would be the temporary withdrawal of parental authority provided for in the Czechoslovak code. The Polish side also agreed, in the course of further work, to include the following provision in the draft: "Parents are

[2] Alexej Čepička (1910–1990) – Czechoslovak politician and army general, Minister of Justice in the years 1948–1950 and Minister of National Defence in the years 1950–1956.

obligated to take care of the physical and spiritual development of their children. In particular, they should strive to maintain and educate them so that they are properly prepared to work for the good of society in accordance with their talents and inclinations." In addition, a review of the provisions of the two drafts regarding the rights and responsibilities of parents towards their children revealed no major discrepancies. Finally, work on the joint text was completed after three months on April 29, 1949, and continued separately thereafter. Due to the need to amend other provisions, including the Civil Code, and adopt provisions introducing the Family Code, the Council of Ministers did not pass the draft Family Code until March 3, 1950.

Family law and the Constitution of the Polish People's Republic

The Family Code was the first code of the Polish People's Republic and was enacted more than two years before the passing of its Constitution,[3] which was to indicate the basic principles of family law. The provisions of the Basic Law directly relating to family law were contained in Chapter VII on the fundamental rights and duties of citizens. The laws concerning family were primarily social in nature. Of fundamental importance was Article 67(1) of the Constitution, according to which "Marriage and the family are under the care and protection of the Polish People's Republic. Families with many offspring are to be given special care by the state." The adoption of the Family Code was a breakthrough in the field of Polish family law, although it was assessed differently by specialists. As Fiedorczyk notes, positive opinions come from the period immediately following the codification, while its shortcomings were emphasised later. It was pointed out that the generality of its provisions – resulting from the need to unify the text with Czechoslovakia – made it necessary to supplement them with judicial decisions. However, the drafting of the Code also had the very positive effect of producing important monographs on family law that built on the content of the Code and called attention to its shortcomings. These publications

[3] Constitution of the Polish People's Republic passed by the Legislative Assembly on July 22, 1952 (Journal of Laws of 1952 No. 33 item 232).

contributed significantly to the development of family law doctrine and further amendments to the Code.

Family law and the 1956 October events

The development of family law in Poland was also influenced by the so-called Polish October 1956 when the Codification Commission of the Minister of Justice began its work. It was tasked with, among others, drawing up a civil code. Aleksander Wolter,[4] the author of the project, suggested a change in the formulation of the premise of the welfare of minor children. According to his proposal, a divorce could be pronounced if the child's welfare required it, whereas the existing Code of 1950 provided that the child's welfare could not be affected. The purpose of this proposal (as well as several others) was to make it more difficult to obtain a divorce. The revision of Wolter's draft was prepared by Seweryn Szer,[5] who submitted the prepared document to the Codification Commission on November 6, 1957. In his paper, he defended the existing solutions, in particular pointing out that statistical data did not confirm the need for stricter divorce laws. Szer stressed that socialist law should maintain a balance between the principle of the permanence of marriage and the principle of the permissibility of divorce in socially justified situations, the negation of which would be the artificial, forced maintenance of a marriage between two people when the union had become a sham. As a result of further work and discussions, the above-mentioned wording of the negative premise for divorce in the form of the welfare of minor children was maintained in the wording of Article 29(1) of the Code.

The proposed Article 83 was amended to read:

> In a judgement pronouncing a divorce, the court, taking into account the best interests of the child, shall entrust the exercise of parental authority to one of the parents, shall determine the powers of the other parent in relation to the person of the child, in particular with respect

[4] Aleksander Wolter (1905–1967) – Polish lawyer, specialist in civil law, Supreme Court judge from 1948 to 1951.

[5] Seweryn Szer (1902–1968) – Polish lawyer, professor of law, a specialist in civil law. From 1945 to 1953, he was employed at the Ministry of Justice, among others as a Deputy Director of the Department of Legislation.

to the supervision of the child's upbringing and maintaining personal relations with the child, and shall decide to what extent each parent is obliged to bear the costs of the child's upbringing and maintenance.

It is worth noting that Article 85 of the draft provided for the possibility of amending the ruling on the suspension and termination of parental authority in the event of a change in circumstances if the best interests of the child so required. The proposed Article 122 of the draft, which was an expansion of Article 56(2) of the Family Code, was adopted without amendments. According to Paragraph 1, if one of the parents was deceased, did not have full legal capacity, had been deprived of parental authority, or had had his or her parental authority suspended, parental authority was vested in the other parent. The same applied when paternity had not been established or had been established by the court, but the parental authority had not been granted to the father. The next paragraph indicated that if neither parent had parental authority or if the parents were unknown, custody of the child should be established.

Article 124 of the draft did not raise controversy during the work. According to it, parents were obligated to bring up the child under their parental authority, care for his or her physical and spiritual development and prepare him or her properly to work for the good of society in accordance with his or her talents. There was some discussion, however, about the proposed wording of Article 125 of the draft, which provided that a child under parental authority owed obedience to his or her parents and that the parents could discipline the child if proper upbringing required it but without detriment to the child's physical and moral health. A similar provision was contained in the Family Law Decree of 1946, but it was not included in the Family Code of 1950 due to opposition from the Czechoslovak side. After a vote by the Commission, the wording of proposed Article 125 was retained, although Jan Wasilkowski[6] submitted a dissenting vote.

Similarly uncontroversial was Article 134 of the draft. According to it, if parental authority was vested in both parents who were not married, the guardianship authority could – taking into account the

[6] Jan Wasilkowski (1898–1977) – Polish lawyer, politician, rector of the University of Warsaw (1949–1952), the First President of the Supreme Court (1956–1967).

best interests of the child and the public interest – entrust its exercise to one of them, specifying at the same time the rights of the other parent in relation to the child, in particular, with respect to supervising his or her upbringing and maintaining personal relations with him or her. As a result of the Commission's work, Paragraph 2 was added to this provision, stating that it was to be applied mutatis mutandis if the married parents were separated.

The Commission also adopted the provision on the suspension of parental authority in the event of a temporary obstacle, which was governed by Article 135 of the draft, but amended the next article, which regulated the institution of termination of parental authority. It read as follows:

> If parental authority cannot be exercised due to a permanent obstacle, or if the parents abuse parental authority or grossly neglect their duties towards the child, the guardianship authority shall deprive the parents of parental authority. Deprivation of parental authority may also be pronounced against one of the parents. The court may also terminate parental authority in a judgment declaring a divorce or annulling a marriage. If the reason that gave rise to the termination of parental authority ceases to exist, the guardianship authority may restore parental authority.

The provisions for the deprivation of parental authority were thus greatly expanded compared to the law in effect at the time.

Finally, Article 137 of the draft stated (following the model of the existing Article 63 of the Code) that if the child's welfare so required, the guardianship authority could prohibit parents who were deprived of parental authority from having personal contact with the child.

The adoption of the Civil Code in 1959 and its separation from the Family Code

In the spring of 1959, work on the preliminary reading of the Civil Code was completed, and the Chairman of the Commission, Wasilkowski, argued for family law to be included in it. The draft Civil Code was passed on September 12, 1959. In turn, in December of that year, the organisation and procedures of the Commission were changed, which

facilitated public discussion after the first reading of the adopted draft. The second reading of the draft lasted from March to May 1960, during which time only one systematic comment was made on Book IV. The third reading of the draft Civil Code took place between October 1960 and May 1961. In the course of this work, it was decided in December 1960 to exclude family law from the Civil Code and to codify it separately. It should be noted that as part of the work carried out during the third reading, the proposed provision in Book IV concerning the right of parents to discipline children was removed, which had also been postulated in the public discussion of the draft. On the other hand, with regard to the issuing of appropriate orders by the guardianship court, the phrase "if the parents do not exercise parental authority properly" was replaced with "if the child's welfare is endangered by the improper exercise of parental authority." It should be noted, however, that the Commission did not choose to introduce anonymous consent for adoption, which was advocated by social organisations and the Supreme Court.

Government work on the draft Family and Guardianship Code

In a letter dated July 31, 1961, the Chairman of the Commission forwarded to the Minister of Justice the final draft of the Family and Guardianship Code (FGC), together with an explanatory memorandum and draft derivative provisions. Government work slowed down in mid-1962 because work on the six times more extensive Civil Code had to be completed. It was decided that both these drafts should be considered simultaneously by the Council of Ministers and referred to the Sejm (the lower chamber of the Polish Parliament). Particularly noteworthy at this stage of work was the introduction to the FGC of a reference to the possibility of placing a child in a foster family, which marked the beginning of the statutory empowerment of this institution. At the same time, however, as emphasised by Fiedorczyk, in the wording of Articles 149(3) and 150 FGC, the possibility of establishing institutional custody was introduced. The provision of Article 150 FGC remained a dead letter; it was repealed only in 2008, and the wording of Article 149 FGC was amended accordingly. As a result of many discussions and several years of work, the government bill on the Family and Guardianship

Code and introductory provisions to the Family and Guardianship Code were adopted at the plenary session of the Sejm on February 25, 1964.

The creation of the Family and Guardianship Code was made possible by the 1956/1957 decision to incorporate family law into the Civil Code. Without it, and if a draft book containing family law had not been drafted, the legislators would probably have been content to amend the existing Code. The FGC was thoroughly revised in 1989 following the collapse of the communist system and the departure from socialist ideology. Moreover, it has seen more than a dozen amendments between 1985 and 2017, and it is believed that the current version of the Code is, in fact, an entirely new regulation.

Legal considerations of child custody under current law

Polish Constitution

The protection of the child's welfare is a fundamental principle of family law under Article 72 of the Constitution of the Republic of Poland, according to which "The Republic of Poland shall ensure the protection of the rights of the child. Everyone has the right to demand that the public authorities protect the child against violence, cruelty, exploitation and demoralisation." This principle is also sanctioned in Article 48 of the Constitution, which formulates the principle of family protection. The family, family life and the right to raise children in accordance with one's beliefs are therefore values subject to constitutional protection. Article 48(2) of the Constitution allows for the limitation or termination of parental rights only in cases specified by law and only on the basis of a final court decision. The legislator gives high priority to the protection of the family and the welfare of the child, providing in Article 72 certain measures for its implementation (Smyczyński, 2005, p. 45). This provision imposes an obligation on the state to ensure the protection of the rights of the child, guarantees the right to care and assistance by public authorities to a child deprived of parental care and shapes the state's obligation to protect the child from violence, cruelty, exploitation and demoralisation, as well as the obligation of public authorities and persons responsible for the child to hear and, as far as possible, take into

account the opinion of the child when determining his or her rights. In the current legal system, the state's obligation to guarantee care for the child when, for various reasons, it is not provided by the parents is realised in an appropriately chosen form of foster care – family or institutional (Resolution of the Supreme Court of November 14, 2014, Ref. III CZP 65/14). In turn, according to Article 40 of the Constitution, no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Corporal punishment is prohibited.

The principle of the child's welfare in the Family and Guardianship Code

The principle of the child's welfare is concretised in the provisions of the Act of February 25, 1964 – Family and Guardianship Code (FGC) and the Act of November 17, 1964 – Code of Civil Procedure (CCP), to the extent to which they regulate separate proceedings in matrimonial matters and matters of relations between parents and children, as well as non-litigious proceedings in family and guardianship law cases. Attention should also be paid to the provisions of the Act of June 9, 2011, on Family Support and the Foster Care System (FSFCSA) and the Act of July 29, 2005, on Counteracting Domestic Violence (CDVA).

The Family and Guardianship Code is the primary source of family law in Poland. It was adopted to expand and complete the regulation of family law in relation to the 1950 Family Code, in view of its many shortcomings and the proliferation of case law. Its enactment was also the final stage in the unification of Polish family law in the post-war period. The Code consists of titles, sections, chapters and subchapters. The concept of "child's welfare" is mentioned several times in its provisions, i.e. in Articles 58(1) and (1a), 61^{16}, 86, 93(2), 95(2) and (3), 96(2), 106, 107(1) and (2), 109(1), 112^{3}(1), 113^{2}(1), 113^{5}, and 120. In addition, the Code uses the concept of "welfare of common minor children" in the wording of Articles 56 and 61^{1}. Finally, the concept of "child's welfare" appears in the provisions of the Code of Civil Procedure and the Law on the System of Common Courts. Nevertheless, an analysis of the FGC shows that, in particular, the provisions of the entire Title II "Kinship" are intended to guarantee an order that protects the welfare of the child. In this Title, Section Ia regulates issues such as the parentage of the child (Chapter I), relations between parents and

children (Chapter II), Section II regulates the institution of adoption, and Section III regulates the maintenance obligations.

The FGC also imposes tasks on the guardianship court in various areas (Haak, 2002, pp. 75–83), such as:

- Establishing a child's paternity, e.g. Article 73(4) FGC: "Acknowledgment of paternity may also take place before a guardianship court and, when abroad, also before a Polish consul or a person appointed to perform the function of consul, if the acknowledgement concerns a child whose one or both parents are Polish citizens. The provisions of Paragraphs 1–3 are applied accordingly."
- Naming a child, e.g. Article 89(4) FGC: "A child whose parents are unknown is given a name by the guardianship court."
- Parental authority, e.g. Article 97(2) FGC: "However, the important matters of the child should be decided jointly by the parents; in the absence of an agreement between them, the guardianship court decides."
- Adoption, e.g. Article 118(2) FGC: "The guardianship court should hear the adoptee under the age of thirteen if he or she can comprehend the meaning of the adoption."
- Marriage of a minor, e.g. Article 10(1) FGC: "A person under the age of eighteen cannot enter into marriage. However, for important reasons, the guardianship court may permit a woman who has attained the age of sixteen to marry when the circumstances indicate that the marriage will be in the best interests of the established family."
- Care and custody of a minor, e.g. Article 111(1) FGC: "If parental authority cannot be exercised due to a permanent obstacle or if the parents abuse parental authority or grossly neglect their duties towards the child, the guardianship court shall terminate parental authority. Deprivation of parental authority may also be pronounced against one parent."

It is worth noting the content of several provisions of the FGC concerning the protection of the child's rights, especially in the context of the child's relationship with his or her parents. First and foremost, Article 87 FGC requires parents and children to respect and support each other. As Grzegorz Jędrejek (2013) explains:

> This provision applies, according to the *lege non distinguente* principle, to all parents and children. In the former case, it applies regardless of the limitation or even termination of parental authority, and in the latter case, it applies regardless of whether the children are of age or not. This obligation is therefore independent of whether the children are subject to parental authority.

Respect for the other person should be understood as recognition of the far-reaching integrity of this person, their right to make their own decisions, life choices, and independence. Mutual respect in the relationship between parents and children is necessary to maintain proper relations, a sense of stability and permanence in the family. Mutual support, on the other hand, means consciously empowering the other person, helping them through difficult times and finding ways of solving a problem together. One can be supportive by showing understanding or spending time together. Mutual support between parents and children includes both spiritual and material support. The details of the material support obligation are contained in the provisions governing the maintenance obligations. Violation of the duty of spiritual and emotional support may result in disinheritance (Jędrejek, 2013). The duty of respect and support is bilateral but not reciprocal in the sense of Article 487(2) of the Civil Code. This means that the failure of one party to perform a duty does not entitle the other party to act similarly.

Divorce and termination of parental authority

Among the provisions of Section IV "Dissolution of Marriage" of Title I of the FGC, Article 58 is relevant to the present considerations. As stated in Paragraphs 1 and 1a, in the judgment granting a divorce, the court decides on the parental authority over the minor child of both spouses and contacts between the parents and the child and decides to what amount each spouse is obliged to bear the costs of maintenance and upbringing of the child. The court shall consider the spouses' written agreement on how to exercise parental authority and maintain contact with the child after the divorce if such agreement is consistent with the child's best interests. Siblings should be brought up together unless the best interests of the child require a different solution. In the absence of such an agreement, the court, taking into account the child's right

to be raised by both parents, shall decide on the manner of exercising joint parental authority and maintaining contact with the child after the divorce. The court may entrust the exercise of parental authority to one of the parents, limiting the parental authority of the other parent to certain duties and powers in relation to the child, if the child's welfare so warrants. The manner in which parental authority is exercised, and thus the choice of the parent who should be entrusted with the exercise of parental authority, depends on one criterion: the welfare of the child (Bodnar et al., 2015).

Under Polish law, the principle of the integrity of a divorce judgment is implemented, which means that a divorce case is not a case concerning only the dissolution of marriage, but a case in which the court decides on the entirety of the family's affairs in connection with such a decision. The rule comes down to the fact that challenging a decision, even a part of it, affects the whole – i.e. a partial challenge to a judgment means that the remaining decisions that are not challenged do not become final because of their close connection to the part of the judgment that is. The principle of the integrity of a divorce judgment requires the court to comprehensively and exhaustively address the entirety of marital, parental, child support, housing and property issues of the dissolving family. As Tomasz Sokołowski and Wanda Stojanowska (2014) point out:

> This requires an extensive evidentiary hearing, and the desire for a quick, expeditious divorce should not preclude the protection of the often one-sided interests of the other spouse and the welfare of minor children by carefully shaping the legal consequences of the divorce.

It should be noted that the wording of Article 58 FGC quoted above is the result of an amendment to the Code introduced by the entry into force of the Act of June 25, 2015, amending the Family and Guardianship Code and the Code of Civil Procedure. Under the pre-amendment regulations, in the absence of an agreement referred to in Article 58 FGC, the court was forced to limit parental authority to one of the parents. An analogous situation occurred in the case of parents living apart, in accordance with Article 107 FGC. Such a solution was not justified and led only to unnecessary antagonising of the parties, distinguishing between primary and secondary parents even though there was often

no basis for concluding that the restriction was due to the parent's inadequate qualifications. The change in the wording of Article 58 FGC reiterated the importance of the principle that, first and foremost, the exercise of parental authority and the maintenance of contact with the child after divorce should be decided by the parents themselves through an agreement. If an agreement is not reached, or if it is not in the child's best interests, the court, guided by the child's right to have contact with both parents and by the child's best interests, should consider leaving full parental responsibility to both parents as the solution that generally best ensures that the child can be raised by and maintain contact with his or her parents.

At this point, it is worth noting the content of Article 61^1(1) and (2) FGC. If the marriage has broken down irretrievably, either spouse may request the court to pronounce a separation. However, despite the complete breakdown of the marriage, the pronouncement of separation is not permissible if, as a result of this separation, the welfare of the common minor children of the spouses would suffer or if, for other reasons, the pronouncement of separation would be contrary to the principles of social coexistence. As Małgorzata Manowska (2014) explains:

> In the case of separation, there are only two negative grounds for declaring it compared to divorce. A separation order is not permissible if it would harm the interests of the spouses' common minor children or if it would otherwise be contrary to the principles of social coexistence. Those conditions should generally be understood in the same way as in the case of divorce. However, the specific nature of separation should be taken into account, namely that it does not have the ultimate effect of breaking up the family, i.e. there is no possibility of entering into a new marriage. Therefore, when assessing whether the ruling of separation is contrary to the welfare of the parties' common minor children or to the principles of social coexistence, it should be taken into account whether the legal separation of spouses and, above all, the separation of property do not fulfil any of these negative premises.

A decision on parental authority over a common minor child of the spouses is an essential element of a judgment declaring separation and is also required when the court decides to terminate the separation pursuant to Article 61^6 FGC. In view of the categorical wording of Paragraph 3 of this provision, when terminating the separation, the court

is obliged to take a position on the issue of parental authority, even if, during the separation, the guardianship court has changed the ruling on parental authority and the manner of exercising it contained in the judgment pronouncing separation. As emphasised by Janina Panowicz-Lipska, due to the broad formulation of this provision, a judgment on the annulment of separation may include any of the rulings that could have been made when pronouncing a divorce or separation. Thus, when terminating the separation, the court may maintain or change the state of affairs formed in the judgment adjudicating the separation or restore the previous state of affairs, and, when deciding the issue of parental authority, the court should be guided by the welfare of the child, taking into account the circumstances of the case and the requests of the spouses seeking to annul the separation (Panowicz-Lipska, 2014, pp. 970–971).

Sokołowski and Stojanowska are rightly of the opinion that the aim of protecting the child's welfare requires ensuring such a procedural position that would not only prevent the violation of various elements of the child's interest but also ensure the preservation or procurement of such an arrangement that protects the child's welfare in an optimal way. This is a difficult task because the interests of the parties may be or are conflicting during the proceedings. In divorce proceedings, the child is not represented by a separate entity, which poses some risk to the child's welfare. In this situation, the court plays a special role, having a duty to protect his or her welfare and seeking to do so in the course of the proceedings. The protection of the child's welfare is served by the specific obligations and prohibitions indicated above, including the obligation in Article 441 CCP to establish the circumstances concerning the parties' children and their situation, and the absolute prohibition in Article 430 CCP to examine as witnesses the parties' children who are under the age of seventeen. The welfare of the child is also served by the obligation, under Article 431 CCP, requiring the court to conduct an evidentiary hearing and not allowing mere acknowledgement of the claim or admission of facts by the defendant (Sokołowski, Stojanowska 2014).

A child's welfare requires that he or she should always live and grow up in conditions that ensure his or her physical and spiritual development to the maximum extent possible, as well as properly prepare him or her for working for the good of society according to his or her

talents, as stipulated in Article 96 FGC. When a child does not reside and grow up in such conditions, interference with parental authority by the competent guardianship court may be justified. If the court has already interfered, the best interests of the child may require a change in the nature or extent of the interference. It is for this reason that Article 577 CCP provides that the guardianship court may change its decision, even a final one, if the welfare of the person concerned so requires. Article 106 FGC, therefore, provides for the possibility of changing the decision on parental authority contained in the judgment pronouncing a divorce and the manner in which it is exercised. Pursuant to this provision, if the best interests of the child so require, the guardianship court may modify the decision on parental authority and the manner of its exercise contained in a judgment pronouncing a divorce, separation or annulment of marriage, or determining the child's parentage. This means that a decision on parental authority contained in the judgment pronouncing a divorce and the manner of exercising such authority may be changed only if two conditions are fulfilled simultaneously: if the good of the child requires a change and if there has been a relevant change in his or her circumstances. Article 106 does not provide any limitations on the extent of the modification of the decision on parental authority and the manner of its exercise. It may consist not only in suspending, limiting or terminating the authority but also in restoring it (Gromek, 2008, pp. 237–238).

The scope of parental authority

It should be clarified that the term "parental authority" is not defined in the FGC. In her commentary, Krystyna Gromek (2008, p. 104) adopted the following definition:

> parental authority is a legal relationship directly linking the parents with a minor child in such a way that it grants the parents a combination of rights and obligations in relation to the child in terms of custody, representation and management of the child's property, functionally linked to the process of raising the child and indirectly linking the parents and the child with other subjects of law, systematised in accordance with the principle of the child's welfare and social interest.

The child, due to its physical and mental immaturity, requires constant care for his or her proper comprehensive development, safety, bodily integrity, and ensuring his or her favourable legal status (Smyczyński, 2005, p. 204). This duty rests with the parents, who have the right and obligation to care for and raise the child.

According to Polish law, parental authority can only belong to parents. It cannot be passed on to anyone, and if parents are absent or unable to exercise it, it expires (Pietrzykowski, 2015). By its very nature, parental authority exhibits special characteristics as a subjective right. Its essential feature is that its attributes are at the same time a parental obligation, and its primary purpose is to serve a protective function with respect to the child. However, the content of parental authority is not entirely uniform in the literature. It consistently includes custody of the child's property and the attribute of representation. On the other hand, the interrelationship of all those statutory provisions that make up the normative (model) idea of the desired actions of parents towards the child itself and his or her personal affairs causes some doubts. Some authors separate the upbringing and guidance from the custody of the child. Others treat all these elements as components of one attribute (Strzebinczyk, 2014). Referring to these elements, Krzysztof Pietrzykowski stresses that the doctrine divides parental authority into three parts: custody of the child, administration of the child's property and representation of the child. However, the boundaries between these components are not clear, and they sometimes overlap. In particular, acts of representation are either acts of administration of the child's property or acts of custody. Also, the internal content of each of these components cannot always be divided with absolute strictness into further duties and powers (Pietrzykowski, 2015).

Meeting a child's natural and basic need for contact with his or her parents is part of the parents' efforts to care for the child's affairs (custody). By maintaining personal contact with the child, parents provide a sense of security and participate in the child's upbringing. Daily personal contact with the child allows parents to learn about the child's needs and, consequently, to properly care for them and their upbringing. Maintaining personal contact with the child, which is a prerequisite for proper upbringing, is therefore essential for the proper exercise of parental authority.

According to Article 95(3) FGC, parental authority should be exercised as the child's welfare and the public interest require. In terms of the

implementation of parental duties towards children, the child's welfare means the necessity to provide the child with conditions for personal development and material existence. When assessing the child's welfare, objective conditions, such as the child's age, gender, the parents' character traits, the parents' mutual relationship with each other, the child and the parent's relatives cannot be overlooked either. Subjective criteria, such as the child's sensitivity, the mutual relations and bonds between parents and children and the child's sense of security, are also important. As emphasised by Helena Ciepła, parents are the most important authority for the child; therefore, a dysfunctional exercise of parental authority poses a threat that the child will adopt negative patterns of behaviour presented by the parents (Piasecki, 2011, p. 741).

In addition to the primary directive of the child's welfare, contained in Article 95(3) FGC, there is also a reference to the upbringing of the child as required by the public interest, by which parents should be guided in their exercise of parental powers and duties. It follows that the upbringing of children by parents constitutes the performance of a social function. An important issue here is the relation of the child's interest to the public interest. Following the provisions of the Convention on the Rights of the Child, it should be assumed that the primary and fundamental value is the good of the child. The realisation of this principle requires taking into account the public interest since the child should be raised so that he or she is prepared to live in society. However, this factor plays only a part in how the child's welfare is perceived.

> In a democratic state under the rule of law, it is necessary to start not from the priority of society but from the human individual as the highest value and from this point of view give special care to the child (Piasecki, 2011, p. 64).

While the basic premise of family law is to guarantee the best interests of the minor child in every case, this does not mean that the parents' interests are excluded. This premise means that the parents' interests cannot be decisive for the resolution of the case when the failure to take these interests into account is a condition for ensuring that the child's interests are protected. The parents' interests may be rendered secondary only if they cannot be reconciled with the legitimate interests of the child. According to Article 96^1 FGC, persons exercising

parental authority and having care or custody of a minor are prohibited from using corporal punishment. Although the FGC does not provide any sanction for a person who violates this prohibition, this provision complements the provision contained in Article 40 of the Polish Constitution. In turn, according to Article 97(1) FGC, if parental authority is vested in both parents, each of them is obliged and entitled to exercise it. The regulations indicate that the important affairs of the child should be decided jointly by the parents, and in the absence of agreement between them, the guardianship court shall decide. Like the concept of "the child's welfare," the concept of "the child's important affairs" has not been defined in the Code, as pointed out by the authors of the commentary *Parental Authority and Contacts with the Child*:

> By contrast, it can be said that these are not issues related to everyday existence and the ongoing parenting process. These must be important matters, i.e. matters that have an impact on the child's further development. It is unanimously accepted in case law and doctrine that important matters include those concerning the child's place of residence, the administrative change of the child's name, the child's choice of school, the child's medical treatment, the child's way of spending vacations, including, in particular, travelling abroad, securing maintenance due to the child if the parent obligated to pay it goes abroad and the choice of the parent who should take parental leave (Bodnar et al., 2015, p. 61).

Pursuant to Article 93(1) and (3) FGC, parental authority is vested in both parents; however, if the child's best interests so require, the court, in its judgment establishing the child's parentage, may order the suspension, restriction or termination of parental authority of one or both parents. According to Article 95(1) FGC, parental authority includes, in particular, the duty and right of parents to exercise custody over the person and property of the child and to bring up the child with respect for his or her dignity and rights, while Article 97(1) FGC expresses the principle of parental autonomy, which is one of the main principles for exercising parental authority. Under this rule, each parent is entitled and obligated to exercise parental authority independently, meaning that they do not have to exercise it jointly. However, neither parent may usurp a privileged position in the exercise of that authority. In practice, this means an obligation to cooperate in the exercise of parental

authority since only this will ensure the proper welfare of the child. Lack of cooperation – although such an obligation does not arise directly from the provisions of the FGC – endangers the child's welfare and may be the grounds for issuing protective orders listed in Article 109 FGC. If the child's parents live apart, the lack of consensual cooperation precludes the possibility of leaving both parents with parental authority under Article 107(2) FGC.

Pursuant to Article 107(1) FGC, if parental authority is vested in both parents living apart, the guardianship court may, for the sake of the child, determine the manner of exercising parental authority and maintaining contact with the child. The court shall leave parental authority to both parents if they present a written agreement, consistent with the child's best interests, on how to exercise parental authority and maintain contact with the child. And according to Paragraph 2 of this article, in the absence of an agreement on the exercise of parental authority and maintenance of contact with the child, the court, taking into account the child's right to be raised by both parents, shall decide on the manner of joint exercise of parental authority and maintenance of contact with the child. The court may entrust the exercise of parental authority to one parent, limiting the parental authority of the other parent to certain duties and powers in relation to the child, if the child's welfare so warrants. The limitation of parental authority under Article 107(2) FGC is of a completely different nature than the limitation of authority under Article 109(2) FGC. This is due to the fact that in this case, the court does not decide what a parent is allowed, but what they are not allowed. Thus, to the extent not specified in the order, the parent retains full parental authority. When limiting the parental authority of one parent, the court is obliged to define precisely his or her duties and powers in relation to the child (Bodnar et al., 2015, p. 77).

It should be added that the adopted concept of a parenting plan – an agreement – is a way to meet the doctrinal requirements in this area, referring to the American model, which boils down to negotiations between parents and their voluntary commitment before the court to a specific manner of exercising parental authority and maintaining contact with the child. The form of the plan is arbitrary, and since it is not a settlement, it has no substantive legal effect. Although this plan is not binding in court, it can be used as a basis to assess whether it is reasonable to expect the parents to cooperate in the child's

affairs. Only positive findings on this issue allow both parents to be granted parental responsibility. In the event of a negative assessment, the court makes a decision based on all the circumstances of the case, taking into account the parents' decisions.

Article 107(1) FGC also indicates that siblings should grow up together unless the child's welfare requires a different solution. This is not a peremptory norm, as both the court and the parents, by consensual agreement, may decide otherwise. As a criterion for such a decision, the Act indicates the welfare of the child, which should be taken into account both separately for each child and collectively for all siblings. In particular, the separation of siblings cannot be justified by the parents' interests (Bodnar et al., 2015, p. 68).

The guardianship court may, pursuant to Article 109 FGC, make any order that the welfare of the child requires under the circumstances. Under this provision, the legislator introduced one criterion for limiting parental authority, i.e. the threat to the welfare of the child. It manifests itself in irregularities in the exercise of parental authority. These irregularities are sometimes treated as a second criterion for limiting parental authority. However, as Gromek points out, in essence, these irregularities threaten the child's welfare as a result of the parents' or parent's improper conduct. Parenting errors do not constitute grounds for interference with parental authority under this provision unless they are a threat to the child's welfare. Therefore, as Gromek (2008) rightly emphasises, the only basis for the restriction of parental authority, under Article 109 FGC, is the threat to the child's welfare. The content of this provision implies that the court must take preventive action, ordering interference in the sphere of parental authority when this welfare is threatened. The purpose of limiting parental authority is not only to protect the child but also to assist the parents in the proper exercise of that authority. The limitation of parental authority is thus not a means of repression against the parents but rather a means of protecting the child and, at the same time, a method of assisting parents who, due to difficulties in their upbringing or life, cannot cope. The limitation of parental authority under Article 109 FGC may apply to both or one of the parents as well as to all children or only some of them (Pietrzykowski, 2015).

The court may, in particular, oblige the parents and the minor to act in a specified manner, especially to work with a family assistant;

implement other forms of work with the family; direct the minor to a day-care centre referred to in the regulations on family support and the system of foster care; or direct the parents to an institution or a specialist dealing with family therapy, counselling or providing other appropriate assistance to the family, indicating at the same time the manner of control and execution of the orders issued. The court may also specify what parents cannot do without the court's permission or subject the parents to other restrictions to which the guardian is subject. The court may also appoint a guardian to supervise the exercise of parental authority or order the minor to be placed in an institution established for training or another institution that exercises partial custody over children; in a foster family, a children's home or institutional foster care; in a care and treatment facility, nursing home or a therapeutic rehabilitation facility. The court's decision to place a child in foster care of whatever type, issued in connection with the restriction, suspension or termination of parental authority, is perceived as the final, most far-reaching interference in the relationship between parents and children. When deciding to place a child in foster care, the guardianship court designates a particular foster family or children's home. Therefore, in light of Article 579^2 CCP, the court considering the need to place a child in a foster family or a children's home is obliged to consult the relevant social welfare centre or the relevant organiser of the family foster care to obtain information on the previous performance of a foster family or the person running the children's home, as well as information from the data register kept by the head of a county (*starosta*), based on the provisions on family support and foster care system about the candidates who are capable of taking custody of a child.

The list of guardianship orders contained in Article 109(2) FGC is exemplary, and the guardianship court may issue any other order which is in the best interests of the child in view of the circumstances. As Pietrzykowski emphasises, the concise formula of this provision is rich in content, thanks to which the guardianship court has broad competencies. The range of measures at the court's disposal is wide, from the completely lenient to the very strict. The court must also choose the most effective solution and not resort to overly drastic measures unnecessarily. This versatility and flexibility are what distinguishes the interference in the sphere of parental authority under Article 109 FGC

from other decisions of the guardianship court, namely the termination and suspension of parental authority. The Code does not call the interference of the guardianship court under Article 109 FGC a restriction of parental authority (Pietrzykowski, 2015).

To sum up, the content of the provision expressed in Article 109 FGC and its amendments indicate the evolution of the object of enforcement proceedings from the supervision of the exercise of parental authority to the modelling of parental attitudes. This is particularly evident in cases concerning the limitation of parental authority. The goal of the executive proceedings in cases concerning the limitation of parental authority is to strive for the reintegration of the family, taking into account the primacy of the parents in the upbringing of the child (Jakimiec, 2016, p. 206). The purpose of orders issued under Article 109(2) FGC is to model and implement proper child-rearing and caring attitudes of the parents by appointing a family assistant, referring the minor to a child support institution, referring the parents to a family therapy institution or specialists or obliging them to adhere to certain conduct (Jakimiec, 2016, p. 217). The situation is different in the case of orders issued pursuant to Article 109(2) FGC that place the exercise of parental authority under the supervision of a guardian, entrust the administration of the child's property to a guardian or subject the parents to such restrictions as are imposed on the guardian. In this case, the essence of the order is primarily the supervision of parental attitudes. Thus, based on the impact of these orders, they can be divided into those shaping and those supervising parental attitudes.

The orders set forth in Article 109(2)(1) FGC and the obligations arising from them are not imposed on the parents of a minor in the case of termination or suspension of parental authority. In the first case, parental authority is not vested in the parents of the minor, while in the second case, it is not exercised. After the judgment on the termination or suspension of parental authority becomes final, the guardianship court shall initiate proceedings for the appointment of a legal guardian for the minor. As soon as the decision to appoint a legal guardian becomes final, the guardianship court shall ex officio initiate enforcement proceedings. Natural parents do not participate in it, but this does not preclude their efforts to restore parental authority through the forms of family support listed in the provisions of the Act on Family Support and Foster Care System (Jakimiec, 2016, p. 221).

Pursuant to Article 110(1)(2) FGC, in case of a temporary obstacle to the exercise of parental authority, the guardianship court may order its suspension. The suspension will be lifted when the reason for it disappears. On the other hand, under Article 111 FGC, if parental authority cannot be exercised due to a permanent obstacle or if the parents abuse parental authority or grossly neglect their duties towards the child, the guardianship court shall terminate parental authority. The deprivation of parental authority may also be ordered against one of the parents.

> The boundary between a temporary and a permanent obstacle that justifies the termination of parental authority is not strict. It is rightly noted, however, that the benchmark should be the prognosis as to whether family relationships will change during the period of the obstacle. In this sense, the obstacle is transient when, once it ceases, the parent can return to the exercise of his or her parental functions in a substantially unchanged pattern of family relations and ties. When, on the other hand, the anticipated return is to occur when family relations have changed fundamentally (the child has grown up), we are dealing with a permanent obstacle (Jakimiec, 2016, p. 221).

The cause of the obstacle, the parents' contribution to the obstacle, or the question of their culpability and its degree in bringing about the situation that prevents the exercise of parental authority are irrelevant. In this sense, a permanent obstacle is, for example, a chronic illness of a single parent that prevents him or her from exercising parental authority, a sentence to many years of imprisonment, or departure abroad for an indefinite period of time accompanied by a lack of interest in the child. As Jacek Ignaczewski points out, a permanent obstacle to the exercise of parental authority may also be subjective in the sense that it is the result of a false value system in relation to an individual, the consequence of which is a completely uncritical assessment of one's own pathological behaviour (Bodnar et al., 2015, p. 61).

Abuse of parental authority involves highly reprehensible behaviour of a parent towards a child, such as using corporal punishment or excessive discipline, forcing a child to do inappropriate work and inducing a child to commit a crime. Deliberate isolation of the child from the other parent and psychological subjugation of the child may also be considered an abuse of parental authority and gross neglect of the

resulting duties. Gross neglect of duty is serious neglect or less serious neglect that is characterised by an exacerbation of ill will, persistence and incorrigibility. Dereliction of duty to a child may include evading maintenance, abusing alcohol and engaging in criminal activity. Gross neglect of duty may also consist of a complete severance of ties with the child, a lack of interest in the child's life or failure to maintain contact with the child for many years for reasons attributable to the parent.

The court may deprive the parents of parental authority if, despite the assistance provided, the reasons for placing the child outside the family still exist, and in particular if the parents do not show a sustained interest in the child. In order to help the parents, the child is placed in a foster family or an educational care facility. These measures are of a temporary nature and are intended to allow the parents to make such changes to their lives and conduct that will enable them to raise their child in a family environment. The optional nature of the deprivation of parental authority in relation to a child placed in an educational care facility or in a foster family is due to the fact that taking the child away from his or her parents removes the threat to the child's daily existence and proper development. Further interference of the court in the sphere of parental authority should be justified by the welfare and best interests of the child (Bodnar et al., 2015, p. 176).

If the reason that gave rise to the termination of parental authority ceases to exist, the guardianship court may restore parental authority. The optionality emphasised in this provision does not imply voluntariness and judicial discretion.

> There can be no doubt that the cessation of the reason that was the basis for the deprivation of parental authority should, in principle, lead to its restoration, but not always because, first, the parents must express their will and desire in this respect, and, second, the cessation of one reason does not mean that new obstacles to the exercise of parental authority have not arisen during the period of deprivation (Bodnar et al., 2015, p. 177).

The court learns about the possibility of restoring parental authority by virtue of its supervision over the child's legal guardian or over a foster family or an educational care facility, or from information obtained under Article 572 CCP, which imposes an obligation on everyone to

notify the guardianship court of an event justifying the initiation of ex officio proceedings, or from a community interview ordered under Article 570[1] CCP (Bodnar et al., 2015, p. 177).

The right to contact the child

In light of Article 113(1) and (2) FGC, regardless of parental authority, parents and their child have the right and duty to maintain contact with each other. It should be emphasised here that it is a well-established view in doctrine and case law that personal contact with the child is not an element of parental authority and that the sole source of this authority is the kinship between parents and children. Polish family law does not directly regulate the issue of parent-child contact, neither as a right of the parents nor as a right of the child. Contact with the child includes, in particular, spending time with the child (visits, meetings, taking the child away from his or her place of permanent residence) and direct communication, maintaining correspondence, using other means of remote communication, including electronic means of communication. Pursuant to Article 113[1](1) FGC, if a child resides permanently with one of the parents, the manner in which the other parent maintains contact with him or her shall be determined jointly by the parents, acting in the best interests of the child and taking into account his or her reasonable wishes; in the absence of an agreement, the guardianship court shall decide. These provisions shall apply accordingly if the child does not reside with either parent and is cared for by a guardian or if the child has been placed in foster care.

If it is in the best interests of the child, the guardianship court may limit the parents' contact with the child, in particular by prohibiting meetings with the child, prohibiting taking the child away from his or her place of permanent residence, permitting meetings with the child only in the presence of the other parent, guardian, court-appointed guardian or other person indicated by the court, limiting contact to certain methods of remote communication or prohibiting remote communication. Certain restrictions may be applied by the court to both or one parent. This should be determined with the child's best interests in mind. The court may apply one of the permissible means of limiting contact with the child, and the prohibitions may also be cumulative so that the court, while prohibiting contact with the child, may also

prohibit remote communication with him or her. The court's interference may also be gradual. As Pietrzykowski (2015) explains, if the court prohibits communication with the child while allowing remote contact, and it is later found that even such contact threatens the child's welfare, the court should prohibit it. Thus, if the maintenance of parental contact with the child seriously threatens or violates the child's welfare, the court may prohibit all forms of contact (Article 113^3 FGC). The premise of a "serious threat is fulfilled in particular when the parent's contact with the child may endanger the child's life, health, proper development, safety, lead to his or her demoralisation or formation of an antisocial attitude, as well as result in hostility towards the other parent" (Bodnar et al., 2015, p. 209).

Pursuant to Article 113^4 FGC, the guardianship court, when making a ruling on contact with the child, may oblige the parents to act in a certain way, in particular, refer them to institutions or specialists providing family therapy, counselling or other appropriate assistance to the family, at the same time specifying the manner of monitoring the implementation of the orders. This provision, therefore, gives the guardianship court the power to require the parents to adhere to certain conduct.

The situation of a child deprived of parental authority

The provisions of the Family and Guardianship Code are important for determining the legal situation of a child in the absence of parents or parental authority. The broader scope is the actual custody of the child, which is called foster care. Until December 31, 2011, the basic legal act defining the system of foster care was the Act of March 12, 2004, on Social Assistance (Journal of Laws of 2009 No. 175 item 1362 as amended). By its provisions, the public tasks related to child custody were transferred from the Ministry of National Education to the Ministry of Social Policy. In turn, with the Act of June 9, 2011, on Family Support and the Foster Care System (Journal of Laws of 2011 No. 149 item 887), Subchapter 2a – Foster Care was introduced to Chapter II of the Family and Guardianship Code.

Pursuant to Article 112^1(1) and (2) FGC, unless the guardianship court decides otherwise, the obligation and right to exercise day-to-day custody of the child placed in a foster family or an educational care facility, to raise the child and to represent him or her in these matters, in

particular, in seeking maintenance payments, rest with the foster family or the educational care facility. The other rights and responsibilities relating to parental authority rest with the child's parents. Thus, they retain the right to represent the child in all other matters, the right to decide on all important matters of the child and matters beyond the scope of the concept of "day-to-day custody," and the right to manage the child's property (Bodnar et al., 2015, p. 194).

According to Article 112^3(1) FGC, a child may be placed in foster care only when other previously applied measures provided for in Article 109(2)(1–4) FGC and forms of assistance to the child's parents referred to in the regulations on family support and the system of foster care have not led to the elimination of the threat to the child's welfare, unless the need to provide immediate foster care to the child results from a serious threat to its welfare, in particular, a threat to his or her life or health. In turn, Paragraph 2 of this provision implies that it is not permissible to place a child in foster care against the will of the parents solely because of poverty. This provision is a consequence of the changes introduced by the Act of March 18, 2016, amending the Act – Family and Guardianship Code (Journal of Laws of 2016 item 406). This provision specifies the principles of the court's reaction to the threat to the child's welfare referred to in Article 109(2) FGC, obliging the court to exhaust all possibilities at its disposal before it decides to place a child in foster care. If the previous measures have not eliminated the threat to the child's welfare, the court may, in subsequent proceedings, place the child in foster care. However, these measures do not have to be applied cumulatively, nor is it necessary to use all of them. It is necessary, however, that in addition to the measures interfering with parental authority, the court determines whether the parents have been offered the forms of assistance provided for in the Act on Family Support and the Foster Care System.

As for the will of the parents referred to in Paragraph 2 of the provision in question, it should be noted that under Article 100(1) FGC, the parents may request the court or other public authority to provide foster care for the child. The will of the parent is to be understood as a sovereign act, which means that it applies to parents who have parental authority. At the same time, the autonomy of the family is emphasised because it is assumed that parents know what is best for their child. If the parents who are aware of the child's vulnerability due to poverty request that the child be placed in foster care, showing concern

for him or her, the court may do so. If, on the other hand, the parents' motive for placing the child in foster care is their unwillingness to bear the additional burden of raising a child in poverty, the court will also be able to do so. In both cases, the court will decide on such custody by assessing the nature of the threat to the child's welfare, but if the parents do not express their will in this regard and the only threat is poverty, the court will not be able to make such a decision.

The Act on Family Support and the Foster Care System defines the principles and forms of supporting a family experiencing difficulties in fulfilling its care and child-rearing functions, the principles and forms of providing foster care and assistance to the child in becoming independent of its adult wards, the tasks of public administration in supporting the family and the foster care system, the principles of financing family support and the foster care system, the tasks in adoption proceedings. According to Article 2(1) FSFCSA, support for a family experiencing difficulties in fulfilling its care and child-rearing functions is a set of planned activities aimed at restoring the family's ability to fulfil these functions. In turn, the foster care system consists of people, institutions and activities aimed at providing temporary care and upbringing of children in cases where parents are unable to provide care and upbringing.

When applying the provisions of the Act on Family Support and the Foster Care System, one should take into account the subjectivity of the child and the family and the child's right to be brought up in the family – or, if necessary, outside the family – to be cared for and brought up in family forms of foster care, if this is in the best interests of the child, to be reunited with his or her family, to maintain personal contacts with the parents (except in cases where the court has prohibited such contacts), to have a stable upbringing environment, to be educated, to have the opportunity to develop his or her talents, interests and beliefs, as well as to have play and leisure time, to be assisted in preparing for independent life, to be protected from arbitrary or unlawful interference in his or her life, to be informed and able to express his or her opinions on matters affecting him or her in accordance with the child's age and degree of maturity, to be protected from degrading treatment and punishment, to have his or her religious and cultural identity respected, to have access to information concerning his or her background.

Also noteworthy is the content of Article 145 FGC, which refers to the provision of legal guardianship to a minor. According to its

wording, custody is established for a minor in the cases provided for in Title II of FGC. Thus, it applies to situations when the parents are deceased, unknown, lack full legal capacity, have been deprived of parental authority or their authority has been suspended but not when the child has at least one parent who has parental responsibility. Custody is established by the guardianship court as soon as it becomes aware of a legal reason for it. The guardianship of a minor is protective in nature and is understood as a form of custody of the minor and his or her property (Haak, Haak-Trzuskawska, 2012, pp. 19–20).

When taking measures to protect the child's welfare, attention should also be paid to the local system for counteracting domestic violence created under the Act on Counteracting Domestic Violence (CDVA). Pursuant to its Article 9a, communal interdisciplinary teams are created together with working groups and appointed to solve problems related to the occurrence of violence in specific families. The goal of the interdisciplinary team is prevention and assistance to families in overcoming difficult life situations. The disposition of the aforementioned provision grants the interdisciplinary team the status of an entity of an internal character, operating in the municipality within the framework of its own tasks, and also specifies in detail the members of this group. Representatives of organisational units of the social welfare department, the municipal commission for solving alcohol problems, police, education, health care and non-governmental organisations are appointed to work in the team, which also includes court-appointed guardians, prosecutors and representatives of institutions working to prevent violence (Niebieska Linia Instytutu Psychologii Zdrowia, 2022). They aim to ensure effective cooperation of institutions and organisations in preventing and combating domestic violence by diagnosing the problem of domestic violence, taking action in situations where there is a threat of domestic violence to prevent this phenomenon, initiating intervention in the environment affected by domestic violence, disseminating information about institutions, persons and possibilities of assistance in the local environment, initiating action against persons using domestic violence. Pursuant to Article 9d CDVA, intervening in a family affected by violence is based on the "Blue Card" procedure and does not require the consent of the person affected by family violence.

According to Article 2(1) of the Act on Family Support and the Foster Care System, support for a family experiencing difficulties in fulfilling

its care and child-rearing functions is a set of planned activities aimed at restoring the family's ability to fulfil these functions. The responsibility for providing support lies with the head of the municipality, mayor or city council. In light of Article 8(1) FSFCSA, support encompasses, in particular, analysing the situation of the family and the family environment, as well as the causes of the crisis in the family, strengthening the role and functions of the family, developing care and child-rearing skills of the family, raising awareness in the field of family planning and functioning, assistance in family integration, counteracting the marginalisation and social degradation of the family, striving for the reintegration of the family. Support takes the form of work with the family, which is carried out by a family assistant, as well as assistance in child-rearing provided by support families and day-care centres. Since January 1, 2015, family assistance has been an obligatory task of the municipality. However, it is not a mandatory aid for families (Prusinowska-Marek, 2016, pp. 17–18).

With regard to the activities of social workers and family assistants aimed in particular at protecting the child's welfare, attention should be paid to their legal basis, including the provisions of the Act on Social Assistance, the Act on Family Support and the Foster Care System, the Act on Counteracting Domestic Violence and the Regulation of the Minister of Labour and Social Policy of April 17, 2012, on Specialisation in the Profession of a Social Worker (Journal of Laws of 2012 item 486). The latter Regulation sets out several requirements to be met by a social worker applying for, respectively, the first and second degree of specialisation in the profession of a social worker. According to Paragraphs 8 and 9 of the Regulation, the employee must therefore be licensed to practice the profession, have a certain length of service, complete a training course and pass an examination. For the first degree of specialisation, two years of work experience in the profession is required, and for the second degree of specialisation, the required work experience is five years.

The requirements that a family assistant must meet are outlined in Article 12 FSFCSA. The formal requirements for family assistant candidates include education, work experience, parental rights as well as lack of a criminal record and fulfilment of maintenance obligations. The required courses of study recognised in this profession are pedagogy, psychology, sociology, family studies and social work. However, a candidate

may hold any university degree provided that he or she supplements it with an appropriate training or postgraduate studies. An additional requirement in this case is at least one year of experience working with children or families. Individuals with a high school diploma may apply for the position of a family assistant if they have completed training and have three years of work experience.

Pursuant to Article 17(1)(10) of the Act on Social Assistance, social work is one of the obligatory tasks of the municipality. Social welfare centres must employ no fewer than three full-time social workers. This is of particular and vital importance as it determines the workload. The role and tasks of a social worker are defined in Article 119 of the Act on Social Assistance and include conducting social work, as well as analysing and evaluating phenomena that give rise to the need for social welfare services. In addition, a social worker is obliged to provide information, assistance and guidance in solving life issues to people who, thanks to this assistance, will be able to overcome difficult situations. A social worker should be able to effectively use legal regulations in performing his or her professional tasks and also help individuals/families in obtaining assistance from other institutions. In the field of community work, a social worker is obliged to cooperate with specialists to prevent and reduce social pathologies, stimulate the activity of the society and self-help groups and participate in the process of initiating, developing and implementing aid programs to improve the quality of life. A special duty of a social worker is to initiate the establishment of support institutions and new forms of assistance to those in need.

On the other hand, according to the Act on Family Support and the Foster Care System, the assistant works with the family in its place of residence or in a place indicated by the family. The main goal of the assistantship is to improve care and child-rearing skills, household management skills and the ability of the child's parents or guardians to cope with everyday situations. As a result, the recipients should regain control over their own lives, which will allow them to become self-reliant and fulfil their parenting roles in a way that will ensure the safety and development of their children. It can only be achieved with the participation of the family at every stage of the methodical action: from the initial assessment, through the creation of a work plan and its implementation, to the final evaluation, adapting the work to the family's capabilities and life and using small steps to move slowly forward. The

preconditions of assistantship include establishing a relationship with the family, working long-term and adapting the communication style and methods of action to the phases of the transition process.

The family assistant is obliged to systematically improve his or her qualifications in the field of work with children or families, in particular, through participation in further training courses and self-education. The Act on Family Support and the Foster Care System specifies that the number of families one family assistant may work with at the same time depends on the difficulty of the tasks to be performed but may not exceed 15. The assistant plays a different role than a social worker; he or she is supposed to be closer to the family and its problems, and his or her flexible, non-standard working hours should be adapted to the family's rhythm of life and its real needs. The assistant strives to preserve the integrity of the family, and his or her role is to help dysfunctional families with minor children in solving parenting and social problems, including household management, expense planning and other parental responsibilities.

In turn, court-appointed guardians, in accordance with Article 1 of the Act of July 27, 2001, on Court-Appointed Guardians (Journal of Laws of 2014 item 795 as amended), perform tasks of a pedagogical and re-socialisation, diagnostic, preventive and control nature, defined by law and related to the execution of court decisions. Whereas Article 147(2) of the Act of July 27, 2001 – Law on the System of Common Courts (Journal of Laws of 2020 items 365, 288) indicates that court-appointed guardians (family guardians and guardians for adults) are a guardianship service that carries out pedagogical, re-socialisation and preventive activities, as well as other activities set out in specific legislation. The family guardian, who is entrusted with the supervision, gets acquainted with the case files and other necessary sources of information about the ward, and in particular with the course of supervision to date; establishes the first contact with the ward within 7 days from the date of entry of the final decision to the team of guardianship court service; instructs the ward on the rights and obligations resulting from the court decision and discusses the manner and deadlines for their realisation; plans preventive, re-socialising and caring activities towards the ward; co-operates with the family of the ward; assists the ward in organising education, work and leisure activities, as well as in solving life difficulties; controls the ward's behaviour in his or her place

of residence, stay, learning and work; co-operates with organisations, institutions, associations and other entities, the purpose of which is to help the wards.

Conclusion

The situation of a child deprived of parental authority should always be analysed from the perspective of the principle of the child's welfare. To understand the lengthy process leading to its implementation, one should look into the origins of family law in Poland. This chapter discusses family law, its development and transformation, as well as the forms of work with children and young people from the interwar period to recent times. Efforts to unify Polish civil law, including family law, were first undertaken after the Second World War. This process took place in the shadow of the country's dependence on the USSR and the sovietisation of the law. For these reasons, the Family Code was a product of collaboration between Polish and Czechoslovak lawyers. Due to the need to draft a uniform text together with Czechoslovakia, the provisions of the Code were quite vague. As a result, they had to be supplemented by case law. The work on the Code had one positive outcome, i.e. the creation of important family law monographs which were based on the Code and pointed out its shortcomings. These publications contributed significantly to the development of the family law doctrine and further amendments to the Code. The creation of the Family and Guardianship Code was possible thanks to the decision made at the turn of 1957 to include family law in the Civil Code. Otherwise, had a draft family law book not been prepared, the existing code would probably only be amended. The Family and Guardianship Code was thoroughly revised in 1989, after the fall of communism and the departure from the socialist ideology. Moreover, it was amended several times between 1985 and 2017, and the version currently in force is, in fact, a completely new set of regulations.

At present, the welfare of the child is regulated by the provisions of the Family and Guardianship Code, the Code of Civil Procedure, the Act on Family Support and the Foster Care System and the Act on Counteracting Domestic Violence. The Act on Family Support and the Foster Care System defines the principles and forms of support for families having

difficulty with providing parental care, the principles and forms of foster care, the assistance offered to foster children who become of age to help them to become independent, the tasks of public administration in supporting the family and foster care, the rules for financing support for family and foster care and the tasks related to the adoption procedure. The Act on Counteracting Domestic Violence aims to eliminate violence as a global social phenomenon that requires decisive intervention. To counteract this multi-faceted and complex phenomenon, comprehensive and coordinated solutions need to be employed. The literature on the subject presents different views on the content and scope of the definition of domestic violence. Some authors believe that the current legal system does not include a legal definition of violence, while others are of the opinion that the definition is insufficient and does not take into account all the aspects of the phenomenon. There are also those who point to the unclear relationship between domestic violence and the attributes of the crime of abuse. It is emphasised that the definition formulated in the Act on Counteracting Domestic Violence was developed as a result of expanding the catalogue of the attributes of abuse. The national policy of counteracting domestic violence focuses, on the one hand, on actions aiming to help the victim and, on the other, on working with perpetrators. The introduction of solutions aimed at protecting the victims of violence, especially children, seems crucial. Therefore, the introduction of the injunction to leave the premises by the perpetrator of violence and the introduction of family assistants to the social welfare system should be seen as positive changes in recent years.

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Childcare in Czechoslovakia and the Czech Republic

Established in 1918, Czechoslovakia derived its model of state from Austria-Hungary and then followed its own path. The young republic was very progressive, with gender equality and women's right to vote enshrined in its first constitution.

Childcare in the period from 1918 to 1938

At the turn of the 19th and 20th centuries, foster care was provided in so-called colonies, and this model functioned until the Second World War. This model was implemented in areas with good transport accessibility where there was a sufficient number of families willing to care for foundlings and a person willing to manage the colony. The colonies were formed on the basis of selected families that lived in the area and were suitable to act as foster parents. They could support each other, and the children were able to safely experience a social situation in which they were not alone. Children with special needs, whom today we would describe as abused and deprived, were also sent to these colonies. The introduction and development of foster care in the colonies were strongly advocated by Milada Horáková J.D. The supervisor of the colony was usually someone with pedagogical education (Secký, 1926). He or she also had to find an apprenticeship for the children over the age of 14 that would match their needs and abilities. This was given in Article 1(2) of Act No. 256/1921 Coll.: "how to supervise and care for the above-mentioned children, as well as illegitimate children under the age of 14 in the care of their parents." This model was similar to the "foster care facilities" model that functioned in the Czech Republic

from 1999 to January 2013. It operated on the principle that one of the spouses was employed by the regional authority (professional foster parent) and the other worked at their regular job. Such foster parents could take care of up to six children, mainly large sibling groups. These families also had better access to professional support than other foster parents.

Childcare during the communist era

At the beginning of the construction of a new class system within the "Legal Biennial" model, Act No. 265/1949 Coll. on Family Law was issued. This law completely disregarded foster care as a whole. Priority was clearly given to institutional care, with adoption being the only form of substitute family care.

The state's position was strengthened by Act No. 69/1952 Coll. on Social and Legal Protection of Youth, which stated in Article 9:

> If it is necessary to entrust a child to an alternative to parental care, the child shall, in principle, be placed into collective care; otherwise, the child may be placed only in a family that provides a guarantee that the child will be raised to love the people's democratic republic and is able to provide an environment favourable in all respects to the child's development, usually with the person who adopts the child.

This meant that foster care ceased to exist, substitute family care was only possible through adoption, and all other forms of care were institutional. The Communist Party wanted to have control over every part of society and the social life of the population. Uniformity was manifested throughout society, and there was a strong need to influence families and children from an early age. This uniformity affected all spheres of life. The communist motto "everyone is equal" did not allow any differences in thinking, education or care for the disadvantaged or elderly. Institutional care began to develop – for children whose parents failed in their educational duties, institutions for the disadvantaged, homes for the elderly, etc. All these institutions were usually located outside the cities. Institutional care for newborn children also began to develop. Nurseries cared on a daily or weekly basis for children over

6 months of age whose parents had to go to work, and it was assumed that the children would be raised by the community.

Act No. 94/1963 Coll. on the Family confirmed the environment of permanent control in Article 30: "Parents, the state and social organisations, especially Youth Union of Czechoslovakia and its pioneer organisation, take care of the children's upbringing in inseparable unity."

The attitude towards the educational rights of parents, and thus the idealisation of education, was set out in Article 31:

> (1) The main educational task is to influence the emotional, intellectual and moral development of children in the spirit of the morality of a socialist society.
> (2) Education must be conducted in such a way that children acquire an ever broader and deeper education, adopt a responsible attitude to work, and that such moral principles as the love of their motherland, the friendship between nations, protection of social property, subordination of individual interests to the interests of the whole, voluntary and conscious observance of the rules of socialist coexistence, respect for others, personal modesty, honesty and dedication are reflected in their consciousness and conduct.

The first changes to this system were introduced in c. 1960 when three authors – Zdeněk Matějček, Josef Langmeier and Jiří Dunovský – published the results of their research. They focused on early childhood deprivation in long-term hospitalised children with chronic illness and the possible impacts on the psyche of children who were placed in institutional care in nurseries from the age of 6 months because maternity leave was short to allow women to help build socialism. The building of socialism – a new world order – was the motto underlying the growing influence of the state on the upbringing of children and influencing and controlling the inner workings of families.

Dunovský concerned himself with the CAN (Child Abuse and Neglect) syndrome, whereas Langmeier and Matějček focused on the psyche and needs of children. Their documentary *Děti bez lásky* (Children Without Love) brought a fundamental change. They also described the results of their observations in the book *Psychická deprivace v dětství* (Psychological Deprivation in Childhood) (Langmeier, Matějček, 1963), at the time when John Bowlby proposed his attachment theory.

The process of returning to family forms of assistance did not start until 1968 when the establishment of SOS Children's Villages brought about the development of non-institutional care. In 1967, Hermann Gmeiner came to Czechoslovakia at the invitation of the Czech Paediatric Society to present this project.

In 1968, the Friends of the SOS Children's Villages Association and later the SOS Children's Villages Association were founded. The fundraising account of 777 SOS Children's Villages was also established in the same year. A year later, the sum of 28 million Czech korunas was raised, and the construction of the Children's Village in Doubí near Karlovy Vary began. The village started operating on October 4, 1970, and the foundations of the Village in Chvalčov in the Kroměříž region were laid that year as well. Its construction began in 1971, with the construction of the Village in Brno-Medlánky starting a year later. The Village in Chvalčov began to operate in 1973.

The period of normalisation in the 1970s did not encourage any form of civic initiatives. The Villages were transferred to the jurisdiction of the state in 1974, and a year later, a commission was established to liquidate the Association. The Association was renewed after the events of November 1989, and the functioning Villages in Doubí and Chvalčov were handed back to the Association. The construction of the unfinished Village in Brno-Medlánky was resumed in 1996, and the Village opened for children in 2003. In 1993, the SOS Children's Village Association was accepted as a full member of the international organisation SOS Kinderdorf International based in Austria.

Family foster care as such was reintroduced by Act No. 50/1973 Coll. on Foster Care. The foster parent can represent the child in routine matters, and the parents still have an obligation to pay maintenance. The 1982 amendment to the Act on Family Law also allows adoption by a single parent. These changes were initiated as a result of studies and publications already mentioned (on the developmental needs of children) but also due to new approaches to childhood in general. However, institutional care was still the preferred method over substitute family care.

Childcare in the democratisation era – after 1989

The Velvet Revolution marked the beginning of an era of democratisation in the Czech Republic and the Slovak Federative Republic. It brought not only economical changes but also influenced the area of human rights. For example, the Convention on the Rights of the Child was ratified on September 30, 1990, and the strengthening of families, meeting the needs of children and protecting childhood continued.

Another change that strengthened non-institutional care was Act No. 117/1995 Coll. on State Social Support, which defined foster care benefits, foster carer's allowances and child's allowances. Substitute family care, however, remained an altruistic decision. Only the SOS Children's Villages employed their foster mothers, although they operated as a non-governmental, non-profit organisation (NGO) funded mainly by contributions.

Postmodern ideas, together with the strengthening of human rights, especially the rights of disadvantaged groups and children, gave rise to Act No. 91/1998 Coll., which amended the Act on the Family issued in 1963. This law gives family care priority over institutional care. It still maintains, however, that the child's stay in a troubled family should not be prolonged and that the most beneficial form of assistance, placement in a foster family, should be implemented as quickly as possible. This Act also mandates that assistance for children at risk should be sought primarily within their extended family. Until 2013, foster parents were not remunerated for their work, so foster care was an altruistic activity. During this period, children's homes remained specialised workplaces with therapeutic programmes aimed to reduce psychological damage to children and prepare them for future life.

The gradual process of modernisation of institutional facilities (children's homes), such as reducing the number of residents and improving their quality of life, led subsequently to deinstitutionalisation. As a result, large children's homes were divided into small housing units where groups of up to eight children lived their "family life." Life in these units, which were eventually moved to ordinary flats, was supposed to be as close as possible to the life of an ordinary family (the children cooked, cleaned, took care of their finances, etc.). The aim of the deinstitutionalisation was to maximise all the assistance and services provided to disadvantaged people in the home environment.

In this circumstances, new Act No. 359/1999 Coll. on Social and Legal Protection of Children was passed, which introduced new perspectives and new services to help vulnerable children. At the same time, it established the basic benefits of foster care: financial support for foster parents. Social workers were given new roles by the state, and Article 5 of this Act defined the protection of the child and childhood as a priority: "The key aspect of social and legal protection shall be the interests and wellbeing of the child."

This Act also redefined foster care facilities, which were primarily used for larger sibling groups and were usually established by municipalities or regional authorities. In practice, these facilities functioned on the basis that one spouse was employed by the founder and the other had a regular job.

A new form of substitute family care, i.e. temporary foster care, was introduced by an amendment to the Act on Social and Legal Protection of Children – Act No. 134/2006 Coll. The model of social work was in practice still paternalistic, which meant that the state knew best what the client (child) needed and in what form.

Changes leading to the current concept of the social and legal protection of children (SLPC) in the Czech Republic

A fundamental change in the legal system of the Czech Republic after 2012 was the monitoring of deinstitutionalisation. These processes were closely linked to the democratisation of society and supported by the activities of non-governmental, non-profit organisations. The expert discussions held before the entry into force of these legal norms were long and challenging. One of the key issues was the creation of only one Ministry for Children and Family Affairs, which would help overcome the current political and functional fragmentation. In connection with these changes, Act No. 108/2006 Coll. on Social Services was passed, which transferred social care from the state to the extended family. It assumes that no one, even excluded families, wants to live at the expense of the state and that they have a natural inclination to live according to generally accepted legal norms. This approach has also been adopted in the SLPC system.

The Czech system was modelled on those of Great Britain and Norway, which belong to the family service paradigm (Gilbert, Parton, Skivenes, 2011). During the expert discussions, institutional care was demonised and biological family glorified. In my opinion, these two basic attitudes had a negative impact on the final solution and its implementation. The result was not a cooperation to change the system but a battle of opinions. This struggle continues to this day, and the tunnel vision of both sides of the argument limits the quality of the outcome.

Deinstitutionalisation

The process of deinstitutionalisation (or transformation) in Central Europe and especially post-communist countries began after 1989. This process has often been confused with the concept of modernisation.

Modernisation (improvement of conditions for people with disabilities) took place much earlier and was mainly concerned with improving conditions in collective social care facilities. This process accelerated with the Velvet Revolution.

Already at the time of the Velvet Revolution, children's homes in the then Czechoslovakia were divided into small educational "families." The large number of children living in children's homes, who had no possibility of getting other kinds of assistance within the SLPC system, was also an argument against radical deinstitutionalisation. Throughout Czech history, following the letter of the law has prevailed over its meaning in legal interpretation. This led to situations in the SLPC where children were being punished for the mistakes of their parents and situations where life in children's homes was based on control and meritoriousness. Therapeutic work was carried out to a much lesser extent.

Changes in philosophy and related laws

Paradigms and schools of thought have changed mainly due to legal decrees, with Act No. 109/2002 Coll. on Institutional Education, which defined its aim as follows:

> The purpose of school facilities for preventive educational care is to prevent the emergence and development of negative manifestations of children's behaviour or the disruption of their healthy development,

> to mitigate or eliminate the causes or consequences of existing behavioural disorders and to contribute to the healthy personal development of children.

During this period, Act No. 359/1999 Coll. on Social and Legal Protection of Children (the SLPC Act), which stated in Article 5, "The key aspect of social and legal protection shall be the interests and wellbeing of the child," was in force. A fundamental change took place in 2012 when a new amendment to this Act was issued with effect from January 1, 2013, with Article 5 stating:

> The key aspect of social and legal protection shall be the interests and wellbeing of the child, the protection of parenthood and the family and the right of parents and children to parental upbringing and care while taking into account the child's wider social environment.

Both laws concern vulnerable children, but the institutional education law monitors personal development, and the SLPC law monitors the child's life in the family. This is done regardless of the parental skills of the parents.

It is believed that child neglect in poor households is caused by social reasons, and thus, it is stated in Article 971(3) of Act No. 89/2012 Coll. – Civil Code:

> Inadequate housing or property situation of the child's parents or persons entrusted with the care for the child may not in themselves be grounds for a court decision ordering institutional care if the parents are otherwise capable of ensuring proper upbringing of the child and fulfilling other obligations arising from their parental responsibility.

In other words, it is assumed that a parent wants to be a good parent but may be prevented from doing so by, for example, poverty. Currently, the SLPC system distinguishes between physical and sexual abuse (active form), which is a criminal offence, and neglect (passive form) by failing to meet the child's basic needs as a result of a dire social situation, which should be addressed by the social welfare department. This solution seeks to keep children in their natural environment for as long as possible and at almost any cost (Decree No. 473/2012 Coll., Article 1).

This led to the emergence of fundamental differences. Before the amendment to the SLPC Act, it was assumed that the child's needs could be met even in poor families and that good parenting was a personality trait. Whereas the current legislation assumes that good parenting is in some way dependent on the economic strength of the individual or family. In their study, David Schramm, Ted Futris and Renay Bradley (2013) point out that a well-functioning relational interaction between parents can counterbalance the family's poor economic situation and its effect on the child. On the other hand, a dysfunctional relationship puts the child at risk if the family's economic situation is poor. Similarly, Neil Gilbert in his publication *Child Protection Systems* (Gilbert, Parton, Skivenes, 2011) distinguishes between active and passive forms of failing to meet the child's needs. However, he also notes the shift where good parenting becomes strongly correlated with the economic and social situation of the family, as opposed to being a personality trait of the adult.

At the same time, resistance to all forms of institutional care developed. Children's homes and crisis centres began to be perceived not as an addition to the family form of assistance but as its opposition – it was believed that institutions made the child depressed, not his or her family.

Forms of assistance

With the introduction of Decree No. 473/2012 Coll., new forms of child assistance emerged. These were primarily oriented towards the family form of assistance. The following section presents the new forms of family assistance, as well as institutional facilities and instruments of help that were abolished.

Assistance to children who are still living with their families is addressed by Act No. 108/2006 Coll. on Social Services. It is provided by social activation and social rehabilitation services, which focus primarily on improving the financial situation of families, their social inclusion and legal representation and help them with housekeeping.

The exceptions are organisations focused on relationship development, which are allowed but not required to implement the aforementioned services. Based on a study conducted by Petr Fabián, Lucie Geršičová and Markéta Vnenková (2020), these organisations aim to

develop good parenting and enable the child to experience a good childhood. Based on their practical experiences, it was also possible to introduce the so-called weekend parenting. These are situations where the parents cannot bear the parental load throughout the week, but the children are attached to them. In these cases, children stay in a children's home from Monday morning to Friday afternoon and then spend the weekends with their parents. This model is similar to British boarding schools. Unfortunately, this solution is implemented only in a few children's homes.

Act No. 359/1999 Coll. on Social and Legal Protection of Children, in turn, deals with assistance to children outside the biological family and addresses the following issues:

- Emergency foster care for infants. It is a family form of assistance that lasts for a maximum of 12 months and is intended for children who are meant to be adopted or as a temporary form of assistance for the time necessary to develop parental skills in accordance with Article 27(9).
- Temporary foster care for children over 2 years old. It should also last for a maximum of 12 months, with up to three children being cared for at the same time. This form of assistance is intended to replace crisis centres (facilities for children requiring immediate assistance).
- Regular foster care is now perceived as a temporary form of assistance only for the time necessary before the child returns to his or her biological family.
- All previously-existing institutionalised forms of assistance remain in place. The main goal is to maximise the development of children's skills and abilities with their subsequent return to the biological family and to fulfil the provisions of the aforementioned Act No. 109/2002 Coll. on Institutional Education. Assistance must be provided in small educational groups. These groups shall consist of up to eight children in children's homes and up to four children in facilities for immediate assistance, with the exception of sibling groups.
- Foster care facilities are abolished as this form of assistance was primarily intended for sibling groups. It was implemented by foster carers, with one of the foster parents employed by the regional authority and the other having a regular job.
- Adoption takes on a new dimension as the previous legal order considered it to be the ideal form of assistance for vulnerable children,

whereas the new legal order treats it more like a last resort. Under the old legislation, specifically, Act No. 94/1963 Coll. on the Family, adoption could take place within a matter of weeks. According to the new legislation, with Civil Code No. 89/2012 Coll. repealing the Act on the Family, the adoption process takes about 8 months. During this time, the child is in the care of emergency foster parents.

– Guardianship can be exercised both in the biological and the foster family. In the former case, the guardian is the authority or a relative; in the latter, the guardians are foster parents who assume certain parental rights and responsibilities.

After the child has been taken away from his or her family, that family is no longer covered by the law, so it does not qualify for assistance. At the same time, all childcare is only temporary.

Impact on the performance of social work and social and legal protection

The change in the paradigm of SLPC also brought significant changes in social work as such.

Families whose child has been taken away suddenly are left without any assistance and find themselves outside the interests of the state. Paradoxically, however, the goal of foster care is still to return the child to his or her biological family.

Politicisation of assistance

In the years following this amendment, we have seen a gradual politicisation of this issue. Foster parents claim that foster care is a regular job, and institutional care is presented as an opposition to family forms of assistance. The issue is moving away from the question "How to prevent the failure of parental responsibility?" to "How to get as many vulnerable children as possible into substitute family care and how to achieve the abolition of all forms of institutional care?"

In the background is the glorification of the biological family as the best thing that could happen to a child. Failure in parenting is seen as a consequence of poverty.

Risk areas of the substitution of goals

The new approach has several downsides:

1. Developing young people's parental skills is no longer a goal.
2. In order not to exceed the maximum number of children in substitute family care, large sibling groups are divided, and children get traumatised.
3. Even in situations where biological parents do not change their pathological or inappropriate patterns of behaviour, they are encouraged to have regular contact with their child who is in foster care. This results in copying the post-divorce model of existence, which is usually not beneficial for the child.
4. The child's stay in an emotionally inappropriate (traumatising) environment of the biological family is prolonged.

The client in the new approach

In the original paradigm, the main goal was to help the child, find a foster family for him or her and support them. The focus was on the child's wellbeing and on creating space for the bond between the foster parent and the child to be established. Early intervention in the biological family was also important. In the event of unsuccessful intervention, the best interests of the child led to the separation of the biological parents. Today, the situation is changing significantly, with the complexity of the social structure increasing rather than simplifying.

Children and their world

We can look at vulnerable children from several different perspectives. One of them is related to the forms of the CAN syndrome. As shown by long-term statistics, neglect is predominant among them, accounting for 80% of cases. According to the Ministry of Labour and Social Affairs (MoLSA), the number of neglected children in the Czech Republic increased by 100% (from 3,460 to 6,808) between 2010 and 2020 (MPSV, 2020). However, despite the growing prosperity of society and the availability of information on good parenting, the number of children in need of assistance does not change. Thus, it seems that

the material security of the family is not the cause of family pathology. Matějček's and Bowlby's research indicates that we are witnessing the transgenerational transmission of family patterns consisting of a lack of emotional attachment and relational patterns.

The consequences of neglect, especially the failure to meet the child's emotional needs, intensify with age. Children who are in a state of long-term emotional distress in their families often find substitute satiation of these needs in aggressive or otherwise pathological behaviour as they grow older. We know these processes from substitute family care, where children create an emotionally unstable environment in the foster family because they are unable to function in a properly functioning family system (Škoviera in Fabián, 2019).

Children entering the SLPC system often come from complex socio-cultural backgrounds. In the case of children under the age of 3, the father is usually unknown, the pregnancy is not monitored, and the mother shows pathological behaviour during the pregnancy (e.g. promiscuity, substance abuse, etc.). These children are characterised by neurological disorders in early childhood, such as anxiety, FASD, neonatal abstinence syndrome and other disorders.

As the legal practice is to leave children with their biological families until the age of 6 (unless there are life-threatening conditions), the majority of children enter the system when they are older after their school draws attention to their behaviour or that of their parents. According to current data from the MoLSA, most children enter the child protection system at the age of 6–15 years. There are more of these children than in all the other age categories (MPSV, 2021). Families and children often have long-term experience with social activation services and attempts to rehabilitate the family. These children also often come from families where grandparents and parents have never worked and have lived their whole lives on social benefits. Very often, these children have witnessed domestic violence and have these patterns of behaviour already well entrenched in them.

Biological families

This is a relatively new category of the SLPC system clientele. Prior to the paradigm shift, social services were concerned with the biological family only until the child was transferred from the family to some form

of foster care. In contrast, the biological family is at present given more attention than the child.

The aim of the current Czech concept of SLPC is to keep children in their natural (biological) environment for as long as possible. Social workers are equipped with basic tools for this task: social activation services, social rehabilitation (with the aforementioned risks) and the possibility to order up to three sessions of family mediation. As a result, biological families get the maximum level of assistance with no obligations arising from it.

Foster families

Foster care and foster families were receiving only the basic support of social services until the laws were amended. Control was lax; rather, the child's wellbeing was monitored. Continuing education was rather random. Since foster care was an unpaid service, it relied on the foster parents' altruism and was sometimes a solution for people who wanted to have a child.

In the current model, foster care is considered an occupation and carries with it a number of responsibilities, while the rights remain with biological parents. A fundamental change is the perception of foster care as only temporary. When the foster children begin to address the foster parents as mom and dad, it is seen as a professional failure.

Fosterers must receive ongoing training (24 hours over 12 consecutive months), have a contract with the accompanying organisation that primarily supervises the child's upbringing, allow contact between the child and his or her biological family, and participate in the development of the child protection plan. At the same time, they are still supervised by SLPC workers. The accompanying organisation is obliged to mediate assistance in case of educational difficulties and offer respite care.

Respite care is provided in children's centres or at summer camps. The aim is to give parents that take care of a child with a disability and fosterers time for their education and their relationships.

Institutional facilities

All institutions are seen as the last form of help for children. From a social point of view, they have a strongly negative image, and social workers who place children in these institutions are perceived as supporters of

child deprivation. In reality, however, some children can no longer find assistance in the family, and institutional assistance is their only alternative. As we have already mentioned, institutional care is primarily intended to repair the emotional and educational damage caused by the biological family. This obligation is based on Act No. 109/2002 Coll. on Institutional Education. Over time, children's homes in the Czech Republic have profiled themselves as specialised facilities, basing their work on therapeutic activities with children and their biological families. Within the framework of this concept of institutional care, these facilities were a significant help, especially for working with older children living in an unsuitable environment without emotional ties or in an environment of domestic violence.

New tasks and challenges for social workers

With legal changes come changes in the tasks of social workers. Prior to these amendments, they had a primarily supervisory function. In the new legal order, they are expected to take a more therapeutic and motivational approach toward the child's parents. The child as such is somewhat relegated to the background. Social workers have been given several advisory tools, authority and, above all, responsibility to carry out their work.

New tools and guidelines for the conduct of the SLPC

Article 10 of Act No. 359/1999 Coll. describes the new tasks of SLPC workers:

- SLPC workers establish an individual child protection plan that ensures the protection of the child and strengthen the child's family functions. This plan must be prepared within one month of the child's inclusion in the register (the child is identified as being at risk but may be still staying with his or her biological family). This plan must be regularly updated through case conferences.
- SLPC workers organise case conferences during which the individual child protection plan is prepared. The conferences should be

attended by SLPC workers, parents, school representatives, health care providers, police, experts and NGO's family support workers.
- Under the amendment to this Act, SLPC workers can compel parents to seek counselling, such as family counselling, therapy, mediation, etc.
- SLPC workers are obliged to visit children ordered into institutional care and children placed in foster care every 3 months. They are also required to visit the children's biological parents.
- During the visits to the biological parents, SLPC workers should ascertain whether the reasons for the child's stay outside the family persist and, if necessary, who provides social services to the family.
- SLPC workers must make sure that fosterers in their legal area have properly signed contracts with the accompanying organisation.
- SLPC workers should work in a therapeutic and counselling way with the biological family and motivate it to change. However, this task is not enforceable and is not carried out.

By law, only a court can take children away from their biological family. If a child is placed in temporary foster care, the court must review its decision every 3 months; for institutional care or regular foster care, the period is 6 months. Social work thus acquires a new dimension – therapeutic. However, there are limitations in the comprehensive and long-term preparation of social workers to carry out the therapeutic work that is now expected of them. Other conditions must also be set for the therapeutic process as it is long-term and time-consuming. Unfortunately, none of this is possible in the regular practice of social work. The municipal social worker keeps all the files and is responsible for the therapeutic process, but it is not carried out in the way it is supposed to take place in the family.

Accompanying organisations and their tasks

The legislator, who was aware of the complexity of foster care, established in Article 48 of Act No. 359/1999 Coll. new institutions for the performance of social and legal protection of persons entrusted to them – so-called accompanying organisations. They were authorised to carry out preventive activities but, above all, to conclude agreements on the performance of foster care. This has created entirely new organisations which focus on counselling and practical assistance to foster

families. Any family wishing to perform foster care must sign a contract with an accompanying organisation for the whole duration of foster care. These organisations are state-funded and have three basic tasks: providing support, exercising control and education.

Providing support

- Support for children: The worker accompanying the family – the key social worker – is in regular and individual contact with the child (at least once every 3 months). His or her task is to ascertain the child's satisfaction during the stay with the foster family. Other tasks include, e.g., supporting the child's ability to express his or her wishes, thoughts, feelings; determining the level of insecurity, etc. This support applies to all children living in the family, including the foster parents' biological children.
- Support for fosterers: The key social worker accompanying the family must meet the fosterers in person at least once a month. His or her task is to encourage fosterers to reflect on their substitute parenting, strengthen their competencies and plan together with them other services for the child and the family system. In some cases, the worker designs educational activities according to the current needs of the foster family.
- Support for the family: The worker, in meetings with the whole family, supports its functioning and facilitates contact with the biological parents of the child. He or she does not, however, work with the biological family.

Exercising control

As part of his or her work, the key worker monitors the fulfilment of substitute family care with regard to the individual child protection plan. In particular, the worker checks:

- The implementation of goals set during case conferences;
- The development of the educational plan by fosterers or guardians and its adjustment according to the current needs of the family and the child.

Under Criminal Code No. 40/2009 Coll., he or she is also obliged to report suspected child abuse or neglect to the police or the competent municipal social department.

Education
The third task of accompanying organisations is education, i.e. strengthening and increasing the competencies of foster parents for the performance of substitute family care. The aim is to take a proactive approach to the changing needs of the child but also the changing demands on the knowledge and skills of foster parents in the field of upbringing and ensuring the child's healthy development in all aspects. It builds on the basic training of fosterers that they received while preparing for the performance of foster care.

Implementing substitute family care under the new regulations

Amendments to the law still distinguish between active (abuse) and passive (neglect) forms of the CAN syndrome, but the approach to assistance is changing radically. Social workers are thus placed in a new and unusual role. They are required by law to:

- Protect children's right to favourable development and proper upbringing;
- Take steps to restore the impaired functions of the family;
- Provide an alternative family environment for children who cannot be permanently or temporarily raised by their biological family.

Working with vulnerable children

The transition from the child protection model to a paradigm extended to include family support was based on the provisions of Act No. 359/1999 Coll.: "The key aspect of social and legal protection shall be the interests and wellbeing of the child, the protection of parenthood …," and Article 971(3) of the new Civil Code No. 89/2012 Coll.:

> Inadequate housing or property situation of the child's parents or persons entrusted with the care for the child cannot in themselves constitute grounds for a court decision ordering institutional care if the parents are otherwise capable of ensuring the proper upbringing of the child and performing other duties arising from their parental responsibility.

As we have mentioned previously, children enter the SLPC system around the age when they start school, sometimes on the basis of a report from a health facility. In the case of a suspicion that a child is being affected by the CAN syndrome, it must be considered what is the cause of the parent's inadequacy in the performance of their parental duties, within the framework of Act No. 89/2012 Coll. The initial analysis, therefore, addresses whether the cause of the parental dysfunction is a dire financial situation of the family or something else.

If a social worker concludes that poverty is the cause of parental dysfunction, the solution is to provide the family with social benefits and all possible social assistance. This form of assistance usually takes place in cooperation with non-profit organisations that have a registered social activation service for families under Act No. 108/2006 Coll. This initial assistance may be provided as a result of a case conference or earlier and then be evaluated during a case conference in which the accompanying organisation participates.

Taking children away from their biological family is only possible in limited circumstances. For the immediate placement of a child outside his or her biological family, a notification from a medical facility is required in cases of physical or sexual abuse. All the other options are difficult to verify and time-consuming.

Assistance to children placed outside their family

When placing a child outside their biological family, family forms of assistance are usually used. In accordance with Article 5 of Act No. 359/1999 Coll., the assistance is primarily sought within the extended family. This approach has both admirers and opponents. The problem in the Czech Republic is that 75% of fosterers are relatives, in most cases grandparents (Lipová, Krbcová, Tomanová, 2019).

With grandparents, a conflict of roles may occur as the relationships with parents and grandparents are different. Hana Kubíčková (2020) points out in her research that grandparents in the role of primary educators (family foster care) very often complain about the complexity of the situation and personal exhaustion. At the same time, they treat their new role as an "atonement for parental failure."

Impact on the substitute family

Foster families often function similarly to post-divorce marriages. They take in children who have already been deprived to a certain degree. By doing so, fosterers take on several tasks.

One of the main responsibilities of fosterers is to participate in continuing education. At the same time, they should allow contact between the children and their biological parents – who, however, are not obliged to work on changing their educational patterns – at least once a month. They should represent the children entrusted to their care in ordinary matters, but two social workers (from the accompanying organisation and the municipality) should visit them every month. During these visits, social workers should interview all members of the household and once every six months, they should submit a report to the court on whether or not it is appropriate to return the children to their biological family.

The situation is similar to post-divorce marriage in that children live in two different family systems without being psychologically or legally "at home" in either of them. In cases where foster parents have children from more than one family, the numbers of family systems multiply rather than add up, as it often happens that grandparents also enter this system with their views. More precisely, it is a situation where children are placed in foster families that have their own models of functioning, rituals and are used to helping each other. Foster children come into these families with different experiences, sometimes of an opposite nature, especially if they have witnessed or been victims of domestic violence. Even though they are older (e.g. 7 years old), they are "newborns" in the emotional and psychological sense. Moreover, they are still in regular contact with their biological family, which does not change its behaviour in any way. Thus, the children are in two family systems, where different and sometimes contradictory internal rules apply. This life can be psychologically challenging for everyone involved.

Impact on the child

Unwanted children suddenly become an object of interest. Their lives take place in two different family environments, as described above, and they are also put in a position of both power and helplessness. They

have power because they can make life and educational situation difficult for the fosterers with just a single statement (Škoviera, 2007). The fosterers may thus find themselves subject to the child. On the other hand, the children's developmental needs are not fully satisfied in either family. This sense of helplessness may be exacerbated if biological parents do not cooperate in the development of their parental skills.

Non-family assistance – institutional care

This form of assistance is internally predictable, stable and offers the possibility of establishing relationships, although of a more limited nature than in other forms of assistance. These relationships are inherently uncertain, as it is impossible to predict when the biological parents will take an interest in the child again or when a specific social worker will resign or be fired. In the long run, there is room for a future before adulthood as children or young adults have the opportunity to graduate school. Life is a life without the model of partnership.

Another disadvantage of this environment lies in the narrow selection of clients. These are children in whose cases foster care has failed (they have been seriously disappointed) or the situation in their family started to be resolved so late that due to age or deprivation factors, it was not possible to place them in another form of substitute family care.

Facilities for children requiring immediate assistance

Facilities for children requiring immediate assistance have been established by Act No. 359/1999 Coll. and should provide children with crisis assistance in cases where it is not possible to place children into the family form of assistance.

These facilities have strict rules regarding their operation, in terms of both equipment and staffing. Childcare must be provided in small housing units with a maximum of four children. This number may be increased for sibling groups.

Upon arrival, every child is assigned a key worker who monitors the fulfilment of the individual child protection plan. The length of stay is limited to 6 months but may be extended by court order. These centres

allow for a safe start to the therapeutic process with the children or even the beginning of therapeutic work with the family. This work can play a key role in returning the child to his or her family or finding other adequate care for him or her.

Child centres

Child centres were established in accordance with Act No. 372/2011 Coll. on Health Services by transforming infant care centres. Child centres formerly served an educational (preparation and education of applicants for alternative family care, education of a parent to whom a child with a disability was born) and protective purpose (care for children from birth to 3 years of age, care for children with disabilities and respite care for families with disabled children) (Schneiberg, 2011).

Children's homes

Children's homes are established by the Ministry of Education. Their role is defined in Article 1(1–3) of Act No. 109/2002 Coll. as follows:

> (1) … conditions must be created to support children's self-confidence, develop the emotional side of their personality and enable the child to actively participate in society. Children must be treated in the interest of the full and harmonious development of their personality, taking into account the needs of a person of their age.
> (2) … The facilities cooperate with the children's families to help them in matters relating to the children, including family therapy and teaching parental and other skills necessary for the upbringing and care of the children. The facilities provide support for the children's transition to their biological family environment or to substitute family care.
> (3) The purpose of the centres is to provide preventive care, in particular, to prevent the formation and development of negative manifestations of children's behaviour or the disruption of their healthy development, to mitigate or eliminate the causes or consequences of existing behavioural disorders and to contribute to the healthy personal development of children …

These institutions function on the basis of small family units consisting of six to eight children. Children and young people live an

independent life here, which is intended to resemble that of a family. Some facilities have been able to provide this care in residential units in a housing estate; some are still operating within the former large facilities after necessary remodelling has been done.

Even in these institutions, the goal is to return the child to his or her biological family. The court must review the child's need to live apart from the biological family every 6 months.

These institutions usually also run halfway houses, which are flats in regular city areas that serve as start-up flats for young adults.

Evaluation of the tools of social and legal protection

All forms of assistance to vulnerable children described above are intended only to mitigate the effects of deprivation caused by institutions or the biological family. Each of them has its limitations, social weight, status, etc.

Ideally, the SLPC should create conditions that prevent deprivation in biological families (Fallesen, Emanuel, Wildeman, 2014). It is not a question of whether social workers should place children in an institution or foster care. The main point is that social workers only "put out fires" – they choose a lesser evil and not the best solution. The essence of the problem is, therefore, something completely different from what the Ministry of Labour and Social Affairs, the mass media and some NGOs are trying to tell us. It is rather the fact that the biological family is becoming the most risky environment for children in the SLPC system, and social workers are sometimes left alone with the difficult task of helping children with their development.

This puts the SLPC workers in a difficult situation. They have to look for ways to help the child become a person. Essentially, their job function has changed from repressive to supportive in one day, but no one has provided them with appropriate tools (e.g. therapeutic skills) and, above all, they have to cope with limited time and the lack of parents' motivation to change (Fabián, 2018). So they face the following dilemmas:

– Trying to rehabilitate families and leave children in their depriving biological environment, thus getting credit for following the letter

of the law, and manage their stress by telling themselves that they do not have the time to do it and that they cannot change the parents' internal motivation.
– Placing children outside of their biological family, often in a less depriving environment, thus preserving the spirit of the law but getting reprimanded for not following the letter of the law.
– Dealing with the political mandate to replace institutional care with temporary foster care and fill foster families.

It is a paradox that even the best SLPC system will not solve the root of the problem – lack of a loving and creative family environment – without a functioning overall family policy system that focuses on teaching responsible parenting. However, simple solutions to this issue do not exist, despite what lobby groups and the media might say.

In this chapter, we have tried to emphasise the complexity of the whole issue. When dealing with the immediate crisis of a particular child, it is important for the social worker to perceive all the SLPC system's tools as equal and to know that the burden of choosing the most suitable option for the child at a given moment lies with him. There is no definitive answer to the question of which form of assistance is best for vulnerable children because a different option is suitable for each child.

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Context of Changes in the Slovak System of Substitute Educational Care in the Years 1989–2019

The Slovak Republic, like other former socialist states, has undergone many radical changes since 1989 that affect all aspects of life. A multidimensional approach is necessary to name, identify, evaluate and objectively interpret the positive and negative aspects of these changes in both basic types of substitute educational care,[1] educational care in substitute families and educational care in institutions. Even this approach is, however, influenced by the author's perspective, professional experience, values and preferences.[2] The advantages and drawbacks are perceived somewhat differently by different groups, such as the creators of system changes (who rarely self-reflect and admit their own mistakes) or some non-profit lobbying organisations, which have a great influence on the creators (because they "work in the field and know the problems and needs of the system better than academics at universities and are an important part of participatory democracy"). Non-profit organisations that fulfil the real "part of the state order" in the system (e.g. engage in the processes of selection, basic training and subsequent education of foster parents or in assisting them) and substitute parents also have significantly different perspectives than teachers and other professionals in specific facilities.

[1] One of the reasons why we have chosen the term **educational care** is that until 1977, children's homes were institutions for substitute care, and only after having been transferred to the Ministry of Labour and Social Affairs did they become institutions for social assistance or social welfare.

[2] The author was a teacher and therapist in residential facilities for children with emotional and behavioural disorders (EBD) for 30 years and was the director of such a facility from 1990 to 2002 until he left to work at the university.

Milan Fico (2017) states that in Slovakia, there are three main approaches to the care for children whose family environment is unsuitable and threatening. These approaches focus on:

- Working with the family and preventing problems in the family;
- Providing substitute family care;
- Transforming and deinstitutionalising children's homes.

Each of these approaches has its benefits but also risks. Although they should and could ideally complement each other, it can be said that today, "there is no professional consensus between the three approaches on the benefits that children should enjoy in the social protection system" (Fico, 2017, p. 7).

The wider context of changes

Nowadays, there is a tendency to simplify and narrow down the range of circumstances that have led to numerous changes, including in the field of substitute educational care. Emphasis is put on political and economic changes that took place in Czechoslovakia after 1989, but we believe that they were only one of the consequences of broader philosophical and social movements.

Postmodernity as a negation of modernity

The times we live in have changed radically (from the ideological, social, technological, economic, etc., point of view). The basic framework of this change was created by the transition from modernity to postmodernity and the fulfilment of its ideas.

> The features of postmodernity include the fragmentation of human existence, pluralism, and the rejection of universal principles. Opponents of postmodern existence would use the analogy to chaos, the loss of traditional values, and the disappearance of certainties. Its proponents would emphasise tolerance, freedom, respect for differences, and multiculturalism (Janebová, 2005, p. 70).

Fragmentation is, to a large extent, the opposite of contextuality in our perception of reality. It is mainly about atomisation, decomposition, subdivision, or even taking out of context and logical system.

In postmodernity, there is a clear preference for a social constructivist view of the world, in which the anthropological-psychological understanding of people and social reality remains in the background. Michel Foucault (2016) talks about contextuality, Zygmunt Bauman (2019) about a fluid world, a fluid age and fluid relations, Pierre Bourdieu (1998) and others about media power, and Jan Fook (2002), through the approach of critical discourse analysis, about power struggles and a new redistribution of power (Vašát, 2008). All of these concepts reflect the need for social change, but they say very little about the quality that this change will bring about.

Part of postmodernity is the critical growth of bureaucracy and administration (Blaho, 2013; Hampl, 2018). For children's homes, which de jure do not exist in Slovakia today (as of January 1, 2019, they are only one of the facilities of the Centre for Children and Families), this means that each child has a binding individual plan for the development of his or her personality. This plan consists of the following parts:

- Plan of educational work with the children;
- Plan of social work with the children and their families;
- Plan of the preparation for independence.

However, this is only part of the "administration." Our repeated research (Škoviera, 2007; Škoviera, Bohunická, 2013) has shown that the service (cooking, shopping, etc.) and administrative work take up so much of the educators' time that there is not enough of it left for development activities. It seems that it is more important to report on the work than to actually do it. This often leads the educators to only formally fulfil the plans (Fico, 2017).

Political, economic and social changes after 1989

In Western European culture, cultural-philosophical and intellectual encounters occurred, and a societal "immunity system" to one-sidedness was built. Whereas the post-socialist states, having rejected the ideology of Marxism-Leninism, almost completely emptied their ideological space, which was then easily filled by postmodernity.

A society that was not used to and ready for pluralism of opinion and power was affected by it, which made many people uneasy. Therefore, those who had information, contacts and courage to take risks managed to "pick up power from the ground." They acted pragmatically, cynically and quickly (often with adequate support from foreign partners) to gain an advantageous starting position for the next period.

In the area we have studied, pluralism manifested itself in new legislative measures that:

- Established non-governmental and religious children's homes, re-education and other facilities;
- Established civic associations, non-profit organisations and foundations, several of which focused on family (especially the civic association Návrat) as well as institutional forms of substitute educational care (e.g. the Society of Friends of Children from Children's Homes Úsmev ako dar). Their ambition was not only to implement specific projects and support work with the target group but also to educate people and influence further changes in legislation;
- Amended Act No. 94/1963 Coll. on the Family to allow not only spouses but also individuals to apply for adoption and foster care.

In the first half of the 1990s, there occurred significant personal changes at social welfare offices, which weakened the functionality of the system. The past fifteen years were associated with Slovakia's accession to the European Union (EU) and the "harmonisation" of the latter's legislation with the Slovak one. In promoting the interests of lobby groups, claims such as "it is a requirement of the EU" or "this is how it works in the EU" were often used as manipulative and incorrect arguments with regard to substitute educational care.

Critical reflection on the past

Revolutionary euphoria, political naivety and an uncritical desire for change have led laymen and experts alike to a one-sided admiration of all that was new (i.e. Western). On the other hand, everything that had been built in the period for which the generalizing term "totalitarian"[3]

[3] The author does not deny that it was, in many ways, a non-free society, but in his opinion, the totalitarianism of the 1980s was already very sophisticated.

or "communist" was used became the object of criticism. This approach, however, was not based on a real analysis of what came in as new from the outside and what had worked quite well before the end of the communist period.[4] The negative examples from developed countries (e.g. the United Kingdom or the Nordic states; see Fabián, 2015; Hampejs, 2017) were and still are hardly mentioned as if they did not exist.

This approach has led in some areas to the destruction – in our opinion – of a logically built and functional system that also had the potential to be innovative. An example are the changes concerning diagnostic institutes and centres (introduced in Slovakia in 2005 and in the Czech Republic in 2012). These facilities were much more competent to assess the degree of emotional and social disruption of the children and to decide on their optimal placement in a substitute care facility than the courts and social curators are in today's system. We perceive this change as primarily intended to weaken the power of the education department and strengthen the power of the social and judicial sectors. Another example was the model of the Children's Town in Trenčín-Zlatovce,[5] which was based on married couples. Together with the children, they lived in a "family house" and created an environment that was much closer to a family for the children than the current reality of the "transformation into a family type of children's home" does, with six workers (usually women) taking turns to care for independent groups and commuting to work from outside.

Convention on the Rights of a Child – Communication No. 104/1991 Coll.

More than 190 United Nations states were able to agree on this international document, primarily because it was drafted and formulated in the era and spirit of modernity. However, the problems that have long been

[4] Western European and American experts who visited substitute care facilities in Czechoslovakia in the 1980s praised the system of work and the high number of university-educated teachers. In their systems, university-educated teachers were "too expensive."

[5] Of course, the Children's Town had to adapt as well. One solution could have been, for example, to create the position of a "domestic help" coming from outside. These were perceived as "bourgeois" under the previous regime, and such job positions did not exist.

apparent in the field of substitute educational care are completely unrelated to the basic text of the Convention. They are linked to activist postmodernist-liberalist interpretations that are associated with a hyper-protective approach to child protection and social pedocentrism. This is manifested in the significant imbalance between the rights of children, the degree of their responsibility and their obligations, on the one hand, and the rights and responsibilities of their parents, teachers or other adults responsible for children in a given situation and the possibilities of "enforcing" the children's obligations, on the other. One such example in the Slovak system of substitute institutional educational care is the payment of the allowance. The allowance cannot be used as an educational measure because the children are entitled to it; therefore, it can only be reduced in one month, but the difference must be paid in the following month. An even more significant educational problem is the fact that there are virtually no consequences for children who escape from children's homes (they simply do not receive the allowance for the days spent on the run). In essence, this is an obstruction of a court decision. These children learn that a court decision is unimportant and does not have to be taken seriously, which can have a negative impact on their legal awareness. The same can be said of the educators' powerlessness when it comes to underage smoking.

The aftermath of the division of Czechoslovakia

The splitting of Czechoslovakia in 1993 also meant a gradual transition from Czechoslovak legislation to Slovak legislation. As part of creating a statehood (and perhaps also state identity), there was a gradual differentiation from the Czech Republic. The first different law in the field of substitute educational care was Act No. 279/1993 Coll. on School Facilities, which, in addition to special educational facilities, also dealt with substitute care facilities. Article 18 mentioned for the first time a previously non-existent form of educational care in the family – professional substitute family care. Its purpose was to enable, in particular, children who had difficulties working in a group to grow up in a substitute family environment. The professional substitute family was created as an organisational and personnel part of a substitute care facility, although the court did not have to decide independently on the placement of a particular child in it. This was the responsibility of the directors of the facilities.

Inter-ministerial tensions

Since 1992, there has been considerable political pressure from the social sector to take over the whole area of institutional substitute educational care under its responsibility. Until then, for more than 40 years, it had been divided between the Ministry of Education (children's homes for children aged 3 and over, diagnostic institutes/centres and re-education facilities), the Ministry of Health (nursing homes and children's homes for children under 3 years of age), and the social sector (social services homes for children). It has been argued that the system is "fragmented" and that the consolidation will improve the quality of the whole system, similarly as in other countries (although there are countries in the European Union where this is not the case). We are convinced, however, that a clear definition of the ministries' competencies and their compatibility (and, in a particular situation, reaching an acceptable consensus[6]) is a much more workable solution than the monopolisation of the system, which we consider even more risky. Among other things, such a model allows for cross-checking and thus prevents the abuse of "monopoly."

The transfer of children's homes from under the jurisdiction of the departments of healthcare and education to the social sector took place on January 1, 1997, in accordance with Act No. 222/1996 Coll. on the Organisation of Local State Administration. This was followed by a concept of transferring other facilities (diagnostic, re-education) to the social sectors in 2008 (Act No. 305/2005 Coll. on Social and Legal Protection and Social Guardianship). This step has not yet been implemented due to a "lack of political will."[7] We perceive several problems regarding this issue:

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[6] This occurs, e.g., in the execution of punishment, where the Ministries of the Interior and Justice play a major role, or in the maintenance of "fields, forest and meadows," where the Ministry of Agriculture and Rural Development cooperates with the Ministry of Environment.

[7] One of the arguments against the transfer of these facilities to the social sector was that the dual management model does not work in practice, with schools, including vocational training, falling under the Ministry of Education and resocialisation education under the Ministry of Labour, Social Affairs and Family. Although this model works in schools for children with physical disabilities, the problems include inter-ministerial rivalry, the struggle for competencies, the speed of competent decision-making and the different philosophy of working with the child.

– **Different paradigms of the scope of work.** The education department considered children in a children's home as having emotional and social disabilities (Komárik, 1999), therefore, their upbringing (especially emotional, moral and social, as well as cognitive and physical development) dominated their work. The social sector, in turn, perceive these children primarily as individuals from socially disadvantaged backgrounds associated with material deprivation (poverty), so their staff focus on assistance linked to the fulfilment of basic needs and the "protection" of children's rights. They strive to provide material assistance to children that is comparable to or even higher than in well-functioning families.
  Articles 12–15 of Act No. 305/2005 Coll. refer to educational measures and, in several places, also to educational programmes. The role of a social worker or social curator is limited to making a formal decision – imposing an educational measure or checking the adequacy of educational approaches. Even though educators very often have a university degree, education in children's homes is not bound by law to any particular pedagogical professional activity. The attitude towards the professional work of educators is also illustrated by some of the first steps taken by the social department after taking over children's homes, namely the change of **educational** groups into independent groups, professional substitute upbringing in the family to a professional family, the abolition of the methodological association of **educators**, and the change in the scope of work of educators so that today, they act more as caregivers than educators. The name of the court decision on the basis of which children are placed in children's homes has also changed – since 2005, institutional upbringing has been referred to as institutional care.
– **The paradox of decentralisation.** One of the ideas of the social sector was the decentralisation of "group activities" in the children's home. It is thus a paradox that the department itself reinforced the centralisation. While under the jurisdiction of the education department, the board of the Institute of Substitute Upbringing (a self-governing body) was part of the establishment. It announced the selection procedure for the position of director and without its opinion, the founder could not appoint a director. In the social sector, this concept was completely "usurped" by the founder – the

Regional Office of Labour and Social Affairs. On August 1, 2011, a further centralisation step was taken, in the form of the transfer of the entire founding competence to the Central Office of Labour and Social Affairs. This resulted in several personnel changes. The much higher frequency of directors' meetings in the social sector than in the education department can also be regarded as a centralisation effort. Another example was the purposeful merging of several (even distant) children's homes into larger units (e.g. Horný Kelčov – Semeteš – Bytča) or changing (in 2005) the professionally respected Centres of Counselling and Psychological Services into Departments of Counselling and Psychological Services, which became part of the Offices of Labour and Social Affairs.[8]

– **The ethics of the transfer.** Despite the fact that neither the directors nor the staff of the "school" children's homes agreed with the transfer at a national assembly the Ministry of Education organised in 1996 (attended by the present author), it was implemented virtually without discussion, by way of a political decision. From the point of view of ethical conduct, it is also interesting to note that although the social sector initially rejected the decree drafted by the Ministry of Education concerning amendments to Act No. 279/1993 Coll. in the interdepartmental comment procedure, a substantial part of it was subsequently included in Act No. 195/1998 Coll. on Social Assistance.[9]

An example of "political ethics" is the fact that only after the transfer of children's homes to the social sector funds for a significant reconstruction of many of them were "found" in the state budget, even though they had "not been available" before.

[8] It is probably no coincidence that, from 2005 to 2014, the number of psychologists and professional counsellors decreased from 184 to 81, according to the Minister of Labour, Social Affairs and Family (TASR, 2015).

[9] The claim, which can also be found in the professional literature, that the entire transformation of children's homes in Slovakia was initiated by the social sector in cooperation with the Úsmev ako dar society in 2000, is not entirely true, either. The children's homes in Tornali and Bratislava introduced the new system of work organisation (i.e. what was later called "transformation") already in 1995 and 1996 when they were still under the education sector. Basically, the social sector just took over the entire "know-how" and secured the financial resources.

Professional (un)preparedness of the sector

At the bureaucratic level, the transition took place without major difficulties, but the significant professional unpreparedness of the sector was evident at the level of the concept of work, the methodology of "upbringing" and the management of children's homes. The "universal" model of the children's home, which had the ambition to care for all children, both healthy and with a wide range of disabilities, from birth to independence (up to 25 years of age), proved to be problematic. This was mainly because it did not take into account specific groups of children (newborns and infants, children with severe mental disabilities, severe psychiatric diagnoses, etc.), other ways of meeting the children's needs and working with them, as well as issues of staffing. The social sector reassessed the situation, and as a result, several facilities partly returned to their previous focus and performed specific tasks. Conceptual problems also arose with the implementation of Act No. 305/2005 Coll. on Social and Legal Protection and Social Guardianship, which created a framework for children's homes to set up specialised groups as part of internal differentiation. From the beginning, it was clear to experts that an independent group for children with behavioural disorders could not be composed of children of widely varying ages, nor could it replicate the "standard" independent groups' organisation and scope of work. Even the current amendment to Act No. 305/2005 Coll. does not create suitable conditions for working with children with behavioural disorders. The belief that all this will be "saved" by professional teams and workers (psychologists, special educators, social workers) in children's homes was and is mistaken. Firstly, because the experts on the front line must always be educators first and foremost, and secondly, because even experts will not "save" a system that has been set up incorrectly. That is why independent specialised groups have gradually disappeared from children's homes.

Stages of the transformation process

The transformation that took place in the past 30 years can be divided into several stages, which differed from each other in terms of what was considered the primary issues to be addressed in the area of theoretical

concepts but especially in terms of policy decisions in both institutional and family substitute educational care.

The 1990–1996 period

The new political situation enabled a radical increase in the frequency and intensity of contacts with the countries of the "Western bloc," including in the field of institutional and family substitute care. While the public sector used this, sometimes too cautiously, as an inspiration, the newly-formed, "revolutionary" third sector often embraced it with uncritical enthusiasm, e.g. proposing the not quite realistic idea of the complete abolition of children's homes, backed up by demagogic claims that any family is always better than a children's home.[10]

Changes in substitute educational care in families during this period included the following:

- Relaxing the standards for applicants for adoption or foster care, in particular regarding the completeness of the applicant's family.
- Introducing the possibility of adopting children with disabilities who were previously considered unfit for adoption.
- Allowing those who were previously discriminated against on ideological grounds (e.g. practising Christians) to apply to become foster parents.
- The significant involvement of the civic association Návrat in the processes of finding, training and supporting foster parents, finding "suitable" children for them in children's homes and educating the society.
- Creating a new specific form of substitute family educational care called professional substitute family care, in which 13 children were placed at this stage – in 1995–1996, the Istebné Children's Home began to orient itself more strongly in this direction (Marošiová, 2012).

[10] Nowadays, even in Great Britain and the USA, which we sometimes consider to be "exemplary," some experts (e.g. Connelly, Milligan, 2012; Lieberman, 2009) are convinced of the need to redefine substitute institutional care and to see it as the optimal and most appropriate solution in specific situations. These include, as Zdeněk Matějček (1992) has pointed out, situations when being taken in by a foster family is a risk to the child.

– The first attempts to implement intercountry adoptions, with the Mlynky – Biele Vody Children's Home participating in the intercountry adoption of about 10 children by Swedes (Škoviera, 2005).
– The gradual increase in the number of children in family forms of educational care.

Changes in substitute institutional educational care during this period included the following:
– Reducing the number of children in educational groups and reducing the overall capacity of children's homes.
– Introducing the possibility to create independent (allocated) educational groups as an organisational unit of an institution.
– Partly modifying the definition of the tasks and functions of the institutions (they already included medical and pedagogical care, psychotherapeutic activities, etc.).
– The creation of legislative conditions for internal and external differentiation of institutions, including children's homes, e.g. the new Children's Home in Liptovský Hrádek was designed for secondary school children and high school students with behavioural problems, while the Children's Town in Trenčín-Zlatovce accepted children for long-term stays in a family environment (Škoviera, 2005).
– The establishment of two institutions for minor mothers with children in Zlaté Moravce (state) and Medzilaborce (church).
– Conducting systematic work with the families of children with behavioural disorders and problem behaviour (parental therapeutic groups and weekend stays for children and their parents).[11]
– The overall increase in the number of children's homes – ten non-governmental and church children's homes were established during this period.
– A strong involvement of the third sector, the Úsmev ako dar society, which at that time was mainly trying to improve the material conditions of children in children's homes.
– The creation of an increasingly negative image of institutional substitute care in the media, usually without distinguishing the age of the children.

[11] Parental therapeutic groups began operating at the Children's Diagnostic Institute in Bratislava in 1990.

There were also anomalies related to the division of Czechoslovakia, albeit on a small scale.

A remarkable model of an intergovernmental political agreement was the agreement on the "repatriation" of Slovak and Czech children from their country of residence to their parent's country of origin. These were usually Slovak Roma children living in the Czech Republic whose parents were no longer interested in them (Škoviera, 2015, p. 67).

Was this really done in the best interest of the children?

The 1997–2005 period

In accordance with Act No. 222/1996 Coll., children's homes were transferred to the social sector on January 1, 1997. Although we are critical of this move, we acknowledge that it had several positive effects:

- Children's homes were relieved of debt, and their funding was significantly increased.
- In contrast to the education and healthcare sectors, the social sector made children's homes one of its priorities.
- Legislation drafted by the social sector was much more flexible, and legal norms were adopted much more quickly (but also amended more frequently).
- Institutional care was no longer provided in special boarding schools for children with mental disabilities (Act No. 305/2005 Coll.).
- Part of the Necpaly Children's Home was transformed into professional foster families.
- Directors of children's homes, under "pressure" from the sector, were more accepting of substitute family care than in the previous period.
- The number of psychologists, special and health educators and social workers in children's homes increased.
- As part of crisis intervention, crisis centres were set up for the short-term stay of children (both in facilities and with their parents).
- Resocialisation centres were set up to provide services to drug addicts who had dropped out of school and to adults (after their professional treatment).
- The Úsmev ako dar society began to implement the American educational programme PRIDE both for those working in substitute family care and for potential applicants for foster care and

professional parenting. In the first stage, the training of 28 selected coaches took place. In the second stage, PRIDE began to be extensively implemented in children's homes,[12] and even several employees of the Offices of Labour and Social Affairs participated in it.
- The number of professional (foster) families increased significantly, from 13 in 1996 (Matej, 2000) to 116 in 2005.
- Individual re-education programmes started to be implemented in re-education facilities.
- The Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption was ratified (Notification No. 380/2001 Coll.), which, on the one hand, clarified the framework for adoption but, on the other, showed that there was a certain group of children who were "not welcome" in our state.

Some of the negative aspects included:
- Children's homes were transformed from substitute care institutions to social assistance institutions, which was reflected in their gradual "de-pedagogisation"; the scope of the educators' work was, on the one hand, based on the "imitation of family roles" and focused on service activities and, on the other, paradoxically, focused on the ever-increasing administration.
- There was a lack of any comprehensive concept for the training of educators in children's homes that would be based on an inter-ministerial agreement between the social and education sectors.
- The functional "informal" external differentiation of children's homes completely disappeared.
- The staff turnover of educators and assisting educators increased significantly (especially in areas with low unemployment rates).

A specific problem was the transformation of children's homes, the extent of which was significantly influenced by the Úsmev ako dar society. According to several critics (Fico, 2007), at the time, it focused on "preserving institutionalism," in contrast to the civic association Návrat, which had tried to expand family forms of educational care as much as possible (although less successfully in this period). The partial goals of the transformation (Mikloško, 2011) were:

[12] The present author is a graduate of the first group of coaches and has led the PRIDE programme in six children's homes.

– the change in educational conditions
– the change in staff structure
– the creation of suitable spatial conditions
– the change in economic conditions.

Not all the goals were fulfilled; for example, the system of the State Treasury significantly cut back on the running of independent groups (the original concept included four educators and a housewife, but one to three educators were replaced by assisting educators).

The 2006–2018 period

The changes introduced in this period date back to 2005, when two fundamental laws were adopted concerning the areas of substitute educational care. These were Act No. 36/2005 Coll. on the Family and Act No. 305/2005 Coll. on Social and Legal Protection and Social Guardianship. It came as something of a surprise that after a period of strong support for the reconstruction of children's homes, a significant change in philosophy occurred. Article 58(2) of Act No. 305/2005 Coll. states that priority shall be given to the implementation of institutional care in a professional family.

There were several changes in the area of substitute family educational care:

– The number of professional families and the number of children in them increased significantly – in 2015, there were 1503 children in 669 professional families, while in 2018, there were 1395 children in 602 professional families (Ústredie práce, sociálnych vecí a rodiny, n.d.).
– The assistance and support of families by children's homes as well as non-profit organisations intensified (support centres for professional parents were set up, and family conferences started to be implemented).
– Children with disabilities were more frequently placed in professional families, and "emergency" professional families also began to appear.
– Professional parents were legally entitled to group and individual supervision and further education.
– The Act abolished foster care facilities.

However, several problems also arose:

- Especially in the first half of this period, instead of being selected, the parents were recruited (the number of professional parents was an important criterion for the assessment of a children's home). This led to a lowering of the requirements for them, which resulted in several serious failures of professional parents and their criminal prosecution.
- Several professional parents who did not realise they had a burn-out syndrome were allowed to continue offering substitute care.[13]
- Lack of sufficient attention paid to the "bonding" of children and parents led to the failure of some professional families, which meant that the children had to be transferred to another professional family or a children's home.
- Social offices had inaccurate or incomplete information about the children, in particular regarding the drug addictions of their mothers.
- There was the issue of granting professional parents leave to take a vacation while caring for the children and of allowing them reasonable "mourning" time between the departure of one child and the arrival of another.
- The idea of a "short-term" stay in these families was not implemented as in 32% of cases, the children stayed for 4 to 6 years. This meant that a basic psychological attachment was formed, followed by secondary trauma caused by the children's departure.
- Social offices (and some directors) had a very critical attitude towards those professional parents who wanted to become long-term fosterers for the children in their care ("they failed," "they want to circumvent the law," etc.).

Two further issues that we had encountered during our work have been little researched: the earlier departure of biological children from the home and the increasing divorce rate in professional families.

In the area of institutional substitute educational care, after a period of enthusiasm for its transformation, advocacy for deinstitutionalisation began. A declarative move, which had no practical impact on the scope and quality of work in children's homes, was their division

[13] This was also related to the already-mentioned "recruitment" of professional parents.

into children's centres (intended for several independent groups in one facility) and children's homes (where only one group lived). Furthermore, Act No. 305/2005 Coll. introduced the following additional changes:

- In addition to the already existing independent groups, it enabled the creation of specialised independent groups (Article 53(2)) – independent diagnostic groups, which are specialised groups for children under 3 years of age with special care needs, for children with behavioural disorders, for children addicted to drugs and other substances, for children with CAN syndrome, for unaccompanied minors, for children with mental, physical, sensory and combined disabilities, for children with severe disabilities and young adults.
- Supervision in children's homes began.
- After the social sector took over the implementation of institutional care, specialised independent groups were organised for children with mental and severe physical disabilities.
- The model of educational care based on a married couple, implemented in the Children's Town Trenčín-Zlatovce, was abolished.
- Article 12 of Act No. 305/2005 Coll. redefined the educational measures that can be imposed by the social curator, which had been previously included in Acts No. 94/1963 Coll. and No. 36/2005 Coll.[14]
- The independent Centres of Counselling and Psychological Services became Departments of Counselling and Psychological Services in the Department of Social and Legal Protection of Children and Social Guardianship.
- Diagnostic institutes/centres that are part of the education sector ceased to perform their tasks of diagnosing and placing children in re-education facilities and children's homes,[15] while in children's homes, this role was to be performed by independent diagnostic

[14] A child can be taken away from his or her family and placed in an institution only based on a court's decision; a social guardian can impose less severe educational measures.

[15] This shows the power ambitions of the social sector. The institutions – diagnostic institutes/centres and Centres of Counselling and Psychological Services – were too "professional and independent." A married couple living in an environment with children became an outdated model. Educational measures were taken over by a sector that was not competent to deal realistically with the issues of upbringing.

groups; specialised groups for children with behavioural disorders were to replace re-education homes/centres.
– The School Act No. 248/2008 Coll. redefined re-education facilities but also strengthened educational and "upbringing" integration or inclusion in schools and school facilities.
– Standards of educational work were introduced in re-education facilities.
– Article 37 of Act No. 36/2005 Coll. enabled the courts to temporarily place children in institutional educational care based on an educational measure.

We have already indicated that some of these changes had a negative rather than a positive impact. In terms of conceptual ambiguity and quality of work, we consider it necessary to point out that:
– the differential diagnosis serving to determine the appropriate type of facility or group for children with imposed educational measures is still not clear to the courts and social offices (there are about six different options with various philosophies of work and priorities);
– while in re-education facilities, joint educational activities for both intellectually able children and children with mental disabilities are organised, in children's homes, school-age children who have even mild mental disabilities usually learn in separate groups;
– the system of institutional educational care, which is strongly tied to court decisions,[16] is not flexible, and due to the monopoly and unwillingness of the social sector to cooperate with the education sector, it is not possible to solve even those problems that could be solved within this system (e.g. inappropriate and vulgar behaviour towards educators, escapes of children from children's homes);
– evaluating the quality of work of children's homes based on how many professional families they have or how many children they have "successfully" managed to return to their biological families leads to the lowering of requirements for professional parents and sometimes results in children being returned to the biological

[16] In Slovenia, for example, the placement of a child in a children's home/re-education facility is much more often the result of an agreement between the social office, the legal representative and the child. Court decisions in this matter are rare.

families before the latter are fully prepared. In these cases, the children soon are "back" in the system.

The period after 2019

This is a period of further change. Children's homes as independent institutions have ceased to exist; now, they are only one of the facilities of the Centre for Children and Families.[17] Although it is presented as a progressive solution, we consider it unfortunate to mix a clientele as diverse as that found in resocialisation centres, crisis centres and children's homes "under one roof," even if only formally. It is, in a sense, a disadvantage for children's homes, which have established their position in most municipalities and gained their support. Moreover, children need to build their identity and know where they belong. They often proudly claim to be from a particular children's home, while the centre is something anonymous. And lastly, from the point of view of support services, it is very difficult (almost impossible) to professionally focus on a wide range of clients.

Conclusion

Substitute educational care has gone through a complicated journey in Slovakia in the last thirty years. The search for optimal solutions has been simplified, both by rejecting what was relatively well built and could be innovated and by not wanting to "linger" by listening to opponents. This was perhaps due to the authorities' belief in their competence, perhaps because they had a short-term rather than long-term vision. Thus, depending on the degree of staff's influence on decision-making processes, different concepts were at the forefront at a given time: first, the reconstruction of facilities, then their transformation into "family types," and finally, deinstitutionalisation. Professional families were once "in disgrace," but later they became the preferred way of providing institutional care. The biggest shift, however, has occurred in the perception of

[17] The Centre for Children and Families was established on January 1, 2019, as an umbrella facility, which includes pre-existing children's homes and rehabilitation centres for people with a history of drug use.

children's needs, as priority was moved from upbringing and education to care and welfare. Paraphrasing Erich Fromm, we can say that we have moved from "Who am I" to "What I have."

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The Child Protection System in England and Wales

The origins of the current child protection system and public law in England and Wales date back to two acts: the Poor Law of 1601 and the Poor Law of 1834, both of which addressed the problem of orphaned and abandoned children and children who were experiencing poverty. Children who were not properly cared for by their parents became the responsibility of the parish, and the Poor Law of 1601 obliged the parish, or churchwardens, to send them to work or apprenticeship (Keating, 2008, p. 23). The Poor Law Amendment Act of 1834 imposed a duty of care on local authorities only for those children who asked for help themselves.

The state had a very limited right to intervene in the life of the family, but the Poor Law of 1601 allowed churchwardens to remove a child from his or her family if the family was unable to provide for the child properly, regardless of whether it received poor relief or not (1601 Elizabeth 1, c. 2 Act for the Relief of the Poor).

The Poor Law of 1601 made state intervention possible also in cases when a child was born out of wedlock. The mother could give the child to a caregiver who was paid to look after them. When the mother could no longer afford the services of a caregiver, such a child was sometimes abandoned and left to die. This practice, called "baby farming," led to the passing of the Infant Life Protection Act of 1872, which required nannies to be formally registered and the standard of childcare to be monitored.

The New Poor Law (Children) of 1889 permitted greater state intervention in the life of the family through the introduction of so-called Poor Law Guardians, who could take parental responsibility for children if the parents of those children were found to be inadequate.

A regulation strongly reinforcing the role of the state in the protection of children was the Prevention of Cruelty to, and Protection of, Children Act (also known as the Children's Charter), passed by the British Parliament in 1889, which was the first legal document to criminalise cruelty to children, which was defined as the behaviour of a guardian who "wilfully ill-treats, neglects, abandons, or exposes such a child … in a manner likely to cause such a child unnecessary suffering, or injury to its health" (Munro, 2019, p. 93).

Among other things, the resolution outlawed begging for all children under the age of 16 and set restrictions on the employment of children, boys under 14 and girls under 16, for which it enforced fines of up to £25 or, if not paid, imprisonment for up to 3 months (Children's Charter, 3. Restrictions on the employment of children). Jean S. Heywood believes that the Children's Charter "expressed the public desire to try to prevent cruelty to any child before it actually occurred, and to prevent excessive suffering and overwork, which still existed in the many kinds of employment open to children …" (Heywood, 1978, p. 102, cited after Powell, 2001).

The Children's Charter was the first piece of legislation to allow state authorities to intervene in family life and parental rights if it was suspected that a child was experiencing violence in the family. The police could enter a home when they received information about violence against a child and could arrest anyone who was committing said violence. Harry Hendrick wrote that this act created "a new interventionist relationship between parents and the state" (Hendrick, 2003, p. 28, cited after Crane, 2018).

Five years later, this regulation was extended to allow children to testify in court; moreover, "mental cruelty" was recognised as violence and refusal to treat a sick child was considered an offence. However, the Children's Charter focused mainly on punishing parents for child abuse and did not provide support solutions for families. At this time, significant organisations working in this field were established, such as the National Society for the Prevention of Cruelty to Children (NSPCC, 1884), Dr Barnardo's Homes (1866) and the Home Children (1869), which were founded on Christian values and aimed to protect homeless children from the risk of urban poverty and exploitation. It was also then that, according to Fred W. Powell (2001, p. 41), the issue of risk in the context of child welfare became a key feature of social work.

Before 1900, as Harry Ferguson notes, the concept of risk in relation to children was simply insufficient to make them predictable subjects for intervention, and child deaths were perceived in the context of a "sin, a seasonal rhythm." With time, however, these deaths became "cases," which in turn led to the adoption of the view that most of them were preventable and that "deviant parenting" could be reformed through social intervention (Ferguson, 1996, p. 208). Ferguson emphasises that the increased confidence in the effectiveness of child protection has its origins in forms of "disciplinary powers," central to the contemporary understanding of the importance of control and supervision. This view was reflected in the Children's Charter. Child protection and risk detection put social work on the path to professionalisation.

The Prevention of Cruelty to Children Act (1904) gave local authorities the right to remove children from their families, and The Children Act (1908) was essentially a compilation of existing documents and regulations meant to better govern the key areas of child protection. The act itself was designed to protect the poorest and most vulnerable children, and its main aims were to establish juvenile courts and introduce the registration of foster parents, thus regulating "baby farming" and attempting to eliminate infanticide. Local authorities were also given the power to keep poor children away from the poorhouse/workshop to protect them from exploitation (Children Act 1908, c. 67).

In 1932, the Children and Young Persons Act extended the prerogatives of juvenile courts and introduced supervision orders for children whose welfare was at risk. In 1933, the same act incorporated all regulations regarding children into a single legal document called the Children and Young Persons Act. Many of its assumptions are still relevant today, including the list of offences against children, which are called Schedule One Offences (NSPCC, 2010, p. 1).

The passing of the Children Act 1948 followed the death in 1945 of a 13-year-old boy, Dennis O'Neill, due to neglect and beatings he received from his foster father. The Act focused on children in the care of the state and living apart from their families and established a children's committee and a children's officer in every local authority to take responsibility for such children (*A Brief History…*, 2015).

The landmark event that shocked public opinion was the death in 1974 of an eight-year-old girl, Maria Colwell, who died as a result of physical abuse she suffered at the hands of her stepfather, William

Kepple. Maria was one of the five children of Raymond and Pauline Colwell. Her father died when Maria was an infant, and she was placed in the care of her aunt and uncle, Mr and Mrs Cooper, while her siblings stayed with their mother. Her mother remarried and made a successful effort to have her daughter returned to her care. Three years later, Maria died of the injuries inflicted by her stepfather. Her death was the subject of a public inquiry to find out what had gone wrong at the systemic level. Such an investigation was unprecedented in the British system, and as Jennifer Crane (2018, p. 47) put it:

> The inquiry gained widespread media coverage and public attention, and was significant in bringing awareness of child protection issues to social and political arenas. The format set by the inquiry also established a compositional pattern replicated in following inquiries over the next quarter of a century.

The inquiry revealed huge flaws in the cooperation between the various institutions responsible for children's welfare, mainly social workers, the housing department, the health service and the police and the local community. Maria Colwell's case also raised the issue of the validity of practitioners' "professional judgement" over the child's right to express his or her feelings and opinions. Crane points out that the professionals who dealt with Maria assessed her feelings and emotions based on observation of her behaviour rather than on talking to her. This was consistent with a view popular in the 1970s that observation was "a key means to access children's inner worlds" (Crane, 2018, p. 49). Consequently, Mia Kellmer Pringle, Director of the National Children's Bureau, argued that "'professional opinion' may still 'weight the scales' in favour of adults over children, and that children's voices must be heard independently of adults" (Crane, 2018, p. 50).

The inquiry into the death of Maria Colwell resulted in the creation of Area Child Protection Committees, inter-agency child protection conferences and child protection registers to identify children at risk.

In the 1980s, there were more than 30 investigations of child abuse cases involving children who had died as a result of violence perpetrated against them by their parent or guardian. Professionals, especially social workers, were seen as those who had failed to protect the children from the terrible consequences of this violence. In addition, it

was practitioners who were seen as being too credulous and sentimental toward parents and not focusing on the needs of children nor applying their "statutory powers" to properly protect them (Wilson, James, 2007, p. 15).

The main focus of these investigations was to ensure that professionals, in this case, social workers, used their mandate to intervene in families' lives to protect children; to improve the framework for interdisciplinary cooperation and to improve practitioners' knowledge of the signs and symptoms of violence against children so that they could intervene earlier.

The Cleveland inquiry

However, the events that took place in 1987 in Cleveland, UK, the investigation that followed and the subsequent report by Judge Elizabeth Butler-Sloss threw a different light on the relationship between the family and its autonomy and the state. They had a profound impact on the perception of the relationship between child protection services and the family, the quality of assessments and diagnoses by medical services and social workers serving as a basis for intervening in the life of a family, including the safeguarding of a child on the grounds of suspected abuse.

In 1987, in Cleveland, over 100 children were taken from their families into foster care and to a hospital (a place of safety) because of the "dubious" diagnosis of paediatricians Dr Higgs and Dr Wyatt, who claimed that the children had suffered sexual abuse (Wilson, James, 2007, p. 15).

Many of the assessment and diagnostic tools for identifying sexual abuse developed by paediatricians, psychiatrists and social workers came under enormous criticism in later investigations. Many of these children were returned to their families, and the subsequent inquiry led by Judge Butler-Sloss strongly criticised not only the actions of professionals and poor inter-agency communication, the lack of coordination and tensions between professionals but also the hasty and narrow diagnosis of these cases. As Jo Delahunty (2018, p. 4) notes, Judge Butler-Sloss' report "revealed both the tensions and the misunderstandings that can arise when child sexual abuse is diagnosed rather than alleged."

The events in Cleveland spurred not only the first inquiry into the over-reaction of professionals working with children but also the first inquiry into sexual abuse cases where medical services and social workers were so strongly criticised (Wilson, James, 2007, p. 15). As Kate Wilson and Adrian L. James (2007, p. 15) state, "this time it seemed that professionals – paediatricians as well as social workers – had failed to recognise the rights of parents and had intervened prematurely in families where there were concerns about sexual abuse."

The Cleveland case was groundbreaking on many levels, but one of its key contributions was, as Wilson and James report, taking a look at the relationship between family and the state in terms of child protection:

> Now, not only did the law itself need to be changed but there was also a need to recognise that professionals should be much more careful and accountable in identifying the 'evidence,' legally framed, for what constituted sexual abuse and child abuse more generally. It was not only a question of getting the right balance between family autonomy and state intervention but also getting the right balance between the power, discretion and responsibilities of the various judicial, social and medical experts and agencies. In this respect, the judiciary was seen to be central for future decision-making (Wilson, James, 2007, p. 16).

The Children Act of 1989

A pivotal moment in the history of the evolution of the child protection system in England and Wales towards a child-centred system was the passing of the Children Act of 1989, which is considered to be the most significant legislation protecting the rights and welfare of children. It introduced the principles that were at the heart of the Convention on the Rights of the Child (1989) and was called by Lord Chancellor Lord Mackay of Clashfern "the most comprehensive and far-reaching reform of child law, which has come before Parliament …" (Wilson, James, 2007, p. 196).

The Children Act of 1989 was the first legal document to emphasise the right of every child to be protected from abuse and the right to investigate and examine cases to safeguard the welfare of children. The primary tenets of this regulation were:

- Children should be cared for by their families unless intervention in family life is necessary for their safety.
- Children's welfare is of paramount importance when making decisions about their care and upbringing (the paramountcy principle).
- Children should be informed about decisions concerning them, and the court must consider the views and wishes of the child before deciding on the child's future.
- Local authorities have a duty to support and promote the child's welfare in partnership with his or her parents.
- Every effort must be made to preserve the child's relationship with his or her family environment.

The Children Act of 1989 also introduced the concept of parental responsibility, defined as "the rights, duties, authority and responsibility which a parent legitimately has in relation to his child and his or her property" (section 3 [1]). The term "parental responsibility" focused on the duties rather than the rights of the parent toward the child. The persons who had parental responsibility were the child's mother and his or her father if the parents were married. The mother's partner who was not the father of the child and the grandparents, on the other hand, did not acquire parental responsibility automatically but only with the permission of the court. It is essential to stress that parents or guardians of children who were in the care of the local authority did not lose their parental responsibility. They shared it with the local authority in the case of an Interim Care Order and a full Care Order or maintained full parental responsibility if they had voluntarily consented to place a child in foster care (section 20).

Wilson and James point out that the Act aimed to encourage "an approach to child welfare based on negotiation with families and involving parents and children in agreed plans" (Wilson, James, 2007, p. 17). The accompanying guidance and regulations emphasised the importance of practitioners working with parents and young people, and the law itself underlined the role of the state in supporting families and children in need.

When introducing the regulation for a vote in Parliament, Lord Mackay said:

> … the days when a child should be regarded as a possession of his parent – indeed when in the past they had a right to his services and to sue on their loss – are now buried forever. The overwhelming purpose of parenthood is the responsibility for caring for and raising the child to be a properly developed adult both physically and morally (Lowe, n.d.).

It was with the passage of the Children Act of 1989 that the concept of "high risk" and "significant harm" was introduced. Section 31 (9) included the following definitions:

> "harm" means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;
> "development" means physical, intellectual, emotional, social or behavioural development;
> "health" means physical or mental health; and "ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

Although no precise criteria for deciding what constitutes significant harm were given, section 31 (10) read:

> Where the question of whether harm suffered by a child is significant turns on the child's health and development, his health or development shall be compared with that which could reasonably be expected of a similar child.

The Children Act of 1989 did not define the meaning of "significant." As Lord Wilson, a judge of the Supreme Court, argued:

> … in my view the court should avoid attempting to explain the word 'significant.' It would be a gloss; attention might then turn to the meaning of the gloss and, albeit with the best of intentions, the courts might find in due course that they had travelled far from the word itself (in: The Matter of B(A Child), 2013, UKSC 33 Supreme Court, Paragraph 26 – Davis, 2014, p. 144).

Hedley J., in turn, believed that significant should mean "something unusual; at least something more than the common-place human

failure or inadequacy" (Re L, Threshold criteria, 2007, 1FLR, 2050 High Court, Paragraph 51 in Davis, 2014, p. 145).

In light of the Children Act of 1989, it was significant harm that became the threshold for state intervention in the life of the family, and for the first time, the criterion for intervention took into account not only what can or does happen but also what might happen in the future (Wilson, James, 2007, p. 17).

The Children Act of 1989 came into force in England and Wales in 1995 and in Ireland in 1996. Two documents are associated with it. The first, entitled *Working Together to Safeguard Children. A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children* (HM Government, 2010), is currently under review. It defines what constitutes abuse and neglect of a child and informs on what actions need to be taken by institutions to protect children. It also outlines the role and responsibilities of Local Safeguarding Boards, which have replaced Area Child Protection Committees, and Safeguarding Practice Reviews (previously known as Serious Case Reviews). The document describes as well the roles of different agencies/institutions in the process of cooperation and child protection.

The other document is the *Framework for the Assessment of Children in Need and their Families* (Department of Health, 2000), which provides information on how to systemically identify children in need and provide the best help to them and their families.

The Protection of Children Act of 1999 was passed to prevent paedophiles from working with children. The regulation required all organisations working with children to inform the Department of Health of any person known to the organisation who is suspected of having committed violence against children or endangered the welfare of a child. A similar law was passed in Scotland in 2003.

In 2002, the Education Act placed a duty on schools and other educational establishments to safeguard and promote the welfare of children. The Adoption and Children Act of 2002 made several amendments to the Children Act of 1989, the most notable of which were:

- Amending the definition of "harm" to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill-treatment of another person;
- Obliging courts to draw up timetables for resolving adoption cases without delay;

- Adding the provision that an unmarried father acquires parental responsibility where he and the child's mother register the birth of their child together;
- Introducing a new special guardianship order intended to provide permanence for children for whom adoption is not appropriate (Summary, p. 5).

The Children Act of 2004

The Children Act of 2004 originated as a response to the serious systemic neglect that resulted in the tragic death of Victoria Climbié, who died as a result of the violence and suffering she endured while in the care of her aunt and her partner. The case was shocking as the family itself was under the care and supervision of social services, and the girl had been seen and visited many times by various practitioners and professionals.

Victoria Climbié's case was a shock to British society and was widely covered by the media. A public inquiry conducted by Lord Laming highlighted the huge systemic failures that resulted in significant professional malpractice in protecting a child from the terrible violence she suffered at the hands of her carers. Lord Laming concluded in his report:

> The suffering and death of Victoria was a gross failure of the system and was inexcusable. It is clear to me that the agencies with responsibility for Victoria gave a low priority to the task of protecting children. They were underfunded, inadequately staffed and poorly led. Even so, there was plenty of evidence to show that scarce resources were not being put to good use. Bad practice can be expensive (*The Victoria Climbié Inquiry…*, 2003, para. 1.18).

It was shown that children's suffering was likely to be overlooked by practitioners if they focused too much on adults and overlooked the experience of children in the family (Wilson, James, 2007, p. 383). Lord Laming's report also made 108 recommendations for change at the central and local levels to improve services for children and families. While not all of them were implemented, a great majority of them became the basis for the Every Child Matters reform.

The government's response to Lord Laming's report were two documents: *Keeping Children Safe* (Department for Education, 2003) and *Every Child Matters* (HM Treasury, 2003), which eventually led to the passing of the Children Act of 2004.

The adoption of the Every Child Matters reform agenda has resulted in many radical changes to the child protection system. The main objectives were to strengthen inter-institutional cooperation and ensure that all children under the age of 19 received systemic protection and support at all stages of their development. The five pillars of this reform were:

- Stay safe;
- Stay healthy;
- Enjoy and achieve;
- Make a positive contribution;
- Achieve economic well being.

The Green Paper

> sets out a framework for services that cover children and young people from birth to 19 living in England. It aims to reduce the numbers of children who experience educational failure, engage in offending or anti-social behaviour, suffer from ill health, or become teenage parents (HM Treasury, 2003, p. 5).

The Children Act of 2004 is not an improvement on the Children Act of 1989. It places greater emphasis on inter-institutional cooperation and the process of integrating services for children by placing a duty on local authorities and their partners (police, schools, health services) to work together to promote child welfare and child protection. The Children Act of 2004 gives local child protection committees the power to conduct serious case reviews. Its Section 48 also updates legislation on the physical punishment of children.

The Children Act of 2004 states that

> the interests of children and young people are paramount in all considerations of welfare and safeguarding and that safeguarding children is everyone's responsibility.
>
> Safeguarding in the broadest sense can only be achieved by improving a wide range of outcomes for children and young people, including

> their health, education and development, safety, and economic circumstances (East Kent Hospitals University, n.d., p. 10).

Past developments and activities in building child welfare policy in the UK have also changed the perception and definition of child protection issues. The term "safeguarding" replaced the previous term "child protection" and was significantly influenced by the Climbié inquiry in 2002 and the joint Chief Inspectors' report (Department of Health, 2003).

Safeguarding is defined as

> The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully (Wilson, James, 2007, p. 9).

Child protection is also part of safeguarding, although it relates more to actions to protect children whose welfare and safety are at risk. Effective child protection can only take place in the context of a wider process of safeguarding and promoting the welfare of children. It is the responsibility of all institutions working with children to safeguard them, so there is less need for activities in the area of child protection.

In 2007, another tragic child death became, like in Victoria Climbié's case, a turning point in the evolution of the UK safeguarding system. Peter Connelly, also known as Child A or Baby P, was 17 months old when he died as a result of the repeated violence he suffered at the hands of his mother and her partner over eight months. His postmortem examination established that he had c. 50 injuries. The case caused so much outrage because the family had been under the care of social services and health professionals, and Peter himself had been seen several times by social workers and doctors. It echoed the tragic events of Victoria Climbié's death. Lord Laming, who had conducted the public inquiry into that case, was again asked to thoroughly analyse the systemic causes that led to such gross negligence. His report highlighted that Peter's death could have been avoided and criticised the poor and inadequate cooperation of all the agencies that had the child's family in their care. It also stressed that the necessary reforms had already been

introduced, mainly in the aftermath of Victoria's death, and that professionals should simply "get on with it" (Corby, Shemmings, Wilkins, 2012, p. 3).

In addition, the report also pointed out that child protection institutions were underpaid and too focused on objectives and procedures at the expense of child safety. Lord Laming highlighted that progress in strengthening the system was hindered by the lack of a national electronic system to help practitioners monitor the situation of children at risk; the overly complex system of assessing and diagnosing children induced practitioners to focus more on completing tasks which meant that they lost sight of the child's situation and experience.

In 2010, the Government invited Professor Eileen Munro to conduct an independent review of the child protection system in England with the view of revising the bureaucratic and hitherto rigid practices of social work with children. Her report, which was completed in 2010, called for a child-centred system and the removal of prescriptive timeframes, establishing goals and targets in working with children and their families and the strengthening of cooperation between institutions.

Munro argued that to understand what was happening in the child protection system, mainly why and how omissions occurred, "we need to understand what motivates the behaviour of professionals as well as how the systems in place to protect children often result in unintended consequences" (Corby, Shemmings, Wilkins, 2012, p. 3). She also felt that previous investigations had been well intentioned, but the large number of regulations that had been subsequently introduced reduced the amount of time practitioners could spend working with families. The Government accepted all of her 15 recommendations, with a focus on expanding early intervention, strengthening the role of Ofsted in inspecting and reforming the healthcare system and moving away from central decision-making to support local decision-making with measured quality assurance to ensure the best possible outcomes for children.

Taking a child away from family

Analysis of the history of the development of the child protection system in England and Wales shows that it has evolved into a child-centred system. The Children Act of 1989 was the first piece

of legislation to incorporate a child-centred approach, including the Child Welfare List, which, among other things, emphasised the obligation to consider the views of the child. The paramountcy principle was firmly established for the first time, while the "no delay" principle stressed that every decision concerning the child's welfare should be taken without unnecessary delay and that excessive delay had a negative impact on the child's development and welfare. The Act also emphasised the need to work in partnership with parents and contained the No Order Principle, which stated that the court should not make any decision unless it had been shown to be in the best interests of the child. Moreover, the regulation introduced the concept of significant harm, which became the threshold for state intervention in the life of a family when a child was considered to be suffering or experiencing significant harm. To meet the intervention threshold criteria, it was necessary to present supporting evidence. Catherine Cobley and Nigel V. Lowe have asked how rigorously the intervention threshold criteria should be met and pointed to the dilemma between protecting the child and protecting the family from unnecessary intervention (Cobley, Lowe, 2011, p. 417).

Professionals and lawyers have different opinions about the right moment to intervene in the life of the family – when it may be unjustified and when too late. For example, Hedley believes that:

> To understand this concept [significant harm] and the extent of harm it is intended to cover, it is necessary to start with a policy issue. Essentially, it is the tradition of the UK that by law children are best brought up in natural families. Society has to tolerate widely varying standards of parenting, including the eccentric, the barely adequate and the inconsistent. This is because children will inevitably have very different parenting experiences and very unequal consequences from this. This means that some children will experience difficulties and harm, while others flourish in an atmosphere of love and the security of emotional stability. These are the consequences of our human fallibility, and the state is not the place to save children from the consequences of faulty parenting. In any case, it just can't be done (Re L, Threshold criteria, 2007, 1FLR, 2050 High Court in Harris-Short, Miles, 2011, p. 831).

These discussions show the dilemmas surrounding decisions about intervention and prove that it is not possible to fully protect children

and that some level of harm is inevitable. However, setting the threshold for intervention is in itself a sign of respect for family autonomy in accordance with Article 8 of the European Convention on Human Rights, which was ratified by the UK in the Human Rights Act of 1998.

Foster care

Most of the legislation relating to the welfare and safety of children in foster care is contained in the Children Act of 1989 (volumes 2 and 4 of statutory guidance), the Care Standards Act of 2000, the Adoption and Children Act of 2002, the Children Act of 2004 and the Children and Young People Act of 2008. The Fostering Services Regulations of 2011 and National Minimum Standards provide guidance for those who organise and manage foster care settings.

The child protection system in England and Wales emphasises the importance of making decisions about the child's situation without delay because any unjustified delay has a negative impact on his or her life and development. The "no delay" principle makes this clear. This approach stems from research findings on attachment, a child's identity and the impact of instability on a child's development. The premise of the system, in the context of childcare arrangements, is permanency planning, which is defined as a systematic, goal-oriented and time-limited approach to case planning for children who have been subject to child protection interventions. The aim of permanency planning is to promote stability and continuity (Tilbury, Osmond, 2006).

Where there are reasonable concerns about a child's welfare and health, the local authority should make every possible effort to cooperate with the child's parents at the pre-proceedings stage in accordance with the Public Law Outline (PLO). The PLO regulation was introduced in 2008 and revised in 2014 with the enactment of the Children and Families Act of 2014. It was designed to establish cooperation with the parents without the need to involve the court; however, in the event that such cooperation was not possible, it specified that the necessary information on the child and the family should be collected before the application for custody proceedings was filed. As the Family Division President, John Munby (2013, p. 6), pointed out:

> Work done by the local authority in the period pre-proceedings – front loading – is vital for two quite different reasons. Often it can divert a case along a route which avoids the need for proceedings. When that is not possible, and proceedings have to be commenced, work done beforehand will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly than a case which reaches the court in an unsatisfactory state.

Currently, the maximum length of care proceedings is 26 weeks, during which the court decides on the child's future. This arrangement was introduced in section 14 (2) of the Children and Families Act of 2014. In order to comply with this time limit, the court is obliged to create a "timetable for a child" at the beginning of the proceedings, which must have regard to the impact on the welfare of the child and the way in which the care proceedings are conducted (section 14 [3]). An extension by 8 weeks is possible (section 32 [5]) but only when it is "necessary to enable the court to resolve the proceedings justly."

If proceedings have to be prolonged, the court must consider:

> (a) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates, and
>
> (b) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings (section 32 [6]).

If a local authority has a reasonable suspicion that a child is experiencing significant harm in the care of his or her parents or guardians and it is, therefore, necessary to safeguard the child's welfare and health by taking him or her away from their family, the local authority may request the parents or a person with parental responsibility to voluntarily agree to place the child in foster care. During that time, the local authority provides accommodation for the child (Children Act of 1989, section 20) and takes the necessary steps to assess the family's situation and provide support. This is done at the so-called pre-proceedings stage when social workers carry out the required actions.

In this case, parents retain full parental responsibility and may withdraw their consent at any time. However, if they do not agree to a voluntary out-of-home placement and there is a need to safeguard the child's welfare and health, the local authority must apply to the court

for an Interim Care Order. If a child protection intervention is necessary, it can be carried out by a police officer on the basis of a Police Protection Order (PPO) that lasts for up to 72 hours, without having to apply to the court. In the case of a PPO, parents also retain full parental responsibility.

An Emergency Protection Order (EPO), on the other hand, requires an application to the family court and is effective for 8 days with the possibility of an extension of 15 days. The EPO implies a limitation of parental responsibility, which is shared by the parent or guardian with the applicant (the local authority or NSPCC). An Interim Care Order (ICO) also limits parental responsibility and grants the right to place a child in the care and supervision of the local authority while proceedings are taking place. The ICO is issued when the court has sufficient evidence that the significant harm threshold criteria have been met. It can last up to 8 weeks when it is first granted and can be renewed for up to 28 days. There is no limit to the number of ICO decisions. Parental responsibility is then shared between the child's parents or guardians and the local authority. However, the local authority has overriding rights to exercising parental responsibility. It is the most common order issued by the courts while a child is in foster care and proceedings are ongoing.

A full Care Order (CO) places the child in the care of the local authority and gives it the rights and responsibilities included in parental responsibility. It can last throughout a child's childhood unless exempted. Unlike the ICO, the Care Order does not require renewal.

Foster care is divided into long-term and short-term. Short-term foster care provides a child with a home and care for a period from one day to several months until the court decides on the permanent placement of the child (return to the family, adoption, long-term foster care or placement with a relative). Long-term foster care involves housing a child until they become an adult and gives the child more permanence if he or she cannot return to their family home or be placed with a relative or adopted family.

Until 2015, long-term foster care had no legal status. With the introduction of the Care Planning and Fostering Regulations of 2015, a new definition of permanence was established, which reads:

> Permanence is the long term plan for the child's upbringing and provides an underpinning framework for all social work with children and

families from family support through to adoption. The objective of planning for permanence is therefore to ensure that children have a secure, stable and loving family to support them through childhood and beyond and to give them a sense of security, continuity, commitment, identity and belonging (Department for Education, 2021, pp. 19–20).

The 2015 Regulations define long-term foster residence, which must meet all of the following conditions:

- Long-term foster care is an appropriate permanency option according to the care plan;
- The foster carer has agreed to be the child's long-term foster carer;
- The authority responsible for the child has confirmed this agreement with the foster carer, the child and the child's parents.

There is also a Special Guardianship Order (SGO), introduced with the Children and Adoption Act of 2002, which aims to provide permanence for those children for whom adoption is not appropriate or possible, e.g. children placed in kinship care. In the case of SGOs, guardians hold most of the parental responsibility, and they can override the parents' rights to decide.

When a child is in temporary long-term foster care or kinship care, he or she has the right to contact their biological family, and in all cases, the parents retain some parental responsibility. Only an adoption order does not allow this, and the parents lose parental responsibility.

The issue of a child's contact with their biological family is a complex and ambiguous one. For many children in foster care, contact with their biological family is very important, but for others, it can be problematic and fraught with risk.

While the Children Act of 1989 made it clear that local authorities have a duty to promote contact between a child and their biological family, unless it is not in the best interests of the child and their welfare, the Children and Families Act of 2014 removed this obligation to reduce the disruption caused by inappropriate contact with children.

The Care Planning Placement and Case Review and Fostering Services Regulations of 2013 introduced a two-stage assessment process for foster carer applicants. In stage 1, information on foster carer candidates should be obtained as soon as possible, and a decision on their suitability should be made within 10 days. This information includes

the applicant's full name, date of birth and address; his or her health information supported by a medical certificate; information about the applicant's place of residence and its other inhabitants, including children; information about whether the applicant has previously applied for adoption or foster care and the outcome of that process; the name of the foster care service where the applicant has qualified as a foster carer in the last 12 months; the names of two people who can give references about the applicant; proof of lack of criminal record; information about the applicant's current or previous marriage/civil partnership; information from the local authority about the applicant's current place of residence (Department for Education, 2013, p. 6). If the decision on a candidate's application is negative, the institution making the assessment is obliged to notify the candidate, and he or she may respond in writing or make a complaint about the process itself.

If the decision is positive, the following information about the applicant is obtained in stage 2: information about the candidate's personality, ethno-cultural background as well as their denomination and ability to care for a child from another denomination or cultural background, previous experience of caring for a child of their own or not, skills, competencies appropriate to caring for a foster child (Department for Education, 2013, p. 8). If the application is rejected, the candidates are informed in writing within 28 days and have the right to appeal to an Independent Reviewing Mechanism (IRM).

Foster care providers are responsible for securing a range of formal and informal support for foster carers, including remuneration, appropriate supervision, short breaks, support groups, out-of-hours support and access to independent support, as well as support for their children.

Adoption

Adoption is governed by the Adoption and Children Act of 2002, which replaced the previous legislation: the Adoption Act of 1976 and the Children Act of 1989. The 2002 regulation puts the welfare of the child at the centre of the judicial legislation that currently governs the legal custody of the child. The new Act addresses adoption in a wider context, recognising the limitations of previous acts and moving the courts, local authorities, adoption agencies and their support organisations towards a more integrated system.

The key elements of the Adoption and Children Act of 2002 are:

- Putting the child at the centre by placing the responsibility on the court to ensure that all agencies involved in the adoption process put the needs and welfare of the child first.
- Placing a duty on local authorities to maintain the adoption service and provide adoption support services.
- Ensuring that adoption orders are issued for single people, married couples and unmarried couples.
- Introducing a new Independent Reviewing Mechanism (IRM) for prospective adoptive parents who feel they have been rejected unfairly.
- Providing a new system for accessing information stored in adoption agency files and establishing the General Register of adoptions that will take place after the law comes into force.
- Imposing additional restrictions on bringing a child to the UK for adoption.
- Introducing restrictions on arranging adoptions and advertising children for adoption.
- Reducing delays in the adoption process by establishing an Adoption Register and a Child Register to suggest matches between children and approved adoptive parents.
- Introducing new court provisions governing the issuing of adoption orders and new measures requiring courts to develop timetables for dealing with adoption cases. Free orders are now converted into "submission orders."
- Introducing a new Special Guardianship Order (SGO) for children for whom adoption is not a viable option but who cannot return to their families.
- Ensuring that an unmarried father can assume parental responsibility for his natural child if he and the child's mother register the child's birth together.
- Introducing arrangements regarding paternity for the purpose of assuming parental responsibility.

To ensure that the welfare of the child comes first, the Act contains a social welfare checklist that the court and adoption agencies must use, which includes:

- The child's wishes and feelings (taking into account their age and understanding).
- The child's special needs (e.g. physical or educational).
- The impact that ceasing to be a member of the original family will have on the child.
- Child characteristics such as age, gender and background.
- Harm or risk of harm to the child (including any impairment of a child's health or development as a result of witnessing the ill-treatment of another person).
- The child's relationship with relatives and "other relevant persons" (e.g. the benefits to the child of continuing the bond/relationship with the biological family, the capacity of relatives to provide a safe home for the child).

The court can only make an adoption order if it believes that it would be better for the child than the alternative, i.e. not to make such an order.

The following people can apply for an adoption order under this Act:

- Single persons.
- Married couples applying jointly.
- Unmarried couples applying jointly (regardless of their sex).
- Stepparents (provided that the child has been residing with them for at least six months prior to the application).
- Foster carers (provided that the child has been residing with them for at least 12 months prior to the application, although they may seek court permission to apply within a shorter period).
- Lesbian and gay couples.
- Other individuals who do not fit into the above categories (e.g. the partner of the child's parent) but the child must have been residing with them for at least three years prior to the application.

To be recognised as adoptive parents, a "couple" (married or unmarried) has to prove that they have a stable and lasting relationship and that they can provide a loving family environment for the child. There are also continuing restrictions on age and place of residence.

The court order authorising the local authority to place a child for adoption with adoptive parents is a placement order. The law in

England and Wales says that if there is a parent or guardian of the child, they must consent to the placement of the child for adoption unless the court considers that the consent should be granted without the guardian's agreement because it would be in the child's best interests.

The average waiting time for a child to be adopted in 2016 was 18 months, which was about four months shorter compared to 2011 (Department for Education, 2016, p. 3). The government's policy work highlights the need for systemic change in the context of the adoption process, which has to be shortened and ensure that every child has permanence in an adoptive family as long as it is the right solution for them.

Since July 2013, there has been a two-stage training and assessment process for potential adoptive parents. The first stage is a two-month initial assessment process focusing on the initial training and preparation of potential adopters and is largely led by adopters. During that time, local authorities determine the suitability of the candidates using specified checks and verifying references. The assessment period in stage 2 lasts up to four months, during which the agency carries out intensive training and assessment of the potential adopter. Those who have already adopted and have a child/children in their care can generally skip the first stage.

Conclusion

As outlined in this chapter, the child protection system in England and Wales has developed over the years towards being more child-centred. It uses the most advanced and comprehensive approach to protecting children from harm, encompassing national and local legislation, policy and guidance. The introduction and evolution of the Safeguarding Practice Reviews (formerly known as Serious Case Reviews) helped to monitor the operation of the English child protection system and provided much-needed feedback. According to the *Triennale Analysis of Serious Case Reviews: Pathways to Harm, Pathways to Protection*, published in 2016, the reviews have shown that once a child is known to be in need of protection, e.g. when there is a child protection plan in place, the system is working well. There has been an increase in the number of Safeguarding Practice Reviews carried out since 2012, but

this has been against a backdrop of a steady year-on-year increase in child protection activity (Sidebotham et al., 2016, pp. 51–52).

Despite many reforms, however, the social care system still faces many challenges. Josh McAlister offers an interesting insight on this issue:

> There have been many reviews and attempts at reform since the landmark introduction of the 1989 Children Act and though each has ushered incremental progress, we are now left with a high stack of legislation, systems, structures, and services that with their sheer complicatedness make it hard to imagine something different, let alone address foundational problems (The Independent Review of Children's Social Care, 2019, p. 3).

The above suggests that the conclusions from Professor Munro's report on child protection, which recommended less administrative work for social workers and more time spent with the families to address their issues have not yet been fully implemented.

Most recent statistics suggest that more families have contact with the children's social care system than is commonly believed. The Children in Need review found in 2018 that over the last six years, one in ten children had a social worker. Another study suggests that 25% of all children will have had a social worker at least once before their 16th birthday (cited after The Independent Review of Children's Social Care, 2019, p. 3).

The most recent data shows that since 2010 there has been an increase in out-of-home placements by 24% and that in 2020, there were 80,080 children in care. The most significant rise was noted in child protection investigations, which increased by 129% between 2010 and 2019.

The many factors contributing to this situation include complex problems that families face in the changing landscape of British society with its more and more diverse population. However, the most visible systemic issue that the social care system in the UK must deal with is the quite weak and insufficient family support and early intervention services that should provide early support to families struggling to cope with their issues before they become a risk to their children's wellbeing and development. Currently, more efforts are being

undertaken to develop and test integrated family support and child protection models providing direct help and support to families at an early stage. One of them is the Hertfordshire Family Safeguarding Model, which proved to be successful in reducing the involvement of the police and domestic abuse incidents in families by 64% (Department for Education, 2017).

In the context of creating an effective and child-centred child protection system, one might ask whether it is possible to eradicate all risk of harm to children. Professionals and policymakers are thus faced with the dilemma of how to create a system that manages risk and its uncertainty to ensure that services provided are timely, proportionate and targeted appropriately to keep children safe. They must also decide what kind of environment is needed for the effective collaboration of key professionals so that it is easier to do the right thing and more difficult to do the wrong thing.

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Assessment of the Presented Models

Introduction

Four different models of child and youth protection, which are used in countries with different historical experiences and development, were discussed in the previous chapters. This final comparative chapter summarises the discussed models and describes their important parts that are used in practice (including the tools necessary for social workers).

In the last section, these tools are compared with paradigmatic currents and goals. Within this comparison, possible ways of developing child and youth protection are indicated to further support the development of a child into a person.

The Polish model

The Polish model is based on the protection of children's rights and needs with a strong emphasis on parental responsibilities.

All work concerning families at risk is carried out by social workers of the relevant district. They are guided by the following principle:

> Children have the right at all times to live and be brought up in conditions that ensure their maximum physical and spiritual development, including the possibility of preparing for a future profession, appropriate to their abilities. This is for their own good (Arczewska, 2017).

If these conditions are not met, the court can intervene and interfere with the rights of the parents. Parental rights are a set of rights

and obligations, including the obligation to look after the child's well-being. Children's rights include the right to maintain contact with their parents, which is not restricted even when the child is placed outside his or her biological family. However, the interests of parents cannot be a decisive factor in cases where the children's needs and rights are not being fulfilled.

The basic elements of the system are:

Family court judges – In their own opinion, one of the most fundamental problems of providing assistance to children is the overwhelming number of decisions they have to make. Another one is that the children's interests are not protected enough. The judges also point to the lack of therapy and learning tools for parents. Another important issue is the need to ensure that children are represented by a lawyer in court cases. The fragmentation of the family and child assistance system between several departments (Ministry of Justice and the social welfare system) is also considered problematic by the judges as it results in a lack of a common and consistent approach. In situations where the problem is addressed by several different institutions, the assistance is provided only in theory. According to the judges, this shows the rigidity of the system and is proof of the need to redefine the nature of the work of all the institutions involved in offering assistance to families and children. They also emphasise that over time, the social department has been reduced to a mere distributor of financial aid to families.

Family curators – They are employees of the judicial service department, which gives them a distinctly different position in the overall system of assistance. However, at the same time, they are overwhelmed by bureaucracy. Given the preference for parental rights in the system, the sense of responsibility for the children's fate is lost. This lack of interest in the life and future of children is also evident in several services and institutions that deal with helping families and children. According to the curators, assisting children in situations where parental rights are preferred is complicated. The length of court proceedings also reduces children's chances of finding a new family.

Social workers – They are overwhelmed by their work and bureaucracy. Social workers are mostly civil servants, and their work is hampered by the inconsistent interpretation of legislation. This leads to situations where the decisions of family judges contradict the findings of family curators due to the unclear interpretation of the concept of

the child's best interests. Courts often decide on placing a child in kinship foster care, which is perceived badly by social workers. Although they can intervene quickly in cases of domestic violence, many parents appeal against the interventions and know the law well enough to use its ambiguity against the social workers.

Family assistants – They are directly subordinate to social workers, and their tasks consist of working with the family on restoring parental functions and the functioning of the family. Their work is often perceived as free household help; therefore, they start with determining their role in the family and setting boundaries. Another problem is the overly bureaucratic work and complicated involvement of assisting organisations, which is based only on their goodwill. There is no clear source of payment for the services provided. Insufficient training of family assistants is also a problem. As Dobroniega Głębocka (Fabián, 2021) points out, they should be able to provide psychotherapy to the families in their care. This corresponds to the results of research conducted in the Czech Republic (Fabián, Geršičová, Vnenková, 2020), which shows that psychotherapeutic work aimed at developing relationships between partners, parents, children and siblings is necessary for the success of family support. Social services designed to support vulnerable families are not based on psychotherapeutic work and often lead to the development of attachment. Precarious situations arise when children are transferred into substitute family care and family assistants stop working with their parents, as the legal preference for parental rights and the protection of parenthood requires constant work with them even without the presence of children. This is due to the fact that parents have the right to maintain contact with their children, and the children are consequently placed in conflicting family systems.

Family services – Services aimed at family support and child protection are not clearly set out in the Polish model. The state's assistance focuses on protecting parenthood and the child's best interests. Family services are, however, provided by non-governmental non-profit organisations. The complexity and uncertainty of this situation stem from the instability of the funding of these organisations and the issue of staff selection and their training.

One of the major problems of the Polish system is the availability of family support services in different parts of the country. An analysis conducted in 2018 by the University of Łódź (Wydział ds. Badań i Analiz,

Regionalne Centrum Polityki Społecznej w Łodzi, 2019) showed that the availability and range of services depend on the proximity of foster families to larger cities, where service providers are concentrated. As the distance from the city increases, so does the cost of services, and they become less available. This may also apply to the other countries described in this publication.

The Czech model

Since 2010, the Czech system has undergone a paradigm shift in the protection of vulnerable children – it transitioned from a child protection model to a family service model. These changes came into force on January 1, 2013, with the amendment of Act No. 359/1999 Coll. on Social and Legal Protection of Children. The next step was the issuing of Decree No. 473/2012 Coll. describing the standards for the exercise of the social and legal protection of children.

However, social workers still face the dilemma of whether to help a vulnerable child or a child with CAN syndrome. This issue is addressed differently in Act No. 359/1999 Coll. on Social and Legal Protection of Children, which seeks to find help for vulnerable children in their biological families who have neglected and abused them in the first place, and Act No. 109/2002 Coll. on Institutional Education, which introduces preventive rehabilitation care and strives to prevent negative effects of neglect or abuse and ensure the development of children's personality.

The situation is also worsened by the politicisation of the methods of help and the demonisation of children's homes.

The basic instruments of assistance differ depending on the preferred method of substitute family care. What follows is the description of steps that social workers from municipalities with extended competence have to take.

The fundamental tool is the case conference. Without it, it is impossible to carry out any form of social work with the family. A case conference is a platform for drawing up an individual child protection plan, which becomes the essential document for helping the family. It is also within the competence of social workers to order a therapy session for the parents or a session with a family mediator.

In cases where these initial forms of assistance are not effective, the next step is to offer clients the services of organisations that focus on helping families. Social activation that takes place in the home environment and aims to restore or strengthen parental and civic competencies is considered an essential service. It is usually provided by mandated non-governmental non-profit organisations, which are directly subordinate to the social worker from the relevant authority. The evaluation of the results of social work is carried out at the subsequent case conferences. The duration of the assistance is not limited by law.

The internal processes of the accompanying organisations are important for how effective they are. Those that focus on the development of relationships and positive parenting experiences tend to have a higher success rate than those focusing on practical skills such as finances, household management, helping children with schoolwork, finding a job, etc.

Another, though less used form of assistance is the social rehabilitation service. This service operates on an entirely different basis. It takes place outside the original family environment, in an institution focused on rehabilitation. In these facilities, the family undergoes therapy, and parenting skills are developed. The family is then moved to a different house where work is continued in their new environment. If the restoration of parental and social functions of the family is successful, the service is terminated.

Only in the case of failure of the rehabilitation and therapeutic work can measures be taken to remove children from their biological family and place them in substitute family care. In general, relatives are strongly preferred as foster parents for such children. However, there are risks when children are placed in the foster care of their grandparents, who in some cases share a household with the children's parents, or when the difference in the roles of parents/grandparents is developmentally complex for them or the children due to their age.

Other forms of family assistance are temporary foster care, which appoints a caregiver (especially for young children), and long-term foster care. Both also function as an immediate form of assistance. Every applicant for foster care must undergo training, except relatives to whom children are entrusted.

Institutional forms of assistance, such as children's homes and facilities for children in need of immediate assistance, are also regarded as constitutional forms of crisis assistance.

All forms of assistance (both family and institutional) are considered by law to be temporary.

The legislator also does not neglect the fosterers and their work and provides fostering services aimed at supporting them. This task is given to accompanying organisations, which are obligated to offer families performing foster care a professional and consulting service. The child is assigned a key social worker, who, however, does not work with his or her biological parents. They remain under the supervision of the authority's social worker but are not obliged to cooperate or change their behaviour.

When children are placed in substitute care (family or institutional), the biological parents' position changes. They cease to have responsibilities but acquire rights. As mentioned before, they are not obliged to work on changing their attitudes and ways of acting and living. It is their right to visit the children in foster care and have them over for weekends, even if no remedial actions are taken.

At the same time, there is a possibility of "weekend parenting" for parents who are working on changing their behaviour. This resembles the British model of boarding schools – the biological parents have the children with them for weekends, and it is up to them how much of the parental burden they take on themselves. However, they have constant contact with the children and can build a secure relationship with them.

The Slovak model

In Slovakia, social and legal protection of children and the system of assistance for vulnerable and abused children began to diverge from the family services model as early as 2005.

Slovak social workers found themselves in a similar situation as Czech workers, having to choose between different forms of assistance. Act No. 305/2005 Coll. on Social and Legal Protection and Social Guardianship defines its objective as the protection of children, while on the other hand, it emphasises the importance of the environment of the biological family, although it is the reason why the state's assistance is needed.

The Slovak experience has demonstrated some other risks of rapid change. These can be linked to the separation of the Ministry of Labour, Social Affairs and Family from the Ministry of Health in 1990. The broad

ambitions of the social sector resulted, among other things, in children's homes falling under the administration of the Ministry of Labour, Social Affairs and Family from January 1, 1997. This included homes for children under the age of 3, which had been health care facilities up to this point, and homes managed by the Ministry of Education.

This change has influenced the following three aspects of children's homes: the understanding of the priorities of children's assistance, the organisation of work and the professional structure of staff. The education sector saw the causes of dysfunctional family environments more in terms of educational failure and perceived children as emotionally and socially disturbed, aiming to help them with emotional, social, cognitive and motor development. Whereas the social sector perceives the low socio-economic status of families and the related failure to meet children's needs as a major problem. It is evident that raising more money for material security is in many ways easier. In this context, renaming "educational" groups to "independent" also seems logical. Another change introduced by the social sector was the replacement of professional substitute care in the family with a professional family.

Changes in the organisation of work were reflected both in the focus of the educator's activities (service work in groups became a priority, and the educator became a service for the children) as well as in the introduction of daily group cooking, which became the core of the "family-type" children's home.

Finally, the personnel structure changed in several respects. Overall, the ratio of social workers to children improved significantly. The number of service workers was minimised, but, over time, the number of social workers, psychologists and special pedagogues forming a professional team whose task was to communicate with parents and advise educators increased. These teams created space for the practical implementation of case studies and, subsequently, group family conferences. The professional requirements for educators, however, were relaxed, and they lost not only their position as front-line professionals but also their status in the eyes of children.

Since 2005, there has been a serious disruption in the continuity of expertise in diagnosing children. Specialised diagnostic homes with schools that were tasked with diagnosing children and suggesting further appropriate solutions for them remained under the administration of the education sector.

Children with problem behaviour and behavioural disorders were sent straight to children's homes and substitute family care not only without the appropriate comprehensive residential, psychological, pedagogical and social diagnostics but also without the important shift in acceptance of their new situation.

Overall, it appears that the historical division into children's homes, diagnostic institutes and facilities for children with special needs was preferable to the abolition of institutions for children who could not be placed in foster families. At the same time, the number of children taken into substitute family care is not an appropriate parameter of quality and effectiveness. Many of these children have become so-called backpackers, i.e. children that alternate between several foster families until they reach adulthood. This problem affects all of the described systems – it also occurs in the Czech Republic and Poland, as well as the United Kingdom.

In 2019, Slovak children's homes were merged with crisis centres and resocialisation centres into a newly designed institution – the Centre for Children and Families. This led to a gradual mixing of children with different therapeutic needs and created tensions in the centres where professional activities had been drastically reduced. Another important factor that has not been taken into account is the very fragile identity of vulnerable children. Even the term "children's home" gave them a certain level of identity, unlike being in a crisis centre, which does not offer this.

Closely related to the paradigm shift is the increase in the number of foster families and children living in them. General discussions on the topics of family and family care have had a positive impact on society as a whole. On the other hand, the standards for the selection and training of fosterers need to be maintained. The work is demanding in many ways, so good selection, quality preparation, and follow-up care for families and children are essential if we are to give children home and space for their personal development.

On the other hand, emergency (crisis) substitute families were also created. These aimed to help children for a limited time and provide them with educational care for the period when the biological family was unable to fulfil parental responsibilities in both the educational and psychological spheres. From today's perspective, it was an unsuccessful experiment. The children's stay in the families was extended to 4–6 years, and their departure was accompanied by further trauma. It also

increased the divorce rate of these families, from which the biological children had previously left for independent life. One of the positive changes in institutional and substitute family care made by the social sector was the introduction of individual and group supervision.

It is important to remember that without a good diagnosis it is not possible to transfer children between families or institutions. We must bear in mind that our aim is to help a specific child and that this help should be in line with the objectives of the social and legal protection of children as well as the tools at our disposal. Children need to lay the foundations for an identity on which they can build in adulthood. A wide and illegible system does not allow for targeted support of children and foster families. The much-criticised fragmentation of the system, with substitute family care falling under the Ministry of Labour, Social Affairs and Family and children's homes under the Ministry of Education, may also have its advantages, especially in the context of different educational requirements for staff working with children.

The British model

Important changes to the British model were introduced by the Children Act of 1989, which set out the legislation for the protection of children's rights and their best interests. It was the first legal document to emphasise the child's right to protection from abuse. It also determined that the best place for children is their family, provided that it is not dangerous for them. In addition, the Act formulated the Paramountcy Principle, which stated that the child's best interests are the most important factor in decisions regarding his or her care and upbringing. Children must be informed about decisions affecting them, and the court must take their opinions and wishes into account. Local authorities have a duty to support and give priority to the child's best interests in cooperation with the family and to take such actions as will maintain the relationship between the children and the parents.

The Children Act of 1989 defined parental responsibility as the rights, duties and responsibilities that a parent has under the law with respect to his or her child. This document also set out provisions for assessing risk to children based not only on the current situation but also on what might happen in the future.

The 2004 amendment to the Children Act presents a new perspective, emphasises cooperation between institutions and addresses the process of integrating services for children. The obligation of cooperation is imposed on local authorities and their partners, such as schools, police and health services. It is also stressed that the child's best interests are the responsibility of all citizens.

Another issue addressed by the new legislation is the placement of children outside their biological families. It is acknowledged that there is always some degree of trauma in situations where the child has to be taken away from his or her family. The British model highlights the need for a swift response, as any delay deepens the child's trauma. The "no delay" principle is also linked to research findings on attachment, the child's self-concept and the impact of uncertainty on child development. Consequently, substitute care should bring stability to the educational environment. In situations where decisions on care plans for vulnerable children are made, planning for the stability of the educational environment is defined as "systematic, goal-oriented and time-limited."

The Children and Families Act of 2014 requires local authorities to make every effort to cooperate with the children's parents prior to the commencement of legal proceedings. There is merit in this approach. First of all, the family's situation may already start to change before the legal proceedings commence. If no changes occur, the first steps to evaluate the family's situation and protect the children's best interests are taken. This Act also sets a time limit of 26 weeks to decide on the timetable for the protection of children's rights. This period can be extended by a further 8 weeks in cases where additional time is needed to make a fair decision. Thus, assisting the family in their change is time-bound.

If the local authorities have a strong suspicion that parents or caregivers are harming the children, they have a duty to ensure and protect the children's best interests. They can get parents or other persons with parental responsibility to voluntarily consent to place a child in substitute care. During meetings with the parents, the local authorities decide on the family's situation and the need for support. Parents retain full rights and obligations toward their children and can change their voluntary decision at any time. However, if they do not agree to the temporary placement of the child outside the family, he or she may be removed with the assistance of the police. The family court may order

this procedure for a period of 8 days or extend the child's stay outside the family to 15 days, which is called an emergency protection order.

In cases where local authorities have to place children outside their biological family, they acquire full parental rights and obligations. There are two main forms of substitute family care in the United Kingdom. The first one is short-term (temporary) foster care, which provides a home and care for children. It can last for one day or several months before a decision is made on the child's permanent placement, such as reunification with his or her family, long-term foster care, kinship care or adoption.

Long-term foster care is strictly defined and lasts until adulthood. The law defines it as:

> Permanence is the long term plan for the child's upbringing and provides an underpinning framework for all social work with children and their families from family support through to adoption. The objective of planning for permanence is therefore to ensure that children have a secure, stable and loving family (Department for Education, 2021, p. 19).

For the entire period of their stay in temporary or long-term foster care or with relatives, the children have the right to have contact with their biological parents, who retain part of their parental responsibility. Local authorities are obliged to encourage contact with the parents unless there are serious potential risks for the children.

Foster care applicants go through several stages of verification. If they are selected as suitable candidates, they can benefit from a range of services aimed at supporting them in the performance of foster care. These include remuneration, appropriate control, short holidays, support groups, support at work and support for children.

Finding new ways

In this final, comparative part, we will address the broader issue of child and childhood protection.

In the previous chapters, we have looked at the changes in the perspectives and tools available in different countries. Albín Škoviera has pointed out the change in social norms and the evolution of the

understanding of values and value systems that took place as part of the shift in thinking from modernity to postmodernity. These social changes have also had an impact on the understanding of family and its relationship structure. Moreover, families and their members are affected by the liberalisation of society, emancipation and the rise in the standard of living.

Nature and normality

In Aristotle's reasoning, the concept of "nature" had two meanings: things not affected by human actions and the individual character of each thing (Sobotka, 2017).

In the context of family and upbringing, it is natural for children to have a mother and father, to grow up in a functional family and to have been conceived in a natural way – as a result of intercourse between a man and a woman.

With the advancement of technology, liberalisation and the emphasis on parental rights over the rights of children to have both parents, the issue of normality is coming to the fore.

What is normal

Sociologist Jan Keller (2017) defines "normality" as follows:

> (from Lat. *normalis* = measured by an angle, regular) – in sociology, it is primarily the opposite of anomie, as a state when individuals, groups or the whole society adequately respect established systems of values and norms. Likewise, in psychology, normality can be understood in a narrower sense as the mere absence of deviation or in a broader sense as the expression of the optimal state of an organism or system.

In today's society, children can find themselves in completely different basic relationships:

- Children with both biological parents.
- Children with one biological parent and a second parent (who may change with time).
- Children with foster parents.
- Children who were born from a surrogate mother and are wholly or in part biologically related to the parents raising them.

– Children with one parent.
– Children raised by persons of the same sex.

Another thing that has changed are the views on parental leave (a time when childcare is paid for by the state). The emancipation movement and the economic policy of the state are aimed at helping parents return to work as soon as possible. This is why models of "institutional" care for very young children are emerging.

The protection of children and childhood thus acquires a family policy dimension.

Childhood trauma – Epigenetics and transgenerational transmission

When helping children, we sometimes forget about the past traumas of children and families. Epigenetics offers us an interesting perspective on working with children at risk and protecting their childhood. As Marek Vácha (2019) points out, much more information is passed to children through DNA than we originally thought.

Not only do children copy the educational patterns they have learned in the family, but they may also take on family traumas that may be rooted in previous generations. Transgenerational transmission, which we perceived more through the prism of education and educational patterns, thus acquires a much broader and deeper dimension.

From this point of view, it is more appropriate to base our work with vulnerable children and their families on therapeutic approaches and social work models that take into account a wide range of influences. Environmental approaches in social work that are set in a broad context, including different time scales and different generations, seem ideal to be used in this case.

These approaches must be combined with therapeutic approaches aimed at treating trauma, even though the transition between families is in itself a form of trauma for children and families. Therefore, more attention should be paid to the expertise of family assistants, social workers and the availability of other related services.

Dilemmas of the current models

A dilemma is a situation where a difficult choice must be made, and the answer is not always clear. For the purpose of further analysis, we used the dilemmas described by Petr Fabián (2018), which are based on research carried out after the introduction of changes in the Czech legal system.

1. Should we work on the rehabilitation of the family together with the children or rather place the children in substitute care for the duration of the family's rehabilitation?

This is the first dilemma. Should we protect the children's best interests or family ties and ways of upbringing that result in the children becoming vulnerable from the point of view of the law? Psychological diagnostics have also indicated the gravity of this issue, and Polish psychologists have even introduced the term "adult child from a dysfunctional family" (Michno-Wiecheć, 2018).

In such situations, the child's basic needs are not fulfilled, and he or she does not build strong relationships. This phenomenon is known from all the discussed countries. Czech psychologist Hana Kubíčková (Burdíková, Košťálová, Kubíčková, 2019) points out that there is a higher risk of it happening in family foster care (e.g. when grandparents are fosterers of the children).

- It is usually the case that none of the parents wants assistance, but a guardian or an organisation is assigned to them by the court anyway. Therefore, there is a fundamental lack of cooperation from the outset.
- Parents often do not feel the need to change anything because they are convinced that their way of treating their children is good enough. Institutional substitute care is more acceptable to them than kinship care as they believe that they do not "lose" their children when they are placed in an institution.
- From the children's point of view, if they participate in the change, they experience the meaning of changes in family and family life and become their implementers.
- Therapeutic work can help children and parents to cope with the effects of transgenerational transmission.

- The strain imposed by the changes can lead to reluctance to implement or complete them.
- In the process of uncovering family traumas, the parents' views on their own childhood change, which can be uncomfortable for them in the presence of their children.
- Therapeutic work with children, on the other hand, helps to reestablish close bonds (attachment), at the very least on the basis of shared experience.

Considering all this, we are faced with the question of whether it is appropriate to support and rehabilitate the family in the presence of the children. Maybe it would be better to place them in a crisis centre and try to rehabilitate the family when the parents do not have to fulfil their parental responsibilities? However, there is a risk that the parents will enjoy this "freedom" and choose to leave their children in substitute care.

2. Who is the parent? The biological parent or the person who provided the child with a home?

Before the paradigm shift from child protection to family service, the situation was quite clear. The parent was the person who gave the child a home and love. Currently, after the amendment of the Czech law, foster care is only temporary, and fosterers have found themselves in a new position, having to perform the role of educators. Škoviera (2007, p. 61) describes this dilemma from a different perspective: should the substitute parent bring expertise or humanity?

Each of the presented models struggles with a shortage of foster parents. Additionally, more than 75% of fosterers in the Czech Republic are grandparents, which puts them in a position of conflicting roles.

This conflict is even bigger for the children. While staying with the fosterers, they experience both daily care and worries, as well as contribute to the functioning of the household. They associate their biological parents with leisure time but are often made promises that are not kept and thus bring them disappointment. Where should the children anchor psychologically?

The children develop parental bonds with people who gave birth to them (biological parenting), foster parents who adopted them and gave them a home (psychological parenting) and grandparents in the

position of parents, which leads to a conflict of educational roles that affects both grandparents and children.

Another paradox of the system may be a situation where a child who already has their own family gets court-ordered assistance from his or her elderly parents who have shown no interest in them for their entire life.

3. Is substitute family care just a temporary stay for the children (e.g. like a summer camp), or is it similar to living at home?

Both Zdeněk Matějček (2015) and John Bowlby (2010) agree that the feeling of home is important for the child's growth into a person. However, if the law dictates that a child has to move between two families, thus experiencing different educational and partnership models, are we not just increasing his or her uncertainty? This feeling is deepened by the fact that the whole foster family or only the children are visited by social workers at least five times a month. Social workers can meet with the children even in school to fulfil their obligation. Thus, the child becomes convinced that close relationships do not pay off. How then can they start a family and have a close relationship with their partner and their own children if they have not experienced it anywhere safely?

4. What place will the children call "home" when they grow up?

This dilemma stems from the fundamental need of the children to have an open future. By law, foster parents are supposed to leave the children to their fate when they reach adulthood. Young adults, however, need something to relate to and somewhere to return to in adulthood. Institutional care does not provide them with a home, i.e. a place where they feel safe, can move in with their life partner and raise their children. The question arises whether emphasising that foster care lasts only until the child's adulthood does not create another, hidden model of institutional care.

According to Robin Sen and Karen Broadhurst (2011), the best approach in foster care is when children spend their childhood and adolescence in a foster family until they reach adulthood and can live independently. The opportunity to be at home with foster parents also

in adulthood is important, as they are part of the mutual future. This view moves us further in our thinking. Children living permanently in foster care who also have a good relationship with their biological families and know their history can work on their development and change of patterns in a safe place. This experience makes them aware of the educational demands and gives them an easier start in responsible, independent life.

5. Is foster care a mission or employment? Is the fosterer a substitute parent or a person to whom the child is entrusted?

The temporary or transient nature of the child's stay with a foster family places children and fosterers in completely different roles. The children are, so to speak, part of the job of their guardians and can experience significant uncertainty that will prevent them from establishing a close relationship with them. The same applies to fosterers who experience different forms of relationship between themselves and their children, especially the biological and foster ones, and find it discomfiting. When perceived as a mission, however, foster care gives the child space to develop very close and safe relationships. In stable foster care, a child can find a second family that will continue being his or her family even in adulthood. This stability can also facilitate dialogue between the fosterers and the biological parents (Škoviera, 2015).

6. Do we offer the children the fulfilment of their developmental need, or do we make them more uncertain?

This seems to be a fundamental dilemma. The law gives priority to the biological family. According to the research conducted by the Sirius Foundation in the Czech Republic, the transition of children from biological to foster families occurs most often between the ages of 5 and 10 (Lipová, Krbcová, Tomanová, 2019). Children learn by imitation and by this time have already developed their behavioural patterns.

The relationship with the biological family is still highlighted in the process of substitute care. The child then lives in different, often conflicting family constellations. One question arises: "Have we not just devised a new, highly sophisticated method of child abuse that is defined by law?"

There are three ways in which the number of vulnerable children can decrease: a drop in birth rate, leaving the children to their fate or prevention. Even though the birth rate in the Czech Republic has been declining since 2017 (Český statistický úřad, 2021), the number of children placed in foster care has increased by 5% (Ministerstvo práce a sociálních věcí České republiky, 2021). This points to a failure in the forming of emotional ties between parents and children, as poverty itself is not a reason for children to be put into foster care.

Another way to improve statistics is not to track specific behaviour because what is not tracked "does not exist."

The last option is to return to the true meaning of social policy and social work – to help everybody develop their individual potential and take responsibility for their lives. This means working with both vulnerable and not vulnerable families to create a change in the system that will support parental ties and personality development.

Comparison of the four systems and their overlaps

Neil Gilbert's child protection model was used to compare the presented systems. This author has published two books on the topic in recent years. The publication from 2008 describes two models: child protection and family service, which have been referred to in the analyses of the individual states. The publication from 2011, which is the basis for our comparative analysis, discusses the third model: child focus.

The third model (child focus) seems to be the most suitable one. It presents and monitors the needs of the children for their successful development into persons.

Our comparison is aimed at the transformation of the current models in this direction. It intends to highlight the strengths of the presented models and their practical applications without making a fundamental change to the legal model of the states.

Legal aspects of the change

All the discussed models give social workers a high degree of authority and responsibility. In the Polish system, this is additionally strengthened

Table 1. Comparison of Gilbert's three models

	Child protection	Family service	Child focus
Driver for intervention	Parents being neglectful and abusive toward children (maltreatment)	The family unit needs assistance	The individual child's needs in the present and future perspective, society's need for healthy and contributory citizens
Role of the state	Sanctioning: the state functions as a "watchdog" to ensure child's safety	Parental support: the state seeks to strengthen family relations	Paternalistic: state assumes parent role, but seeks to refamilialize child by foster home/kinship care/adoption
Problem frame	Individual/moralistic	Social/psychological (system, poverty, racism, etc.)	Child's development and unequal outcomes for children
Mode of intervention	Legalistic/investigative	Therapeutic/needs assessment	Early intervention and regulatory/need assessment
Aim of intervention	Protection/harm reduction	Prevention/social bonding	Promotion of wellbeing via social investment and/or equal opportunity
State–parent relationship	Adversarial	Partnership	Substitutive/partnership
Balance of rights	Children's/parents' rights enforced through legal means	Parent's right to family life mediated by professional social workers	Children's rights/parents' responsibility

Source: Gilbert, Parton, Skivenes, 2011, p. 255

by the fact that the curator for children and youth is a bailiff; therefore, his decisions have a bigger impact on the situation of the children and their families.

In his analysis, Petr Fabián describes the fundamental legal characteristics of the vulnerable children care model in the Czech Republic. Educational standards are set out in Article 1(3) of Act No. 109/2002 Coll. on Institutional Education:

> The purpose of school facilities for preventive educational care is to prevent the emergence and development of negative manifestations of children's behaviour or the disruption of their healthy development, to mitigate or eliminate the causes or consequences of existing behavioural disorders and to contribute to the healthy personal development of children.

Whereas the social sector (social workers) perceives children as individuals from socially disadvantaged backgrounds and focuses its intervention in this direction, as given in Article 5 of Act No. 359/1999 Coll. on Social and Legal Protection of Children:

> The key aspect of social and legal protection shall be the interests and wellbeing of the child, the protection of parenthood and the family and the right of parents and children to parental upbringing and care while taking into account the child's wider social environment.

As a result of these differences, kinship care, which can often prolong the socially and educationally negative impact on the children, is preferred.

The British and Polish models take these risks into account. In these models, parents are ordered to cooperate in the name of children's best interests, and the courts have to monitor the effectiveness of the solution for the children's future.

In Poland, an effective tool for the performance of this work was introduced in the form of family assistants, who cooperate with the families and organisations that assist them (Głębocka in Fabián, 2021). They are employees of the municipal offices who manage the system of family assistance. Their cooperation with the family should continue even after the child is taken into substitute care. As the other three systems show, this cooperation should be, like in the British model, mandated by law and not just voluntary.

The tools for providing family assistance are also included in the Czech model, which is, however, more focused on giving material assistance to the family and fighting poverty and social exclusion. The change of direction towards a goal enshrined in the British and Polish models (the development of parental competencies and time-bound assistance) would make the Czech system more effective. This is also reflected in

the results of research conducted by Petr Fabián, Lucie Geršičová and Markéta Vnenková (2020). They showed that organisations that focus on strengthening the relationship ties and providing assistance to vulnerable families have a higher success rate and can find non-traditional solutions for children in institutional care.

A significant advantage of the British model is that parents retain a degree of responsibility even after their children are taken away from them.

Family forms of assistance

All of the presented models of child and childhood protection, in their basic principle, prefer family forms of assistance. This approach toward the child's needs appears positive and most beneficial for the children.

This solution has a weakness, however, when a child is entrusted to the care of relatives who did not undergo the proper preparation for the performance of substitute family care. The British model tries to avoid it by ordering relatives to complete such a training. The caregiver may be another person close to the child who is able to fulfil his or her needs and at the same time is willing to undergo training for fosterers and substitute parents.

Bringing back "foster care facilities" also seems appropriate. This term was used for foster families that cared for more than three kids, with one of the parents being a full-time fosterer and the other having a regular job. It was also possible to place multiple sibling groups in these families. "Foster care facilities" are still used in the Polish model, and their abolition in the Czech and Slovak models seems counterproductive from today's perspective.

Inspiration should be drawn from the British model, which monitors the stability of the care, because it seems more effective than treating substitute family care as only temporary, as is the case in the Czech and Slovak models.

Institutional forms of assistance – Children's homes and other institutions

Judging from past experiences, it seems clear that there will always be children for whom the institutional forms of assistance are the best

solution to ensure their successful development and the protection of their rights. This is particularly true for children and youth whose parents have gradually failed. It is already very difficult to find fosterers for adolescent children when we are struggling to provide care for younger children of school or preschool age. Even Matějček (1992) considers placing adolescent children in institutions a better option than foster care since integration into a new family at this age is very complicated in terms of developmental psychology.

The Slovak model, by breaking up children's homes and building centres for children and families, possibly negatively affects the children's identity, which is already very fragile.

On the other hand, Czech children's homes that consist of small educational groups are burdened with a lot of bureaucracy. Implementing the family model, in which educators cook, wash and "serve" children in other ways, means that there is less time for educational activities and personal development of the children.

Cooperation with the child's family

The Polish and British models legally oblige the parents to cooperate, while in the Czech and Slovak models this cooperation is only voluntary. The lack of obligation in the latter cases means that no desirable changes in the behaviour and attitudes of the parents occur. The children then find themselves functioning in several different parental and educational models. On the one hand, there are the rights and obligations in foster families or institutional forms of assistance, and on the other, the model of the biological family, which draws benefits from the social system and receives support without any correlation to the rights and obligations.

A starting point for the child focus model can be the good practices from the Pardubice region in the Czech Republic. The director of one of the children's homes, Katerina Fialova, implements the concept of weekend parenting, based on the model of British boarding schools. Children stay in the children's home during the week and go to their parents for the weekends. This solution was also successfully tested in the Moravian-Silesian region by social organisations that work with vulnerable families and focus on developing relationship ties between the children and their parents. The children leave school on Friday, spend the weekend with their parents and return to school on

Monday. This method of care takes into account the parents' abilities and skills and, at the same time, ensures the safety and development of children with regard to the right to have parents and parental education (Fabián, Geršičová, Vnenková, 2020).

Another organisation that had a positive experience is Child Centre Veska in the Pardubice region. Within the framework of social rehabilitation, they succeed in gradually developing parental competencies so that mothers are usually able to be a good parent to the third child, even though the first two are in foster care. The mother is, however, able to maintain a positive relationship with them.

Solutions used in the Czech system, such as social activation services (carried out in the family's home) or social rehabilitation (carried out with the whole family in a safe environment), can fundamentally influence the development of parental competencies of the vulnerable family.

The Polish model, in which family assistants help reduce the bureaucratic burden on social workers, is inspiring. Another important point of reference is the British model, where parents retain a part of parental responsibilities, including the responsibility to work on improving their parental competencies. Failure to fulfil those responsibilities can result in a break in contact with children staying with foster families. In the current Czech, Polish and Slovak models, on the other hand, emphasis is put on parental rights and not responsibilities.

Benefits for practice

All of the presented models have evolved from the child protection model, in which parents with limited parental competencies are seen as the children's enemies, to the family service model, which emphasises the biological family, sometimes uncritically.

Very few steps are needed to shift these models towards the child focus model, often even without any major legal changes. It also seems that the child and childhood protection systems are ready for such a change.

The change in the philosophy of assistance

Given the broader social discourse that we presented at the beginning, we perceive it as essential for the state as a whole to stress the

importance of parental ties and the responsibility of parents to meet the children's needs. It is appropriate to mention here not only the children's rights but also their obligations. Children in foster care, as well as their biological parents, can work very well with their (parents') rights. In our opinion, working with the responsibilities of parents will also change the children's view on their responsibility to be a part of the foster family.

It is apparent from the presented models that defining assistance as the protection of relationships and the development of parental competencies, with the fight against poverty and social exclusion being less important, is a minimal but fundamental change in the social assistance provided to families. This change may result in a development that is outlined in the Czech law on institutional and protective education. The British model strives to achieve similar goals by providing substitute family care that lasts until adulthood. In the British system, parental responsibilities are emphasised even in situations where a child is taken away from his or her family. This lowers the risk that the parents will be glad to see their children leave and continue drawing benefits from the social system.

With these changes, the social workers' and the judiciary's focus shifts to repairing the damage already caused to the children's personalities and assisting in their development.

The time limit of assistance

Children live in a different time frame. What is only a few years for adults – a piece of life – for them is often their whole life. The British model limits the time of rehabilitation and assistance to a family with children to 26 weeks, which seems to be the minimum period of intervention that would be suitable for all of the presented models.

The time limit of assistance is also related to the attitude towards substitute forms of assistance (both family and institutional) which perceives them as temporary since the number of children returned to their biological families is used as a quality parameter. The British model already contains a fundamental element of the child focus model because it takes into account the children's future when looking for solutions.

Therefore, setting a time limit of 26 weeks for the social worker to make a decision and treating substitute family care as a form of

assistance that lasts until the child reaches adulthood are worth implementing. This approach will increase the personal security of both children and fosterers.

Forms of assistance

The most important issue with regard to forms of assistance is the demonisation of institutional care, i.e. children's homes, which should be stopped. There are and always will be children for whom this is the only option. Children that have suffered domestic violence for prolonged periods often resort to violence in the households they live in (Škoviera in Fabián, 2019). They have learned behavioural models that make them unable to function in a different home environment. They are even capable of breaking up the foster family. In our opinion, institutionalised therapeutical care is the best way to help these children change their patterns of behaviour. It should be noted that some of them are even relieved that they do not have to stay in their biological families.

Drawing inspiration from British boarding schools and introducing the possibility of weekend parenting may increase the effectiveness of the child-parent relationship development without traumatising the children.

Another important step should be the restoration or establishment of the institute of "foster care facilities." This institution of specific family assistance has achieved good results in Poland, and its abolition in the Czech Republic and Slovakia has created a gap and loss of assistance for larger sibling groups.

Assistance management

The Polish model of family assistant shows the benefits of managing assistance. The importance of the assistant is determined by the role itself. He or she is a key worker in providing assistance and deciding whether the family has the potential for change. This person organises directly the form and manner of assisting the family.

In the other models, this responsibility rests with the municipal social worker, who plays a controlling role; the service itself, however, is provided by an organisation, which should use the same worker in a supportive or therapeutical role (Fabián, 2015).

Delegating this activity to a family assistant would create a direct line of assistance (social worker – social organisation). At the same time, the administrative burden on social workers would be reduced.

Conclusion

The authors of this publication have compared four models of care for vulnerable children. With the growing affluence of society, the number of children for whom we seek forms of assisting their development and reducing the damage already caused by their biological families has not decreased. We have described child and childhood protection models from Poland, the Czech Republic, Slovakia, and the United Kingdom. This selection was not random. The first three models have a very similar past shaped by totalitarian regimes. The UK model was chosen as a point of reference for their change and further development.

At the same time, we have tried to find a starting point for the improvement of the presented models based on the paradigmatic model discussed by Gilbert in his book *Child Protection Systems*. The child focus model, which focuses on children and their needs, was chosen as an example in this publication.

The proposed changes entail minimal interference with existing national legislation and use tools that have already proven effective in practice, albeit in different systems. Ideally, the model of child and childhood protection should be linked to social policy models aimed at the development of society as such. In other words, to refer to the Universal Declaration of Human Rights, it should create favourable conditions for individual development. However, this is a topic for another publication.

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This publication provides a useful insight into the structure and historical development of four family support and child protection frameworks: Czech, Slovakian, Polish and British (England and Wales). It looks at how each of the models understands child welfare, especially in the context of child protection, and discusses the parents' position therein. The book could inspire practitioners, researchers and policy makers to redefine child-focused practice and build systems where child welfare is considered paramount and is safeguarded throughout – first and foremost, well--coordinated and targeted support of their families and, if that is not possible, thoroughly assessed and supported permanent out-of-family placements.

'The Chapter describing child protection proceedings in the Family Courts in England and Wales is essential reading for those wanting to know more about the evolution of the law, public inquiries following cases where protection was found wanting, and current practice, particularly in regard to fostering and adoption. Much light is shed on the elements of assessing risk and permanence planning. It's suitable for those needing an overview, but also those wishing to explore the subject in depth. I highly recommend it.'

Judge Arvil Calder,
Immediate Past President of International Association of Youth and Family Judges and Magistrates

'With its broad scope, the reviewed publication is an important contribution to the monographs devoted to the subject. There are not many works that focus on the analysis of individual national systems in order to find a perfect model – an institutional solution that could be used to improve the protection of children's rights in practice.'

Excerpt from the review by Marta Danecka, PhD

'As regards interdisciplinary reflection on social work understood as providing solutions to problems of children, youths and dysfunctional families, *Child Protection System – just think differently? Critical analysis of selected models* is, in my opinion, a publication that is unique on the Polish market. Its vast advantages include the theoretical and practical research-based approach as well as the legal perspectives applied by the authors. The book may find its place in international organisations (such as Eurochild) and in on-going debates concerning child protection and child care.'

Excerpt from the review by Agnieszka Golczyńska-Grondas,
Professor of the University of Lodz

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