

HUNGARY: THE CONTENT OF THE RIGHT TO PARENTAL RESPONSIBILITY



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1. Introduction

The content of parental responsibility in the traditional sense has not changed significantly in the recent decades. However, the issues and legal disputes about the exercise of parental responsibility have multiplied and become more diverse. This trend has led to serious changes and the emergence of a new approach at the international level as well.

The initial “paternal power” and “parental power” developed to “parental custody” in the former Family Law Act, while international documents use paternal “responsibility” instead of “custody” for the summary of parents’ rights and duties in relation to their children. In Hungary, during the codification process, it was suggested that other phrases, such as parental care, parental liability, and parent–child relationship, would be desirable instead of the term “parental responsibility”; however, according to the legislator, none of them express what the parents’ tasks in this matter are better than “parental responsibility.”¹

1 Kőrös, 2006a, p. 1.

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2. Axiological and constitutional foundations for the protection of parental responsibility

According to the Fundamental Law, Hungary shall protect the institution of marriage, namely the conjugal union of one man and one woman based on their voluntary and mutual consent; Hungary shall also protect the institution of the family, which is the foundation for the survival of the nation. The basis for family relationship is marriage as well as the relationship between parent and child. The mother is a woman, and the father is a man. The creator of the Constitution wanted to clearly enshrine the creation of the mother as a woman, the father as a man, and to establish the basic guarantees intended to protect children and the rights of future generations. In line with this, the Fundamental Law declares that Hungary protects the right of children to be identified by their sex assigned to them at birth and provides for their education in accordance with the values based on Hungary's constitutional identity and Christian culture. These foundations, which serve the most important interests of children and future generations, provide a stable basis for Hungary to remain a strong, secure community in the future. Hungary promotes the commitment to have and raise children on the level of Fundamental Law. The protection of families shall be regulated by implementing an act.

Parents shall have the right to choose their form and method of child-rearing. They shall also provide care for their minor children, which includes their education. Children of adult age shall provide care for their parents if they are in need.²

3. Protection of parental authority in the system of legal sources

The Family Protection Act³ places great emphasis on families as “the most important national resource of Hungary” and “the guarantee of the survival of the nation.”

In addition to emphasizing the importance of upbringing in a family, marriage is seen as the foundation of family, which fulfills its role when the long-lasting and solid relationship between mother and father bears the responsibility for the children. Without the birth of children and growth of families, there is no sustainable development and economic growth under the law; further, there is no well-functioning society without harmonious families. The Family Protection Act also states that intergenerational relationships, including between grandparents and grandchildren, are of paramount importance in the lives of families.

² Fundamental Law Art. XVI. (1)-(4)

³ Act 2011 of CXXI on the Protection of Families [FPA. – Family Protection Act] Preamble.

According to the law, the protection of the institution of family and marriage—especially the parent–child relationship that forms the basis of the family relationship—in which the mother is a woman and the father is a man is the duty of the state. The protection of orderly family relationships and the exercise of children’s right to self-identity according to their gender are of particular importance for the protection of their physical and mental health. The state supports the desire to have children in accordance with the provisions of special laws to ensure the survival of the nation and help the realization of the parents’ intentions to have children. The state supports adoption so that all children can be raised in a family and seeks to establish an adoption procedure that is in the best interests of the child within a reasonable timeframe.⁴

The law stipulates as a principle that, to protect children, media service providers are obliged to provide their services with respect to the institution of marriage and the value of family and child-rearing. The state encourages the presentation of programs and media contents that disseminate the value of the family and the upbringing of children. It was also declared, as a principle for the protection of children, that anyone under the age of 18 years cannot be made available for any pornographic content or content that depicts self-centered sexuality or that promotes deviation from the gender identity assigned at birth, gender reassignment, and homosexuality.⁵

According to the Family Protection Act, a parent is not only obliged but is also entitled to take care of their minor child in the family and to provide the child with the conditions necessary for the physical, mental, spiritual, and moral development and access to education and healthcare.⁶ The FPA sets out, in a separate chapter, the parental obligations and rights in respect of which the mother and father are equal.

The parent of the minor child is obliged to

- respect the human dignity of the child;
- cooperate with the child;
- inform the child about the issues concerning to the child, in accordance with their age and development and take the child’s views into account;
- provide guidance, advice, and assistance for the exercise of the rights of the child;
- take the necessary measures to enforce the rights of the child;
- cooperate with persons, bodies, and authorities involved in the care of the child;
- take care of the child in accordance with the provisions of a separate law when the child is in a public place or nightclub at night.

The parent is obliged to spend the support received with regard to the child in the care and upbringing of the child and is obliged to support the minor child even by restricting their own necessary maintenance.⁷

4 FPA. Art. 1(1)-(4).

5 FPA. Art. 5 and Art. 5/A.

6 FPA. Art. 9(2).

7 FPA. Art. 9..

A parent raising a minor child is entitled to the benefits in accordance with the provisions of a separate law as well as benefits ensuring the coordination of the parental role and work.⁸

It is also necessary to mention the Child Protection Act,⁹ which details the rights and obligations of children¹⁰ and parents in a separate chapter. The latter are in line with the content of the Family Protection Act. An important legislation on the subject is the Government Decree 149/1997 (IX. 10.) on guardianship authorities and child protection and guardianship proceedings (Gyer.). This Decree contains rules on matters relating to the exercise of parental responsibility in cases where the guardianship authorities have jurisdiction over disputes between parents living together and living apart from each other as well.

The Criminal Code stipulates the punishment of crimes against the interests of children and against the family in several criminal offenses.¹¹

4. The concept of a parent and a child

According to the Civil Code, and in line with the UN Convention on the Rights of the Child, persons who have not yet reached the age of 18 years shall be deemed minors. Nevertheless, married minors are considered to be of legal age. In cases provided for by law, the guardian authority may authorize the marriage of a minor of limited legal capacity over the age of 16 years.¹²

If the marriage is annulled by court order owing to the lack of capacity or in the absence of the guardian authority's consent where it is required due to minority,

8 A pregnant mother or a parent raising a minor child, as a parent raising at least three children, a single parent, or a parent with a chronically ill or severely disabled child are entitled to various benefits to take account of these circumstances. FPA. Art. 15-18. For instance, until the child reaches the age of three, the worker shall be entitled to unpaid leave for the purpose of caring for the child, to be granted at the time requested by the worker. According to the Art. 128 (1) of the Act 2012 of I on the Labour Code (LC), employees shall be entitled to unpaid leave for the purpose of taking care of their child until the child reaches the age of three, and such leave shall be allocated at the times requested by the employee, or if in the case of women, while receiving treatment related to a human reproduction procedure [LC. Art. 65(3)].

9 The Act 1997 of XXXI on the Protection of Children and about the Guardianship Administration (Children Protection Act – CPA.).

10 CPA Art. 6-10.

11 The Chapter XX of the Act 2012 of C on the Criminal Code (Criminal Code) regulates the criminal offences of “Abuse of a Minor” (Art. 208), “Child Labor” (Art. 209), “Preventing the Exercise of Visitation Rights” (Art. 210), “Changing of the Custody of a Minor” (Art. 211), “Nonsupport” (Art. 212), “Domestic Violence” (Art. 212/A), “Violation of Family Status” (Art. 213), and of “Plural Marriage” (Art. 214). These regulations are often filled with content of family law provisions.

12 CC. Art. 4:9(2).

adulthood acquired by marriage shall no longer apply. The dissolution of this marriage shall not affect adulthood acquired by marriage.¹³

Minor children are under parental responsibility or guardianship.¹⁴ It follows that a child who has neither a parent having parental responsibility nor a guardian cannot be legally interpreted. In the case of a child born in wedlock, parental responsibility and both paternal and maternal status are established by birth, *ipso jure*, by law. With the exception of the special rules on adoption, parental responsibility may not be waived, and parental responsibility over a minor child can be terminated only by court in cases specified by law. If, for any reason, the child does not have a single parent exercising parental responsibility, immediate action must be taken with the involvement of the guardianship authority regarding the child's further fate and, if necessary, placing them under guardianship. For each child, there must be a person (parent or guardian) who is "responsible" for the child for the entire duration of the minority.

5. Principles of parental responsibility

The Book of Family Law of the CC sets out the principles governing the exercise of parental responsibility, which are important for the parent-child relationship, in line with the best interests of the minor.

5.1. Cooperation obligations of parents

The cooperation obligation of parents is an essential requirement, which means that parental custody shall be exercised by the parents in collaboration with one another in the interest of the child's physical, intellectual, and moral development, regardless of whether the parents live together or separately. It is necessary to deal with the child by pushing personal differences and possibly the parents' offenses against each other into the background and to discuss and make decisions related to the common minor child. If the parental responsibility of the minor is exercised jointly by the parents together or separately, this is accompanied by a joint decision-making right.

However, the obligation to cooperation does not always and in all respects constitute a right of consent or joint decision if, after the separation of the parents, only one of the parents exercises parental custody of the joint minor child(ren). In such a case, the separated parent has the right to the joint decision only on major issues relating to the child's well-being.¹⁵ Otherwise, the parent raising the child is only

13 CC. Art. 2:10(1)-(3).

14 CC. Art. 4:146(1).

15 CC. Art. 4:175.

obliged to inform the separated parent about the child's development, state of health, and studies.¹⁶

It shall be emphasized that in addition to the general cooperation obligation of parents, the Book of Family Law emphasizes the duty of cooperation between the parent exercising parental responsibility and the separated parent to respect each other's family life and peace.¹⁷

5.2. Principle of equality of spouses

The principle of equality of spouses is one of the general principles of family law, which includes, *inter alia*, that on family life, and in family affairs, spouses shall be considered equals; they shall have equal rights and obligations.¹⁸

However, the legislator also considered it important to place a special emphasis on the requirement of equality for parents. Another important basic premise is that the rights and obligations of parents are equal in the joint exercise of parental responsibility; thus, no discrimination can be made between parents in this area. In other words, neither parent has more "power" in issues and matters affecting the child than the other, who also exercises parental custody.¹⁹

5.3. Involving children in the decision-making process

According to Article 12 of the UN Convention on the Rights of the Child, the child who can form their own views has the right to express those views freely in all matters affecting them, and their views are given due weight in accordance with the child's age and maturity.

The child's opinion shall be taken into account according to their age and degree of maturity. To exercise this right, the child shall be given the opportunity to be heard in any judicial or administrative proceedings directly or through a representative or appropriate body in which they have an interest, in accordance with the procedural rules of domestic law.

According to the Family Protection Act, parents shall inform the child concerning the decisions that pertain to them as well, and they shall take the child's opinion into account, giving it due weight consistent with the child's age and degree of maturity.²⁰

The Child Protection Act also states, as a basic principle, that the child has the right to freedom of expression and to be informed about their rights, the possibilities of enforcing these rights, and to be heard directly or otherwise on all matters

16 CC. Art. 4:174.

17 CC. Art. 4:173.

18 CC. Art. 4:3.

19 However, parental equality is expressed not only in the Book of Family Law but also in the Family Protection Act.

20 FPA. Art. 9(3) c).

affecting their person and property, and their opinion shall be taken into account in view of their level of development.²¹

Art. 4:148 of the Book of Family Law describes the parent's obligation to inform their child concerning the decisions that pertain to the child as well, and they shall permit the child of sound mind to express their views before the decision is made and to partake in making the decision itself.²² Article 4:171(4) prescribes to courts that in justified cases—or if requested by the child themselves—the court shall hear the child as well, either personally or through an expert. If the child is over the age of 14 years, the decision relating to custody and their placement can be made upon the child's agreement, except when the child's choice is considered to jeopardize their development.

An example is when a child chooses a parent who is less suitable for upbringing solely because they provide better financial conditions or tolerate the child's free life. It shall be regarded that a child over the age of 16 years shall be allowed to leave the parents' home or any other place of residence designated by the parents, with the guardian authority's authorization and without the parents' consent, if that is not contrary to their interest.²³

The law stipulates the different levels of a "partnership" between a parent and a child.

On the one hand, it prescribes an obligation to provide information on all decisions affecting children. On the other hand, in some cases, the parents and the child jointly decide on the latter's career path by considering their abilities.²⁴

In certain matters, the Civil Code grants an independent decision-making right to a child who has reached the age of 14. This means, for example, that they can make legal statements of a personal nature for which they are authorized by legislation (e.g., statement concerning the acknowledgment of paternity, adoption, or marriage), can conclude contracts of minor importance aimed at satisfying their everyday needs, can dispose of the earnings they acquire by gainful employment, or can give away gifts within reasonable limits.²⁵ In the field of healthcare, a minor who has reached the age of 16 is entitled to name the person who exercises the right to refuse informed consent or to refuse healthcare instead.²⁶

In addition to the principles of exercising parental supervision, the Civil Code provides regulation stating that the opinion of a minor of sound mind shall be taken into account:

21 CPA Art. 8(1) and Art. 12(4) b).

22 E.g., the court classified the contract signed by the parents against the will of the 17-year-old, which obligated the minor to perform the contract in person even after reaching the age of majority, as a void contract concluded by circumvention of the law (EBH2004. 1019.).

23 CC. Art. 4:152(4).

24 CC. Art. 4:153(1)-(2).

25 CC. Art. 2:12(2).

26 Health Care Act Art. 16(6).

- any statement made by the legal representative that effects the person or property of the minor;²⁷
- as to their adoption, a minor of sound mind under the age of 14 shall be heard, and their opinion shall be taken into consideration where deemed appropriate;²⁸
- the court or the guardian authority shall adopt a decision relating to visitation rights taking into account the child’s age, health, and living conditions; the parents’ personal circumstances; and the opinion of the child of sound mind;²⁹
- in the process of appointment of a guardian, the opinion of a minor child of sound mind shall be taken into account and given due weight consistent with the child’s age and degree of maturity.³⁰

The adjudication of whether a child is of sound mind is an extremely complex issue. According to the Child Protection Act, the child of sound mind is a minor who, in line with their age, intellectual, and emotional development, can understand the essential content and facts of the decisions affecting them during the hearing.³¹ In the context of the settlement of parental custody, a minor child who is stable in terms of their way of thinking and personality is able to express a concrete opinion independently and without negative influence and thus make their well-founded request in the best interests of the court informed.³² A judge with sufficient experience is already able to make a decision with great certainty as to how well the child has judgment when over the age of 10–12.³³ However, under this age, it can be necessary to involve an expert.³⁴

The success of the child’s personal hearing depends on the court and on the judge’s ability to perceive the child’s specific psychological situation and to establish a real dialogue with the child.³⁵ The advantage of judicial hearings is the principle of “directness,” while the advantage of a psychologist expert’s hearing is that it is less burdensome or shocking, since it involves no direct questions and children do not see the purpose of indirect questions.³⁶ The “child-friendly procedure” in the Civil Procedural Code (CPC)³⁷ is not traumatic for the child, but it takes into account their rights and needs.³⁸ During the analysis of concrete court and guardianship cases, it

27 CC. Art. 2:14(3).

28 CC. Art. 4:120(2).

29 CC. Art. 4:181(1)-(2).

30 CC. Art. 4:228.

31 Gyer. Art. 2 a).

32 According to psychology, a court hearing is permissible from the school-age group of second grade (6–8-year-old children) since then the minor’s logical abilities and perception of reality are developing and are thus suitable for forming an opinion that cannot be ignored. Ádámkó, 2015, pp. 10–11.

33 Szeibert, 2020b, pp. 10–11.

34 Visontai-Szabó, 2015, pp. 31–32.

35 Kozák, 2011, p. 25.

36 Ádámkó, 2015, p. 12.

37 The Act of 2016 on CXXX on the Civil Procedural Code (CPC).

38 The National Office for the Judiciary has set up child hearing rooms in several courts across the country under the “Child Friendly Justice” program, where children under 14 are heard in a special environment designed to meet their needs. Fazekas, 2016, p. 2.

can be mentioned that, in almost all cases, the court hears a child over the age of 14 with binding force and, in all other cases, entrusts this task to a specialist—a psychologist.³⁹ It is obvious, even without psychological knowledge, that the minor can express a meaningful opinion on some issues before reaching the age of 14 (e.g., even at the age of six or seven), and there are other issues in which the minor cannot be considered competent later on.⁴⁰

5.4. Limiting parental supervision in exceptional cases

Limiting parental supervision for the protection of the child(ren) should only be done in exceptional cases and should always be proportionate to the seriousness of the danger or the harm. With regard to this, the Act stipulates that the court or other competent authority may restrict or withdraw the parent's rights of custody in exceptional and justified cases specified by law where this is deemed necessary for the protection of the child's best interest (see, in detail, chapters 6.5.4. and 6.6.3.) Eventually, the CC allows the termination of parental responsibility by the court if the parent has engaged in any wrongful conduct causing serious injury to, or endangering the interest of, their child, including the child's physical integrity and mental or moral development, or if the parent was sentenced to imprisonment by court verdict for an intentional criminal offense committed against either of their children.⁴¹

6. The rights and obligations of parents and children resulting from parental responsibility

6.1. Rights and obligations arising from parental responsibility in general

The Act lists the rights and obligations arising from parental responsibility, which are the following: to select the minor child's name, to provide care, to determine the child's place of residence, to handle their financial affairs—including the right and obligation of representing the child in legal forums—and the right to exclude guardianship and other forms of social care.⁴²

In addition to parental responsibility, the Family Protection Act defines the rights and obligations of a parent as follows. In the family, the mother and father have the

39 Bucsi, 2011, p. 20.

40 According to Fehérné Gaál Tünde, children under 10 years of age are more open to the expert, and the various tests and methods used by the expert are more effective in revealing the child's family relationships. These children do not yet have the capacity to judge, but what they say will be assessed in the context of the other facts of the case. Fehérné Gaál, 2016, p. 9.

41 CC. Art. 4:191(1)-(2).

42 CC. Art. 4:146(2).

same rights and obligations under parental responsibility, with the exception detailed in a separate act. A parent is obliged and is also entitled to take care of their minor child in the family, to nurture them responsibly, and to provide them with the conditions necessary for the physical, mental, and moral development and access to education and healthcare.

The duties of the parent of a minor child, in particular, are the following:

- respect the human dignity of the child,
- cooperate with the child,
- inform the child about the issues concerning to them according to their age and development,
- provide guidance, advice, and assistance in the exercise of the child’s rights,
- take the necessary measures to enforce the child’s rights,
- cooperate with the persons, entities, and authorities involved in the child’s care,
- take care of the supervision of the child, in accordance with the provisions of a separate law, when the child is in a public place or nightclub at night.

The parent is obliged to spend the support received for the child in their care and upbringing. The parent is obliged to maintain the child in the manner and with the exceptions specified by law, including in the case of a minor child, by restricting the own necessary maintenance.⁴³

6.2. Naming the child

Determining the name of a child is a right that falls within the scope of parental responsibility, which, as an important issue affecting the child’s fate, belongs to both parents, even if the parental responsibility rights are no longer exercised jointly. If the parents cannot agree, the guardianship authority decides.⁴⁴

The child shall be given—by the parents’ agreement—the birth name or the married surname of their mother or father. The child’s surname may consist of two segments at most.

If no person is considered the child’s father, the child shall use the mother’s surname accrued by birth or through marriage. The mother may request the guardian authority to enter an imagined person in the registry of births as the father of her minor child; however, this is only possible if there is no proceedings pending for paternity or for the child’s adoption.⁴⁵ However, it is recommended that this procedure be performed as soon as possible in the child’s life as changing the name may be detrimental to an older child.⁴⁶ At any time after the child has reached the age of ma-

43 FPA. Art. 9-10.

44 CC. Art. 4:175.

45 Gyer. Art. 60(1).

46 Makai, 2013, p. 240.

majority, the child may apply to the guardianship authority for a person to be identified as the father, provided that no person is already regarded as the father. The child can also request, at any time, that the name and data of the previously registered imagined father shall be deleted and can make a statement whether they wish to continue to bear the imagined father's surname.⁴⁷

6.3. Taking care of the child

The most important element of parental responsibility is that the parents shall ensure the child's livelihood, care, and upbringing, so that when their child becomes an adult, they are able not only to live independently but also to integrate into society. That is why the responsibility and obligation of the parent goes beyond the child's maintenance and education. Within the scope of the parent's educational obligation, the minor child shall pass on the general moral norms and shape their character, values, and habits in accordance with the moral requirements accepted by society. The absolute respect of life and human dignity is the central element of moral education and the core of a minor child's socialization and emotional intelligence.⁴⁸

In this regard, it is critical to decide when and under what conditions a minor child can appear on social platforms. In Hungary, the age limit of digital self-determination is 16 years. The processing of personal data of a child under this age is only lawful if consent was given by the parent exercising parental responsibility over the child. The data controller shall make reasonable efforts to verify that the consent has been given by the parent. The problem is that children can understand digital technology better than parents.⁴⁹

6.3.1. The child's residence and leaving the parental home

The place of care and upbringing of the child is primarily the parental home, the common home. The Act also stipulates that parent shall provide a home for their child in their own household, and the child's place of residence shall be the parents' home even if the child temporarily resides elsewhere (e.g., in college, boarding school, and so on). The child can use the parents' home in their own right; it is prescribed by the Book of Family Law that "*Minor children of the spouses shall be given the right of tenancy in the common home of the spouses.*"⁵⁰

A child over the age of 16 years shall be allowed to leave the parents' home or any other place of residence designated by the parents with the guardian authority's authorization and without the parents' consent. In this regard, the guardianship

47 Gyer. Art. 60(2)-(3).

48 The most important aspects of good moral and family upbringing are compromised when the guardian of the minor fails to do their utmost to impart these values to the minor, thereby failing to best shape their emotional stability and mental health (BDT2010. 2364.).

49 Gál, 2020, pp. 23–24.

50 CC. Art. 4:76(2)-(3).

authority shall examine whether leaving the parental home is “not against the best interests of the child.”⁵¹

It is important to note that this kind of permission of the guardianship authority does not imply the placement of the child or its alteration, nor does it affect parental supervision. However, it may be necessary to change the court decision related to the payment and enforcement of child support in some cases.⁵²

6.3.2. *The extradition of the child*

The parent or guardianship authority may demand the extradition of the child from anyone who is wrongfully holding them.

An action for the extradition of a child may be brought by the parent who exercises parental responsibility provided that the person against whom the action is sought is unlawfully retaining the child. The conduct of a person is unlawful if they take a child against the parents’ consent or court order. However, the subject of the evidence in preparation for the decision should not be to examine which parent is better to exercise parental responsibility. The provisions on the procedure for the extradition of a child are in line with the Brussels II Regulation as well as the Hague Convention.

6.3.3. *Taking the child abroad and staying abroad*

Different rules have been developed for the child’s travel abroad.

The consent of a separate parent who does not exercise parental custody is not required for the minor child to travel abroad for occasional holidays, sightseeing, or family visits for a few days or weeks, when the child travels with the other parent who exercises parental custody. The separate parent is also entitled, within the framework of visitation rights, to maintain personal contact with the child; removing the child from their home or place of residence on a regular basis even to go abroad, for a prearranged period of time; spending longer time with the child at specific times, such as school breaks and lengthy holidays; as well as maintaining contact by ways other than personally. The right of visitation applies also to traveling with the child to foreign destinations, unless otherwise provided for by the court or the guardian authority in the child’s interest.⁵³

However, if it becomes necessary for the child to stay abroad for a longer period or possibly permanently—whether the child or the parent is studying abroad or for the parent’s employment or other similar purpose—the other parent’s consent must be obtained, and a statement that the child is staying abroad alone or with the

51 There can be many reasons for a child’s intention: the minor’s further education, training, or employment; a possible civil partnership; or emotional distance from the parent(s).

52 Makai, 2007, pp. 694–695.

53 CC. Art. 4:180(1)-(2).

parent must be made. The longer period depends on the purpose of the stay abroad, which can be a few months or possibly several years (for example, in the case of employment). Thus, a child can travel abroad for a longer period of time on their own or with one of their parents only with the consent of both parents. If they cannot reach an agreement, their guardianship authority will also have to settle their dispute.⁵⁴

Based on the abovementioned rules, it is obvious in which cases is legal and in which is illegal to take a child out of Hungary. The purpose of the departure—and not the duration—is the criterion from which the illegality or lack thereof can be established. Thus, taking a child abroad for a long period of time, not for the purpose of vacation or visiting relatives but for the purpose of changing the usual place of residence or for establishment, is considered illegal on the basis of a unilateral decision of the parent.⁵⁵

6.4. Rearing of children and career guidance

According to Fundamental Law, parents shall have the right to choose the form and method of rearing their children. Rearing contains many legally unregulated elements, such as worldview, religion, morality, and behavior.⁵⁶

Issues of the freedom of conscience and religion connected to a child's upbringing may affect sensitive and personal areas in which a third person or authority cannot intervene, even if the parents have not reached an agreement. Thus, if, in the case of joint custody, the parents fail to agree on issues connected to the right of freedom of conscience and religion, the guardian authority does not have decision-making power.⁵⁷

Considering the child's abilities, the parents and child decide together about the latter's preferred career; however, the child's physical and intellectual abilities, interests, development, and endurance shall be taken into account. The parents can decide whether to send their child to a public, parochial, or other private school. An important aspect in the designation of the school is that it teaches the mother tongue of the separated parent to a high standard, for a significant number of hours, and introduces the child to the culture and traditions of the parent's country of origin.⁵⁸ As the choice of the child's school and career is an important issue affecting their well-being, the separated parent also has the right to consent.⁵⁹ If the parent caring for the child decides to choose (change) the child's school without the consent of the separated parent, as a result of which the amount of child support would increase by

54 CC. Art. 4:175.

55 Kőrös, 2013, p. 5.

56 Fundamental Law Art. XVI(2).

57 CC. Art. 4:166 and BH2001.479.

58 BH2013. 246.

59 When choosing a school for the child, it is important that it teaches the mother tongue of the separated parent to a high standard, with a significant number of lessons, and that it introduces the child to the culture and traditions of the parent's country of origin (BH2013. 246.).

tens of thousands of forints, the separated parent is not obliged to pay it if income conditions would otherwise allow this.⁶⁰ The parent's right to the free choice of school may be restricted to ensure the child's special interests, fundamental rights, and equal opportunities.⁶¹

The Book of Family Law appoints the guardianship authority to decide the dispute.⁶²

The Act puts great emphasis on the "direct contact with the child"; therefore, the CC allows the stepparent and foster parent to be involved in exercising certain rights and obligations relating to caring for and raising the child with the agreement of the parent.⁶³ For example, to take part in a parent's meeting at the child's school, to take the child to kindergarten or school, and to take them to various school events, special classes, sporting events.

6.5. Management of the child's assets

One of the most important sub-rights of parental responsibility is the management of the assets of the minor child. In recent decades, the responsibilities of parents in this area have become even more important.

6.5.1. Subject of the asset management

The parents' asset management rights and their obligations extend to all the properties of the child that are not excluded from the custody in accordance with the Book of Family Law. The following are not covered by parental responsibility:

a) The earnings acquired by the child's gainful employment. It can be wage, salary compensation, reward, or royalty. Moreover, a child over 14 years of age can undertake commitments up to the extent of their earnings.⁶⁴ For example, they can give away gifts, shop, or be a guarantor. If the child is raised in the parent's home and has an income, the parent shall be entitled to ask for appropriate contribution to household expenses.⁶⁵

b) Property that a child has received with the demand that it cannot be managed by the parents. In this case, the guardianship authority shall appoint a trustee to manage the property. The condition of it is that the other parent is also not entitled to the administration of the property or that the administration of the property is contrary to the child's best interests.⁶⁶

60 BH2016. 64.

61 BDT2017. 3761.

62 CC. Art. 4:153.

63 CC. Art. 4:154.

64 CC. Art. 2:12(2) c).

65 CC. Art. 4:157(3).

66 The detailed rules of the procedure can be found in the Art. 26/A of the Gyer.

6.5.2. Appropriation of the child's asset and income

In this manner, asset does not mean the earnings of the minor child but the pure income of the asset (e.g., property rental, interest of cash).

The parents shall use the child's assets remaining after covering the incremental costs applicable to them for financing the child's justified needs. Unfortunately, in some cases, the child cannot be maintained even in this way. The parents shall be allowed to allocate the child's assets for covering the costs of maintenance with the authorization of the guardianship authority. However, whether parents can take care of the child without compromising their own support is an important condition.⁶⁷

6.5.3. The parents entitled to manage the assets and their liability

a) The range of parents entitled to manage the child's property. In the case of parents exercising parental custody jointly, the rights and obligations of the management are exercised jointly by the parents; otherwise, the parent exercising parental custody acts exclusively in the child's property matters. However, the Book of Family Law provides that the court may delegate management rights upon the parent living separate from them⁶⁸; in particular, such a decision may be justified where the management of the child's property requires special expertise.

b) Parents' responsibility for the management of the child's assets. The parents shall administer their child's property without having to provide security and without the obligation to give account. In managing their child's property, the parents shall follow the same rules of prudential management as applicable to their own affairs. In the event of any breach of this obligation committed intentionally or through serious negligence, the parents shall provide compensation for damages on the grounds of non-contractual liability.⁶⁹

In the event of any breach of obligation of parents having rights of custody in managing their child's assets, thus causing serious injury to the child's interest, the guardian authority may impose restrictions on or withdraw the right of management from the parents in justified cases.⁷⁰

6.5.4. Limitation of the parent's right to manage the child's assets

a) Limitation of the parent's right to manage the child's assets by the guardianship authority. In the event of any breach of the obligation of parents having rights of custody in managing their child's assets, thus causing serious injury to the

67 CC. Art. 4:215(2).

68 CC. Art. 4:168(2).

69 CC. Art. 6:519.

70 CC. Art. 4:159.

child's interest, the guardianship authority can impose such consequence(s) that can ensure the protection of the child's asset:

- order that the child's money and other valuables be transferred to the guardian authority if such assets are not immediately required for ongoing expenses according to the principle of prudential management.⁷¹
- order the parents to provide collateral security,
- place the management of assets under its supervision,
- order the parents to give account of management practices as a trustee,
- impose restrictions on or withdraw the right of management from the parents or their right of representation in certain financial matters or specific groups of matters.

The guardianship authority can apply more than one consequence simultaneously.

b) Limitation of the parent's right to manage the child's assets by the law. While the guardianship authority can restrict the parent's right to manage the child's assets only in the case of a serious breach of obligations, the provisions of the Civil Code impose restrictions to protect the child's property in the event of the exercise of the parent's general asset management right.

The parent, as a legal representative, can act independently on behalf of a minor of limited legal capacity, but restrictions apply. In some cases, the law requires the minor's personal statement (e.g., a notarial will), or the legal representative parent cannot make legal statements concerning the minor's income from work.

In addition, the Civil Code mentions several cases where the approval of the guardianship authority is required for the validity of the statement of the parent as a legal representative in the case of both a minor of limited legal capacity and with legal incompetency:⁷²

- 1) The waiver of maintenance of a minor. For example, the parent can agree that the parent living separate and apart from the child can meet the maintenance obligation by providing assets of kind value (real estate ownership share or money).⁷³
- 2) The rights or obligations that, by virtue of inheritance, are conferred upon a minor, and the refusals to inherit any property that can be individually refused; for example, an inheritance contract concluded by a minor of limited legal capacity as heir. However, a minor of limited legal capacity can make a notarial will on their own, without any consent or permission.
- 3) The acquisition of any real estate property by a minor, if such property is not free, or the transfer or encumbrance of a minor's real estate property. This

71 Gyer. Art. 26/B(2).

72 CC. Art. 2:15.

73 CC. Art. 4:217(2).

may be, for example, the lien on the property, the grant of the right to use it, or the establishment of an easement right.⁷⁴

- 4) The disposal of property exceeding the amount⁷⁵ specified by law for a minor. For example, legal transactions concerning the child's movable and cash assets or property rights exceeding the abovementioned value limit (for example, securities, shares, stocks, and so on).
- 5) The guardianship authority shall, upon request, decide whether to approve the parent's abovementioned legal declarations. The condition for this is that it is in the best interests of the child to make a declaration of the child's property.⁷⁶

Finally, it shall be mentioned that some statements will not be valid with the approval of the guardianship authority either:

- 1) Gifting is an exception as the child can give away gifts within reasonable limits.
- 2) Liability for a foreign obligation without adequate consideration is an exception when a minor of limited legal capacity undertakes commitments up to the extent of their earnings.
- 3) Waiving on rights without compensation: if the waiver was made for a fee, it depends on the content of the legal declaration—whether the guardianship authority's approval is required for the validity of the legal representative's legal declaration or not.

6.6. Legal representation of the child

Minor children are under parental custody or guardianship, which means that parents having rights of custody can and shall represent their child in matters of a personal and financial nature.⁷⁷

Marriage, which has an age-related effect, is an exception to this.⁷⁸

6.6.1. The legal representation of a minor of legal incompetency

As a general rule, an incapacitated minor who has not reached the age of 14 cannot act on their own behalf or independently; instead, the parent or guardian exercising parental custody can act and make a valid legal declaration. As an

⁷⁴ The need for the approval of the guardianship authority for all legal transactions involving the property of a minor with limited capacity or incapacity is independent of the value of the property (share of the property). (BH2007. 153.).

⁷⁵ If the value of the assets involved in the parental provision exceeds seven times the current minimum amount of the old-age pension.

⁷⁶ See, in details, Art. 26/B of the Gyer.

⁷⁷ CC. Art. 4:146.

⁷⁸ CC. Art. 4:9 and the Art. 36 of the Government Decree No. 149/1997. (IX. 10.)

exception, the contracts of minor with legal incompetency can be concluded if they are generally concluded in large numbers and do not require special consideration or assurance that have been concluded and performed directly (e.g., bus tickets or skating rink entrance purchase).⁷⁹

6.6.2. The legal representation of a minor of limited legal incompetency

The consent of the legal representative is required for the validity of a legal declaration made by a minor of limited legal capacity who has reached the age of 14. In most cases, the legal representative of the minor (parent or guardian) of limited legal capacity makes the legal declaration independently; however, an important guarantee rule is that if a parent makes a legal declaration on behalf of a minor of limited legal capacity, they must take the child's views into account.

A minor who has reached the age of 14 can make some legal statements on their own; for example, they can conclude contracts aimed at satisfying their everyday needs. This is the so-called "pocket-money rule," which allows a minor over the age of 14 to validly make small purchases and simpler transactions. The minor can conclude contracts that only offer advantages, and they can give away gifts within reasonable limits. Finally, they can dispose of the earnings they acquire by gainful employment and undertake commitments up to the extent of their earnings.

Finally, some legal statements require the approval of the guardianship authority in addition to the consent of the legal representative or will not be valid with the approval of the guardianship authority either.⁸⁰ These statements were analyzed in the chapter about management assets.

6.6.3. Exclusion of legal representation by parents

If the child has received property with the stipulation that it cannot be managed by the parent, the parent may not act as a legal representative in matters related to the administration of property.

A parent may not be able to act as the child's legal representative because these matters require the minor's personal statement (e.g., last will,⁸¹ marriage⁸²). A minor of limited legal capacity can prohibit the removal of organs or tissues from the body for transplantation after death.⁸³

The parent's legal representation may be excluded owing to a conflict of interest. A parent may not represent the child in a matter in which they—or the spouse, cohabitant partner, or other person under their legal representation—are an adversary

79 CC. Art. 2:14.

80 Barzó, 2014, pp. 180–194.

81 CC. Art. 7:14(4).

82 CC. Art. 4:5(1).

83 Healthcare Act Art. 211(1).

to the child. This would be the case if the parent were to gain a pecuniary or other advantage at the expense of the minor in the matter in which their child was represented. In this case, the guardianship authority assigns an ad-hoc guardian for the child; this is appointed by the law (e.g., in action for establishing paternity⁸⁴) or at the request of the court if there is a conflict of interest between the minor witness and the legal representative.⁸⁵

The ad-hoc guardian can officially be appointed upon request of the interested party or by the authority, and they shall have the same authority in the matter as the guardian; however, the ad-hoc guardian is also obliged to know the opinion of the child in their judgment and to take it—as well as the child’s age and maturity—into account in the performance of their activities.⁸⁶

7. Exercising of parental responsibility

The basic common affair and responsibility of the spouses is the care and upbringing of a common minor child; thus, parental responsibility is exercised jointly by the parents. This applies to cohabiting parents even if it is clear that the exercise of custody in everyday life is actually shared between them. Joint parental responsibility does not mean that both parents participate in the life, care, and upbringing of the child with equal emphasis and role. Unless otherwise provided for in an agreement between the parents or by the guardian authority or the court, parental custody shall be exercised by the parents jointly, even if they are separated.

7.1. Agreement between parents on the exercise of parental custody

7.1.1. Joint exercise of parental responsibility

Parents shall establish such a system and lifestyle for their child as they see fit as regards the exercise of custody, whether by express agreement or by implication. However, the law sets two critical limits to parental agreement:

- on the one hand, if the parents are separated, they shall ensure that the child’s life is well balanced when exercising joint parental supervision;
- on the other hand, in matters where immediate attention is required, in the case of joint custody, either parent shall have the right to decide on their own in the child’s interest, of which the other parent must be notified immediately.

84 CC. Art. 4:106(2).

85 CPC. Art. 167/A(4).

86 The detailed regulations can be found in Art. 130/A of the Gyer.

7.1.2. The agreement of parents on the exercise of parental responsibility

In addition to the joint exercise of parental responsibility, an agreement between separate parents may have several contents.

The parents may agree on the joint exercise of parental responsibility in general, meaning that even though they no longer live together, they are still making decisions about the child together. Therefore, if the parents can agree on joint parental responsibility, it is not necessary (but not prohibited) to settle the minimum extent and manner of contact. In the case of the application of the rules of joint parental custody, it is also necessary to indicate the child's place of residence, and it is also necessary to settle the child's maintenance in the agreement.⁸⁷ Undoubtedly, the best solution for a child is if the parents can remain responsible, caring parents who respect each other's parental quality even after their separation.

Parents may share the rights and obligations related to parental responsibility in any division. It can be settled that one of the parents is more actively involved in the care of the child, while the other is only involved in legal representation, administration, and property management. However, the division of duties may also involve the division of work that falls within the scope of the exercise of a specific right, such as care and education. For example, one parent studies with the child and goes to the educational institution, while the other parent promotes the child's out-of-school sports activities and takes them to competitions.

The parents may also agree that parental responsibility is exercised by only one of them. This means that the parents continue to decide jointly on major issues relating to the child's well-being; however, in other issues, only one of them has rights and obligations under parental responsibility.

Nevertheless, in practice, the parents themselves shape the situation in such a way that, after their separation (for example, when one of the spouses moves out of a joint family home), the minor children remain in the household, care, and upbringing of the other parent, to which the other separately moving parent also contributes—only financially or financially and actively—as a parent. If the practice developed in this way is not opposed by the other parent, but they accept and acknowledge it, then this behavior is of paramount importance for the future as well. The CC stipulates that this situation should be considered as an agreement between the parents; thus, the parent disputing this shall prove that, as a result of a substantial change in circumstances, the demanded change in the exercise of parental responsibility is in the child's best interests.⁸⁸

87 CC. Art. 4:21(4)-(6).

88 CC. Art. 4:170(1) Kőrös, 2006b, p. 2.

7.1.3. The court's decision about joint parental responsibility

In a lawsuit for the settlement of parental responsibility, the parents' agreement on joint parental custody or the sharing of it may be approved by the court taking into account the child's best interests, but it can also be decided with a judgment upon the joint request of either party or parties.

Since January 1, 2022 it is possible that in the absence of an agreement between the parents living separate and apart, at the request of either parent, the court may rule to order joint parental custody if considered to be in the best interest of the minor child.⁸⁹

However, under the regulations in force until December 31, 2021, if the parents were not able to agree on the exercise of the child's custody following the deterioration of their marriage or cohabitation, the court had to decide which parent exercised parental custody. According to the previous regulation, the court did not have the possibility to order the exercise of joint parental supervision, even if both parents were suitable for the upbringing and care of the child and even if this was in the child's best interests. In practice, the courts have tried to "solve" this legal obstacle by authorizing the separated parent to have contact with the child for the same period as the parent exercising parental custody. However, according to the Curia, such an arrangement meant the replacement of joint parental supervision with the legal institution of contact, and joint parental supervision disguised in its content.⁹⁰

However, since January 1, 2022, the abovementioned amendment created the possibility for the court to decide on the joint exercise of parental custody at the request of one parent if it is in the best interest of the minor child (i.e., if the child's physical, mental, and moral development can be provided in the most favorable way).

Consequently, in the case of an application for the exercise of joint parental responsibility, the given parent must show in detail how the joint parental supervision and the possible alternate placement and care of the child(ren) will work in the concrete case. The court is entitled to order evidence in this regard and may even hear the child(ren) in person. The court must examine whether it is convenient for the parents to exercise parental responsibility jointly and whether compliance with such a judgment constitutes a real commitment in life. It is also an important aspect to what extent the establishment of joint parental responsibility ensures the child's balanced future life—especially if joint parental responsibility is manifested in the child's possible "alternate placement and care."

The child's place of residence is the home of one parent, even in the case of a joint parental supervision. This can be a problem when parents choose the form of "alternate placement or care" in which the child alternately spends equal time with both parents.

⁸⁹ This amendment was enacted into Art. 4:167 (1) of the CC with Act CXXII of 2021.

⁹⁰ BH2020. 11.

In this case, the parents must state in their agreement—or the court shall state in the judgment—about the child’s place of residence because, in such a case, the child can only have one registered place of residence.⁹¹

7.1.4. The form of exercising parental responsibility – the so-called alternate care

The alternating care that was applied by former judicial practice without concrete legal regulation was added to the CC with the amendment coming into force on January 1, 2022. The amending Act (Act CXXII. of 2021) supplemented the Art. 4:164(1) of the CC with the following:

“Joint parental custody may be exercised by way of the parents taking turns, where they each shall have custody of the child for the same length of time entailing the entitlement and duty of raising and caring for the child.”

This means that both parents can alternately spend the same amount of time physically with the child⁹²; if there is a discrepancy in this (for example, 9 days with the mother and 5 days with the father), it is no longer considered alternate care.

In the case of joint parental supervision, the parties and court shall decide on the extent of the parent’s independent care, including the period of breaks and holidays and on how and when to take over the child. The child’s age may also play a key role in determining the duration.

The establishment of so-called alternate care⁹³ does not exclude the possibility that the court can establish an obligation to pay maintenance from one of the parents, taking into account the different property and income conditions and the parents’ living conditions. This is called additional child support.

It is important to list in the judgment (settlement) exactly which expenses the parents are obliged to undertake separately, which mostly include the fees for meals, clothing, medical expenses, and special lessons. If travel costs are incurred with alternate care, it is necessary to decide who shall bear it; of course, household expenses are always borne by the parent with whom the child is currently staying.

The order of joint parental custody on a unilateral application can be applied in the court proceedings initiated on or after January 1, 2022; however, this solution is not applicable in pending cases.

In the case of alternate care, therefore, both parents spend virtually the same amount of time with and take full care of the child while they are with them. It is not uncommon in some European countries to hand over custody in 3 or 4 days, or

91 Grád, 2019, pp. 1–7. and the Opinions of the Advisory Board of the New Civil Code. http://www.kuria-birosag.hu/hu/ptk?&body_value=&page=1 (Accessed May 6, 2022).

92 Szeibert, 2022, pp. 10–16.

93 Szeibert, 2017a, p. 38.

having a child spend 1 week with one parent and then the same time with the other; however, doing so every 2 weeks has become more common in other countries.⁹⁴

The primary condition of alternate placement is that both parents are not only suitable for raising their children but are willing to spend the same or even more time and energy on their children in the future than before.

The child's suitability is also a significant factor. Some professionals believe that frequent placement alternation can lead to imbalance for young children in the long run. Most psychologists and psychiatrists are strongly opposed to using this option in infancy, and many professionals would prohibit it until the age of 6 years. In the specific case, it is decided whether the equal paternal and maternal presence is necessary for the child or whether the child's emotional lability would no longer be able to endure the constant change in the environment associated with the relocation.⁹⁵ A significant difference exists between the different professional viewpoints.⁹⁶ A critical connecting issue is to determine the opinion of the common minor children because the decision can have a decisive significance and impact on the child's further life.⁹⁷ Therefore, it is advisable for the parents and child to make a decision on the issue of alternate care together, or at least taking into account the opinion, aspects, and request of the child.⁹⁸

The proximity of the parents' place of residence is also a critical requirement as the child must feel at home in both places. They must often travel between the parents' homes, and in the case of a school-age child, they must go to the institution.

It is also a common viewpoint that if parents are unable to communicate properly with each other, alternate care cannot be approved because it requires a good relationship between the parents; nevertheless, it is also supposed that the lack of good communication between parents alone should not be an obstacle of alternate care.⁹⁹ However, another study reports no tangible evidence that the "switched model" would reduce the number of conflicts between parents. Moreover, if the parents had heated debates, the remnant of this dynamic survives, exposing the child to even greater tension.¹⁰⁰

7.2. The court's decision on the sole exercise of parental responsibility

If the separated parents cannot agree on the exercise of parental responsibility, or the conditions for the joint parental custody are not met, the court will decide on the settlement of parental responsibility. A Civil Procedure Code states that in case

94 Szeibert, 2012, pp. 2–7.

95 Gyengéné Nagy, 2006, pp. 34–35.

96 Szeibert, 2017a, p. 43.

97 Fehérné Gaál, 2016, p. 13.

98 Pál, 2014b, p. 12, pp. 16–18.

99 In fact, in some cases, it is the poor relationship between the parents that may require alternate care. Szeibert, 2017a, p. 42.

100 Szeibert, 2017b, p. 58.

of annulment of marriage or divorce, the court must also decide on the maintenance of a joint minor child, the exercise of parental responsibility, or the placement of the child with a third party, even in the absence of a claim to that effect.¹⁰¹

The law prescribes a significant right, allowing one parent to “fully exercise” parental responsibility with the consequence that the other parent cannot do so but has the right to decide jointly on material matters affecting the child’s fate.

During its decision, the court will consider how the child’s best physical, mental, and moral development can be ensured; however, if the exercise of parental responsibility by the parents endangers the child’s best interests, the court may place the child with a third party, provided that this person also requests the placement with them.

Therefore, the court must conduct an extensive evidentiary procedure to decide on the issue. The principles and criteria set out in Directive No. 17 of the Supreme Court (Curia), amended by Directive No. 24 (hereinafter referred to as: Directive), are often applied by courts when they decide which of the separated parents can ensure the full and best development of the child.¹⁰² Therefore, the court must make its decision by exploring and considering all the circumstances affecting the child’s life.¹⁰³ Which are these circumstances?

It must be examined whether the parents are capable to ensure the child’s upbringing based on their individuality, lifestyle, and moral qualities. The court must take into account the honesty of their attachment to the child, the child’s emotions toward the parent and attachment to them, and the parent’s ability to provide education and schooling opportunities.¹⁰⁴

It is also necessary to examine the development of the financial and housing situation of the parties as the environment in which the child’s maintenance, care, and health care is better ensured. The opinion of the environmental study, the nursery school, the kindergarten, and the school can provide valuable data for the decision.¹⁰⁵

Psychological expertise can help make the right decision in the child’s best interests. In these lawsuits, the court asks the questions to the psychologist expert, whose test methods used to define the questions asked are determined entirely independently using the methodological guide,¹⁰⁶ which includes the following:

- 1) Emotional attachment: the impairment of an emotional relationship with one parent, if it is not the result of external influence, justifies the placement of the child with another person in the case of the parent’s incapacity to raise the child.

101 CPC. Art. 459(1).

102 Szeibert, 2020a, p. 15.

103 Grád and Jánoskúti and Kőrös, 2007, pp. 17–20.

104 The worldview of the parents, the doctrines, and beliefs of the religion they practice are not a matter for judicial discretion in the adjudication of the dispute (BH2001. 479. II.).

105 Visontai-Szabó, 2015, p. 35.

106 Methodological letter No. 5/2020.

- 2) Gender and age: the case law of recent decades has only attached importance to a child's age and gender when it is in the best interests of the child to take this into account. However, it should also be emphasized that the decision on parental responsibility and placement of a child over the age of 14 can only be taken with their consent.¹⁰⁷
- 3) Permanence of "placement" and care: the healthy development of the personality of the child is facilitated by being able to live in their usual environment, in the care of those who love them. It is the duty of the parent to explain to the child that the home of the other parent will be their home, and it is the duty of the host parent to help the child get used to their new home.¹⁰⁸ Permanence cannot be taken into account in favor of a parent who creates it through arbitrary, violent behavior with the intention of excluding the other parent from the child's life.¹⁰⁹
- 4) The raising of siblings together: when deciding on the exercise of parental responsibility, the court must seek that the same parent exercises parental responsibility over the children after their separation. However, children's mutual attachment is not equally strong in all families—for example, when there is a significant age difference between them or their abilities, interests, and needs differ significantly. It is not unlawful to place siblings separately with the two parents if it is in accordance with a situation that has developed for several years as well as the wishes and best interests of the children.¹¹⁰
- 5) Responsibility for marriage: behavior that violates marital fidelity¹¹¹ can be assessed in the context of a child's placement if it expresses irresponsibility, selfishness, and indifference toward the family. The court should seek to ascertain which antecedents have led to the severance of cohabitation.¹¹²

7.3. Entitlement of a separated parent to exercise certain parental custody rights

In practice, when both parents are suitable for the upbringing and care of the child but the objective circumstances do not allow for the exercise of joint parental supervision or the so-called application of alternating care, it is not uncommon for the judge to decide, but this decision should not exclude a parent who also loves the

107 CC. Art. 4:171(4).

108 Parental behavior that, by influencing the child, has prevented or made impossible contact with the other parent for years endangers the long-term interests and balanced development of the minor and justifies the placement of the child with a parent who is better able to raise the child (BH2017. 123.).

109 It is not in the child's best interests if the parent who has not been granted parental rights tries to use various means (e.g., repeatedly bringing new lawsuits) to prevent or delay the child's placement in the other parent's home in the hope that they will eventually be entitled to exercise parental rights over the child (BH1998. 180.).

110 BH2000. 451.

111 CC. Art. 4:24(1).

112 Pál, 2015, p. 24.

child in the same way. To achieve the most ideal solution, the legislator allows a parent who does not generally exercise parental responsibility over the child to take an active part in the day-to-day tasks of caring for the child. For example, this parent can take the child to the educational institution on certain days, or they may be responsible for preparing, practicing, and attending a sports activity or music lesson chosen by the child on a weekly basis.¹¹³

The court may confer on a parent with special expertise the right to legal representation in relation to the management of the child's property in general or only in relation to a specific case. However, in the cases indicated above, the obligation to provide information and co-operation also applies to the parent against the one who exercises parental responsibility, cares for, and raises the child in general.¹¹⁴

7.4. The third-party placement of a child

As it was already mentioned, the law only uses the term “placement of a child” if the child is not placed with one of the parents but with a third party. However, the law stipulates placement with a third party—typically a close relative—with the following two cumulative conditions: (1) the exercise of parental responsibility by either parent endangers the best interests of the child; as the mere fact that neither parent is capable of raising a child without the existence of a “threat” is not sufficient, the judge's officiality cannot go so far as to make such a decision merely because a “better” placement in a third party can be accepted; (2) the third party themselves requests that the child be placed with them.

In the event of such placement, the parents' parental custody is suspended, and the person with whom the court has placed the child shall be appointed as the guardian. In this case, the much-mentioned rule that the child's opinion should be given due weight—especially in the case of a child over the age of 14—should apply.

If neither parent is suitable for the care of the child, and there is no third person with whom the child can be placed and child protection care seems to be justified in the interests of the minor, the court shall immediately contact the guardianship authority to take the necessary measures.

7.5. Changes in exercising the rights of parental custody

A change in the exercise of parental responsibility means a change in the exercise of parental responsibility based on either the parents' consent or a court judgment. The final judgment of a lawsuit concerning the exercise of parental responsibility or a child's placement cannot prevent a lawsuit from being instituted against a change in the exercise of parental responsibility or the placement of a child.

113 Ibid. p. 23.

114 CC. Art. 4:176.

This can be requested in the event of considerable changes taking place subsequently in the circumstances underlying the parents' agreement or the court's decision, and in consequence, these changes are in the child's best interest.

It should be emphasized that a change in circumstances (such as a new marriage of the spouse, establishment of a new cohabitation, and so on) alone is not sufficient to review the previous decision as it is also necessary to prove that the changed circumstances justify a change in the previous decision for the child's interest.

7.6. Mediation in connection with the exercise of rights of custody

The Book of Family Law stipulates that the parents can initiate a mediation to settle their relationship before or during the dissolution proceedings and to settle disputes related to the divorce by mutual agreement. The agreement resulting from the mediation procedure may even be included in a legal settlement. However, mediation proceedings can only be offered to the parties as an option in this matter, and a mandatory order is not possible. Nevertheless, the Act creates a substantive legal basis, as in justified cases, and the court may order the parents to submit to a mandatory mediation in the interest of properly exercising parental supervision and to ensure their cooperation to that end, including the right to maintain direct contact between the parent living apart and the child.¹¹⁵ The mandatory mediation procedure ideally ends with an agreement, but the obligation no longer covers it. After the first meeting, each party is free to decide that they no longer wish to take part in the proceedings; however, during the mediation, each party of the dispute is obliged to cooperate more acutely with the mediator (communication by telephone or e-mail or personal appearance at the first informative mediation meeting for information).

8. Rights and obligations of a parent living separately from the child

8.1. Obligation of the parent living together with the child to provide information

The most important right and obligation of the separate parent, namely the right of visitation, is regulated in a separate section of the Book of Family Law.¹¹⁶ In connection with this, however, the separate parent has the right to be regularly informed about the studies, state of health, and development of the child in general.

¹¹⁵ CC. Art. 4:172.

¹¹⁶ CC. Art. 4:178-185.

It is a statutory obligation of the parent raising and caring for the child to regularly inform, which has to be given without any special request, in the interest of the separate parent. However, it is important that the interest of the separate parent does not constitute harassment and does not focus on the ongoing “monitoring” of the parent caring the child.

8.2. Significant issues affecting the fate of the child

The Book of Family Law defines, in the absence of joint parental supervision, the rights and obligations of the parent who lives separated from their child in a specific section. In this context, the separate parent decides, together with the parent caring for the child, on the significant issues concerning the child’s fate, which is also their obligation:

a) Defining and changing a child’s name (see, in detail, Section 6.2).

b) Designation of a place of residence outside the same place of residence as the parent. A joint decision on the determination of the child’s place of residence may be made if the parent exercising parental responsibility wishes to place the child permanently outside their permanent home, in another person, institution (e.g., in a dormitory), or abroad for a long period of time.¹¹⁷ In case of a dispute between parents, either parent may request a decision from the guardianship authority (see, in detail, Section 6.3.1).

c) The child’s stay abroad. Depending on the duration of the child’s travel abroad, different situations and rules have been developed. In case of a dispute between parents, either parent may request a decision from the guardianship authority (see, in detail, Section 6.3.3).

d) Changing the child’s citizenship. It is possible that the parent exercising parental responsibility is a foreign citizen, has settled abroad with their child, or intends to work abroad for a longer period of time, and thus, it is necessary to change the child’s citizenship. However, this also requires the consent of the separate parent. In case of a dispute between parents regarding this topic, either parent may request a decision from the guardianship authority.¹¹⁸

e) Deciding the child’s school and career. According to the Book of Family Law, the parents and child jointly decide on the child’s career by considering their abilities. The Book of Family Law designates the guardianship authority to decide in disputes between parents exercising parental responsibility and between a parent and a child regarding the choice of career, the child’s education, and the choice of school¹¹⁹ (see, in detail, Section 6.4).

¹¹⁷ However, the joint decision does not cover cases where the parent exercising parental responsibility over the child moves with the child to a new place of residence, perhaps to a town geographically distant from the child’s previous place of residence, or stays with the child for a longer period of time outside the place of residence (BH2003. 504.).

¹¹⁸ Gyer. Art. 25.

¹¹⁹ CC. Art. 4:153.

It must be concluded that the legislation on parental responsibility satisfies the societal expectation that the parents caring for a child with due care are independent in their responsible parenting activities and that the state can intervene in the life of families only in situations where it is absolutely necessary to question the parental competence in child's interest.¹²⁰

9. Decisions regarding the minor's healthcare

Within the framework of the exercise of the right of self-determination, any medical intervention shall be subject to the patient's informed consent, which is free from deception, threats, and coercion.¹²¹ One might think that in the case of a minor, these rights can be exercised fully by the parent acting as the legal representative, but this is not always the case. Under the provisions of the current Healthcare Act, the parent (legal representative) has a much narrower decision on the treatment of a minor than on their own, and the exercise of the right of consent is limited to two areas.¹²²

On the one hand, the consent of the parent (legal representative) is only required before an invasive procedure; therefore, the consent of the legal representative is required for any surgery or invasive diagnostic procedure, but the examination and medication of the child can be performed without the parent's approval.¹²³

On the other hand, even in case of invasive procedures, the parent's declaration (legal representative) must not adversely affect the health of the sick child and, in particular, must not lead to serious or permanent damage to health.¹²⁴ The parent (legal representative) can only decide in the child's best interests based on the opinion of the child's doctor; however, this requires decision-making based on sufficiently detailed information.

Nevertheless, if the child's parent is not available prior to the invasive procedure, the consent can be given primarily by the competent sibling living in the same household as the child and, secondly, by the grandparent(s). In the absence of these relatives, the legally competent parent, sibling, or grandparent who is not living in a household with the sick child may declare in this order. In the event of contrary statements by those entitled to make a statement, the decision that is most favorable to affect the patient's state of health shall be considered.

120 Mentuszné Terék, 2019, p. 22.

121 Healthcare Act Art. 15(2)-(3).

122 Dósa, 2003, p. 17.

123 *Invasive procedure*: a physical intervention that penetrates the patient's body through the skin, mucous membranes, or orifices, excluding procedures that pose a negligible risk to the patient from a technical point of view (Healthcare Act Art. 33. m) point).

124 Healthcare Act Art. 16(4).

Therefore, if only one parent exercises exclusive parental responsibility, only their consent is required for an invasive intervention on a minor child.¹²⁵ The separate parent has the right to decide only on significant issues affecting the child's fate, but this does not include the right to consent to an invasive medical intervention. The law only prescribes the obligation of the parent exercising parental responsibility to inform the separate parent about the development, state of health, or studies of the common minor child.¹²⁶ This can lead to an interesting situation when a minor child who stays with the separate parent has an accident and the parent exercising parental responsibility is unavailable or their personal appearance is disproportionately delayed. Although the law allows the right of declaration to a legally competent sibling and grandparent living in a household—respecting this order—and it also accepts the legal capacity of the separate parent to make legal declarations in the absence of such persons,¹²⁷ this rule is completely unrealistic and seriously violates the right of a separate parent entitled to contact but not exercising parental responsibility.

The opinion of an incompetent or limitedly competent sick child shall be taken into account as far as professionally possible in decisions concerning healthcare, even if the right of consent or refusal is exercised by one of the persons indicated above.¹²⁸

The Healthcare Act—albeit to a very limited extent—provides a wider right of self-determination for minors over the age of 16, in accordance with the following¹²⁹:

- 1) On the one hand, a minor who has reached the age of 16 may waive their right to information, unless they need to know the nature of their illness not to endanger the health of others. If the intervention is initiated by the patient and is not for therapeutic purposes, the waiver of information shall be valid only in writing.¹³⁰
- 2) On the other hand, the law allowed a minor who has reached the age of 16 to designate—in an authentic document, in a private document of full probative force, or in a declaration signed by two witnesses—a person with legal capacity who is entitled to exercise the right to information, consent, and refusal in their place. It means that a teenage girl or boy can name their adult boyfriend or girlfriend, or even a separate parent or grandparent, to give the consent required to perform a particular—even invasive—health intervention.¹³¹ Thus, a girl who has reached the age of 16 can visit a gynecologist together with an adult person designated and authorized by her to use the method of contraception that is most effective and least burdensome for her; under the age of 16, however, this is not possible.

125 Lantai, 2014, pp. 303–309.

126 CC. Art. 4:174.

127 Healthcare Act Art. 16(5).

128 Healthcare Act Art. 16(5).

129 Barzó, 2015, pp. 12–14.

130 Healthcare Act Art. 14.

131 Healthcare Act Art. 16(6).

An important rule is that this right does not apply to abortion because Section 8 of Act LXXIX of 1992 on the Protection of Fetal Life provides that the declaration by the legal representative of the person with limited legal competence acknowledging the application for abortion is required for the validity of the declaration by the latter, and the application for abortion of the incapacitated person must be submitted on their behalf by the legal representative.

From the point of view of data protection, the notion of a “mature minor” also exists because the processing of (special) personal data from the age of 16 does not require the prior consent or subsequent approval of the legal representative. Therefore, the consent to the processing of health data from the age of 16, which is typically implicit, does not require the simultaneous presence of a parent in a doctor’s office.¹³²

10. Children’s rights to contact or visit a parent

10.1. Visitation between the parent and the child

a) Visitation between the parent and the child in general: under the UN Convention on the Rights of the Child, a child living separately from both parents or one of them has the right to maintain personal and direct contact with both parents, and this right can only be restricted for their “best interests.”¹³³ Article 8 of the European Convention on Human Rights states that both fathers and mothers have the right to contact with their children.

According to the Book of Family Law, divorce does not remove the joint parental responsibility for the child’s fate, but the child shall have the right to maintain a personal relationship and direct contact with their parent living separate and apart on a regular basis. The parent or other person raising the child shall ensure that the right to maintain personal relationship can be exercised undisturbed.¹³⁴ A parent who unreasonably keeps the child from having contact with the other parent or turns the child against the other parent shall act in a manner that is seriously prejudicial to the child’s best interests. The separate parent should not use their contact with the child to create sentiment against the parent caring for the child or against a relative living with the child (e.g., a new spouse) to nurture hopes in the child that they themselves would be in a better position to care for and raise them. Only the mutual and cooperative behavior of the parents is in the child’s best interests.

b) Exceptional cases of visitation between the parent and the child. A parent has the right to maintain contact with their child even when parental responsibility is

132 Hanti, 2013, p. 298.

133 UN Convention on the Rights of the Child Art. 9. point 3.

134 CC. Art. 4:178(1).

suspended. Even if a parent is a minor at the age of 14 or they are temporarily unable to take care of their child (for example, because of a serious illness), and the child will therefore be admitted to the family, it does not mean that the parent should be completely separated from their child. Therefore, in some cases, parental responsibility is suspended where the closest and most intimate relationship with the child is directly suggested and supported.¹³⁵

In exceptional cases—in the interests of the child—a parent whose parental responsibility has been terminated by a court may also be authorized to have contact with the child—for example, if the child’s emotional development would be jeopardized by the complete separation from the parent, or if the child’s fate cannot be resolved through adoption.¹³⁶

A new rule among the provisions on visitation is that it is also provided for a parent who consents to the adoption of their child and, therefore, no longer has parental responsibility. Sometimes a child is raised in the common household by the mother’s new spouse from an early age, and the separate parent is not involved in the child’s life at all. In this case, the stepfather often wants to adopt the child from his wife’s previous relationship, but the father does not consent. By continuing to allow a parent who no longer has parental responsibility after consent to the child’s adoption the right to visitation, the new provision of the Book of Family Law facilitates the chances of such an adoption.¹³⁷

Rarely and exceptionally, the right of visitation between the adopted child and the blood parents may be guaranteed as well. The child has the right to know their family of origin and, with the consent of the original family, to have the right to visitation, even if the parent’s parental responsibility ceases to exist.¹³⁸

As a surviving right, the Book of Family Law also ensures that a presumed father who has raised the child as their own in their family for a long period of time may also be entitled to have contact with the child in justified cases. If the intimate relationship between the child and man whom they love as a father is broken from one day to another, it can seriously damage the child’s mental development and emotional security.¹³⁹ However, in the latter three exceptional cases, the right to visitation must be expressly decided by the guardianship authority or the court.¹⁴⁰

In addition to the parent, the grandparent and sibling are primarily entitled to have contact with the child.

From 2014, the Book of Family Law extended the scope of the right to visitation to the stepparent (spouse of the parent), the foster parent (cohabitant of the parent), the former guardian, and the parent whose paternity presumption for the

135 Somfai, 2005, pp. 16–21.; Somfai, 2007, pp. 8–17.

136 Gyer. Art. 29(3).

137 This is also prescribed in the CC. Art. 4:133(4).

138 CPA Art. 7(4). Somfai, 2008, pp. 83–85.

139 CC. Art. 4:113(1) b).

140 Gyer. Art. 29(4).

child has been overturned by the court, provided that the child has been raised in their household for a longer period of time.¹⁴¹ With this new provision, the law prevents a lawsuit to overturn the presumption of paternity, where the main objective of one parent is to completely “exclude” the other from the child’s life in the event of dissolution of marriage or cohabitation.¹⁴²

10.2. Types of right to visitation

In decisions related to the right to visitation, *inter alia*, the frequency and duration (continuous or periodical) of the visitation must be specified.¹⁴³

10.2.1. Continuous visitation

The visitation is continuous when contact is repeated at regular intervals. Several forms are named in the law¹⁴⁴:

- Personal meeting with the child at the child’s usual place of residence (visitation);
- Removal of the child from their habitual residence on a regular basis, for a specified period, with the obligation to return. Neither the Civil Code nor the Gyer. limit its duration, and the bearing of expenses related to the child’s removal (for example, the cost of petrol, the price of tickets, and expenses related to the child’s stay with the parent, such as food) is, as a general rule, an obligation of the person entitled to visitation,¹⁴⁵ although the court or guardianship authority may deviate from this in its decision governing the visitation. However, the expenses incurred by the parent raising the child through the attributable conduct—obstruction or even thwart of the visitation—are to be borne or reimbursed by this parent.¹⁴⁶ The right of visitation also extends to the child being taken abroad for a specified period, even though the situation is different if the child’s travel abroad with the separate parent is considered contrary to the child’s best interests by the guardianship authority or the court (for example, because the separated parent has already illegally taken the child abroad);¹⁴⁷

141 CC. Art. 4:113(1) b).

142 Kőrös, 2006b, p. 7.

143 CC. Art. 4:181(3).

144 Gyer. Art. 27(3).

145 CC. Art. 4:180(3) However, in the literature, it has already been suggested that the additional costs justifiably incurred as a result of moving to another municipality should be borne jointly by the moving parent and the contact parent. Grád, 2021, p. 28.

146 CC. Art. 4:183(2).

147 The contact between a child placed with a parent living in Hungary and a parent living abroad cannot be limited to the country’s territory (BH2007. 412.).

Regular contact with the child without personal contact, in particular by correspondence, telephone, or IT means (e.g., skype, social networking sites), gifts, and parcels.

The duration of continuous visitation is not limited by law. According to the current judicial practice, visitation can occur every 2 weeks, lasting from Friday afternoon or Saturday morning to Sunday afternoon. However, the 2-week visitation is also increasingly supplemented with an intermediate contact. Of course, the latter is only possible if both parents live in the same city or town, or at least the geographical distance does not prevent this.¹⁴⁸

10.2.2. Periodical visitation

Periodic visitation includes long-term contact with the child during school breaks and multi-day holidays, with the possibility of going abroad or excluding it for the benefit of the child.¹⁴⁹ The duration of periodic visitation is, in practice, usually about 1 month per calendar year, which can be provided to the separate parent in addition to continuous visitation. The time and extent of the periodical visitation must be determined in the school holidays—summer, spring, winter holidays—and multi-day holidays in accordance with the holidays of the parent caring for the child.

The regulation of periodic visitation may also cover the celebration of birthdays and name days or the “sharing” of special holidays, such as birthdays, in one year with the family of the beneficiary and in the other year with the family of the parent caring for the child.

The duration of periodic visitation should be determined in accordance with the child’s age and maturity. In case of a child subject to compulsory schooling, the date and duration of the school breaks are governed by the decree of the minister responsible for education.¹⁵⁰

10.2.3. The supervised visitation

Supervised visitation is appropriate if no family relationship exists between the child and the parent entitled to visitation or if this has deteriorated. By ordering supervised visitation, the guardianship authority seeks to facilitate the establishment or restoration of a family relationship with the person entitled to visitation under safe conditions for the child. In case of supervised visitation, the meeting between the child and the person entitled to visitation takes place at the contact point of the child welfare service or child welfare center, in the presence and with the advice of the visitation supervisor. Later, as a result of supervised visitation, a meeting between the child and the person entitled to visitation may take place without the presence of a supervisor, and later, the visitation may be exercised in the form of takeaway or visit.

148 Somfai, 2008.

149 Gyer. Art. 27(4).

150 Gyer. Art. 29/A(4).

10.3. The settlement of visitation

In the case of joint parental responsibility, parents do not have to agree on visitation. However, if the right of parental responsibility toward the child is exercised by only one of the parents, the relationship with the separate parent shall be settled on the basis of an agreement, in the absence of which the court or the guardianship authority shall decide.

The agreement of the parties regarding the form and extent of visitation with the child is not restricted by law; the reason for this is that the separate parent should have the widest possible contact with their child. The settlement is approved by a court order, and after the approval, the guardianship authority concludes the agreement in a decision if it is in the best interests and opinion of the child, as well as the purpose of the contact.¹⁵¹ An agreement cannot be approved if it is expressly objected to by a child in their judgment.

The guardianship authority acts when there is no pending marriage procedure or litigation relating to parental responsibility settlement and the parents or the entitled persons cannot agree on the visitation. The guardianship authority also decides if the visitation was originally decided by the court and one of the parents or another person entitled to visitation requests the change of visitation 2 years after the final decision.

However, in a dispute concerning the exercise of matrimonial or parental responsibility, the court shall decide on visitation in the absence of an agreement, provided that one of the parties so requests.¹⁵² If the right to visitation was originally decided by the court, the change of visitation can only be requested from the court within 2 years of the decision.¹⁵³

The Book of Family Law provides for the possibility of mediation, which can mandatorily be ordered in the child's best interests, both in the proceedings of the guardianship authority¹⁵⁴ and the court¹⁵⁵.

10.4. Obligation of the parties to cooperate

10.4.1. The failed visitation

The visitation may be hindered on both sides by unforeseen, sudden circumstances; for example, the child becomes ill at the beginning of the visitation, or they must attend a school or kindergarten event, and in the same way, an extraordinary

151 Gyer. Art. 29/A(1)-(3).

152 The former Civil Procedural Code Art. 3(1) and the current CPC. Art. 1(2).

153 CC. Art. 4:21(3).

154 CC. Art. 4:177.

155 CC. Art. 4:172.

plan or activity may take place in the life of the parent who is entitled and obliged to visitation.

However, the common obligation of the parties concerned is to inform each other in writing, or in any other verifiable manner and without delay, as far as possible, in such a way that the change does not cause disproportionate costs and harm to the other party.¹⁵⁶

If the visitation fails for reasons not attributable to the entitled party, they must be rectified at the nearest appropriate date but no later than 6 months.

10.4.2. The responsibility of the parent toward preventing visitation

The parent caring for the child is liable under civil law for any damage caused by the unlawful prevention of visitation. The condition of liability is the attributable conduct of the parent (person) entitled to visitation or obliged to ensure visitation, in consequence of which the visitation ultimately failed and in connection with which pecuniary damage was caused. In this context, however, only the civil court has jurisdiction. The scope of damage covers actual costs incurred in connection with the infringement (such as overpaid travel expenses, pre-planned and paid foreign holidays, purchased theater tickets or concert tickets) and expenses, as well as other pecuniary and personal damages.

The Metropolitan Court of Appeal stated in a specific case that “the mere fact that legal protection against the unlawful obstruction of the relationship between the child and the parent is provided primarily by the family law institutions does not preclude the possibility of claiming protection of personal rights”¹⁵⁷ or the possibility of the application of compensation.¹⁵⁸

At the request of the person entitled to visitation or the person obliged to visitation, the guardianship authority may also order the party who obstructs the visitation without due cause and who violates the rules of contact to bear the costs incurred. Reimbursement of certified expenses incurred owing to obstruction of visitation and violation of its rules may, of course, also be claimed during the enforcement proceedings.¹⁵⁹

Parental behavior that has prevented visitation with the other parent for many years through the intention of expropriation, influences the child, endangers the long-term interests and balanced development of the minor, and justifies their placement with a separate parent with better parenting skills.¹⁶⁰

156 Gyer. Art. 30(1).

157 7.Pf.21.696/2011/8.

158 Pál, 2014a, pp. 11–17.

159 Gyer. Art. 30(2)-(3).

160 BH2017. 123.

10.5. Restriction, termination, or change of visitation

In view of serious abuse of the child or the parent raising them, the right of visitation already established may be restricted or revoked.

a) Suspension of the right of visitation: the right of visitation of the parent shall be suspended in the event of serious assault of the child by the parent¹⁶¹ or serious abuse of rights by the entitled person to the detriment of the child or the person raising the child. The maximum period of suspension is 6 months, or 1 year in the case of serious abuse.¹⁶²

b) The restriction of visitation: the guardianship authority or the court in a marriage or parental responsibility lawsuit can restrict the already established right of visitation in the best interests of the child, upon request, if the right holder abuses their right to the detriment of the child or the person raising the child. It is considered abusive, attributable conduct if the entitled person does not exercise their right of visitation in accordance with the decision of the court or the guardianship authority, or if they do not exercise their right of visitation at all for more than 6 months. During the restriction of the right of visitation, the guardianship authority may decide to change the already established form, frequency, or duration of visitation and order supervised visitation.

c) Termination of visitation: the guardianship authority shall revoke the right of visitation established in its decision upon request if the entitled person seriously abuses their right to the detriment of the child or the person raising the child, and the child's upbringing and development is seriously endangered by this attributable conduct.¹⁶³ In practice, fortunately, this rarely happens.

d) In the event of a change of visitation, the guardianship authority may decide to change the form, frequency, duration, and location of the previously established contact individually or jointly. Upon request, the guardianship authority may, in the interests of the child, lift the restriction on visitation or restore the right of visitation if the circumstances on which the decision was previously based no longer exist.¹⁶⁴

10.6. The implementation of visitation

From 2020, in case of a breach of the decision on visitation, the district court may be ordered to enforce this decision,^{165,166} and an appeal against that order has no suspensory effect.

161 Gyer. Art. 30/E(2).

162 Gyer. Art. 31(4).

163 Gyer. Art. 31(5).

164 CC. Art. 4:181(4).

165 A particular difficulty for the courts has been to resolve disputes arising from the enforcement of contacts that have failed owing to the COVID-19 pandemic. Pungor, 2021, pp. 23–30.

166 Hámori, 2020, pp. 26–31.

According to the Civil Code, the implementation of the decision may be requested by the person entitled or obliged to visitation within 30 days of the breach of the decision or of the time that the applicant became aware of it. The provisions of the decision of visitation shall be deemed to have violated if the person concerned, for reasons attributable to them,

- does not comply with their obligation of visitation within the time limit,
- does not supply the missing visitation within the time limit set in the decision,
- obstructs the visitation without due cause, or
- otherwise thwarts uninterrupted visitation with the child.

The district court shall, if necessary, hold a hearing or request evidence to order enforcement. The court will act out of turn while examining the application. If the court finds that the applicant has breached the decision to maintain visitation, it will order enforcement. In the enforcement order, the court calls on the applicant to

- comply with the due visitation at the time and in the manner specified in the decision,
- supplement the visitation canceled by a non-attributable conduct of the entitled person at the earliest appropriate time, but no later than 6 months, and set a deadline for the replacement, or
- if there were other obstacles to visitation that cannot be attributed to the person entitled to visitation, ensure uninterrupted contact with the child after the obstacle has been removed.

Upon request, the court shall order the applicant to pay the proven costs incurred as a result of this breach of the contact decision.¹⁶⁷

If the conditions for ordering enforcement are not met, the court will reject the application, and the applicant has the right to appeal against the order. The court must be notified of the fulfillment or non-fulfillment within 30 days of the expiry of the time limit set for voluntary performance. In case of non-performance by own fault, the court

- may contact the guardianship authority to promote the applicant's performance by involving the family and the child welfare institution system;
- may impose a fine pursuant to Point c) of Section 174 of the Act LIII of 1994 on judicial enforcement (Vht.);
- may order the transfer of the child with the assistance of the police in the event of a regular and repeated breach of the rules of visitation¹⁶⁸;
- may apply to the guardianship authority for the purpose of settling parental responsibility or the placement of the child in a third party, provided that it is in the best interests of the minor and that the parent or a third party so requests; or

¹⁶⁷ Harmat and Völcséy, 2020, p. 29.

¹⁶⁸ Vht. Art. 180/B.

- makes a charge for the abuse of the minor or prevents the exercise of visitation rights.

The court may order the application of more than one measure simultaneously, and the fine may be imposed repeatedly. An appeal against the order has no suspensory effect.

In case of an order for the transfer of the child with the assistance of the police, the court shall immediately send the order electronically to the official body of the Hungarian Judicial Enforcement Body.

The proceedings shall be suspended until the end of the mediation procedure, but no later than 2 months after the beginning of the mediation procedure or until the end of the procedure for changing or withdrawing visitation.¹⁶⁹

11. Summary

The Hungarian legal system regulates the parent–child relationship on several levels: on the one hand, Fundamental Law contains important statements declaring that the family relationship is based on the marriage of a man and a woman and on the parent–child relationship, where the mother is a woman and the father is a man. In line with this, it emphasizes the child’s right to the self-identity appropriate to their sex at birth and the right to be educated in accordance with values based on Hungary’s constitutional identity and Christian culture. The Family Protection Act sets out the same principles, but in addition to this, it also contains a summary of the parents’ obligations. The Child Protection Act and its implementing decree summarize the rights and obligations of children and their parents, and the detailed rules relating thereto. Moreover, the Book of Family Law of the Civil Code sets out detailed rules on the content, exercise, and settlement of parental custody. The issue of the exercise and settlement of parental rights is crucial in both everyday life and in litigation; acknowledging this, the Book of Family Law sets out, in addition to the general principles of civil law and the specific principles of family law, several principles that are of particular importance both in the relationship between parents and between parents and children. Defining and highlighting the principles governing the exercise of parental responsibility is an excellent solution in domestic legislation as it can be used by the courts in cases where the specific legal rules governing the dispute cannot be clearly defined. The principle of the child’s best interest and the right of the child to the self-determination should be given greater emphasis by the legislator, even if it is elevated to the level of a general principle of the Civil Code.

169 The Art. 22/A–22/E. of the Act CXVIII of 2017 on the rules applicable to civil extrajudicial procedures and to certain extrajudicial procedures.

As a general rule, the parent or the child's guardian is the child's legal representation. In practice, in some cases, a parent cannot represent the child for some statutory reason (e.g., conflict of interest); an ad-hoc guardian who is typically an advocate is then appointed by the guardianship authority. The law does not require any specialization in family law or child protection law, which should be an important requirement in this case. A similar problem exists in courts where family law cases are heard by general civil law judges, even though family law cases differ both in number and nature from traditional civil litigation. Additionally, the establishment of child-friendly hearing rooms in the courts does not change this tendency as judges cannot take advantage of the room without special training.

With the amendment of the Civil Code as of January 1, 2022, the institution of alternate care has been regulated, and the court may order it even at the request of only one parent. However, the suitability of the child is one of the most important factors in determining this issue. A related and very important aspect is to obtain the opinion of the minor children in common, as the decision may have a decisive impact and influence on the child's future life. For this reason, the decision on the issue of alternate care should always be taken by the parents or the court by taking into account the child's views, points of view, requests, and—if the child does not yet have the capacity to judge—a psychological evaluation (not only in justified cases) if requested or if they have reached the age of 14.

The Book of Family Law sets out, in a separate section, the rights and obligations of a parent who is separated from the child in the absence of joint parental custody. In this manner, the separated parent decides, together with the parent exercising parental responsibility for the child, on important issues concerning the child's fate, which is also the parent's obligation. The law lists these cases in an exclusive list; however, this does not include the exercise of the right of self-determination in relation to the child's healthcare, including the right to consent to invasive medical procedures. The law only requires the parent exercising parental responsibility to inform the other parent about the development, health, and education of the minor child, which does not even allow the parent to obtain information directly from the teacher or doctor about the child's school progress, health, and possible illnesses. This legislation unnecessarily and disproportionately restricts the rights of the separated parent who does not exercise parental responsibility.

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