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Parental Responsibility – a Rose by any Other Name... Terminology and Content

- **ABSTRACT:** *Parental responsibility is among the key questions in family law—what should it be called and how should it be approached? Considering various countries, there is evidently no clear consensus. Ultimately, regardless of the label attached—be it parental care, parental authority, parental responsibility, or parental rights and obligations—the driving principle must be the best interest of the child. Is it possible, or even feasible, to come to a terminological and systematic unity across different national legislations? Does it even matter how we refer to this concept, as long as the contents are up to par? The following study is devoted to a systematic and terminological problem concerning one of the most important types of family law relations—the rights and obligations of parents. In this field, Slovak family law shows a certain underdevelopment, especially in relation to European legislation.*
- **KEYWORDS:** protection of families, family law, parental authority, parental responsibility, parental care, parental rights and obligations

1. Introduction

Parental responsibility, by its most generic definition, means all rights and obligations toward a child and their assets; it includes the whole panoply of parental rights and duties. If we consider various countries, or even only European Union (EU) member states, it is clear that the concept of parental responsibility varies greatly between countries; however, it usually covers custody and access rights. Even the term used to cover this area of family law is very diverse, with different legislations using various terms to refer to this concept, such as parental authority, parental responsibility, parental care,

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parental rights and obligations, and more. The following pages are devoted to a systematic and terminological problem concerning one of the most important types of family law relations—the rights and obligations of parents. In this field, Slovak family law shows a certain underdevelopment, especially in relation to European legislation.

Slovak family law currently stands at an imaginary crossroads of its development, which is, to a large extent, due to the diametrically contradictory influences that determine it and help shape its content. On the one hand, family law remains among the most traditional branches of law, whose changes are limited by the qualitative changes in the thinking and behavior of the majority of society. This rigidity of family law allows for only gradual and very rare legislative changes, which is the reason for its minimal unification, both in the Council of Europe and in other international structures. It could be argued that family law was the least suitable area of the legal system for harmonization, let alone unification. On the other hand, however, even family law cannot resist the influence of internationalization, also in light of Slovakia's membership of European structures and the obligations arising from our status as a signatory state to a number of international conventions. In the following sections, we explore the term, parental responsibility, and its place in Slovak family law, and compare and contrast the terminology and definitions used by select countries in the hope of finding a term for this concept that would unequivocally label the concept without bringing further confusion into legal theory.

This question is particularly important now, with the pending recodification of Slovak family law; thus, we have a unique opportunity to rename the concept and bring some much-needed logic into the set of rights and responsibilities that shall belong under this term. Currently, Slovak family law operates with the terms “Parental Rights and Obligations,” which, on the surface, sound like an acceptable alternative to parental authority or parental responsibility—were it not for the fact that the current family act divides rights that belong under “Parental Rights and Obligations” and those that it labels “Other Rights and Obligations of Parents and Children” without any rhyme or reason for this distinction. Thus, the issue presented is not merely a terminological question, but also a systematic one—and while the naming is important, it is even more crucial to ensure that whatever the name is, it encompasses a unified set of rights and responsibilities toward the child in their best interest. In the following chapters, we consider the evolution of Slovak family law, and within it the term, parental responsibility (and its alternatives), as well as an overview of select countries' approaches to this key concept of family law.

2. Slovak family law – the past, present, and future

Family law relations in the Slovak legal system are regulated by our Act on the Family 36/2005 Coll.,¹ which entered into force on April 1, 2005. Since 1950, family law relations have been excluded from the scope of the Civil Code and are still regulated by a separate law. In the future, however, the regulation of family relations is to be returned to the Civil Code as a separate part thereof in the framework of the forthcoming codification of general private law in Slovakia. For the current relationship between family and civil law, the return to the dual structure of private and public law after 1989 means that the regulation of personal and property conditions in a family and marriage is closely linked to general civil law. The integration of both subsystems of private law is evident even now, especially in Article 111 of the family act, which provides for the general subsidiarity of the Civil Code for legal relations regulated by the family act. Thus, unless the family act provides otherwise, the provisions of the Civil Code shall apply to family relationships.

Until 1949, family law was not uniformly regulated and codified in the territory of the Slovak republic. Legal relations in the family, by their nature, were regulated by several civil law regulations. Following World War I, after the establishment of the Czechoslovak Republic, Act no. 11/1918² reciprocated, with some exceptions, the then Austro-Hungarian law. In Slovakia, the reception standard took over Hungarian civil law, which was mostly unwritten customary law. The Amending Act on Marriage (Act No. 320/1919 Coll.)³ was undoubtedly the most important step on the path of independent Czechoslovak legislation during the first republic. The act uniformly regulated the formation of marriage, marital obstacles, and the dissolution of marriage. The Amending Act on Marriage introduced an optional civil marriage in addition to a valid church marriage. Exhaustively, it adjusted the reasons for the dissolution of a marriage. This act was revolutionary in a sense, because it unified matrimonial law in the sense that it applied to all citizens of the republic, regardless of religion.

The fundamental political changes in Czechoslovakia after February 1948 were quickly reflected in the entire legal order. The new communist government within the so-called biennial of legal proceedings launched a revision of legal regulations, which also affected the area of family law. The first act on Family Law

1 Act No. 36/2005 on Family and on amendment of some other acts.

2 Act No. 11/1918 Reception Act, Art. 2, stipulated that 'all existing regional and imperial laws and regulations shall continue to be in force temporarily' in order 'to avoid any confusion and to regulate an unobstructed transition to a new life of the State.'

3 Act No. 320/1919 Coll. Marriage Amendment.

No. 265/1949 Sb.,⁴ which entered into force on January 1, 1950, became, among other things, a legislative expression of the ideological principles of the new socialist law—which abandoned the classification of public and private law. The dominant paternal power was transformed in the light of equality into parental power by the Family Law Act. The adoption of this act was a significant milestone in the historical development of the family and legal relationship between parents and children; it also led to the equalization of children irrespective of their origin, i.e., irrespective of whether they were born into a marriage or out of wedlock, thereby giving effect to the principles of the constitution of May 9 on the equal rights of women and protection of men, family, and motherhood.

The Act on Family Law did not survive for very long. In 1960, a new socialist constitution was adopted in Czechoslovakia. Under ideological influence, the victory of socialism and subsequent social development were mistakenly anticipated. These misconceptions were legally expressed in the new constitution, and shortly thereafter, the basic branches of law were recodified. Important changes in the legal order ensued, affecting all areas of law, including family law and matrimonial law. The result of the second wave of the socialist codification of law was the new Family Act No. 94/1963 Coll.⁵ The new law entered into force on April 1, 1964 and was in force until April 1, 2005. The new family act followed the main principles of the regulation of individual institutes in the Family Law Act of 1949, with much greater emphasis on the paternalistic understanding of the relationship between the state and the family. Based on the family act, the family became the basic building block of society, in which parents were responsible for the mental and physical development of their children, with the state and other social organizations also being ascribed some responsibilities in terms of raising children and fulfilling their material needs.

The dissolution of the Czechoslovak federation simultaneously meant the birth of new successor states, Slovakia and the Czech Republic, on January 1, 1993. Following the establishment of the Slovak Republic, the Family Act of 1963, as amended, became the basis for the regulation of family law in Slovakia as stated in the reception norm contained in Article 152 of the Constitution of the Slovak Republic. The new and current Family Act No. 36/2005 Coll. was not originally included in the Plan of Legislative Tasks of the Slovak Republic. The plan required the Ministry of Justice of the Slovak Republic to prepare only an amendment to the Family Act No. 94/1963 Coll., as amended. However, the scope of the proposed changes exceeded the possibilities of direct amendment of the law and required not only a change in the system of the law, but also the adoption of completely new legislation. The previous legislation was modern at the time and was in force for

4 Czechoslovak statute on family law of December 7, 1949, No. 265 Sb.—commonly referred to as Act on Family Law No. 265/1949 Sb.

5 Family Act No. 94/1963 Coll., promulgated by the The National Assembly of the Czechoslovak Socialist Republic.

over 40 years. In the 21st century, however, it could not sufficiently respond to the dynamic development and fundamental changes that had taken place in society. The new legislation from 2005 already reacts to the Convention on the Rights of the Child as well as to the legislative intention to recodify the Civil Code, which will include the integration of family law into the Civil Code.⁶

The abolition of the Family Act of 1963 and its replacement by a completely new family act in 2005 was considered to be a rather radical intervention in the traditional concept of family law. Although hardly anyone expected this change and both the professional and lay public were prepared for a large-scale amendment of the original law, it can be stated that, after the initial confusion and theoretical upheaval, the judicial practice has contributed to the application of this act in a fairly uniform manner. Many problems were answered with the help of foreign (especially Czech, Hungarian, and Polish) theoretical background. Although the new family act has changed most of the original provisions and stripped family law of certain remnants of the pre-1989 ideology, it can be said that it maintains continuity with a piece of legislation that was created in completely different social and political conditions.

An example of this continuity between the legislations from 1963 and 2005 may be found in the name of the law itself. Both acts are called “Family Act” (or more precisely, in very direct translation, “Law on the Family”) and have the family as the primary object of their regulation in their title—which stands in contrast to most other countries’ naming of “Family Law Act.” Thus, the naming of the family act is rather based on the preference of the interests of society (the family as the basic unit of society) at the expense of the interests of man—the individual, with their human rights and fundamental freedoms. This contradiction between public and private interests in family law relations is probably the most significant feature of the current stage of development of family law.

Although the 1963 family act was created in a very different political era, the continuity with the 2005 successor is not necessarily negative. The legislation from 1963 was modern for its time; it established the unequivocal equal status of both parents, irrespective of the existence of a decision to entrust a child to the personal care of only one of them. The fact that such a court decision does not interfere with the exercise of parental rights and obligations, but leaves them to both parents without restriction, has advanced Slovak family law by several decades compared to many jurisdictions. This remains the case today, as it was in 1963; the court decision to entrust a child to the personal care of one of the parents does not restrict the other parent from or deprive them of the exercise of parental rights and obligations; the other parent is still entitled and obliged to raise the child, represent them, and administer their property.

6 Act No. 40/1964 Coll. Civil Code.

Although one can agree with the view that rights in family law are the most private of all subjective private rights, there must nevertheless be limits placed on the exercise of those rights by public law. Thus, the purpose of family law is not only to protect the interests of the weakest party to family law relations (the child), but also to protect the interests of society. Ultimately, law has the task of regulating social relations in the most generally acceptable form. Another requirement for modern family law is that it shall provide a system that is socially efficient. The social effectiveness of a norm means that it is either adhered to or non-adherence to it is sanctioned by the state. If the law did not set limits on the proper exercise of parental rights and responsibilities, the assessment in any particular case would depend solely on the legal opinion of the judge applying the law, making each party hostage to the judge's moral profile. It is true that judges co-create the law, unless the legal system gives an explicit or implicit answer to the question at issue, the so-called gaps in the law. Therefore, in practice, the same or similar situations are often dealt with by Slovak courts in diametrically different ways. However, several decisions of the Constitutional Court of the Slovak Republic, according to which the principle of legal certainty inherently belongs to the immanent features of the rule of law, testify against such an application of law. They include the requirement that a certain legally relevant question be answered in the same way when repeated in the same conditions. Decisions in family matters should also be predictable. It is a practical expression of the right to a fair trial guaranteed by the Constitution.

It is clear that the priority of contemporary family law scholarship must be precisely the search for the boundary between the protection of the interests of the individual and protection of the interests of society. On the one hand, the trend of European constitutionalism places at the forefront the requirement of consistent protection of fundamental rights and freedoms of the individual, which is furthermore supported by a number of other international conventions ratified by the Slovak Republic. The protection of human rights as such, particularly the protection of the rights of the child, is now taking on a new dimension. The importance of formulating an appropriate legal framework for these issues is clear, and Slovak family law is currently being recodified in the Civil Code. The ambition of the recodification is to present a modern code that respects fundamental human rights, the principles of a democratic society, a moral value system, and the principles of decency and humanity. The discussions on integrating family law under the umbrella of civil law started in the mid-1990s; expert opinions prevailed that understood the normative regulation of family law as an integral and natural part of the forthcoming recodification of the Civil Code. In other words, family law, together with other branches of private law, should be concentrated in the new Civil Code. As of today, this remains in the realm of the future evolution of family law—the recodification of the Civil Code, and with it new family law legislation—is underway. Although the issue of the rights and obligations of the parents

of a minor child is only a part of the subject of the regulation of family rights, its rigorous theoretical analysis can contribute to the creation of a legal regulation that will be the basis of the legal stability of family law in this century. It is in this era of external influences and the internal pressure to recodify the Slovak family law that a debate on parental responsibility arose—what should it be called and, most importantly, what should be included under the umbrella of this concept?

3. Parental responsibility under current Slovak legislation and in select countries

The legal relationship between parents and children is characterized by certain specific features that are not inherent in any other relationship, not even other family law relationships. The legal status of spouses is precisely defined in the law, which states that they are equal in rights and obligations⁷ or that they are entitled to the same standard of living. However, regarding the parent-child relationship, their mutual status is nowhere explicitly defined, and it is a matter of interpretation and theoretical debate as to whether the private law principle of the equality of the parties is respected in this case. Moreover, if parent and child are not equal, whose position is more sovereign? The law entrusts parents with the right to raise their children in accordance with their own religious and philosophical convictions.⁸ However, the interests of a minor child are considered to be the guiding principle for the entire regulation of family law relations. It is probably not important to determine in what mutual legal relationship the parent and child are. It is much more important to seek and find a limit to the contents of parental responsibility.

The core sources of Slovak family law are the Constitution of the Slovak Republic and the family act from 2005. Article 41 of the Constitution of the Slovak Republic, according to which marriage, parenthood, and the family are under the protection of the law, forms the basis of the national legislation.⁹ Simultaneously, special protection is guaranteed to children and adolescents. The protection and interest of minor children are a priority throughout the legislation. In the context of the exercise of parental rights and obligations, it is significant that the care and upbringing of children is the right of parents; however, the fact that children have the right to parental education and care cannot be overlooked. The Constitution of the Slovak Republic also provides that these rights may be restricted and that minor children may be separated from their parents, even against their parents' wishes, but only by a court decision based on the law.

7 Art. 1 Act No. 36/2005 on Family and on amendment of some other acts.

8 Art. 4 Act No. 36/2005 on Family and on amendment of some other acts.

9 Art. 41 Constitution of the Slovak Republic 460/1992 Coll.

Under the Slovak family act and relevant case-law, parental responsibility represents a relatively complex set of rights and obligations, which include, in particular, the following: a. constant and consistent care for the upbringing, maintenance, and all-round development of the minor child, b. representation of the minor child, and c. the administration of the minor child's property.

It is important to note that Slovak legislation does not use the term "parental responsibility;" it operates with the phrase "parental rights and obligations," which are primarily derived from Section 28 of the family act. We conclude that, despite the legislative inclusion of maintenance obligations in the content of parental rights and obligations in the Slovak family act, maintenance obligations do not and should not belong to parental rights and obligations due to their specific characteristics, although, systematically, they are included under the term, parental rights and obligations, which should not be the case.

As mentioned in the introduction, the development of the family and family law relations has undergone many significant changes. The ancient concept of the family is characterized by polygamy and the dominance of the father, the so-called *pater familias*, while the medieval concept of the family preserved paternal power, the *patria potestas*, in which children were subordinate to the father. The social position of a man in a family was characterized by a set of rights and duties that flowed unidirectionally from the father to a child. The child was lawless, which was reflected in the fact that their survival was primarily decided by the father, who had the right over them over life and death – *ius vitae necisque*. The 18th century is sometimes referred to as the beginning of the family revolution, in which the child becomes the center of interest of the family and society. It is important to note that, in the course of the historical development of the family, a minor child went from being the object of a parent-child relationship, whether characterized by paternal power or, later, parental power, to becoming the subject of that relationship with equal status. The development of the legal regulation of the exercise of parental rights and obligations has, in this respect, had several significant milestones.

The original historical concept of parental power or paternal authority was replaced by the term, parental rights and obligations, in Slovak legislation. These are not fully synonymous, as parental power is a comprehensive legal institute, the content of which are the individual rights and obligations of parents and children. The move away from a terminologically unified institute to partial rights and obligations was brought about by the Family Act of 1963. There were several reasons why the legislator made such a change. However, the main reasoning was that there had been serious changes in relations between parents and children, with the social mission of parents and their role in raising children coming to the fore, rather than their sovereign position based on power and authority.¹⁰ It

¹⁰ Haderka, 1971, p. 189.

is interesting to note that the same principle—to change the focus of the institute from power to another aspect of the parental relationship—was recommended by the Committee of Ministers of the Council of Europe under the Recommendations of the Committee of Ministers to member states: No. R (84) 4 on Parental Responsibilities. The Recommendation refers to parental responsibilities as a collection of duties and powers

which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property.¹¹

Thus, although it shifts the focus from power to care, it does not fragment the content of parental responsibility into individual rights and obligations but preserves its entirety in terminological terms under the concept of “parental responsibility,” which is also used, for example, in the Convention on the Rights of the Child.¹²

The English term “responsibility” does not mean responsibility alone, but rather a burden of responsibility, a function, a duty, an obligation, a commitment, and a task. The Slovak translation of this term has not been adopted in our family law. The unified institute has remained atomized into individual rights and obligations within Slovak family law. Most modern democratic legislations preserve this institute in its unity, unlike Slovak family law. This fragmentation of the parental responsibility has given rise to further legislative confusion, particularly with regard to the different categories of interference with parental rights and the distinction between the different nature of the rights previously understood as part of the parental authority and other rights that are outside it.¹³

In contrast to the Slovak legislation, the Czech legislation has reintroduced the single term, *rodičovská zodpovědnost*, for the former institute of parental authority, which in translation would mean parental responsibility, and then in 2014, introduced the term, *rodičovská odpovědnost*, which would probably be translated more as parental liability. A significant shift can be noted in the changes in the designation of the institute, which regulates the relations between parents and children (paternal power, parental power, parental responsibility, and parental liability), but also in the changes in the content, i.e., the set of obligations and

11 Committee of Ministers of the Council of Europe: Recommendations of the Committee of Ministers to member states: No. R (84) 4 on Parental Responsibilities, adopted by the Committee of Ministers on 28 February 1984 at the 367th meeting of the Ministers' Deputies.

12 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

13 Haderka, 1994, p. 516.

rights that the legislator assigns to the said institute. The change in the terminology was caused by a shift of the focus of interest from parents to the child, as in Slovakia; however, the approach used was different. The 2014 change that introduced the term, parental liability, instead of the previously used concept of parental responsibility¹⁴ was used by the legislator according to the Explanatory Memorandum only for the sake of terminological consistency, not because the legislator sought to take the existing concept of this institute in a new direction. The Czech literature states that the Civil Code does not link the concept of liability with a penalty for failure to fulfil an obligation but links it with proper (or responsible) performance obligations and the proper (or responsible) exercise of rights, consistent with the tradition of the civilization of the European continent, specified in particular by the generally accepted notion of Christian morality and the intentions of the Christian traditions of European legal culture.¹⁵ Thus, it is clear that in Czech legislation, the rather new term, parental liability, should be interpreted as an injunction to be conscious of proper conduct while emphasizing good parenting.¹⁶

The above variety is also apparent in other countries' legislations. The legal terminology used in different countries distinguishes similar concepts and gives them different meanings. As discussed above, over time, the nature of parenthood has undergone a dramatic transformation globally. Gone are the days when parental authority vested exclusively in a child's father, the mother's only entitlement being reverence and respect. Paternal authority was gradually whittled down over the course of the last two centuries, and we can see this change reflected not only in the contents of this concept, but also in the terms used by different countries.

For example, in Germany, a distinction is made between the concept of *Verantwortung*, i.e., liability in the sense of responsible performance of a certain activity, and that of *Verantwortlichkeit*, i.e., liability associated with a penalty for non-performance of an obligation. Similarly, as mentioned above, the Czech legal order, until 2013, distinguished between the concept of responsibility and that of liability. The *Bundesgesetzblatt* (BGB), in its original version of 1896, used the term, *elterliche Gewalt* (parental authority). The change in terminology has been made in light of the principle of the best interests of the child and to consider the child's gradually increasing ability to act independently. Thus, the German legislation started to use the term, *elterliche Sorge* (parental care), to refer to the institution, which corresponds to the institute of parental responsibility.¹⁷ However, the

14 Art. 31 of the Family Act No. 94/1963 Coll., replaced by the new Civil Code, in effect 1 January 2014.

15 Šmíd, 2014, p. 815.

16 Hrušáková and Westphalová, 2014, p. 877.

17 German Civil Code, BGB. Civil Code in the version promulgated on January 2, 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Art. 4 para. 5 of the Act of October 1, 2013 (Federal Law Gazette I page 3719).

more recently adopted legislation uses the term, *elterliche Verantwortung* (parental liability), following the terminology used in Brussels IIBis and international treaties.¹⁸

The Austrian *Allgemeines bürgerliches Gesetzbuch* (ABGB) uses the term, *Obsorge* (care), to refer to a similar concept, which includes the care and upbringing of a child, the care of the child's property, and the representation of the child.¹⁹ Until the 1989 reform, it used the term, *Elterliche Gewalt* (parental authority). The introduction of the term, *Obsorge*, was intended to emphasize the new view of a child's status as a recipient of parental care, not as an object of parental authority.²⁰ It should be added that the new term, *Obsorge*, was introduced into the ABGB before Austria became a signatory to the international treaties that used the English version of parental responsibility or parental responsibilities; thus, the use of *Obsorge* does not imply that the legislator intended to distinguish between those terms.

The French Code Civil currently uses the term, *autorité parentale* (parental authority, but more in the sense of responsibility), and until 1970, used the term, *puissance paternelle* (paternal power). The change in terminology was related to the elimination of differences between the status of the father and that of the mother, with the last advantage of the father regarding the administration of a child's estate being abolished by an amendment in 1985. The introduction of the concept of *autorité parentale* into the Code Civil therefore preceded the adoption of international treaties that used the concept of parental responsibility, and as in the case of Austria, it cannot be interpreted as an attempt to diverge from these treaties. However, since 1970, the Code Civil has been amended several times, while the concept of *autorité parentale* has been retained and is not negatively perceived by legal theory.²¹ According to the provisions of Article 371-1 of the Code Civil, *autorité parentale* includes the care of the child, protection, upbringing, and development while respecting the person of the child. It is certainly worth noting that rights in the French concept precede duties.²²

Another country that uses the term, authority, is Denmark. The Danish concept of *forældremyndighed* could be translated as parental authority. Even the name of the legislation reflects this: Act No. 148 of 1991 is titled the Act on parental authority (*Lov om forældremyndighed og samvær*). Danish legislators have considered, on several occasions, changing the terminology from parental authority to a concept that better reflects the responsibility of the holder of this responsibility. In the end, they decided to keep the term, while emphasizing that the concept of parental authority was not only a right to decide for the child, but also entailed

18 Dethloff and Martiny, 2015, p. 1.

19 Austrian Civil Code – Allgemeines bürgerliches Gesetzbuch (ABGB) § 144.

20 Roth, 2015, p. 1.

21 Ferrand, 2015, p. 1.

22 Wiederkehr, 2013, p. 597.

a duty to protect and care for the child. Under Danish law, the parents are the holders of parental authority; however, it can be transferred to a non-parent or to two non-parents (this can only be a married couple), but there can never be more than two simultaneous holders of parental authority.

As with French and Danish law, Polish law uses the term, *władza rodzicielska*, which translates into parental authority. The primary sources of Polish family law are the principles enshrined in the Polish Constitution of April 2, 1997 and the Polish Family and Guardianship Code (Kodeks rodzinny i opiekuńczy), which interprets parental authority as a set of parents' rights and obligations toward children, which is held by both parents. A minor child is under parental authority until the age of 18.

Lithuania also belongs amongst the states that use parental authority to refer to this concept, used in Lithuanian as *tėvų valdžia*. The Lithuanian Civil Code explicitly defines parental authority as follows:

Until they attain majority or emancipation, children shall be cared for by their parents, i.e., a child is subject to the supervision of its parents until majority or emancipation. Parents have a right and a duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child will be able to live independently in society.

Interestingly, Lithuanian legislation extends beyond the standard definitions and content of parental authority used in other countries; in the constitution of 1992, it states that it is the duty of the parents to raise their children 'to be honest individuals and loyal citizens, as well as to support them until they reach the age of majority.' This clearly highlights the moral aspects of parental authority that exist alongside the legal aspects. Lithuanian legislation combines the personal interests of parents and children with those of the state. It highlights the state's responsibility alongside the parents' when exercising parental authority.

Spanish legislation on family law matters is not uniform; we must distinguish between the so-called common civil law, based on the Civil Code, and the laws of Navarra, Aragon, and Catalonia. The Spanish Civil Code uses the general concept of *patria potesta*,²³ which is the same in the legislation of Navarra and Aragon, whereas Catalan law uses the term, *potestad del pare i la mar*, emphasizing that this authority is usually jointly exercised by both the father and the mother.²⁴ When the Spanish Civil Code was reformed in 1981, a change of terminology was discussed. In the end, however, they decided to keep this term, because it was so deeply rooted in

23 Art. 154 The Civil Code of Spain (Código Civil), formally the Royal Decree of 24 July 1889.

24 Egea Fernández et al., 2000, p. 610.

society. Although they kept the term, the legislation does not explicitly define it anywhere. The Spanish Supreme Court has interpreted *patria potestad* as a function, established in the interests of children, whose contents consist more of duties than rights.²⁵ If parental responsibility is held by persons who are not the parents of the child, Spanish law uses the concept of guardianship, or *tutela*.²⁶

Sweden does not use any of the terms outlined above, but rather operates with the terms, custody (*vårdnad*, Chapter 6 Swedish Children and Parents Code) and guardianship (*förmynderskap*, Chapters 9-15 in part Swedish Children and Parents Code). These concepts together constitute what parental authority or parental responsibility encompasses in other legislations. According to the Children and Parents Code, children have a right to care, security, and a good upbringing. Children must be treated with respect and cannot be subjected to physical punishment or any other humiliating treatment.²⁷

Similarly, Hungary uses the term, *szülői felügyelet*, which can be translated as parental supervision or parental custody.²⁸ The Hungarian Civil Code states that parental supervision shall be exercised by the parents in collaboration with one another in the interest of the child's physical, intellectual, and moral development. In jointly exercising parental supervision, the rights and obligations of the parents shall be equal. According to Hungarian legislation, parental custody covers the right to select the minor child's name, to provide care, to determine the child's place of residence, to manage 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.²⁹

Greek legislation operates with the terms, parental care and guardianship. Parental care refers to the situation in which parents have parental responsibilities for their child. If, for any reason, parental care does not exist, the court will place the child under guardianship, meaning that it attributes parental responsibilities to a third person, the guardian, who is assisted and controlled by a supervisory council and the court, based on Article 1590 of the Greek Civil Code.³⁰ The concept of parental care and guardianship encompasses a set of rights and obligations, which have to be exercised in the child's best interests.

Finland uses the term, *lapsen huoltajuus*, which translates into child custody. This term includes the daily care and protection for the child and their general

25 The Supreme Court of Spain: Sentencias del Tribunal Supremo de 15 de julio de 1996, 27 de septiembre y 31 de diciembre de 1996 (Judgments of the Supreme Court of 15 July 1996, 27 September 1996 and 31 December 1996).

26 Lázaro González, 2002, p. 355.

27 Swedish Act on The Children and Parents Code (Lagen om Föräldrabalk), Swedish code of Statutes, SFS 1949:381, Promulgated 1 October 1998.

28 Both terms are used in the official English translation of the Hungarian Civil Code interchangeably.

29 Barzó, 2017, p. 565.

30 Georgiadis and Stathopoulos, 2003, pp. 259–260.

well-being. This concept encompasses the child's personal relationships to other persons close to them, especially their parents. The terminology is clear from the naming of the main source of the family law, which is the Finnish Child Custody and the Right of Access Act.³¹

The Commission on European Family Law uses the term, parental responsibilities (i.e., the term, responsibility, but in plural).³² Finally, EU legislation uses the term, parental responsibility. The name of this single institute has already aroused considerable controversy and debate internationally. Thus, it can be considered a success that European legislation has already managed to unify the concept of parental responsibility.

English legislation, specifically Article 3(1) of the Children Act 1989, defines parental responsibility as 'all the rights, duties, powers, responsibilities and authority section which by law a parent of a child has in relation to the child and his property.' This legislation emphasizes that the duty to care for the child and to raise them to moral, physical, and emotional health is the fundamental task of parenthood and the 'only justification for the authority it confers.'³³ Parental rights and duties were simply subsumed under the unified term of parental responsibility in the Children Act of 1989.

Ireland follows the EU and Council of Europe recommendation and uses the term, *freagracht tuismitheoiri*, which equates to parental responsibility. Parental responsibility is defined in the Irish Child Care Act of 1991 as rights of custody, access, and guardianship.

The Netherlands also opted for the term, *ouderlijke verantwoordelijkheid* (parental responsibility), which is defined as the duty and right of parents to care for and raise their minor child. The Dutch Civil Code stresses that care and protection are crucial parts of parental responsibility, which includes the responsibility for the child's mental and physical wellbeing and fostering the development of their personality.³⁴ The Dutch Supreme Court also held that parents were free to raise their children in accordance with their own outlook on life, within the framework of the law.³⁵

The Swiss Civil Code also uses the term, parental responsibility. In its Article 296, it explicitly states that 'Parental responsibility serves the best interests of the child. Until such time as they attain the age of majority, children remain the joint parental responsibility of their father and mother.' Parental responsibility under Swiss law means the right and obligation to raise and care for a child with

31 Finnish Act on Child Custody and Right of Access (361/1983; amendments up to 352/2019 included).

32 Boele-Woelki et al., 2007, p. 67.

33 Department of Health. An Introduction to the Children Act 1989 London: HMSO, 1989, para. 1.4.

34 Art. 1:247 Dutch Civil Code (Burgerlijk Wetboek).

35 Supreme Court of the Netherlands 25 September 1998, NJ 1999, 379.

their best interests in mind and to take all necessary decisions unless the child has capacity to act. Interestingly, the Swiss Civil Code also outlines the detailed responsibilities of the minor child. In its Article 301, it concludes that the child

owes his or her parents obedience; according to how mature the child is, the parents shall allow the child the freedom to shape his or her own life and, wherever feasible, take due account of the child's opinion in important matters.

We can see this great variety and changes in terminology happening globally in the past few decades. It is clear that deriving the name of this concept from the word, power—regardless of the language—is becoming obsolete in the current changed conditions in the parent-child relationship. As opposed to the former emphasis on parental power, it is primarily the rights and duties of parents arising from their social mission and function—to raise their children—rather than from any sovereign position based on the power of the parents. Although modern legal theory frowns upon the use of this term, we believe it can still be used in modern family law, as long as we understand that the parental power to control a child exists not for the benefit of the parent but for the benefit of the child and in the child's best interest.

As a result of several important international conventions,³⁶ the view of a child's legal status in a family and in society has changed and, consequently, so has the view of parents' role and position in the child's upbringing and care. A child has ceased to be the object of the parents' sovereign power. Different countries adopted a different approach in changing their terminology, as we have explored this question above. As some authors put it, the change in the designation is not essential; what is essential is the content of the institute.³⁷ The different labels for the concept suggest different notions of the parent-child relationship (and also its historical development) rather than its factual content. This is possibly determined by the specific list of rights and obligations that the institute represents. By using the terms, power, authority, care, liability, or responsibility, the legislator expresses, among other things, what position a child has in this relationship, or what position the legislator grants them.

It is logical that more recent legislation, in view of the development to date and terminology used in the international treaties by which an individual country is bound, seeks to emphasize, as much as possible, a child's position as an active subject, not as a passive recipient, or even an object of action. In this

36 For example, Declaration of the Rights of the Child 1959; Convention on the Rights of the Child 104/1991; Recommendation No. 4/1984 of the Committee of Ministers on Parental Responsibility; RE Resolution No. 2/1988 on the Sovereignty of the Interests of the Child in Private Law, etc.

37 Králíčková, 2013, p. 811.

sense, therefore, the use of the concept of parental responsibility appears to be appropriate.

Unfortunately, the Slovak language does not provide as many suitable possibilities to name this institute as some other languages do, which was probably one of the reasons why the new family act preferred to maintain the fragmentation of an otherwise unified institute and used the rather vague term “parental rights and obligations.” The fact remains, however, that European legislation has introduced and recommends the collective term, parental responsibility, as the name for an institute that encompasses those rights and obligations of parents toward minor children that were previously summarized by parental authority.

From a grammatical and logical viewpoint, it would indeed seem preferable to create a unifying legal institute in Slovak family law, to clarify, at first sight, that it is a set of parental rights and obligations that relate exclusively to a minor child, or the parents’ rights and obligations in respect of the care of the child’s person and property. The current statutory distinction between “parental rights and obligations” and “other rights and obligations of parents and children” in Slovak family law has no logical justification. Moreover, a division of the whole into parts without any apparent logical structure does not withstand scrutiny.

In Slovakia, the Family Act of 1963 had already stopped using the term parental authority and introduced the more fragmented parental rights and obligations. These contained all parents’ and children’s rights and obligations. Most of them were understood as mutual, i.e., where the rights and obligations of two subjects, parent and child, constituted the content of a legal relationship—e.g., a parent not only has a duty to raise a child, but it is also their right. Conversely, the child has the right to parental upbringing and the obligation to submit to parental upbringing, as long as it complies with the legal requirements. Thus, the Family Act of 1963 fragmented the terminologically unified institute of parental authority into parents’ and children’s rights and obligations, while only successively naming and regulating the individual rights and obligations, without any internal logical division. Subsequently, the breakdown was theoretically dealt with through interpretation. The new Family Act of 2005 has already proceeded to a certain sorting; however, it is still not the terminologically and logically soundest solution, as mentioned above. Thus, the period from 1963 to the present day is irrelevant for the search for a suitable name for a terminologically uniform institute, because the Slovak legislation has not logically approached this terminological question and has opted for individual rights and obligations. The current terminology does not comply with European trends, and the future of Slovak family law should see a return to a terminologically uniform institute rather than partial rights and obligations under the current arrangements. This solution is also favored by EU legislation. The Recommendation of the Committee of Ministers No. R (84) 4 on Parental Responsibilities interprets parental responsibilities as a collection of duties and powers

which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property.³⁸

It also defines the terms, father, mother, and parents, to clarify who may exclusively be the bearer of these rights and obligations. The argument for naming the classical parental power as parental responsibility is its acceptance by European legislation. However, as we have seen above, not all countries have adopted this term.

Responsibility can be understood in several senses. The content of the term, responsibility, reflects the totality of the objective requirements of a social group and society toward their individual members in the form of moral principles and norms, thus expressing the interest of the wider public or human society. Responsibility is the assumption of the consequences of one's own actions, which one does based on their free decision. Responsibility can also act, in its subjective, psychological aspect, as a peculiar state of consciousness (in the form of consciousness and feeling of responsibility, duty, conscience, etc.). Responsibility can be understood in a moral and legal sense of the word. The content of the concept of moral responsibility characterizes the orientation toward specific, socially significant moral values, includes a moral evaluation of acts and ways of behavior, and requires a responsible attitude for the choice of motives and forms of action in accordance with the goal and means of achieving it. Moral responsibility manifests itself in the readiness and ability to voluntarily exert effort to realize socially significant goals recognized and evaluated as right or just. Moral responsibility is generally linked to legal responsibility, regulating the expression of the will of individuals and the interrelationships between people. Legal responsibility generally refers to the application of adverse legal consequences, established by a legal norm, to one who has violated a legal obligation.

Thus, it can be unequivocally stated that the legal relationships between parents and children, children and parents, as well as those between parents and the state and children and the state, are relationships of responsibility. However, this is rather a philosophical understanding of the concept of responsibility, because the law understands a much narrower concept under this label. It is precisely because of this well-established and rather strict legal understanding of responsibility as a secondary legal obligation that it seems more appropriate to seek another terminologically more appropriate legal designation for the totality

38 Committee of Ministers of the Council of Europe: Recommendations of the Committee of Ministers to member states: No. R (84) 4 on Parental Responsibilities, adopted by the Committee of Ministers on February 28, 1984 at the 367th meeting of the Ministers' Deputies.

of those parental rights and obligations that constitute the content of the institution of the former parental power.

Moreover, what is a new concept in Slovak legislation is the co-responsibility of a child for their own upbringing, which is no longer exclusively the responsibility of the parent (or society). It is manifested both in a broader definition of the child's obligations—irrespective of their age—and in the competences of the court, the child-welfare authority, or other persons in the event of the child's inappropriate behavior. The Family Act of 2005 describes this in Article 43, according to which

the child is obliged to show appropriate respect and deference to his or her parents. If the child lives in the household with his or her parents, he or she shall be obliged to contribute by personal assistance to the common needs of the family and to contribute to the expenses of the family according to his abilities, possibilities and means. The child is further obliged to cooperate with his or her parents in the care and upbringing of the child, fulfil his or her educational obligations in a manner appropriate to his or her abilities and to avoid a way of life which may be harmful to him or her, in particular the use of substances harmful to his or her physical and mental health.³⁹

Educational practices and methods are also changing significantly. A child is no longer the “property” of their parents; the parents cannot behave as they like in relation to the child. If we speak of a legal relationship between parents and children, this means that a child is not a passive object of the parents' action, but is, above all, depending on age and intellectual maturity, the subject of this legal relationship, with all the consequences that this entails.

The search for a uniform name for a legal institute that would express this new position of a child in family law relations, the roles of the parent in relation to the child and also in relation to society, and the responsibility of parents and children in relation to society is a serious issue with which European legislation is also trying to deal. Meanwhile, it uses the standard term, parental responsibility, which has not been implemented into Slovak legislation. As mentioned, some countries opted for the term, parental care (following the German model), which also does not express the social role and responsibility of a parent in relation to the upbringing of a child; thus, it is not the best term to use.

None of these concepts have succeeded in fully capturing the aforementioned responsibility aspect of the parent-child-society legal relationship, nor its specificity, which stems from the fact that the vast majority of parental rights are also parental duties and that those rights correlate with a child's duties in the same

³⁹ Art. 43, Act No. 36/2005 on Family and on amendment of some other acts.

way as the child's rights correspond to the parents' duties, without the law having to highlight that fact in particular.

Parental authority is also used in some legislations; however, it has the slightly obsolete connotation of power in its content, and it mostly focuses on one aspect of the parent-child legal relationship. While parental power or parental authority has its critics in legal theory, it has certain advantages. It is certainly a better term than the current parental rights and obligations used in Slovak legislation.

Philosophically, authority is the ability to influence the actions of others. A parent's power is the totality of the legal means available to the parent in relation to their minor child; it is, in particular, an expression of the parent's power and duty to behave and act in a certain, legally qualified manner toward the minor in accordance with the minor's best interests. The concept of parental authority thus offers several indisputable advantages over other concepts. First, it is a comprehensive concept; it expresses well both the powers of a parent and their obligations in relation to the child. It is consistent with the international requirements imposed on our legal order. It also includes the aspect of responsibility in relation to society. It has no equivalent in private law that is different in content from that of parental responsibility (as it was in the case of the slightly confusing parental liability). The term, parental authority, could offer a terminological innovation to Slovak family law that could help to articulate the totality of the rights and obligations of parents more clearly under family law.

Although it can be agreed that the content of the institute is indeed more important, and although the inaccurate designation does not constitute a major shortcoming of the legislation, we believe that a more precise designation and differentiation of individual terms, where possible, would be preferable.

4. Conclusion

Based on this research, we can conclude that there is an immense jurisdictional diversity across Europe regarding matters related to parental responsibility. Parenthood always involves a relationship of responsibility, while parental rights are vested in parents to enable those responsibilities to be met. How we view parenthood has undergone significant changes globally in the past two centuries. The notion of parents enjoying individual rights over their children has faded, while the new term of parental responsibility has emerged, which exists in the best interest of the child and for the protection of the child. The term, parental responsibility, gained worldwide recognition from its use in the UN Convention on the Rights of the Child, and this label is now regularly used in international instruments concerning children. The term, parental responsibility, accords children a position of persons, to whom duties are owed and not possessions over which power is wielded. We can see this shift away from the concept of parental

power and expressions related to this, such as parental rights, parental authority, and parental power; however, as seen from our research above, many countries have opted to keep these terms and have not yet introduced the term, parental responsibility, into their domestic legislations.

This study discussed the shortcomings of Slovak legislation regarding the terminology used; primarily, the division of parental rights into “Parental Rights and Obligations” and the labels of “Other Rights and Obligations of Parents and Children,” without much logic behind the distinction between these two categories. The upcoming recodification of family law into the new Civil Code will provide a great opportunity to rectify this situation and to find a sounder terminology. From a linguistic perspective, a direct translation of the term, parental responsibility, may be somewhat cumbersome, due to the limitations of the Slovak language regarding this term. A unified label is, however, definitely necessary. If the concept of parental responsibility were introduced into Slovak law under a unified name, it would better reflect the current reality of being a parent and emphasize the responsibility of all who were in that position. Reformulating parents’ position in law as one of responsibility rather than rights and obligations would bring Slovak legislation in line with modern family law trends and the Recommendations on Parental Responsibility by the Committee of Ministers of the Council of Europe adopted in 1984.

Parental responsibility encapsulates two key ideas: first, the duty of parents toward the children, and that parents must behave dutifully toward their children; and second, the notion that the responsibility for childcare is vested with parents, not the state. This shows a weakening of the supervisory role of the state over the relationship between parents and children and possible further practical implications of this development. While the term is gaining increasing recognition globally as countries are changing their legislation, there remain many examples of other terms being used.

A great resource for the terminology and content of parental responsibility is the study titled ‘Content of the right to parental responsibility in the legal orders of Central and Eastern Europe,’ conducted within the framework of the Central European Professors’ Network coordinated by the University of Miskolc – Central European Academy, which I would encourage the reader to visit because it provides a vast amount of insight into the legislations of Central and Eastern Europe focusing on the topic of parental responsibility.

Globally, parental responsibility, parental care, parental custody, parental rights, parental accountability, and many more terms are in use today, including in Europe. The question remains—is it indeed important, or even feasible, to unify our terminology? Or do we need to focus solely on the contents? After all, as the Bard once said, a rose by any other name would smell as sweet... It is clear that whatever we name this concept, the ultimate purpose is to highlight the responsibility to care for and raise a child to be a properly developed adult physically, mentally, and morally, consistent with the child’s best interest.

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