

# CZECHIA: DEMOGRAPHY, FAMILY POLICY, AND LAW INSTRUMENTS TO PROTECT AND SUPPORT FAMILIES



ZDEŇKA KRÁLÍČKOVÁ

## Abstract

The portrait of the family and family life has been changing in the Czech Republic, particularly over the last five decades, as is reflected in the country's legal system. Many legislative changes occurred in the Czech Republic after the fall of the Iron Curtain, followed later by others. In this context, the Czech Republic's accession to several international human rights conventions and the passing of the new Civil Code are relevant. Considering demographic challenges, this chapter focuses on the current Czech family law, in particular, its principles and the instruments aimed at protecting and supporting families, parents, children, and vulnerable family members.

**Keywords:** demography, family law, change, marriage, registered partnership, *de facto* cohabitation, motherhood, fatherhood, parental responsibility, family solidarity, protection, support, family policy

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## 1. Introduction

The portrait of the family in Czechia underwent a significant transformation as a result of the political, social, and economic changes in 1989. Similar changes occurred in other countries of the former Soviet bloc and the Soviet Union.<sup>1</sup> Fundamental demographic changes have been reflected in legislation; therefore, it is unsurprising that the legal regulation of family life has also undergone significant development. Many amendments have been made to family codes from the previous period and, consequently, new laws have been passed.

At the individual level, one does not need to be a demographer or sociologist to characterise this period as a ‘deviation’ from ‘traditional values’ in favour of an alternative way of life. For example, individuals are postponing marriage until ‘later’ or completely rejecting it; unmarried de facto cohabitation and registered same-sex partnerships have been established, and there has been a sharp decline in the birth rate, as well as, paradoxically, an increase in the proportion of children born out of wedlock. This behaviour has been accompanied by a high divorce rate, including an increase in the number of divorces of long-term marriages, the emergence of so-called ‘incomplete’ and ‘reconstructed’ families, and children at risk.<sup>2</sup>

Similar changes in family life have been negotiated not only in countries of former Soviet influence but also in many other European countries with violently uninterrupted political development. Unsurprisingly, it has been suggested in the literature that ‘the family laws in Europe face the emerging pluralities of relationships and family life’ and that ‘traditionally marriage-centric family law with fixed perceptions of gender roles and indeed gender will have to adapt to the new social realities, with a functional and child-centered family law being the most likely result’.<sup>3</sup>

The current structure of an average family in Czechia is indicated by the statistical data provided by the Czech Statistical Office<sup>4</sup> and those collected for Eurostat and the Council of the European Union by the Czech Ministry of Labour and Social Affairs.<sup>5</sup> Nothing is immutable, not even population behaviour or forms of family and family life.<sup>6</sup> The Populations and Housing Census conducted in 2021<sup>7</sup> provided a whole range of new, and in many cases, surprising, data, which help draw a topical

1 Khazova, 2007, p. 97.

2 Králíčková, Kornel and Zavadilová, 2019, pp. 122–159; Králíčková, 2021a, pp. 77–109.

3 Scherpe, 2016, p. 133.

4 The statistical data and charts by the Czech Statistical Office are available at: <https://www.czso.cz/csu/czso/population>. Some charts are in English.

5 See: [https://www.mpsv.cz/documents/625317/625839/information\\_family\\_policy.pdf/fd2be9f9-7f98-6b74-7d7e-4e97eefab980](https://www.mpsv.cz/documents/625317/625839/information_family_policy.pdf/fd2be9f9-7f98-6b74-7d7e-4e97eefab980) (Accessed: 20 May 2023)

6 Možný, 2011.

7 For the Census results see: <https://www.czso.cz/csu/scitani2021/home> (Accessed: 20 May 2023.) and: <https://www.czso.cz/csu/scitani2021/results-first> (Accessed: 26 April 2023).

portrait of family and family life in the Czech Republic. It can be assumed that the Czech Ministry of Labour and Social Affairs relied on the results of this Census when creating the Family Policy Strategy for 2023–2030.<sup>8</sup>

As mentioned above, many legislative changes have already occurred in Czechia.<sup>9</sup> Some took place soon after the fall of the Iron Curtain, others later.<sup>10</sup> In this context, it is worth mentioning, in particular, the Czech Republic's accession to several international conventions on human rights, the passing of the law on registered same-sex partnerships and, most importantly, the adoption of the new Civil Code in 2012. This Civil Code reinstated the subject of family law in the Czech Republic and, thus, returned to European standards and the tradition represented by the General Civil Code (1811, or 1918) pre-1949 in the former Czechoslovakia.<sup>11</sup> In particular, the recodification of the basic pillar of the legal order – private law – by the Civil Code was preceded by many expectations. However, taking into account the development in nearby European countries, it is questionable whether the 'return to traditions' represented by the General Civil Code represents sufficient legal protection for Czech families. The main question is whether the new family law legislation reflected, and still reflects, the changing nature of families, adult relationships, and the parent-child relationship.<sup>12</sup>

The task of family law academics is not to assess demographic developments and changes in family life<sup>13</sup> but to analyse the existing legal regulation of family law and suggest appropriate legislative changes concerning European standards or values for the protection of human rights, especially those of minor children and other vulnerable persons. As such, this chapter is devoted to an exploration of current family law, in particular, to the principles of Czech family law and the instruments aimed at protecting and supporting families, parents, children, and vulnerable family members. However, below is included at least basic information on demography, social reality, family policy and family support benefits.

8 See: Information about Family Policy System in the Czech Republic. Available at: <https://www.mpsv.cz/web/cz/-/nova-strategie-rodinne-politiky-pocita-s-lepsi-podporou-pecce-o-nejmensi-i-nemohouci> (Accessed: 22 April 2023) [in Czech]. The press release reports that this conceptual document updates the earlier Family Policy Concept from 2017. Supporting families has long been one of the main priorities for the Ministry of Labour and Social Affairs. The strategy deals with several aspects, the aim of which is to create favourable and stable conditions for families, raising children, and caring for loved ones. Roughly 40 different entities, from ministries to non-profit professional organisations and academia, participated in the formulation of the strategy.

9 Haderka, 1996, pp. 181–197; Haderka, 2000, pp. 119–130.

10 Králíčková, 2009, pp. 157–173.

11 Králíčková, 2014, pp. 71–95.

12 Králíčková, 2021a, pp. 77–109.

13 Němečková, Kurkin, and Štyglarová, 2015.

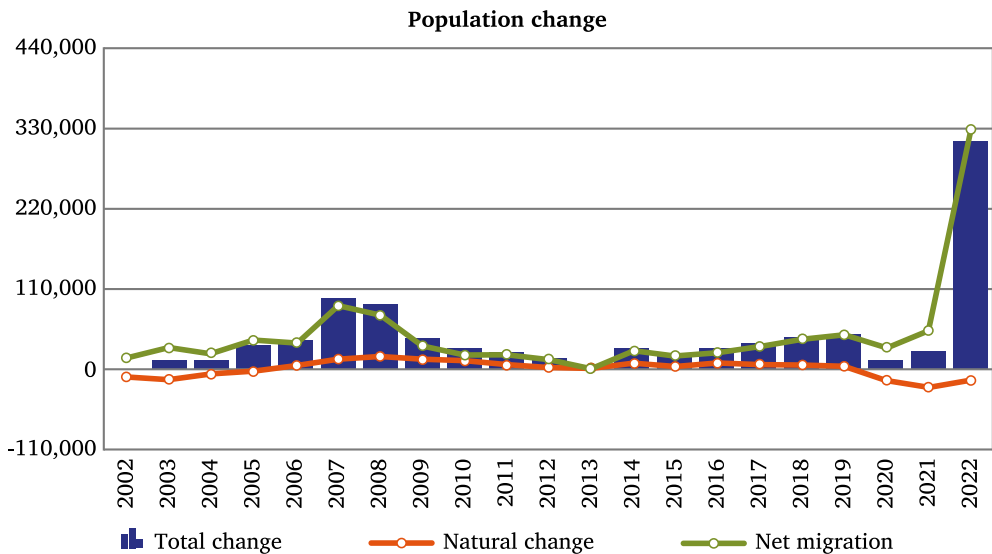
## 2. Families and family policy in Czechia

### 2.1. Demographic development and social reality

The picture of Czech society and family would be incomplete without general statistical data provided by the Czech Statistical Office. According to its website, the figures regarding the size and structure of the population are derived from decennial population censuses and data of demographic balances and changes. The latter are obtained by processing statistical reports on marriages, divorces, births, deaths, and migration, among other demographic factors, provided by the Population Register. All state indicators reflect the final results of the Population and Housing Censuses.<sup>14</sup>

According to the website, the population of the Czech Republic was 10,873,553 as of 30 June 2023. The following charts illustrate the change in population and population structure by sex, age, and marital status.

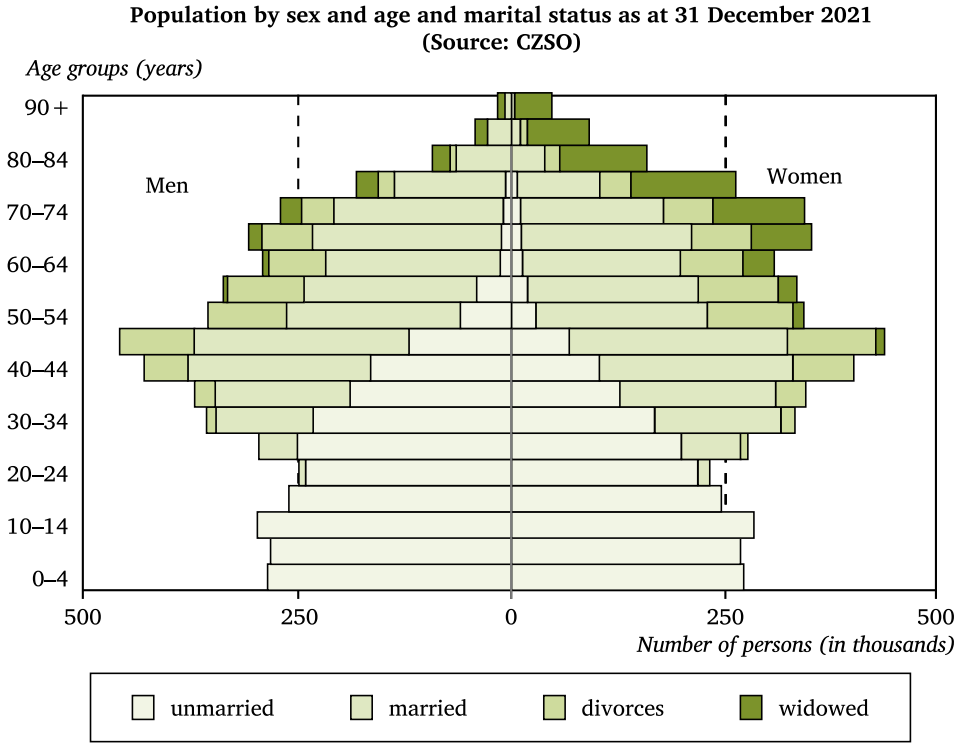
Figure 1. The change in population<sup>15</sup>



14 See: [https://www.czso.cz/csu/gender/3-gender\\_obyvateľstvo](https://www.czso.cz/csu/gender/3-gender_obyvateľstvo) (Accessed: 10 October 2023).

15 See: <https://www.czso.cz/csu/czso/population> (Accessed: 13 October 2023).

Figure 2. Population by sex, age and marital status<sup>16</sup>



As noted, due to political, social, and economic changes in 1989, the portrait of the family in Czechia has completely changed. Exploring the country’s history can elucidate the demographic developments in Czech society, the family, and family policy.<sup>17</sup>

The Communist takeover of 1948 was followed by many changes. These changes undoubtedly influenced both the character of the family and family law. Communist family policy defined the family as a small unit consisting of a husband and a wife, who were equal. The emancipation of women was realised through their full employment, including mothers with young children. That said, the role of maintenance duty between spouses and ex-spouses was underestimated. In any case, the standardisation of the so-called ‘consumption’ way of life gave rise to the need for ‘two family incomes’. Consequently, the man stopped being the head of the family and its primary source of support. Meanwhile, due to nationalisation and expropriation, the family existed without property, real estate, and so on. Family

<sup>16</sup> See: <https://www.czso.cz/csu/czso/population> (Accessed: 13 October 2023).

<sup>17</sup> Previously Králíčková, Kornel and Zavadilová, 2019, pp. 122–132, and data and literature cited therein.

members were generally only allowed to own things for their personal use. Regarding housing, in most cases, families were meant to have flats in ‘personal use’ instead of ‘personal ownership’. In this respect, relevant family policy ‘placed’ families in small state or co-operative flats, limiting the family to the so-called nuclear form: a married couple with one or two children. Parents were obliged to raise and teach their children according to the communist ideology. The social function of the family was transferred to state institutions. To this end, institutional facilities were responsible for the care, upbringing, and leisure time activities of children, while care for grandparents was assigned to institutional houses. The paternalistic state provided help to families through various kinds of support and allowances, the bulk of which were available to newly established young families. Preference for marriage at a young age to any other form of cohabitation led to a phenomenal marriage rate and remarkably low average age of new spouses. Statistically, almost everyone got married at least once in their lifetime, sometimes twice. Getting married ‘early’ offered several benefits. New young families were granted small loans with almost no interest, small flats for ‘personal use’, and some degree of financial support from the state after the birth of a child. Essentially, the only way a young couple would be allocated a flat was if they were married and had a child, a powerful inducement for early marriage and having children. Consequently, ‘underage’ brides were not uncommon. From the 1970s onwards, a pregnant bride was no longer considered a violation of social standards, with such a state often included in the life plans of single women.<sup>18</sup>

However, the family has undergone significant changes since 1989. As a result of better education and labour market opportunities, women have postponed having children—sometimes until it was too late to have them at all—or opted out of motherhood entirely. New possibilities—including a changing labour market, better professional and career opportunities, and travelling—provided young people with tantalising alternatives to starting a family. In 1999, birth rates declined to the lowest in the country’s history, with just 1.13 births per woman. Naturally, the age of first-time mothers also increased. When the low birth rate became a political issue, the Parliament of the Czech Republic sought to encourage new births by extending the length of maternity leave, giving the mothers of newborn children more options on how to use their maternity leave, and increasing financial support. The Czech Statistics Office subsequently announced a gradual increase in childbirths. Specialists attributed the increased birth rate to the pro-family behaviour of the strong population born during the baby boom of the mid-1970s. According to the Czech Statistical Office, the fertility rate was 1.63 children per woman in 2016, and almost 1.7 in 2018. As a result of this increase in fertility intensity, in 2021, the Czech Republic ranked among the countries with the highest level of total fertility in Europe, with an average of 1.83 children per woman—the highest since 1992. The average age of mothers at childbirth increased to 30.4 years. For women aged

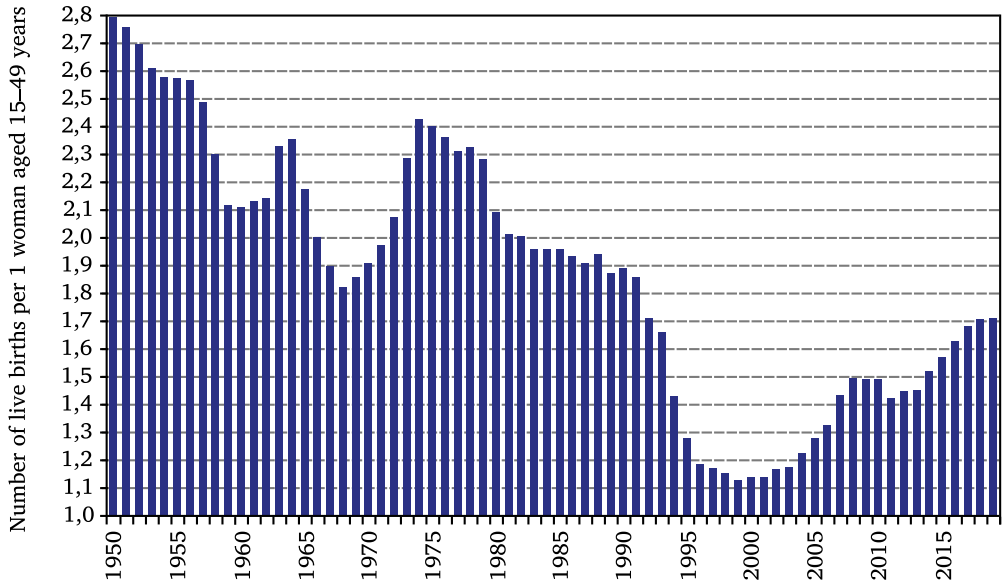
18 Hrušáková, 2002, pp. 24–25.

36 years and older, the increase in fertility was more than half as large. This uneven increase in fertility with age is reflected in the change in the average age of mothers at childbirth.<sup>19</sup>

It is worth examining fertility data collected during the 2021 Census in greater detail. According to the data, women with two children are represented in the population most frequently, with an average number of 1.57 children per woman. The Czech Statistical Office supplemented the data on the number of children born alive with a classification by the mother’s age, educational attainment, and marital status.<sup>20</sup>

All of the aforementioned statistical data should be considered in light of the total fertility rate, as presented in the following Czech Statistical Office chart.

Figure 3. Total fertility rate, 1950-2019<sup>21</sup>

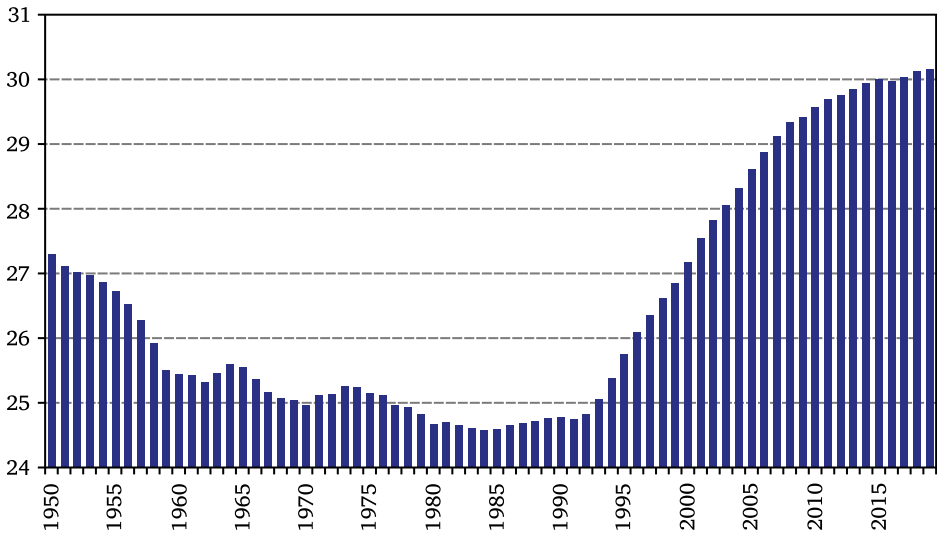


Provided by the Czech Statistical Office, the following graph illustrates the increase in the mean age of women at childbirth.

19 See <https://www.czso.cz/csu/czso/uroven-plodnosti-v-cesku-patrila-loni-k-nejvyssim-v-eu> (Accessed: 20 August 2023).

20 See: <https://www.czso.cz/csu/czso/the-czso-published-detailed-data-on-fertility-from-the-census-2021> (Accessed: 13 October 2023).

21 See: <https://www.czso.cz/csu/czso/total-fertility-rate-1950-2019> (Accessed: 13 October 2023).

*Figure 4. Mean age of women at birth, 1950-2019<sup>22</sup>*

Meanwhile, the divorce rate increased rapidly after 1948, with almost linear growth by the early 1990s. Divorce became a fully acceptable means of solving matrimonial problems. Holding a strong position in society, women could initiate divorce proceedings. The presence of minor children had no bearing on divorce whatsoever. As a rule, divorce settlements saw minor children placed in the sole custody of mothers, who were entitled to use the former family flat as an individual ‘personal user’, or tenant.<sup>23</sup>

The divorce rate, however, stopped growing in 1990. According to experts, the decrease in the divorce rate in the early 1990s may have been the result of feelings of uncertainty related to fundamental social changes. Another factor was the growing numbers of lawsuits during this period, which resulted in court cases taking considerably longer than they previously had. Subsequently, the number of divorces increased only slightly. Nevertheless, the divorce rate spiked again in 2004, with 33,060 divorces. According to the website of the Czech Statistical Office, there were 19,300 divorces in 2022.<sup>24</sup> Prepared by the Czech Statistical Office, the following chart provides a comprehensive picture of trends in divorce rate in the country.

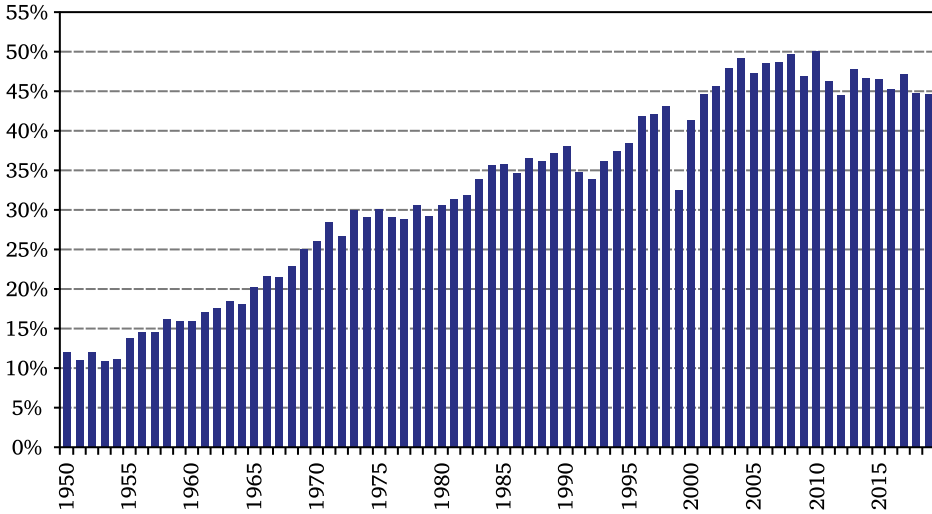
22 See: <https://www.czso.cz/csu/czso/mean-age-of-women-at-birth-1950-2019> (Accessed: 13 October 2023).

23 Hrušáková, 2002, p. 25, 87 ff.

24 See: [https://www.czso.cz/documents/10180/209040860/csuTkobyvatelstvo\\_prezentace.pdf/41dcb862-c251-4e5f-bca5-59d3f3a2775d?version=1.1](https://www.czso.cz/documents/10180/209040860/csuTkobyvatelstvo_prezentace.pdf/41dcb862-c251-4e5f-bca5-59d3f3a2775d?version=1.1) (Accessed: 19 October 2023).



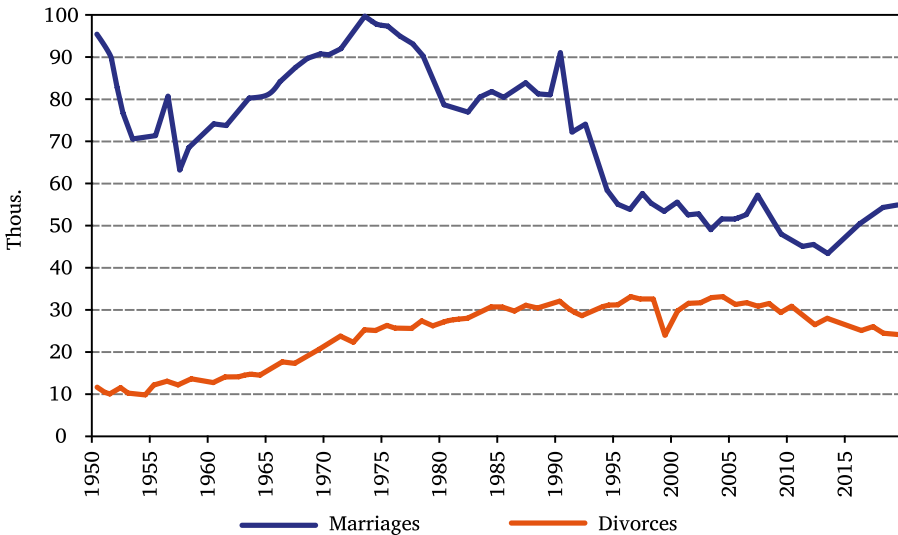
Figure 5. Total divorce rate, 1950-2019<sup>25</sup>



\* Proportion of marriages terminated by divorce provided that divorce rates by duration of marriages of given year remain unchanged.

The following Czech Statistical Office chart provides further data on the proportion of marriages and divorces between 1950 and 2019.

Figure 6. Marriages and divorces, 1950-2019<sup>26</sup>

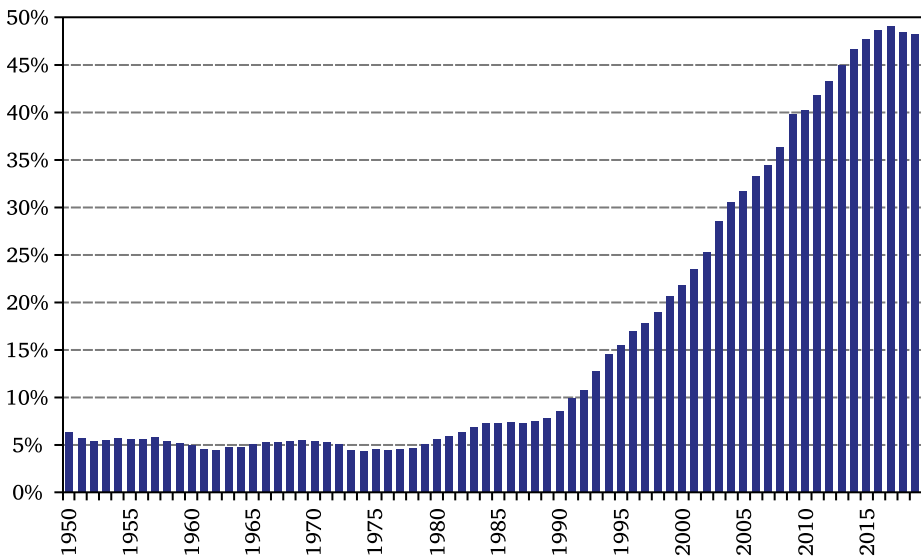


25 See: <https://www.czso.cz/csu/czso/total-divorce-rate-1950-2019> (Accessed: 13 October 2023).

26 See: <https://www.czso.cz/csu/czso/marriages-and-divorces-1950-2019> (Accessed: 13 October 2023).

Given the relatively high marriage rate mentioned above, the period after 1948 was characterised by a relatively low number of children born out of wedlock. Interestingly, the number of children born out of wedlock has grown rapidly since 1989. Indeed, where only 8% of children were born out of wedlock in 1989, this proportion had increased to over 15% in 1996, creating a situation similar to that between 1918 and 1939. There are several reasons for this development. The mothers of such children often live with the child's father. According to polling data, many cohabiting couples in the Czech Republic do not want to get married, with some simply 'rejecting' marriage as 'an old institution', and others preferring to take advantage of state benefits designed to support 'single' mothers. This relates to all the issues mentioned above, as well as the diversity of incomes and increase in costs in general. At present, almost 50% of children are born out of wedlock. According to the Czech Statistical Office, this figure stood at 49.2% in 2023.<sup>27</sup> The following Czech Statistical Office chart illustrates the increasing proportion of children born out of wedlock, especially after 1989.

*Figure 7. proportion of live births outside marriage, 1950-2019<sup>28</sup>*



It is worth noting that cohabitation without marriage was quite rare among young people after 1948, especially in view of the difficulty obtaining flats, with young married couples always preferred in the state's allocation of flats for 'personal

27 See: <https://www.czso.cz/csu/czso/cri/pohyb-obyvatelstva-1-ctvrtleti-2023> (Accessed: 13 October 2023).

28 See: <https://www.czso.cz/csu/czso/proportion-of-live-births-outside-marriage-1950-2019> (Accessed: 13 October 2023).

use'. Informal relationships were primarily considered as 'preparation for marriage' or 'a stage before' marriage. The cohabitation of unmarried couples was almost exclusively limited to older couples or surviving spouses taking into consideration adult children and the need to retain the right to widow pensions. Individuals who had already had several marriages also tended to cohabit without marriage.<sup>29</sup>

Although cohabitation without marriage has clearly increased significantly since 1989, the number of nonformal unions has yet to be measured statistically. The growth of cohabitation without marriage is corroborated by the increasing number of children born out of wedlock and rising average marriage age. The 2001 Population and Housing Census furnished more detailed information on this matter. According to census data, over 5.7% of the adult population in their twenties (approximately 473,420 people) were cohabiting with their partner. Of those aged 50 and older, only 2.8% were cohabiting without marriage. As such, cohabitation was more common in younger age groups, with almost two-thirds of people aged 20–24 cohabiting. In the 2011 and 2021 Population and Housing Censuses, the number of *de facto* unions was even higher.<sup>30</sup>

In contrast to marriage, the Czech Statistical Office does not provide official data on the registered partnership of same-sex couples. In this respect, the greatest interest in registered partnership occurred immediately after it was enacted into Czech law in 2006. After an initial slump, the number of registered partnerships gradually increased over the years. According to non-official sources, a total of 2,174 couples entered registered partnership by the end of the 2015. Gay men appear to be relatively more interested in registered partnerships compared to lesbians, with registered partnership entered into by 1,439 male couples and 735 female couples. Nonetheless, interest has been on the rise in the recent years. Meanwhile, some 300 couples have terminated their registered partnerships.<sup>31</sup>

In conclusion, information reflecting the latest statistical data released by the Czech Statistical Office must be included. The year-on-year decline in the birth rate since early 2022, continued in 2023. Between January and March 2023, 22,000 babies were born alive, a year-on-year decrease of approximately 2,700 (11%). In terms of the order of the child, the number of first births decreased the least at 8%, whereas the number of children in the third or higher order decreased the most at 18%. The Czech Statistical Office also reported that, between January and March, 49.2% of children were born out of wedlock and that 3,500 thousand couples entered marriage, which is 1,000 fewer than the year before. That said, it is worth noting that last year's total for the first quarter was boosted by attractive February dates (e.g. 22 February 2022).<sup>32</sup>

29 Hrušáková, 2002, pp. 95–96.

30 For further detail, see: <https://www.scitani.cz/results> (Accessed: 17 October 2023).

31 See: <http://www.praguemonitor.com/2016/02/05/thousands-czechs-enter-registered-partnership> (Accessed: 14 February 2019).

32 See: <https://www.czso.cz/csu/czso/cr/pohyb-obyvatelstva-1-ctvrtleti-2023> (Accessed: 10 October 2023).

## 2.2. Family policy and family support benefits

The Ministry of Labour and Social Affairs of the Czech Republic (hereinafter, the Ministry) announced that “A New Approach to Family Policy” was being prepared in co-operation with the Expert Committee for Family Policy. The policymakers intended to implement over 24 reform measures across five key areas.<sup>33</sup> In 2017, the Ministry presented “The New Family Policy Strategy 2023–2030” (hereinafter, the Strategy).<sup>34</sup> Approximately 40 different actors, ranging from ministries to nonprofit professional organisations and academia, were involved in the formulation of the conceptual document, which updated the previous draft.

The Strategy was predicated on the realisation that Czech society is undergoing significant social, demographic, and economic development. Among the most significant long-term changes in this respect is the increasing diversity of forms of family cohabitation and life paths. Life expectancy, divorce rates, and the number of children born out of wedlock have increased, relationships within the extended family have loosened, and the division and sharing of responsibilities between parents have changed. These developments are reflected in the varying degrees of fulfilment of family functions, the quality of life of individuals, and the increasing diversity of demands for inclusive family policies. The Strategy was, therefore, based on the premise that the family remains a highly preferred value today. In terms of its unique function, the family is a space for the creation of human capital, in which individual personalities are formed and future generations are nurtured and grown. As such, the family is undoubtedly the most important unit of society. The Strategy emphasised that only stable and prosperous families can guarantee a good environment for the upbringing of children, the sustainable development of society, and the functionality and cohesion of society. The role of the family in society is irreplaceable and deserves the utmost appreciation and support. To this end, the Strategy highlighted a perspective focused on the needs of families at different life stages and specific situations. Great importance was attached to the valuation and stability of the family, the primary prevention of negative phenomena, and the promotion of marriage as a tool for the legal, social, and economic protection of the family. At the same time, it respected the range of life paths and the actual diversity of forms of family cohabitation.<sup>35</sup>

The Strategy was based on an analysis of the situation of families in the context of declining fertility rates, an aging population, changing family structure, women achieving higher education, differential employment by gender and age, and the relative and absolute poverty of families with children.<sup>36</sup> It asserted that family

33 Jahoda, 2016.

34 See: [https://www.mpsv.cz/documents/20142/4552532/Cile\\_strategie\\_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a](https://www.mpsv.cz/documents/20142/4552532/Cile_strategie_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a) (Accessed: 12 October 2023), p. 1.

35 See: [https://www.mpsv.cz/documents/20142/4552532/Cile\\_strategie\\_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a](https://www.mpsv.cz/documents/20142/4552532/Cile_strategie_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a) (Accessed: 12 October 2023), pp. 1–2.

36 See: [https://www.mpsv.cz/documents/20142/225508/Koncepce\\_rodinne\\_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253](https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253) (Accessed: 15 October 2023), pp. 10–19.

policy is by nature a cross-cutting policy, which means that it affects various domains, including taxation, pensions and social security, health and social services, employment, education and training, housing policy, and related policies in the areas of transport services and spatial development, as well as respect for human rights. Therefore, tax instruments and a simplified welfare system were recommended to ensure that the work and costs of raising children and caring for loved ones do not result in a fall in living standards compared with households without children in the same income bracket. These reforms include part-time and more flexible work, an expanded range of services for children, and improved quality and accessibility. The aim of the Strategy was to offer greater opportunities to achieve a balance between family and work life so that families can afford to spend more time with their children and give more care for loved ones.

In terms of its vision, the Strategy sought to create “*A favourable social environment and stable conditions respecting freedom of choice to support families in their functions and provide space and opportunities for families to fulfil their individual needs and aspirations.*” The vision was summated into the following three points: (a) valuing the family and promoting its stability and relationships, (b) providing a supportive and stable socio-economic environment for families, and (c) achieving demographic stability and reducing demographic debt in view of the extremely low birth rates in the 1990s and at the turn of the millennium. Accordingly, the Strategy addressed several aspects aimed at creating favourable and stable conditions for families at all stages of life, rearing of the child, and caring for loved ones.

Based on “A New Approach to Family Policy” and the purpose and vision of family policy, the Strategy was elaborated and concretised into five primary objectives: (a) support the importance of family values, increase social prestige and appreciation of the family, and strengthen the institutional anchor of family policy in the Czech Republic; (b) develop an environment able to support stable family relationships and strengthen prevention risk phenomena in the family; (c) promote the reconciliation between family and work life; (d) create a favourable environment for the material and financial stability of families; and (e) support families at all stages of life and in specific situations.<sup>37</sup>

Although legislative work is currently underway to reform or amend key public law provisions related to this issue, it is difficult to predict whether the objectives of the Strategy will be achieved. At present, we can only provide a brief overview of the current legislative pillars of pro-family policy. This area of law is relatively unstable, with key regulations frequently amended in relation to rising inflation, cost of living, and other current issues.

First, let us consider the concept of maternity, paternity, and parental leave (Act No. 262/2006 Sb., Labour Code, as amended; hereinafter, LC). It is provided that in connection with the birth and care of a newborn child, a female employee shall

37 See: [https://www.mpsv.cz/documents/20142/225508/Koncepce\\_rodinne\\_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253](https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253) (Accessed: 15 October 2023), pp. 3–4.

be entitled to maternity leave for 28 weeks; if she has given birth to two or more children at the same time, she shall be entitled to maternity leave for 37 weeks<sup>38</sup>. In connection with the birth and care of a child, the employer is obliged to grant paternity leave to the male employee. The employee shall be entitled to paternity leave for the duration of the paternity benefit under special conditions<sup>39</sup>. The law also regulates parental leave, which is available for each parent as follows. It is provided that an employer shall, at the written request of an employee, grant parental leave to enhance the care of a child. Parental leave shall be granted to the mother of the child after the end of maternity leave and to the father from the birth of the child to the extent requested by them, but no longer than until the child reaches the age of 3 years<sup>40</sup>. There are also special provisions for substitute family care. Specifically, a female or male employee who has taken a child into care replacing parental care because of a decision by the competent authority or a child whose mother has died shall also be entitled to maternity and parental leave. Maternity leave shall accrue to the employee from the date of taking charge of the child for a period of 22 weeks and, if the employee has taken charge of two or more children, for a period of 31 weeks, but not longer than until the date on which the child reaches the age of one year<sup>41</sup>.

Maternity allowance is one of the six benefits of the Czech sickness insurance system, alongside the sickness benefit, nursing allowance, long-term nursing allowance, paternity postnatal care, and compensatory allowance for pregnancy and maternity. Details are regulated by a special act (namely, Act No. 187/2006 Sb., Sickness Insurance Act, as amended, hereinafter, SIA). In principle, maternity allowance is payable in connection with the care of a newborn child to the mother or father of the child or to the insured person (male or female) who has taken the child into care in lieu of parental care based on the decision of the competent authority. Entitlement to maternity allowance is only granted if two conditions are met<sup>42</sup>: the applicant for maternity benefit must be insured for sickness at the time of claiming the benefit (i.e. social security contributions are paid on the income from employment), or the protection period from the terminated sickness insurance must be in force. To do this, she or he must meet a second specific condition: she or he must have been insured for sickness for at least 270 days in the two years preceding the start of the benefit (i.e. approximately 9 months of sickness insurance spread over two years). This condition does not have to be met under the same employer. Periods from different insurances (i.e. jobs) can be added over a two-year period. Self-employed workers are only entitled to maternity allowance if they voluntarily pay for sickness insurance for a certain period. Specifically, self-employed workers must have been insured as

38 Art. 195, LC.

39 Art. 195a, LC.

40 Art.196, LC.

41 Art. 197, LC.

42 Art. 32 ff, SIA.

self-employed for at least 180 days in the year preceding the date of entitlement to maternity allowance. At the same time, participation in sickness insurance (from employment or business) must have lasted for at least 270 calendar days in the two years preceding the date of entitlement to the benefit.<sup>43</sup> The amount of maternity allowance per calendar day shall be 70 % of the daily assessment base<sup>44</sup>. The subsistence period for maternity allowance is (a) 28 weeks for an insured woman who has given birth to a child and (b) 37 weeks in the case of an insured woman who has given birth to two or more children at the same time; after the expiry of the 28-week sub-replacement period, maternity benefits shall be payable only if the insured woman continues to care for at least two of those children<sup>45</sup>.

Regarding other financial support for families, especially those with newborn infants or children, the legal regulation of social benefits can be found in several legal acts.

According to another special act (Act No. 117/1995 Sb., Act on State Social Support, as amended, hereinafter, ASSS), state social assistance is provided by the State to cover the cost of food and other basic personal needs of children and families and is also provided in certain other social situations. State social assistance is provided in specified cases depending on the amount of income and the costs of State social assistance shall be borne by the State<sup>46</sup>. State social assistance benefits comprise: (a) income-related benefits, which include 1) child benefit, 2) housing benefit, and 3) childbirth allowance; and (b) other benefits, which include 1) parental allowance and 2) funeral allowance<sup>47</sup>.

When a child is born, the parents are entitled to a childbirth allowance. It is provided that a woman who has given birth to her first or second living child is entitled to a childbirth allowance if the family's qualifying income does not exceed the product of the family's subsistence minimum and a coefficient of 2.70. The father of the first or second live-born child shall also be entitled to a birth grant if the woman who gave birth to the child or children has died and on the date of birth fulfilled the necessary conditions<sup>48</sup>. Moreover, a person who has taken into permanent substitute care a child under the age of one year and for whom that child was the first or second child, regardless of whether the first child was born or taken into permanent substitute care, is also entitled to a birth grant<sup>49</sup>. The grant amount is CZK 13,000 for the first child and CZK 10,000 for the second child and shall be paid in one lump sum<sup>50</sup>.

Child benefit is a regular support for lower-income families who need help with the costs of raising and supporting their children. It is a basic benefit for a child who

43 See: <https://www.cssz.cz/penezita-pomoc-v-materstvi> (Accessed: 15 October 2023).

44 Art. 37, SIA.

45 Art. 33, SIA.

46 Art. 1, ASSS.

47 Art. 2, ASSS.

48 Art. 44, ASSS.

49 Art. 45, ASSS.

50 Art. 46, ASSS.

is a dependent and lives in a lower-income family. A dependent child is entitled to child benefit if the family's qualifying income does not exceed the product of the family's subsistence minimum and a coefficient of 3.40<sup>51</sup>. Child benefit is provided in three amounts depending on the age of the dependent child. The conditions for entitlement to child benefit are as follows. The amount of child benefit shall be the following per calendar month in the case of a dependent child: (a) up to 6 years of age CZK 830, (b) from 6 to 15 years, CZK 970, and (c) from 15 to 26 years of age, CZK 1,080<sup>52</sup>. According to the Ministry, if at least one parent works or has other income (e.g. sick leave or pension), the allowance is increased by CZK 500. Therefore, the amount of the allowance ranges from CZK 830 to CZK 1,580 per child per month.<sup>53</sup>

Parental allowance is for all parents of children under 4 years of age irrespective of household income or whether the child's mother or father is the recipient. The monthly amount depends on the parents' choice and the maximum amount depends on their previous income. The act provides that a parent who personally cares for the youngest child in the family on a full-time and proper basis for a whole calendar month is entitled to parental allowance up to the age of 4 years of that child, and no longer than until the total amount of CZK 300,000 has been paid in parental allowance for the care of the same youngest child in the family, unless otherwise specified. If the youngest child in the family is 2 years or more children are born at the same time ("multiple children"), that parent is entitled to 1.5 times the amount of CZK 300,000.<sup>54</sup>

The housing allowance is similarly complex and depends on many variables, including the number of people in the household, their age, and the type of ownership of the family flat or house<sup>55</sup>.

Regarding the conditions for entitlement to funeral benefits, a person who has arranged a funeral is entitled to a funeral allowance according to specified conditions. The amount of the funeral allowance shall be CZK 5,000 and shall be paid in one lump sum (§ 47, § 48, ASSS).

Foster care benefits are comprehensively regulated. Foster care benefits comprise (a) an allowance to cover the child's needs, (b) the foster parent's remuneration, (c) an allowance on receipt of the child, (d) an allowance for the purchase of a personal motor vehicle, and (e) the foster care allowance (Act No. 359/1999 Sb., Act on Social and Legal Protection of Children, as amended; also known as the Children Act; hereinafter, ChA). The amount of allowance to cover a child's needs depends on the age of the child and the degree of disability, if any, and is determined by fixed amounts. The remuneration of the foster parent and the foster care allowance are linked to the

51 Art. 17, ASSS.

52 Art. 18, ASSS.

53 See: <https://www.mpsv.cz/web/cz/statni-socialni-podpora> (Accessed: 15 October 2023).

54 Art. 30, ASSS.

55 Art. 24 ff, ASSS.



minimum subsistence wage or minimum wage set by special laws. The allowance on receipt of the child and the allowance for the purchase of a personal motor vehicle are designated as lump sums<sup>56</sup>.

Significantly, new legislation on the property protection of children was passed recently after many vicissitudes (Act No. 588/2020 Sb., on Substitute Maintenance, as amended). The new law regulates substitute maintenance for dependent children (both under and over age) and is conceived as a social benefit. This law is detailed in the section on the protection of minors (see 5.6. below).

Pension security and the rules governing the provision thereof are laid down in a special law regulating pension insurance in the event of old age, invalidity, and the death of the breadwinner (Act No. 155/1995 Sb., on Pension Insurance, as amended; hereinafter, PI). The following pensions are covered by the insurance system: old-age pension<sup>57</sup>, disability pension<sup>58</sup>, widow's and widower's pension<sup>59</sup>, and orphan's pension<sup>60</sup>. This special act defines the various terms and general rules for participation in insurance and establishes the rules for determining the entitlement to, or calculation of, the various pensions. It also lays down the rules governing the possible overlapping of individual pensions and the conversion or increase of pensions.

The tax relations of natural persons or these persons as family members are also regulated by a special regulation (Act No 586/1992 Sb., on Income Tax, as amended; hereinafter, IT). This Act defines various key terms, including 'taxpayer', 'subject of tax', 'income from dependent and independent activities', 'income from rent', 'tax base', 'tax lump sum', and 'tax exemption'. Special attention is paid to the taxpayer's housing needs in relation to the exemption of income, which is conditional on the expenditure of the funds obtained from that income to provide for the individual's housing needs<sup>61</sup>. The existence of marriage, or of a spouse and children or (grand) parents, is particularly relevant to the assessment of income and expenses of co-operating persons<sup>62</sup>, or the exemption from income tax for gratuitous income from inheritance or legacy, gift or loan, and so on (§ 4a, IT). In respect to family members, emphasis is placed on the tax-free parts of the tax base (§ 15, IT) and tax rebates for taxpayers (§ 35ba, IT), as well as the spouse discount/tax rebate/tax credit (§ 35bb, IT) and other tax benefits (§ 35c, IT). This rather complicated legislation is often subject to amendments.

To summarise, frequent changes in tax, social security, and pension law make this area of public law fairly opaque, causing considerable problems for families, especially those with many children or at risk of poverty.

56 Art. 47e ff, ChA.

57 Art. 28 ff, PI.

58 Art. 38 ff, PI.

59 Art. 49 ff, PI.

60 Art. 52-53, PI.

61 Art. 4b, para 2, IT.

62 Art. 13, IT.

### 3. On the principles of Czech family law and European family law values

The principles of Czech family law stem from human rights conventions and universally shared European values and standards. Art. 8 of the Convention for the Protection of Human Rights and Freedoms protects every person's right to private and family life (in the Czech Republic published under No 209/1992 Sb.; hereinafter, the 'Convention'). The case law of the European Court of Human Rights describes the Convention as a 'living' instrument that provides protection to all forms of families and all models of family life.

The inner Charter of Fundamental Rights and Freedoms is fully in harmony with the above-mentioned broad concept of family life guaranteed by international instruments (Act No 2/1993 Sb.; hereinafter, the 'Charter'). The Charter also contains general rules, stating, 'Parenthood and the family are under the protection of the law' (Art. 32, sec. 2, Charter), although family based only on marriage is not mentioned. It must be stressed that owing to the many human rights covenants and the case law of both the Constitutional Court of the Czech Republic and the European Court of Human Rights, family law began to be amended, interpreted, and applied in harmony with its human rights dimension. The principle of every person's right to private and family life should, thus, be considered a fundamental principle of Czech family law.

Although the Civil Code guarantees all persons the right to freely choose their own way of life and to take charge of their own and their family's happiness, it provides increased protection for families established by marriage (Act No 89/2012 Sb., as amended; hereinafter, the 'Civil Code' or 'CC'). The protection of marriage is systematically enshrined at the beginning of Book Two of the Civil Code, entitled 'Family Law'. Specifically, the legislative goal of supporting families based on marriage is manifested in the form of several provisions that protect the weaker party and underage children. These provisions include the concept of the things that form the usual equipment of the family household; matrimonial property law, especially that regulating community property and mutual maintenance duty; and the protection of family housing. It should also be noted that Civil Code allows marriage to be solemnised only between a man and a woman (§ 655, CC):<sup>63</sup> so-called 'gender-neutral marriage' was not discussed at all during the preparation of the Civil Code, despite recent developments in many European countries.<sup>64</sup> Nevertheless, a pending draft in favour of gender-neutral marriage was lodged by a group of deputies in the Parliament of the Czech Republic in the last parliamentary term.<sup>65</sup> This draft

63 Králíčková, Hrušáková and Westphalová, 2020, p. 1 ff.

64 Scherpe, 2016, p. 40 ff; Sörgjerd, p. 167 ff.

65 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. VIII., Draft No. 201/0.

could be viewed by some as progressive and modern, whereas others may see it as undermining traditional family values or the above-mentioned ‘traditionally marriage-centric family laws with fixed perceptions of gender roles’. As this legislative proposal was not approved in the last legislature, a new legislative proposal submitted to the Parliament of the Czech Republic in the current legislature has built on its theses.<sup>66</sup> The question is whether it will be turned into law.<sup>67</sup>

Alongside the principles of the protection of the weaker party or vulnerable person and the autonomy of will, the principle of family solidarity can be considered a fundamental principle of Czech family law and Czech civil law.<sup>68</sup> The concept of the autonomy of the individual is at the heart of the protection of human rights and is a pillar of private law. Consequently, the Civil Code rightly emphasises the autonomy of the individual’s will in the broadest sense as a right to self-determination. The Civil Code regulates the principle that, unless expressly prohibited by the law, persons may agree upon their rights and duties differently from the law. Only agreements contravening ‘good manners, public order, or rights relating to the status of persons including right to protection of personality are prohibited’<sup>69</sup>. However, for the principle of the autonomy of individual will to be fully realised, all persons must be equal, both legally and *de facto*. The Civil Code develops this constitutional idea and provides that no one may suffer unjustifiable harm because of his or her lack of age, intellect, or dependence on his or her position, nor may any person take unjustified advantage of his or her own incapacity to the detriment of others<sup>70</sup>. One can fully agree with the opinion that ‘one cannot merely take the general private law concept(s) of “autonomy” and transpose them into family law. Autonomy in family law must, because of the subject matter, be seen in a different light and thus judged differently’.<sup>71</sup>

The principle of the protection of the weaker party or vulnerable person follows from the above. This principle is reflected in several concepts in both contract law and the emphasis on the general categories of good morals and public order. Any person can become the weaker party or vulnerable person,<sup>72</sup> and everyone has been a minor child at some time. In addition, any person can be injured or become ill. The principle of the protection of the weaker party and the principle of solidarity permeates the whole of family law. If a person is legally (or *de facto*) attached to someone else, it is perfectly legitimate for them to endure various legal restrictions,

66 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. IX., Draft No. 241/0.

67 However, it must be added that there have currently been changes in this area which will come into force on 1 January 2025 (see amendment to the Civil Code by the Act No 123/2024 Sb.; for details see part 4.3. below).

68 Králíčková, Hrušáková and Westphalová, 2022, p. 26.

69 Art. 1, para. 2, CC.

70 Art. 1, para. 2, CC.

71 Scherpe, 2016, p. 132.

72 Králíčková, 2024.

for example, sharing, especially in the property sphere. The purpose of many family law provisions is, thus, to limit the autonomy of will and the right of ownership (use or disposition) in favour of a third party, usually referred to as the weaker party. This may be a child who is dependent on adults for personal care and maintenance, a spouse unable to support himself or herself due to years of providing all-day care for a common dependent child, a close adult relative who has developed a state of dependency owing to old age or mental illness, or anyone at risk of domestic violence.<sup>73</sup>

As explained in the introduction, the Civil Code respects the general principle of family solidarity. Many sections of ‘Book Two – Family Law’ lay down provisions that protect weaker parties. Special attention is paid to maintenance duty between family members, which is regulated between spouses<sup>74</sup> and ex-spouses<sup>75</sup>, for unmarried mothers of children<sup>76</sup>, and between relatives in a direct line. The most detailed regulation is devoted to the maintenance duty of parents and grandparents toward children<sup>77</sup>. The Act on Registered Partnership (Act No 115/2006 Sb., as amended; hereinafter, ‘ARP’) establishes similar rules for maintenance between registered and formerly registered same-sex partners to those in the Civil Code regarding spouses and ex-spouses<sup>78</sup>, although the regulation on same-sex partnerships is generally insufficient.<sup>79</sup>

Minor children, in particular, are considered vulnerable;<sup>80</sup> thus, the Czech legal order pays due attention to the child’s rights, and the principle of the best interests of the child is understood as a key principle of Czech family law. The United Nations Convention on the Rights of the Child – a Magna Charta of the rights of the child – has been a part of the legal order of the Czech Republic since 1991<sup>81</sup>. Thanks to this significant achievement, it was necessary to significantly adapt the philosophy, ideas, and principles of the Czech legal order from the early 1990s onwards, namely, by passing amendments to the old law from the 1960s and adopting the Children Act (Act No 359/1999 Sb., as amended, on Socio-Legal Protection of Children) into public law.<sup>82</sup> However, substantial changes in this field occurred in connection with the passing of the new Civil Code in 2012. The incorporation of family law matters into the main source of private law, ‘Book Two – Family Law’, was not the only significant development:<sup>83</sup> the admission

73 Králíčková et al., 2011.

74 Art. 697 ff, CC.

75 Art. 760 ff, CC.

76 Art. 920, CC.

77 Art. 910 ff, CC.

78 Arts. 10, 11, and 12, ARP.

79 Holub, 2006, pp. 313–317.

80 Van Bueren, 2007; Radvanová, 2015.

81 Published under No 104/1991 Sb., hereinafter, ‘CRC’.

82 Hrušáková and Westphalová, 2011.

83 Králíčková, 2014, pp. 71–95; 2021a, pp. 77–109.

of the new concept of parental responsibility,<sup>84</sup> conceived according to the international conventions and in harmony with the Principles of European Family Law regarding parental responsibilities<sup>85</sup> by the Commission on European Family Law<sup>86</sup> must also be underlined.<sup>87</sup> In this concept, the child is no longer conceived as a passive object of his or her parents' activities but as an active subject with legally guaranteed rights. This approach also fulfils the main aim and purpose of the Convention on the Rights of the Child as expressed in the Preamble and its key provision, which states, 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'<sup>88</sup>. Following long-standing criticism of bad practice, the Czech legislator has attempted further remedies, in particular, by trying to reduce the number of children in institutional care in favour of foster family care, for example, by requiring financial support for foster care from the child's grandparents. However, the main goal of the state's pro-family policy is to gradually eliminate care for young children in nurseries and similar institutions.<sup>89</sup> Finally, the new regulation on the protection of children's property, which was passed after many vicissitudes<sup>90</sup>, should be highlighted. Further, a new law regulates substitute maintenance for dependent children and builds on the compensatory mechanism previously enshrined in other Acts.

With regard to protecting and supporting adult vulnerable persons, it is also necessary to mention several other provisions in the Civil Code arising from Czechia's international obligations. Two international conventions primarily led the main drafters of the Civil Code to create a new concept of the limitation of legal capacity owing to mental disorders and to enshrine a number of supportive measures. These conventions are the Convention on the Rights of Persons with Disabilities<sup>91</sup> and the International Protection of Adults (published under No 68/2012 Sb. m. s.; hereinafter, 'The Hague Convention'). Finally, Recommendation CM/Rec (2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe was taken into account in relation to the above-mentioned international conventions in the preparation of the Civil Code.

84 Králíčková, 2022a, pp. 73–102.

85 Boele-Woelki et al., 2007.

86 For details see: [www.ceflonline.net](http://www.ceflonline.net) (Accessed: 21 July 2022).

87 Králíčková, 2021b, pp. 85 – 98.

88 Art. 3, para. 1, CRC.

89 Kuchařová et al., 2020 [Online]. Available at: <https://www.mpsv.cz/documents/20142/225508/Zpr%C3%A1va+o+rodin%C4%9B+2020.pdf/c3bdc63d-9c95-497d-bded-6a15e9890abd> (Accessed: 20 July 2023) [in Czech].

90 Act No 588/2020 Sb., on Substitute Maintenance

91 Published under No 10/2010 Sb. m. s.; hereinafter, 'CRPD'.

## 4. Horizontal civil law provisions protecting relationships between adults

### 4.1. Family based on marriage and its legal protection and support

There are many concepts protecting families in the Czech Republic, especially those with minor children. In addition to the constitutional rules mentioned above, other provisions incorporated into the Civil Code follow the principle of family solidarity. As already discussed, the Civil Code provides for special protection for families based on marriage intended for persons of the opposite sex.

First, the Civil Code states that each spouse should contribute to the needs of the family and the family household according to their personal and property conditions, abilities, and possibilities so that the standard of living of all members of the family is the same. As such, it is provided for that property has the same importance as the personal care of the family and its members<sup>92</sup>.

In addition to the duty to contribute to the needs of the family, the law also establishes the mutual maintenance duty of the spouses, to the extent of a right to the same living standard<sup>93</sup>.

Further, the Civil Code regulates the concept of the things forming the usual equipment of the family household<sup>94</sup>. It is established that, regardless of the ownership of things that fulfil the family's necessary life needs, one spouse needs the consent of the other when dealing with them (although this rule does not apply if the item is of negligible value). A spouse may claim the invalidity of a legal act by which the other spouse dealt, without his or her consent, with an item belonging to the usual equipment of the family household.

Community property is also a key concept of marital property law, or rather, family property law.<sup>95</sup> The legal regime of community property is regulated in the first place. Its scope is very broad<sup>96</sup> and includes what one or both spouses have gained in the course of their marriage except for (a) what serves the personal needs of one of the spouses;<sup>97</sup> (b) what only one of the spouses has gained by gift, succession, or bequest, unless the donor or the testator expressed a different intention in their will; (c) what one of the spouses has gained as compensation for a non-proprietary infringement of his or her natural rights; (d) what one of the spouses has gained by legal dealings relating to his or her separate property; and (e) what one of the spouses has

92 Art. 680, CC.

93 Art. 697, CC.

94 Art. 698, CC.

95 Psutka, 2015.

96 Arts.709 and 710, CC.

97 Since 1998, the things an individual uses to perform his or her job have not been excluded from the scope of the legal regime of community property. For a different perspective, see: Boele-Woelki, et al., 2013.

gained as compensation for damage to or loss of separate property. The community property includes any profit from what is the separate property of one of the spouses; however, it does not include an interest of a spouse in a company or a cooperative if that spouse became a member of the company or the cooperative during the marriage, with the exception of housing cooperatives. Community property also includes debts assumed in the course of the marriage unless (a) the debts concern the separate property of one of the spouses, to the extent of the profit from that property, or (b) only one of the spouses has assumed the debts without the other spouse's consent and taking on the debts was not to fulfil the everyday or common needs of the family.

The Civil Code enables not only modifications of the legal regime of community property but also the creation of the agreed regime<sup>98</sup> and the establishment of the regime of separated property<sup>99</sup>. As an innovation, it is possible to conclude arrangements for the case of a termination of marriage due to divorce or death by making a contract of succession<sup>100</sup>. Both would-be spouses and spouses may do so at any time, either before entering into the marriage or during the marriage. In this way, the lawmaker fully respects the principle of the autonomy of will to create a wedding contract, which was completely curbed in the 1960s legal regulation. The parties to the contract are required to maintain the formality of a public deed. A record in the public list is optional<sup>101</sup>.

The protection of the weaker spouse and third persons is expressly established in the Civil Code in a separate provision. It is regulated that a wedding contract of a marital property regime may not, due to its consequences, exclude the spouse's ability to maintain the family and may not affect, by its content or purpose, the rights of a third person unless the third person agrees to it. A contract made without the third party's consent has no legal effects for such a party<sup>102</sup>. The law further establishes that, if during the existence of community property, a debt has arisen for only one of the spouses, the creditor may also recover the debt from the community property in the execution of the judgement<sup>103</sup>. If a debt has arisen only for one of the spouses against the will of the other spouse, who has communicated his or her disagreement to the creditor without unnecessary delay after coming to know about the debt, the community property may be affected only up to the amount that represents the debtor's share if the community property were to be cancelled and divided<sup>104</sup>. This also applies in the case of the spouse's duty to pay maintenance, if the debt comes from an illegal act committed by one of the spouses, or if the debt of one of the spouses arose before they entered into the marriage.<sup>105</sup>

98 Art. 716, CC.

99 Art. 729, CC.

100 Art. 718, para. 2, CC.

101 Art. 721, CC.

102 Art. 719, CC.

103 Art. 731, CC.

104 Art. 742, CC.

105 Art. 732, CC.

It must be added that the Civil Code regulates special protection provisions on regimes established by a court decision. It is provided that if there is a serious reason, a court can, upon the application of a spouse, cancel the community property or reduce its existing scope. A serious reason must always mean that a spouse's creditor requires his or her claim to be secured to an extent exceeding the value of what belongs exclusively to that spouse, that a spouse may be considered prodigal, or that the spouse constantly or repeatedly takes unreasonable risks. The fact that a spouse has started pursuing business activities or become a partner of a legal person with unlimited liability may also be considered a serious reason<sup>106</sup>. Finally, a court decision may not exclude or amend provisions governing the concept of the things forming the usual equipment of the family household. The consequences of a court decision on the change, cancellation, or renewal of community property must not exclude the ability of a spouse to provide for the family, and its content or purpose may not affect the rights of a third person, unless the third person has consented to the decision<sup>107</sup>.

There are also special rules concerning the family dwelling. If the family house or apartment is part of the spouses' community property, their rights and duties are equal, and protection is provided by the regulation analysed above. If not, the situation of the economically weaker spouse is dealt with in the Civil Code by defining the so-called derived legal reason for housing or family dwelling. The law establishes that if the spouses' dwelling is a house or apartment in which one of the spouses has an exclusive right to live, and if it is a different right from the contractual one, the other spouse obtains the right to housing by entering into the marriage<sup>108</sup>. If one of the spouses has an exclusive contractual right to the house or apartment, especially the lease right, both spouses jointly obtain the lease right ensuring the equality of rights and duties by entering into the marriage<sup>109</sup>. Nevertheless, this situation may be contractually agreed in a different way<sup>110</sup>, which is fully in harmony with the principle of the autonomy of will, for example, within the scope of a pre-wedding contract, as mentioned above. In addition, the Civil Code regulates the prohibition of the disposal of the family dwelling in a similar way to the rules relating to the concept of the things forming the usual equipment of the family household<sup>111</sup>. If at least one of the spouses has the right to dispose of the house or apartment in which the family household lives and this house or apartment is necessary for the dwelling of the spouses and the family, that spouse must refrain from endangering the dwelling and prevent anything that may make it impossible to live there. A spouse cannot, without consent of the other spouse, misappropriate such a house or apartment, or create a right to the house or to part or the whole of an apartment, the exercise of

106 Art. 742, CC.

107 Art. 727, CC.

108 Art. 744, CC.

109 Art. 745, CC.

110 Art. 745, para 2, CC.

111 Art. 698, CC.



which is incompatible with the dwelling of the spouses or the family, unless he or she arranges a similar dwelling of the same standard for the other spouse or the family. Further, if a spouse acts without the consent of the other spouse contrary to this rule, the other spouse may claim the invalidity of such legal conduct<sup>112</sup>. If the spouses have a joint right to a house or apartment in which the family household of the spouses or of the family lives, the above-mentioned prohibition similarly applies (Art. 748, CC).<sup>113</sup>

As for divorce, the legal regulation is based on the irretrievable breakdown of the marriage, which has been the only permitted reason for divorce since 1963. The Civil Code sets forth that a marriage may be dissolved if the joint life of the spouses is deeply, permanently, and irretrievably broken and its recovery cannot be expected (Art. 755, para. 1, CC).<sup>114</sup> Unfortunately, the concept of divorce suggested by the Principles of European Family Law regarding Divorce and Maintenance between Former Spouses,<sup>115</sup> created by the Commission on European Family Law, was not taken into account when preparing the draft Civil Code.<sup>116</sup>

If both spouses have agreed to the divorce, or the other spouse has joined the petition for divorce, the court does not examine the reasons for the breakdown of the marriage, concluding that the spouses' identical statements about this breakdown and their intent to divorce are true (Art. 757, CC).<sup>117</sup> The following requirements must be met for an uncontested (agreed) divorce: (a) on the day of the commencement of the divorce proceedings, the marriage must have lasted for at least 1 year, and the spouses must not have lived together for more than 6 months; (b) spouses who are parents of a minor child without full legal capacity must have agreed on arrangements for the child for the period after the divorce, and the court must have approved their agreement;<sup>118</sup> and (c) the spouses must have 'agreed on the arrangement of their property, their housing and, if the case may be, the maintenance for the period after the divorce'. The pre-divorce property agreement must be in writing, with officially authenticated signatures, and must comply with the general requirements for a contract and respect the special provisions on the division of matrimonial property, which are particularly aimed at protecting third parties. The key point is that a settlement of assets and liabilities must not affect any of the rights of a third person. If a right of a third person has been affected by a settlement, the third person may request that a court declares the settlement ineffective with respect to themselves. As such, the settlement of debts is effective only between spouses<sup>119</sup>. As

112 Art. 747, CC

113 Králíčková, Hrušáková and Westphalová, 2022, p. 107 ff.

114 Králíčková, Hrušáková and Westphalová, 2020, p. 426 ff.

115 Boele-Woelki et al., 2004.

116 Králíčková, 2021b, pp. 85–98.

117 The new legal regulation does not acknowledge divorce on the basis of agreement (i.e. consensual divorce). For more, see: Boele-Woelki, et al., 2004.

118 Changes are expected; see: Králíčková, 2022b, pp. 83–100.

119 Art. 737, CC.

the autonomy of the will of the divorcing spouses is paramount, the court deciding on the divorce reviews the contract but does not approve it. To be enforceable, the contract must be made by a notarial deed with a clause of direct enforceability.

In cases where one of the spouses does not agree to the divorce or property settlement, the court must examine both the reality of whether the marriage has broken down irretrievably and the reasons leading to this breakdown.<sup>120</sup> In these cases, the divorce ‘option’ is only a ‘status solution’: the spouses will be divorced by the court, but there will be no division and settlement of their joint property and housing, and no determination of any post-divorce alimony. This concept is particularly disadvantageous for the weaker party; that is, the economically dependent spouse.

Notably, since 1998, there have been so-called ‘*clauses against harshness*’, which are used infrequently in praxis.<sup>121</sup> The first of these clauses protects the weaker party among the spouses. The law sets forth that despite an irretrievable breakdown, the marriage cannot be dissolved if this dissolution would be contrary to the interests of a spouse who was not predominantly involved in the breach of marital duties and who would suffer especially serious harm as a result of the divorce and if there are extraordinary circumstances supporting the existence of the marriage, unless the spouses have not lived together for at least 3 years (Art. 755, para. 2, CC).<sup>122</sup> The principle of family solidarity applies especially in these cases. Nevertheless, this ‘divorce ban’ is not absolute: after 3 years of *de facto* separation, the court must pronounce the divorce judgement.

Unless an agreement is reached soon after a divorce judgement becomes final, it will be up to the spouses to bring an action before the court in separate proceedings for the settlement of the community property, the regulation and adjustment of the use of the former family home, and, where appropriate, maintenance for the period after the divorce.

120 Art. 756, CC.

121 Haderka, 2000, pp. 119–130; Králíčková, 2008a, p. 173 ff.

122 Another so-called ‘*clause against harshness*’ provides that a divorce cannot be granted owing to the interests of a minor child of the spouses and so requires special reasons. The court examines the child’s interests within the existence of the marriage by inquiring of the custodian who is appointed by the court for the proceedings about the arrangement of the child’s custody for the period of the divorce (§ 755, para. 2, CC). This formal protection of children is not used in practice. If the spouses have a minor child, the court will not grant a divorce until the ‘special’ court dealing with the agenda on minors decides on the ‘personal’ custody of the child and maintenance for the child for the period after the divorce (§ 755, sub-sec. 3, CC). The court dealing with the custody of the minor child may decide on or approve the agreement of the spouses in the matter of entrusting the minor child into the individual (sole) custody of one parent, alternating (serial) custody, or joint custody (§ 907, CC). It is necessary to emphasise that both parents of the child are principally holders of rights and duties resulting from parental responsibility (§ 865 et seq., CC). The decision on custody following the divorce only determines who the minor child will live with in the common household (in addition to the maintenance duty toward the child and visiting rights). As mentioned above, changes are expected in the pending drafts that should make divorce law simpler and more favourable for those spouses who are able to reach an agreement in harmony with the best interests of the child. For more, see: Králíčková, 2022b, pp. 83–100.

Regarding the community property, if an agreement is not achieved, the court will make a decision based on both quantitative and qualitative criteria, such as the interests of unsupported children or the extent to which a spouse was involved in obtaining and maintaining the property that falls under the community property of the spouses<sup>123</sup>. If no agreement is made and a petition is filed within 3 years of the divorce, the following legal presumption will be applied<sup>124</sup>:

If, within 3 years from the reduction, cancellation, or extinction of community property, no settlement of what was formerly part of the community property takes place, even by agreement, and no application for settlement by a court decision is filed, the spouses or former spouses are conclusively presumed to have settled as follows: a) corporeal movable things are owned by the spouse who uses them exclusively as an owner for his or her own needs or the needs of his or her family or family household, b) other corporeal movable things and immovable things are under undivided co-ownership of both spouses; their shares are equal, c) other property rights, claims, and debts belong to both spouses jointly; their shares are equal.

The spouses' dwelling after the divorce depends on the legal basis of the marital housing. If the house or apartment used for the family dwelling was in the community property of the spouses, the considerations described above will be applied in connection with its settlement and adjustment. If an apartment was jointly leased by the spouses, they may cancel this property by rescinding the contract or having recourse to the court, which will determine, when deciding on the cancellation of the joint lease, the manner of compensation for the loss of the right, taking into account the situation of any unsupported children and the opinion of the lessor, among other considerations<sup>125</sup>. If one of the spouses was an exclusive owner of the house or apartment used for the family dwelling, through divorce, the other spouse loses the so-called derived legal reason for housing, and the court may make a decision about his or her moving out of the property<sup>126</sup>.

The maintenance duty between divorced spouses is regulated in the Civil Code in a different manner from the previous law.<sup>127</sup> The basic condition is dependence on maintenance, or an individual's incapacity to maintain himself or herself independently; however, the law now establishes that such incapacity to maintain oneself independently must have its origin in the marriage or in connection with the marriage<sup>128</sup>. Another innovation is the list of factors that should be taken into

123 Art. 742, CC.

124 Art. 741, CC.

125 Art. 768, para. 1, CC.

126 Art. 769, CC.

127 Králíčková, 2009, pp. 281–291.

128 Art. 760, para. 1, CC.

consideration when deciding on maintenance<sup>129</sup>. Unless an agreement is reached soon after the divorce judgement becomes final, the court will consider how long the marriage lasted, how long it has been dissolved, and whether (a) the divorced spouse has remained without a job even though he or she is not prevented from finding one for serious reasons, (b) the divorced spouse could have ensured maintenance by properly managing his or her property, (c) the divorced spouse participated in care of the family household during the marriage, (d) the divorced spouse has not committed a criminal act toward the ex-spouse or a close person of the ex-spouse, or (e) whether there is another, similarly serious reason. The scope of maintenance is determined according to the level that would be adequate. The right to maintenance for the period after a divorce terminates only when the beneficiary enters into a new marriage or upon the death of the obligor or beneficiary. If a substantial change in the situation occurs, the court may decide to decrease, increase, or abolish the mutual duty of maintenance between the divorced spouses. The Civil Code also establishes an exceptional right to ‘sanctioning maintenance’ to the extent of ensuring the same living standard. The spouse who did not cause the divorce or did not agree to the divorce and who suffered serious harm owing to the divorce may file a motion to the court to determine a maintenance duty for the former spouse to the extent that the ex-spouses can have the same living standard. The divorced spouse’s right to maintenance may be considered justified only for a period appropriate to the situation, but for 3 years after the divorce at the most<sup>130</sup>.

Finally, to protect the family or family property in the broader sense, the Civil Code also regulates family enterprises<sup>131</sup>. Family enterprises are defined as those where the spouses work together, or where at least one of the spouses works with their relatives to the third degree or persons related to the spouses by marriage up to the second degree, and the enterprise is owned by one of these persons. Those individuals who permanently work for the family or family enterprise are considered members of the family participating in the operation of the family enterprise. Members of the family participating in the operation of the family enterprise also participate in its profits and in things gained from those profits, as well as in the growth of the enterprise to the extent corresponding to the amount and kind of their work. This right may only be waived by a person with full legal capacity making a personal declaration<sup>132</sup>. If the family enterprise is to be divided, a member participating in its operation has a pre-emptive right to it<sup>133</sup>.

129 Art. 760, para. 2, CC.

130 Art. 762, CC.

131 Art. 700, CC.

132 Art. 701, CC.

133 Art. 704, para. 1, CC.

#### **4.2. Family based on the *de facto* relationship of persons of different sexes and its weak legal protection and limited support**

There is no special regulation in the Czech legal order and no relevant statistical data as regards the protection of families that are not based on marriage (i.e. *de facto* unions). The 2011 Census indicated a relatively small number of people living in *de facto* cohabitation.<sup>134</sup> Another Census in 2021 brought to light some new and highly relevant data,<sup>135</sup> which showed that living in *de facto* cohabitation has become more popular than marriage among young couples today. It is common knowledge that children are born into unmarried cohabitation. It should be stressed that whether or not a child is born into marriage, his or her legally established parents have equal rights and obligations related not only to parental responsibility.<sup>136</sup> No child is in any way discriminated against in the legal system because of his or her origin. However, the parents of these children do not always live together in a family household, making it difficult to rely on statistical data showing the proportions of children born out of marriage. Many such children have been born in the Czech Republic in the last decade (almost 50%), as illustrated in the chart from the Czech Statistical Office.<sup>137 138</sup>

It should be noted that during ‘Communist times’, former Czechoslovakia had a relatively low rate of children born out of wedlock at only 5–8%, and there were a lot of marriages. These demographics were (in addition to other impacts) a result of the marriage-centric family law mentioned in the introduction and its fixed perceptions of gender roles. Cohabitation without marriage was adopted as a family model mainly by divorced or widowed people.<sup>139</sup>

As there is almost no regulation of the rights and duties of cohabitantes and there are seldom contracts between them, the protection of the weaker party becomes difficult.<sup>140</sup> There are no legal rules that would establish mutual rights and duties between cohabitantes; for example, there is no duty to help each other, no community property, no protection of the family dwelling or the things forming the usual equipment of the family household, and no mutual maintenance duty by operation of the law. Unfortunately, there are often no property contracts between cohabitantes, which causes extensive problems for the weaker party upon the dissolution of a *de facto* relationship. There is, thus, a lack of legal certainty, especially in families with minor children, when the unit breaks down. It must be stressed again that, as there

134 See: [https://www.czso.cz/csu/czso/otevrena\\_data\\_pro\\_vysledky\\_scitani\\_lidu\\_domu\\_a\\_bytu\\_2011\\_slbd\\_2011](https://www.czso.cz/csu/czso/otevrena_data_pro_vysledky_scitani_lidu_domu_a_bytu_2011_slbd_2011) (Accessed: 20 March 2023).

135 For more, see: <https://www.scitani.cz/csu/scitani2021/recent-news> (Accessed: 26 May 2023).

136 Králíčková, 2022a, pp. 73–102.

137 See: <https://www.czso.cz/csu/czso/proportion-of-live-births-outside-marriage-1950-2019> (Accessed: 28 March 2021).

138 See Part 2 above.

139 Hrušáková, 2002.

140 Králíčková, 2021c, pp. 53–66.

is no discrimination against children born out of wedlock, the rights and duties of the parents of all children are equal. If an unmarried man and an unmarried woman have a child together, they are both principally holders of parental responsibility by operation of the law, without being discriminated against in comparison with married parents of a minor child. However, parenthood must be legally established. There are no differences between the children at all in the Czech legal order, neither in the personal nor property sphere.

Finally, the law traditionally protects the property claims of unmarried mothers of children. The Civil Code regulates ‘maintenance and support, and provision for the payment of certain costs for an unmarried mother’ as follows: ‘If the child’s mother is not married to the child’s father, the child’s father shall provide her with maintenance for 2 years from the birth of the child and provide her with a reasonable contribution to cover the costs associated with pregnancy and childbirth’<sup>141</sup>. Regarding the property rights of a pregnant woman, it is provided that:

A court may, on the application of a pregnant woman, order the man whose paternity is probable to provide an amount needed for maintenance and a contribution to cover the costs associated with pregnancy and childbirth in advance. A court may, on the application of a pregnant woman, also order the man whose paternity is probable to provide in advance an amount needed to provide for the maintenance of the child for a period for which the woman would be entitled to maternity leave as an employee under another legal regulation.<sup>142</sup> (Art. 920, paras. 2 and 3, CC).

To sum up this issue, it is difficult to strike a fair balance between the private autonomy of those who form a *de facto* union (and those who do not want to conclude marriage) and the protection of the weaker party and the welfare of families not based on marriage. The legal orders of European states are very different; thus, only optimists may speak about European standards in this field. However, the first steps toward the spontaneous harmonisation of rules regulating the situation of couples living in *de facto* unions can be observed. This has been achieved mainly thanks to the case law of the European Court of Human Rights and the Principles of European Family Law regarding the Property, Maintenance, and Succession Rights and Duties of Couples in *De Facto* Unions<sup>143</sup> by academics concentrated within a project of the Commission on European Family Law.<sup>144</sup> The Czech legislator should rethink the concept of the protection of families not based on marriage and, at the least, ‘improve’ the provisions regarding family dwellings, especially the right of the surviving cohabitee as ‘a member of the lessee’s household’ to make transferring a lease more favourable.<sup>145</sup>

141 Art. 920, para. 1, CC.

142 This period totals 28 weeks, or 37 weeks in the case of siblings or more children. For details, see: Act No. 262/2006 Coll., as amended, the Labour Code (Section 195, Sub-Section 1).

143 Boele-Woelki et al., 2019.

144 For more information, see: <http://ceflonline.net/> (Accessed: 12 May 2023).

145 Králíčková, 2022c, pp. 109–120.

### ***4.3 Family based on a registered same-sex partnership: Still a controversial topic***

As mentioned above, the protection of all family life is guaranteed by international treaties and the inner Charter of Fundamental Rights and Freedoms. The Czech legal system regulates same-sex relationships, but as registered partnerships rather than marriages (ARP). Neither this source of law nor the Civil Code sufficiently regulates the mutual rights and duties of same-sex partners.<sup>146</sup> However, perhaps surprisingly, the Act on Registered Partnership regulates the mutual maintenance obligation between partners or former partners<sup>147</sup>. In general, however, if there is no contract between the partners, protecting the position of the weaker partner becomes difficult. There is no community property, no common lease of apartments by operation of the law, and no protection of a family dwelling or the things forming the usual equipment of the family household between registered partners. Further, registered partners are also not allowed to jointly adopt a minor child<sup>148</sup> or become joint foster parents of a minor child as only married couples are allowed to do this<sup>149</sup>. Nevertheless, there were some changes in this field in 2016. The discriminative provision that prohibited a single adoption by one of the partners in a registered partnership<sup>150</sup> was cancelled by the decision of the Constitutional Court of the Czech Republic.<sup>151</sup> As mentioned above, there is a pending draft that supports 'gender-neutral marriage'. It should also be noted that there are same-sex families in Czechia where minor children live with their fathers and mothers and their partners in *de facto* unions or registered partnerships, although there are no relevant statistical data on these families.

As indicated above, there have currently been changes in this area which will come into force on 1 January 2025. Same-sex partnerships will be regulated in the Civil Code, like marriage for opposite-sex couples, and a separate law will be partially repealed. The Civil Code, as amended, will provide that a partnership is a permanent union of two people of the same sex, which is concluded in the same way as marriage. Unless the law or another legal regulation provides otherwise, the provisions on marriage, rights and obligations of spouses, widows and widowers apply *mutatis mutandis* to the partnership and the rights and obligations of the partners.<sup>152</sup>

146 Holub, 2006, pp. 313–317.

147 Arts. 10, 11, 12, ARP.

148 Art. 800, CC.

149 Art. 964, CC.

150 Art. 13, para. 2, ARP.

151 See: Ruling of the Constitutional Court of the Czech Republic No. Pl. ÚS 7/15 of 14 June 2016, available at: <http://nalus.usoud.cz/Search/Search.aspx> (Accessed: 12 May 2023) [in Czech]. The Constitutional Court found the provision discriminative as it provided that registration itself is an obstacle to the adoption of a minor child by one of the registered partners. There were dissenting opinions.

152 See new paragraph 2 of Article 655, CC, amended by the Act No 123/2024 Sbt.

## 5. Vertical civil law provisions protecting relationships between adults and children

### 5.1. Legal concept of kinship

In addition to marital status, the Civil Code regulates the establishment of other structures, stating, ‘Kinship is a relationship based on a blood tie or originated by adoption’<sup>153</sup>. The legal regulation of parenthood can be characterised as traditional. The Civil Code regulates the establishment of parenthood and who is the child’s parent through mandatory rules. According to the Czech legal order, a child can ‘legally’ have only two parents: the mother and the father. It is irrelevant how the parentage was established, whether by consanguinity or adoption. As described below, the adoption of both minors and adults is constructed as a status change<sup>154</sup>. It must be added that only a man and a woman who are married can become joint adoptive parents of a child. Here, we leave aside the recognition of foreign decisions on same-sex parentage in Czechia. In the case of so-called ‘multi-parentage’, only foster care is allowed, where the child remains legally united with his or her parents and is cared for by another person for the duration of his or minority.

### 5.2. On motherhood

The Civil Code provides that ‘the child’s mother is the woman who gives birth to the child’<sup>155</sup>, regardless of the identity of the donor of the egg. Legal motherhood is, thus, identical to biological motherhood, and, in the case of egg donation, genetic motherhood is irrelevant. The regulation of artificial insemination, or assisted reproduction, can be found in a special Act (Act No 373/2011 Sb., as amended, on Specific Health Services). This Act defines basic concepts such as assisted reproduction, infertile couples, anonymous donors, and the mutual anonymity of the donor, the infertile couple, and the child. The Act also defines the conditions for the realisation of these procedures (i.e. informed consent) and various restrictions concerning age and kinship. Surrogate motherhood is not regulated in the Czech legal order except for one ‘note’ in connection with adoption among close relatives<sup>156</sup>. For details, see below.

Despite the above-mentioned rules on status, there is a legal possibility of hidden childbirth according to a special Act passed in 2004 at the request of some MPs (Act No 422/2004 Sb., Act on Hidden Childbirth).<sup>157</sup> This concept was later followed up

153 Art. 771, CC.

154 Art. 794 ff, CC.

155 Art. 775, CC.

156 Art. 804, CC.

157 Regarding critical comments, see: Hrušáková and Králíčková, 2005, p. 53 ff.



by new regulation (Art. 37, Act No 372/2011 Sb., as amended, on Health Services). According to the law, a woman with permanent residency in the territory of the Czech Republic, if she is not a woman for whose husband there is a presumption of fatherhood, has a right to have her identity hidden in connection with a birth. If she wants to hide her identity in connection with the birth, this woman submits to the health service provider a written application to hide her identity, in which she must also state that she does not intend to care for the child. The result of this legal concept is that a child may have a mother whose identity he or she does not know because it is hidden from him or her in the Register of Births. The rights of the child and the child's biological father are more or less omitted in this case.

In addition, another new social phenomenon has emerged in the Czech Republic since 2005. As a result of a private fund,<sup>158</sup> we face the reality of 'baby boxes' for unregistered and unwanted children spread across the country, which enable mothers to abandon newborn babies there.<sup>159</sup> If the identity of a mother whose child was abandoned and placed in a baby box cannot be determined, the child is given the status of a legal foundling. Such children cannot be 'properly' registered in accordance with the Convention on the Rights of the Child, thereby creating *de facto* obstacles to tracing their origins in adulthood. Another problem is that not every baby-box child is lucky enough to be adopted. Statistics and research on this issue are lacking. However, police statistics show that murders of newborn babies still occur in the country.

### 5.3. On fatherhood

The Civil Code provides that a child's father is the man whose fatherhood is based on one of three legal presumptions of paternity<sup>160</sup>. The first presumption favours the mother's husband, if the child is born in wedlock or within 300 days of the termination of the marriage<sup>161</sup>. The second presumption respects the autonomy of the will of the child's parents and provides that a man who states, together with the child's mother, that he is the father of her child is, in fact, the father<sup>162</sup>. The third presumption is based on sexual intercourse during the critical period: the father of an unmarried woman's child is considered to be the man who had sex with her within the period between 160 days and 300 days before the birth, unless his fatherhood is excluded for serious reasons<sup>163</sup>. In addition to legal parenthood (*de jure*), biological or genetic parenthood and social parenthood (*de facto*) are also of great importance. Generally, it is necessary to respect the balance between legal, biological, and social parenthood; therefore, the law also protects so-called 'putative fathers' (Art. 783,

158 For more, see: <https://www.babybox.cz/> (Accessed: 13 May 2023).

159 Zuklínová, 2005, pp. 250–253.

160 Art. 776 ff, CC.

161 Art. 776, CC.

162 Art. 779, CC.

163 Art. 783, CC.

CC).<sup>164</sup> Following the case of *Keegan v. Ireland*,<sup>165</sup> in 1998, the lawmaker introduced provisions aimed at strengthening the status of a man who believes himself to be a child's father even against the will of the child's mother who has given consent to the adoption of the child. The active legitimacy of the putative father to bring an action to determine paternity was introduced. In addition, the law set forth that a child must not be adopted until the proceedings on determining paternity initiated by the putative father have been completed.<sup>166</sup>

Despite being planned, the child's right to denial is not expressly regulated in the Civil Code, even if it has never been put into question by expert committees. The right of putative fathers to denial was completely omitted by the lawmakers. The legitimation of persons who can deny fatherhood is traditional, with only the child's legal parents, as recorded in the Register of Births, being able to do so.

Finally, another new development was influenced by the case law of the European Court of Human Rights, namely, the cases of *Paulík v. Slovakia*<sup>167</sup> and *Novotný v. the Czech Republic*.<sup>168</sup> The Czech lawmaker allowed men designated by the court to be named as legal fathers under the third presumption of paternity at a time when DNA tests did not exist in order to bring an action to reopen proceedings and reverse the effects of *res iudicatae*.<sup>169</sup>

#### ***5.4. The importance of human reproductive technologies for family law***

Concerning the rapid increase in the number of infertile people and couples in Europe, for many years, Czech law has regulated assisted reproduction relatively broadly and liberally. It should be noted that as the basic method of assisted reproduction, artificial insemination was previously performed in the former Czechoslovakia only for married couples, according to contemporary legal sources. Gradually, the legislator began to expand both the circle of 'recipients' of assisted reproduction and the range of reproductive techniques allowed, including the possibility of germ cell donation. Interestingly, the first 'test-tube baby' (i.e. a child conceived through *in vitro* fertilisation and embryo transfer) was born thanks to a more advanced method of assisted reproduction in Brno in former Czechoslovakia in 1982.<sup>170</sup>

The broader framework regarding this issue is covered by the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine (published under 96/2001 Sb. m. s.; hereinafter,

164 See: Králíčková, 2008b, pp. 275–282.

165 Application No. 16969/90.

166 Art. 830, CC.

167 Application No. 10699/05.

168 Application No. 16314/13.

169 See: Act No. 296/2017 Sb., an amendment to the Act No 292/2013 Sb., Act on Specific Civil Law Proceedings, that introduced the new § 425a.

170 For more, see: <https://www.fnbrno.cz/pred-40-lety-se-ve-fn-brno-narodilo-prvni-dite-ze-zkumavky/t7607> (Accessed: 29 July 2023) [in Czech].

‘CBioMed’). This Convention enshrines, in particular, the requirement to respect professional standards<sup>171</sup>, the prohibition of sex selection<sup>172</sup>, and the prohibition of financial benefit from the human body or any part thereof<sup>173</sup>.

The key regulation for assisted reproduction, or artificial insemination, is the Act on Specific Health Services (Act No 373/2011 Sb., as amended; hereinafter, ‘ASHS’). This Act defines the basic concepts of assisted reproduction, infertile couples, anonymous donors, the mutual anonymity of the donor and the infertile couple, and the conditions and limits for the implementation of these assisted reproduction procedures, as follows. According to the law, assisted reproduction<sup>174</sup> comprises methods and procedures involving the collection and manipulation of germ cells, the creation of a human embryo through the fertilisation of an egg with sperm outside the woman’s body, and the manipulation and storage of human embryos for artificial insemination of the woman (a) for medical reasons to treat the infertility of a woman or man if it is unlikely or impossible for the woman to become pregnant naturally or to bear a viable foetus and other treatments have not led or are highly unlikely to lead to the woman becoming pregnant; or (b) as regards the need for early genetic testing of the human embryo, if the health of the future child is endangered because of a demonstrable risk of transmission of genetic diseases or defects carried by the woman or man.

Regarding the specific details of assisted reproduction, germ cells here refer to eggs and sperm. The assisted reproduction of a woman involves either (a) the introduction of sperm into the woman’s reproductive organs, or (b) the transfer of a human embryo resulting from the fertilisation of an egg by sperm outside the woman’s body into the woman’s reproductive organs (i.e. *in vitro* fertilisation and embryo transfer). The Act stipulates in more detail what can be used for the assisted reproduction of a woman: (a) eggs obtained from the woman; (b) sperm obtained from a man who is undergoing fertility treatment together with the woman; or (c) germ cells donated by another person (i.e. a donor), who must remain anonymous. The Act states that anonymous donors must be (a) women aged between 18 and 35, and (b) men aged between 18 and 40.

It must be stressed that surrogate motherhood has never been regulated by medical law.<sup>175</sup> However, the Civil Code expressly mentions the word ‘surrogacy’ in the context of regulating the conditions of adoption: the law provides that adoption is excluded among persons who are relatives in a direct line and siblings, ‘except for kinship based on surrogate motherhood’<sup>176</sup>. It should be noted that this ‘supplement’ to the traditional concept of adoption was included in the draft Civil Code as a result of a last-minute proposal.

171 Art. 4, CBioMed.

172 Art. 14, CBioMed.

173 Art. 21, CBioMed.

174 Art. 3, ASHS.

175 See: Haderka, 1986, pp. 917–934.

176 Art. 804, CC.

As regards age, assisted reproduction may be performed on a woman of child-bearing age, provided that she is under 49 years, based on a written request from a woman and a man who intend to undergo this medical service together (i.e. an informed infertile couple). If the request or consent is withdrawn, artificial insemination cannot be carried out, in line with the case law of the European Court of Human Rights on Art. 8 ECHR in *Evans v. the UK*.<sup>177</sup> The right to become a parent includes the right not to become a parent.

It follows from the concept analysed above that assisted reproduction can be performed only on an infertile couple that is married or in a *de facto* relationship (not on a single woman). Repeated informed consent can only be given during the lifetime of the male partner of the infertile couple (and not after his death), although the law does not expressly prohibit assisted reproduction after the death of a husband or partner. The costs of assisted reproduction are covered by the general health insurance system.

The Civil Code regulates the legal status of children conceived through assisted reproduction within the provisions of affiliation. In general, according to the Convention on the Rights of the Child, every child has the right to be registered immediately after birth. This means that the book of births and the birth certificate must, as a matter of principle, indicate who the child's mother and father are, in addition to the date of birth, name, surname, sex, etc. The child has the right to know his or her parents and be in their care, as far as possible<sup>178</sup>. Further, the state must not create or blindly tolerate any obstacles that would enable the separation of the child from his or her parents or relatives<sup>179</sup>. The principle of the best interests of the child should be applied when taking any measures and must be a primary consideration<sup>180</sup>. However, according to the Czech legislation, if the gamete donation is considered anonymous by the law, it must be concluded that the child has no right to request information about the assisted reproduction or, possibly, the donor or donors. There is no case law on this matter.

### ***5.5. The concept of the adoption of a minor child – full adoption***

As mentioned above, the Civil Code provides that '[k]inship is a relationship based on a blood tie or originated by adoption'.<sup>181</sup> People may have different reasons for adopting 'someone else's' child: adoption can be a solution to failed attempts at parenthood through natural means or through assisted reproduction. The process may involve adopting a completely 'strange' child into the family from an institution, or comprise a situation where the child is adopted by a relative or the spouse of the child's parent or the child's surviving spouse.

177 Application No. 6339/05.

178 Art. 7, sub-sec. 1, CRC.

179 Art. 9, CRC.

180 Preamble, Art. 3, sub-sec. 1, CRC.

181 Art. 771, CC.

The legal regulation of the adoption of a minor in the Czech Republic is in harmony with the standards established mainly by international covenants and the case law of the European Court of Human Rights.<sup>182</sup> According to the Czech legislation, adoption always represents a ‘status’ change; therefore, the rules and substantive law conditions are regulated in a very strict and mandatory manner. The whole adoption process can only be carried out by state authorities.

The adoption of a minor is seen as an emergency, subsidiary solution to a crisis of the child’s family of origin.<sup>183</sup> If close relatives of the child are willing and able to provide care for the child personally, preserving family ties will always take precedence over adoption by a non-relative<sup>184</sup>.

First, the law regulates the ‘adoptability’ of a child. As a child is primarily part of his or her family of origin, the rules on the adoption of a minor that are anchored into the Civil Code<sup>185</sup> stipulate the requirements of parental consent<sup>186</sup> and the option of consent withdrawal<sup>187</sup> or expiry<sup>188</sup>. The child’s mother may give consent to the adoption after the expiry of 6 weeks from the delivery of the child<sup>189</sup>. The child’s father is allowed to give consent any time after the child’s birth. Parents of a child who are aged under 16 are not allowed to consent to adoption at all<sup>190</sup> as any consent would be completely irrelevant. As a novelty established by the Civil Code, the law introduces the rule that the court may, while depriving the parents of their parental responsibility, also decide to deprive parents of the parental right to give consent to adoption<sup>191</sup>. As regards parents’ non-interest, the law provides for a variety of situations, such as those where a parent stays in an undisclosed location<sup>192</sup> or clearly shows no interest in the child, thereby permanently and culpably breaching his or her parental duties<sup>193</sup>. The law establishes a presumption of apparent non-interest when non-interest lasts at least 3 months after any instruction, advice, and assistance received from the state authority<sup>194</sup>. It should be added that only the court accepts parents’ consent to the adoption of their child. The court also decides on parents’ lack of interest in a child in a special procedure. The mediation of adoption, that is, the search for suitable adoptive parents for the child to be adopted, and adoption matching are matters overseen by the state and its authorities.

182 Králíčková, 2003.

183 Králíčková, 2022b, pp. 83–100.

184 Art. 822, CC.

185 Art. 794 et seq., CC.

186 Art. 809 ff, CC.

187 Art. 817, CC.

188 Art. 816, CC.

189 i.e. after the puerperium; § 813, CC.

190 Art. 811, para. 1, CC.

191 Art. 873, CC.

192 Art. 818, para. 1c, CC.

193 Art. 819, CC.

194 Art. 820, CC.

Regarding the adoptee, the participation rights of the child, which are guaranteed by international conventions, have been strengthened. The law explicitly states that a child over 12 years of age must always give consent to his or her adoption<sup>195</sup> and that he or she may revoke this consent<sup>196</sup>. If, at the time of the adoption process, the child was very young, the adoptive parents have a duty to inform them about the adoption as soon as it is appropriate and no later than when the adoptee begins compulsory school attendance<sup>197</sup>.

A new provision introduced by the Civil Code lifts a ban on adoption among close relatives. Close family ties were traditionally a disincentive for adoption; however, under strong pressure, the lawmaker relinquished this natural, social, and legal ban. The law currently provides that adoption is excluded among persons who are relatives in the direct line and siblings except for kinship based on surrogate motherhood<sup>198</sup>. It should be noted that medical law has never regulated surrogate motherhood in Czechia, or former Czechoslovakia.<sup>199</sup> However, surrogacy is a reality today. Private clinics, in particular, provide surrogacy procedures without any legal regulation. As mentioned above, a child's mother is considered to be the woman who delivered the child<sup>200</sup>; thus, adoption is the only 'legal way' that non-biological parents can legally become the parents of a child. Of course, if the intended father is also the biological father of the child, he can become the legal father via the second presumption of paternity, based on an agreement with the child's mother, as described above<sup>201</sup>.

As another novelty, the Civil Code also establishes the option for an adoption and its circumstances to be kept secret from the child's family of origin. The option of secrecy also applies to the child's parents and their consent to adoption<sup>202</sup>. However, once the child reaches the age of majority and legal capacity, he or she is entitled to access the details of the adoption file<sup>203</sup>. Regardless of this new rule, the traditional regulation on vital registers still allows adoptees over 18 years old to inspect the registry books and collections of documents.<sup>204</sup> This regulation provides evidence that adoption has been never explicitly based on the principle of anonymity.

The Civil Code also implemented a key change regarding the consequences of adoption, establishing the possibility of converting a revocable adoption into an irrevocable adoption by operation of the law within 3 years of the adoption order becoming effective. No petition for the revocation of adoption is possible<sup>205</sup>. An exception applies to situations where the adoption was in conflict with the law.

195 Art. 806, CC.

196 Art. 808, CC.

197 Art. 836, CC.

198 Art. 804, CC.

199 See: Haderka, 1986, pp. 917–934.

200 Art. 775, CC.

201 Art. 779, CC.

202 Art. 837, CC.

203 Art. 838, CC.

204 See: Act No. 301/2000 Sb., as amended, on Registers, Names and Surnames.

205 Art. 840, para. 2, CC.

However, the court may decide upon the irrevocability of the adoption even before the expiry of a 3-year period from the adoption order.

Finally, in order to give a complete picture of the adoption legislation, it is necessary to briefly mention the adoption of adults, which was abandoned as a ‘bourgeois anachronism’ for political reasons after the communist takeover in 1948 and re-introduced by the Civil Code in 2012. As mentioned above, the adoption of an adult always represents a ‘status change’, although not a full status change, unlike in the case of the adoption of a minor. The law distinguishes between two types of adoption of an adult: (a) an adoption that is analogical to the full adoption of minors<sup>206</sup>, and (b) an adoption that is not analogical to the full adoption of minors<sup>207</sup>, where the adoptee remains, especially with regard to property, – connected to his or her family of origin<sup>208</sup>.

### ***5.6. Parental responsibility and protection of the minor child***

The protection of the minor child is mainly guaranteed through the concept of parental responsibility. The term ‘parental responsibility’ was introduced into the Czech legal order in 1998 as a result of the international human rights conventions signed in the early 1990s.<sup>209</sup> Here, the cleansing of ideological sediment, the different attitude toward the mutual duties and rights of parents, and the emphasis on the rights of the child should be underlined. Thanks to the case law of both the European Court of Human Rights and the Czech Constitutional Court,<sup>210</sup> the human rights dimension of family law was also taken into consideration when preparing the draft Civil Code after 2000 and, later, within the general discussion prior to the passing the final version of this Code.<sup>211</sup> The authors of the Civil Code reflected academic initiatives and their achievements, namely, the Principles of European Family Law regarding Parental Responsibilities<sup>212</sup> by the Commission on European Family Law,<sup>213</sup> which were created and published during the time the Civil Code was gradually being prepared. Consequently, in its final version released in 2012, the Civil Code not only followed up on its predecessor, which was extensively amended in 1998, but also took into account many necessary and relevant innovations in this matter.<sup>214</sup> As such, the Civil Code distinguishes between the ‘holding’ and ‘exercise’ of the duties and rights of parental responsibility. The concept and scope of parental responsibility in the current Civil Code are much broader than in the previous legal regulation, bringing

206 Art. 847, CC.

207 Art. 848, CC.

208 Art. 849, CC.

209 See: Hrušáková, 2002.

210 Králíčková, 2010.

211 See: Eliáš and Zuklínová, 2001, 2005.

212 Boele-Woelki et al., 2007.

213 For more, see: <http://ceflonline.net/> (Accessed: 25 April 2023).

214 For more, see: Králíčková, 2009, pp. 157–173; Králíčková, 2014, pp. 71–95.

more balance, protection, and security to family ties. It is critical that parental responsibility arises from, and belongs (only) to, both the legally established parents of a minor child, without any discrimination based on gender, sexual orientation, being under the age of majority, or disabilities. The duties and rights of a child's parents are equal, regardless of whether they are married, divorced, or separated. Parents must exercise the duties and rights of parental responsibility jointly and in harmony with the best interests of the child and his or her welfare, well-being, and participation rights. If a child is at risk, for instance, if the child's parents are not able to exercise their duties and rights properly because of objective reasons (e.g. they are minors, do not have full legal capacity, or are in a coma) or subjective reasons (e.g. they are socially immature or inadapted, suffer from drug addiction, or are violent), the Civil Code also provides special rules for addressing difficult life situations.<sup>215</sup> Many provisions are applied by the operation of the law (*ex lege*), and many articles give the state administrative authorities and the courts both rights and duties to intervene in family ties with a wide range of measures, remedies, or sanctions.<sup>216</sup>

At this point, it is necessary to present in more detail the legal aim, concept, and content of parental responsibility. Parental responsibility should be understood as the collection of duties and rights aimed at 'promoting and safeguarding the welfare of the child'. As such, the content of parental responsibility is broad and complex. The Civil Code provides that parental responsibility includes parents' duties and rights, comprising (a) caring for the child, mainly including care for his or her health and his or her physical, emotional, intellectual, and moral development; (b) protecting the child; (c) maintaining personal contact with the child; (d) ensuring the child's upbringing and education; (e) determining the child's place of residence; (f) representing the child; and (g) administering the child's assets and liabilities or property<sup>217</sup>. In addition, the Civil Code defines the key issues for which the consent of both of the child's parents is necessary. The list of significant matters related to the child is demonstrative and includes (a) non-routine medical and similar interventions, (b) the determination of the child's place of residence, and (c) the choice of child's education and employment<sup>218</sup>. It can be said that the duty and right to decide on these matters comprise, *de facto*, the content of parental responsibility.

In summary, the legal provisions regarding parental responsibility that are anchored to the Civil Code protect not only minor children but their parents as well. Any person can be in the position of the weaker party, especially minors or parents who are not fully capable, single mothers, putative fathers, or parents left behind in the case of international child abduction or the unlawful inter-country relocation of a child. Consequently, vulnerability is reflected in the broadest sense in the Civil Code. The general protection of the family and family life according to the wishes,

215 Králíčková, 2022a, pp. 73–102; Králíčková, 2022b, pp. 83–100.

216 Krausová and Novotná, 2006.

217 Art. 858, CC.

218 Art. 877 para. 2, CC.



choices, preferences, and special needs of family members is guaranteed through the constitutional law and human rights conventions.

In the context of the social and economic changes that have taken place since 1989, the protection of children's assets has become increasingly important.<sup>219</sup> According to the Civil Code, the protection and administration of a child's property forms part of parental responsibility. The law in this matter contains many general and special provisions,<sup>220</sup> which must always be interpreted and applied in accordance with the principle of the best interests of the child and his or her well-being. The management of children's assets should be rather conservative, and parents should strive primarily to preserve the child's property, not to 'make a profit at all costs'. The basic principle set out in the regulation on parental responsibility is that parents have the duty and right to take care of their child's property primarily as ordinary managers<sup>221</sup>. They must dispose of funds that are not expected to be necessary to cover the expenses related to the child's property. This provision also applies to the child's savings, whether generated on the basis of the parents' agreement within a functioning relationship or on the basis of a court decision<sup>222</sup>.

When it comes to the relationship between the parents, the law emphasises the agreement of both parents: if the parents do not agree on essential matters regarding the care of their child's property, the court will decide on each parent's proposal<sup>223</sup>. In addition, the Civil Code contains provisions regulating the need for a court to approve legal actions by parents<sup>224</sup>. In particular, the law stipulates that parents need the consent of the court to take legal action that concerns their child's existing and future assets or individual components of these assets, unless these are ordinary matters or matters of exceptional but negligible property value. It is further stipulated that the court's consent is always required for legal proceedings by which a child, for instance, acquires, alienates, or encumbers an immovable property or a share in it; concludes an agreement between the heirs on the amount of inheritance shares or the division of the estate; or rejects an inheritance or declares that he or she does not want a reference. Sanctions for non-compliance with the law are no longer apparently carried out, as the law newly stipulates that if a parent acts on behalf of a child without the consent of the court, legal action can be declared invalid only if it harms the child<sup>225</sup>.

Other provisions regulate the issue of income or profit (returns of assets) from a child's property<sup>226</sup>. The rule is that whatever the parents gain by using the child's property is acquired by the child. It is further stated that any income from a child's

219 Haderka, 1996, pp. 181–197; Hrušáková, 2002.

220 Art. 896 to 905, CC.

221 Art. 896, CC.

222 Art. 917, CC.

223 Art. 897, CC.

224 Art. 898, CC.

225 Art. 898 para. 4, CC.

226 Art. 899 to 900, CC.

property that the parents do not use for the proper administration of this property (profit) will first be used for the child's maintenance (even without the consent of the court). If necessary, the parents can then use the remaining profit from the child's property as a contribution to their own maintenance and that of the child's minor sibling(s) if they live in the family household, unless it is necessary for important reasons to keep this profit for the child's use after he or she reaches the age of majority.<sup>227</sup>

A different regime is laid out for property use. The law stipulates that a child's parents may, with the consent of the court, use it for the child's own needs and those of the child's sibling(s) only if, without the fault of the persons who have a maintenance duty toward the child (parents or other direct relatives), a significant disparity arises between the child and the parents.

The child's property also includes alimony that is paid for him or her. Regarding the administration of individual maintenance amounts, the general rules on the management of the child's property apply. The parent who will receive the maintenance payment has the right to dispose of this maintenance in ordinary or exceptional, but negligible, property values. As a child's property can also include savings that are saved from paid maintenance, both parents have the duty and the right to manage these savings.

In legal proceedings concerning an individual part of a child's property, the parents act as the child's representatives. Legal representation of a child by his or her parents is deemed to be both a traditional right and a duty of the child's parents. It follows from other provisions that parents have the duty and right to represent their child in legal actions for which the child lacks legal capacity<sup>228</sup>. If the child is competent, he or she acts alone, and the legal representation by his or her parents does not apply.

Regarding children who do not have full legal capacity or who have partial legal capacity and 'fall under parental responsibility', the law distinguishes between (a) a child who acts independently in relation to his or her intellectual and voluntary maturity<sup>229</sup> and capacity to work<sup>230</sup>; (b) a child who is capable of acting independently, but the consequences of his or her legal acts may be made conditional on the consent of his or her legal representatives, that is, his or her parents<sup>231</sup>; (c) a child who acts with the consent of his or her legal representatives, that is, his or her parents<sup>232</sup>; (d) a child who acts with the consent of his or her legal representatives, that is, his or her parents, and of the court in the case of the operation of a commercial establishment<sup>233</sup>; and (e) a child for whom the legal representatives, that is, his or her parents, act exclusively within the exercise of parental responsibility.

227 Psutka, 2021.

228 Arts. 31, § 892 to 895, CC.

229 Arts. 31 and 32, CC.

230 Arts. 34 and 35, CC.

231 Art. 36 para. 2, CC.

232 Art. 32, CC.

233 Art. 33, CC.

If the child has both parents, they represent him or her jointly as legal representatives; however, either of them may act separately (§ 892, para. 2, CC).<sup>234</sup> Thus, it applies that if one parent acts alone in the child's affairs *vis-à-vis* a third party who is acting in good faith, he or she shall be deemed to act with the consent of the other parent. The law emphasises parental consent; however, it stipulates that if the parents do not agree which parent will represent the child, the court shall decide, on the parent's motion, which parent will act for the child and how.

A special provision takes into account the threat of a conflict of interest<sup>235</sup>, stipulating that a parent may not represent a child if there could be a conflict of interest between him or her and the child or between children of the same parents. In practice, this provision is particularly applied in proceedings to regulate the relationship of parents to a child for the period after a *de facto* separation or divorce<sup>236</sup> and in proceedings concerning the child's property. A guardian *ad litem* must, therefore, be appointed for the child or for each of the children.

It should be added that if parents violate their obligation to take care of a child's property as regular stewards, they must compensate the child for the damage caused jointly and severally. Other duties and rights are connected with parents' obligation to hand over the child's property after completing his or her full legal capacity<sup>237</sup>: parents hand over parts of the child's property or transfer their administration to the child and submit to the child, at his or her request, a statement regarding the administration of the property without undue delay, but no later than 6 months from the day when the child became fully capable.

A significant change to the Civil Code in 2021, which sought to protect 'child debtors' and 'correct bad practice', should be highlighted. This amendment enshrined several new provisions<sup>238</sup>. Of particular note is the section that regulates a parent's liability for their child's monetary debt<sup>239</sup>. This section stipulates that the parent who acted on behalf of a child or gave his or her consent to the legal action is liable for a debt of this child that arose from legal action taken before the child acquired full autonomy. The Civil Code also establishes a new age limit of 13 years within the tort law and lays down special rules for compensation for damage for children both under and over the age of 13, together with the persons who had a duty to supervise the child.<sup>240</sup>

The maintenance duty of parents toward children has not traditionally been part of parental responsibility as both parents have a duty to maintain and support their

234 Šínová, Westphalová and Králíčková, 2016, p. 24 ff.

235 Art. 892, para. 3, CC.

236 Regarding the divorce law concerning minor children, including the pending drafts, see: Králíčková, 2022b, pp. 83–100.

237 Art. 902, CC.

238 Act No 192/2021 Sb.

239 Art. 899a, para. 2, CC.

240 For details, see: Psutka, 2021.

child until he or she is able to make a living<sup>241</sup>. The scope of maintenance is supposed to be within the extent of providing the same standard of living<sup>242</sup>, including the option to accrue savings from the maintenance payment<sup>243</sup>. Thus, the Civil Code fully respects the principle of solidarity and the non-consumption aspect of maintenance. To render the legal regulation more effective, the lawmaker adopted many elements responding to two key problems that are confronted in practice: how to detect the income and property of the parents, especially when they receive cash-in-hand payments for unreported work or are self-employed, and how to enforce judgements ordering the maintenance duty.<sup>244</sup>

Firstly, to make the detection of income easier, the lawmaker introduced the legal presumption of the income of the liable parent or grandparent in order to improve the position of both underage and legal age children. The law provides that a parent must prove his or her income in court by submitting documents necessary for the evaluation of his or her property situation. The law also makes the data protected by special Acts accessible and lays down that a parent must also enable the court to determine other facts that are necessary to make a decision. If a parent fails to fulfil this duty, his or her average monthly earning shall be presumed to amount to 25 times the minimum required for ensuring his or her maintenance and other fundamental personal needs throughout his or her lifetime, pursuant to a special Act<sup>245</sup> (§ 916, CC).

Regarding the enforcement of judgements, a novel provision is that if a debtor fails to maintain and support a child, an executor shall issue a writ of execution to suspend his or her driving licence. The executor will serve the writ on the driver and will deliver it to the registry of drivers. The debtor (i.e. the driver) is then not allowed to drive until he or she pays the overdue maintenance.<sup>246</sup> In addition, the criminal law traditionally considers failure to pay mandatory maintenance a criminal offence, which may be punished in various ways, including imprisonment<sup>247</sup>. Recently, a new remedy has been introduced, where a person is prevented from driving for a certain period (§ 196a, Criminal Code).<sup>248</sup>

Finally, there is also a new regulation on protecting the property of children, which was passed only recently after many vicissitudes (Act No 588/2020 Sb., on Substitute Maintenance).<sup>249</sup> The new law regulates substitute maintenance for dependent children (both underage and legal age children) and builds on the compensatory mechanism that was previously enshrined in other Acts. Substitute

241 Art. 911, CC.

242 Art. 915, CC.

243 Art. 917, CC.

244 Králíčková, 2012, pp. 81–94; Králíčková, 2022b, pp. 83–100.

245 Act No. 110/2006 Sb., as amended, on Living and Subsistence Level.

246 Act No. 120/2001 Sb., on Enforcement Officials and their Activities, § 71a.

247 Art. 196, Criminal Code.

248 See Act No. 40/2009 Sb., as amended, Criminal Code.

249 Janková and Obermannová, 2021.

maintenance is conceived as a social benefit as its primary purpose is to effectively protect children whose parents or grandparents avoid their maintenance obligations and who, thus, find themselves in material need. Consequently, the law provides that the beneficiaries may apply to the state authority to pay a limited amount of maintenance on behalf of the obligors for the necessary period of time and, subsequently, to recover the funds corresponding to the replacement maintenance from the obligors on their behalf. The purpose of the law regulating maintenance compensation is to encourage the establishment of maintenance for obligors and to lawfully enforce it. As such, it is always necessary for the child to take his or her right to maintenance to court and seek a determination of the maintenance obligation. Once maintenance has been established, it is necessary to make use of all the incentives and sanctions available to enforce maintenance, as set out above.

To avoid the misuse of public resources and ensure that child support is paid by those who have a legal obligation to support children (parents and other relatives in the direct line of descent, especially grandparents), the new law establishes several conditions, limits, and procedural rules in relation to its purpose, which must be pursued first and foremost. First, the law stipulates that only the entitled person (i.e. the dependent child) under the special law is entitled to receive substitute maintenance<sup>250</sup>. In particular, whether a minor or an adult, a child is an eligible person until the end of compulsory schooling and thereafter, but not later than the age of 26, if (a) he or she is in continuous training for a future profession; (b) he or she is unable to prepare himself or herself systematically for a future occupation or gainful employment because of illness or accident; or (c) he or she is unable to engage in continuous gainful activity because of a long-term adverse health condition.

In general terms, it is also stipulated that the child, as a beneficiary, must have permanent residence and domicile in the territory of the Czech Republic, although, there are statutory exceptions to this rule. If the recovery of maintenance is unsuccessful, a child who has an enforcement title, that is, an enforceable decision on the basis of which the obligor (i.e. a parent, grandparent, or other relative in the direct line) is ordered to pay a specific amount of maintenance, may turn to the state. The application for substitute maintenance is filed with the Labour Office, which decides whether to approve the application. The law sets strict limits on the amount of substitute maintenance and the period of its payment in relation to its purpose, in other words, it lays out that this benefit should be provided 'in lieu of' child maintenance in the true sense of the word. It is stipulated that the maximum amount of substitute maintenance is, in principle, CZK 3,000 and that this maintenance should be provided for a period of 4 months. The relevant amount is paid monthly in arrears, at the earliest for the month of application. However, an application for substitute maintenance may be resubmitted. If the application for substitute maintenance is granted, the substitute maintenance shall be paid into a bank account or by postal order. The right to substitute maintenance shall cease at the latest after 24 payments.

250 Act No. 117/1995 Sb., as amended, on State Social Support Act.

The provision of substitute maintenance by the state does not transfer the child's right to maintenance to the state *ex lege*, as is the case with state foster care benefits, but must be decided by the Labour Office. This is followed by a request for the state to enter into execution.

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## 6. On the respect, assistance, support, and protection of vulnerable adults as family members

The ageing of the population, which has brought with it an increase in the number of vulnerable family members, is a Europe-wide phenomenon. The rise in the prevalence of Alzheimer's disease places great demands on the families of vulnerable people. As noted in the literature, 'the problem is not limited to the protection of those suffering from lifelong or other learning disabilities ...; it concerns us all, in the medium or short term'.<sup>251</sup> The internationalisation of the problem has resulted in the adoption of the international treaties and other sources described above in more detail, including the Convention on the Rights of Persons with Disabilities, the Convention on the International Protection of Adults, and the Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe.

Concerning international obligations, the Czech legislator has enshrined several provisions in relation to the new concept of shifting 'from protection to support and respect to the autonomy of will' and to the principle of family solidarity. When drafting the Civil Code, the aim of the new concept was to provide the individual with complex protection in all aspects of private life. The introductory provisions embedded in 'Book One – General Part' of the Civil Code provide that 'private law protects the dignity and freedom of an individual and one's natural right to pursue happiness for oneself and one's family or people close to the individual in a manner that does not cause unjustified harm to others'<sup>252</sup>. It further provides that 'everyone has a right to the protection of their life and health, as well as freedom, honour, dignity, and privacy' and that 'no person may suffer unjustified harm due to insufficient age, mental state, or dependence'<sup>253</sup>. In an effort to create a comprehensive legal regulation, the Civil Code also fairly extensively regulates the protection of personal rights, including the right to mental and physical integrity, special provisions regulating the rights of persons admitted to a healthcare facility without their consent, and rules on the disposal of parts of a human body<sup>254</sup>. The

251 Frimstone, 2015, p. xi.

252 Art. 3, para. 2, CC.

253 Art. 3, para. 2, CC.

254 Art. 81 to § 114, CC.

most relevant provisions are included under the heading ‘Supportive measures for cases where the ability of an adult to make legal acts is impaired’<sup>255</sup>, followed by those governing the ‘Limitation of Legal Capacity’<sup>256</sup> and ‘*Ex Lege* Representation and Guardianship’<sup>257</sup>.

As discussed above in the section devoted to the principles of Czech family law, the Civil Code is based on the principles that every individual should be protected and that it is necessary to protect the uniqueness, needs, and wishes of the individual. The key underlying principles in this specific area are the autonomy of the will of individuals who anticipate their own incapacity to legally act<sup>258</sup>, the freedom of contract of individuals who have difficulties due to mental disorders<sup>259</sup>, and family solidarity<sup>260</sup>. The legal regulation emphasises assisted decision-making that involves the vulnerable person. As a result, ‘supportive measures for cases where the ability of an adult to make legal acts is impaired’ must, as a rule, take precedence over the provisions on guardianship or even the limitation of legal capacity. Furthermore, these ‘supportive measures for cases where the ability of an adult to make legal acts is impaired’ must be preferred, in particular, over the limitation of legal capacity as a rather radical judicial decision that may be made – *inter alia* – only where less invasive and less restrictive measures would not suffice with respect to the interests of the vulnerable person, who would otherwise be at risk of suffering significant harm. The legal capacity of a vulnerable person may be limited only where such a measure is in the interest of the person and where the person suffers from a mental disorder of an ongoing nature, after said person has been seen by the court, and always only for a fixed period of time.<sup>261</sup> It must be emphasised that, in praxis, it is the family members, relatives, or close relatives of the vulnerable person who are appointed as supporters, assistants, representatives, or guardians.

Protective measures related to vulnerable persons are included in ‘Book Two – Family Law’ of the Civil Code. Most importantly, a man and a woman have the right to marry unless they have been deprived of this right, that is, their legal capacity in this matter has been expressly limited by a judicial decision<sup>262</sup>. The provisions on marriage law regulate, in particular, the right of the spouses to represent each other in ordinary matters<sup>263</sup>, the protection of the things forming the usual equipment of the family household<sup>264</sup> and family dwelling<sup>265</sup>, and the community property of the

255 Art. 38 ff, CC.

256 Art. 55 ff, CC.

257 Art. 457 ff, CC.

258 Art. 38 ff, CC, continuing power of attorney.

259 Art. 45 ff CC, assisted decision-making.

260 Art. 49 ff, CC, representation by a member of the household.

261 Králíčková et al., 2023.

262 Art. 673, CC.

263 Art. 696, CC.

264 Art. 698, CC.

265 Art. 743 ff, CC.

spouses<sup>266</sup>, and also include a ‘hardship clause’ to protect a spouse who does not want to divorce<sup>267</sup>.

As for the relationship between parents and children, a woman becomes a parent upon birth, regardless of any mental disorder<sup>268</sup>, and a man becomes a father according to the law regulating the three presumptions of paternity. Under the first of these presumptions, the husband of the mother is presumed to be the father<sup>269</sup>. This *ex lege* status may be denied either by the husband or his guardian where the legal capacity of the husband of the child’s mother has been limited before the expiry of the period for the denial of paternity<sup>270</sup>. The second presumption is based on a consenting declaration made by the child’s mother and the presumed father.<sup>271</sup> It is not possible to apply this presumption in cases where the mother is unable to assess the meaning of her declaration<sup>272</sup>. For persons with limited legal capacity – whether the child’s mother or the child’s presumed father – the declaration on paternity must be made before the court, which considers the circumstances of the case and examines whether these persons may establish paternity on their own, or whether a guardian will act for them<sup>273</sup>. However, in both the doctrine and practice, this concept is widely criticised.<sup>274</sup> The procedure for denying the second presumption is similar to that of denying the first presumption. When the paternity of a child is undetermined or denied under the first or second presumption, the court decides the paternity of the child based on sexual intercourse in the relevant period (no fewer than 160 days and no more than 300 days before the birth of the child) and, as a rule, based on a DNA test<sup>275</sup>. I believe that it should be the court that determines fatherhood in cases where the child’s parents are persons with limited legal capacity, have mental disorders, or are vulnerable people in general.

The key institution of law through which parents realise parenthood, and, at the same time, protect their minor child, is called ‘parental responsibility’<sup>276</sup>. Under the new legal regulation, any parent of a minor child has parental responsibility, regardless of any mental disorder or limitation of legal capacity. The exercise of the duties and rights included in parental responsibility, however, is a different matter. The Civil Code provides that the exercise of parental responsibility by a parent whose legal capacity has been limited in this matter is suspended *ex lege*, unless the court decides that the parent, with regard to his or her personality, retains the care of the

266 Art. 708 ff, CC.

267 Art. 755, para. 2, CC.

268 Art. 775, CC.

269 Art. 776, CC.

270 Art. 785, CC.

271 Art. 779, CC.

272 Art. 781, CC.

273 Art. 780, CC.

274 For more, see: Králíčková, Hrušáková and Westphalová, 2020, pp. 520–521.

275 Art. 783, CC.

276 Art. 865 ff, CC.



child and the right of personal contact with the child<sup>277</sup>. A tutor must be appointed for the child<sup>278</sup>.

Finally, in addition to the protections included in ‘Book One – General Part’ and ‘Book Two – Family Law’, other parts of the Civil Code include special rules devoted to vulnerable people, especially regarding the concept of things of sentimental value, wills, and donations.<sup>279</sup>

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## 7. Conclusion

As discussed above, the shape of family life is changing in Czechia. There is no doubt that, in the future, legislators will face many challenges, including those presented by research studies by demographers and sociologists, the opinions of various influence groups and individual MPs, and the views of the professional or lay public. All persons have the right to ‘their own way’. Every human being has the right to live their family life, which is also related to their idea of family law legislation. The question is whether there is an ‘ideal’ form of family law. Respect for the freedom of the individual and the autonomy of will may be a certain approximation of the desired ideal. However, if one person is bound to another, whether by marriage, civil partnership, or a *de facto* relationship, family solidarity and ‘some restrictions’ must come into play. Finally, support and protection from the state must be guaranteed. The question is how the state, or national legislators, should reflect these seemingly contradictory values. An attempt at harmony and balancing in relation to European standards laid down by international human rights covenants and the case law of the European Court of Human Rights is undoubtedly entirely appropriate.

Family law in Czechia was relatively recently recodified into the Civil Code. We can agree with the general view that civil codes are the pillars of private law and the basis of the entire legal system. Consequently, they should not be amended too often. Stability in the regulation of matters related to status is an unquestionable value. It is, therefore, open to doubt whether the recent legislative proposals for completely conceptual changes to family law, which is enshrined in the Civil Code, are on the agenda. On the one hand, the public is calling for ‘marriage for all’ or so-called ‘gender-neutral marriage’. On the other hand, persons of different sexes, who can marry, do not do so and live in *de facto* unions. It is no secret that the high divorce rate and the ‘fragility’ of families not founded by marriage trickle down to the weakest and most vulnerable – minor children.

277 Art. 868 para. 2, CC.

278 Art. 928 ff, CC.

279 For more, see: Králíčková, et al., 2023.

Whether or not the legislative process in the Czech Republic will be completed by enshrining ‘marriage for everyone’, I believe that this political decision will not have a significant impact on Czech society or its demographic development. This issue cannot be ignored or downplayed, but neither can it be given too much importance. I believe that the Czech legislator should primarily focus on strengthening the concept of strong and continuous parenthood after the breakdown of a relationship or cohabitation between parents of minor children, whether they be spouses, unmarried *de facto* partners, or parents who have never lived together with the child.<sup>280</sup> As mentioned in the introduction, the deviation from the concept of marriage-centric family law toward fully functional and child-centred family law is a reality and is, ultimately, a desirable state for many.

Finally, in addition to strengthening children’s rights, especially their participation rights, attention must be paid to the protection of the family and family ties in the broadest sense. It is close relatives who take charge of minor children when their parents are in trouble. It is also relatives who become guardians and supporters of their loved ones when they develop a state of dependency owing to old age or mental illness and are in need of respect, support, and protection.

280 Sörgjerd, 2012, p. 167 ff.

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