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Dimension of social and legal protection in the context of the analysis of legal rules in Slovakia

Abstract. We are all part of a broad community of people, does not matter, whether bond relational or within some other connection. The unique bond is, however, a natural close family relationship, which is based on the family, as the basic community. Bonds, that are formed in the family, constitute a primary basis and a social functionality of the relations not only in terms of law - the formal legal rules, but also in terms of other informal rules. In our contribution we will focus on an informal as well as formal bonds in family relations, on analysis of legislation regulating these relations, their structure of liability, particularly in relation to minors. By protection of the rights of children, who can be considered as the most vulnerable group, despite of the wide range of legislation, in practice disproportions occur, which confirm the weaknesses in the application of legal rules, as well as rules of non-legal nature.

Keywords: family, child, law, social legal protection, educational measures, alternative care

Introduction

The principle of legal protection of children is identified in all areas of law with regard to the specific range of its interest. In the area of the Family law relations, that principle resonates primarily in the provisions of Act No. 36/2005 Coll. on the Family and on change and amendment of certain acts as amended (hereinafter referred to only as “Act No. 36/2005 Coll.”) and

Act No. 305/2005 Coll. on social and legal protection of children and social guardianship, as amended (hereinafter referred to only as “Act No. 305/2005 Coll.”), governing the right of minors to education, especially in the family environment. It can be concluded, that the basic legal status of minors is set up in Family law. We can not miss out, that there is a child protection legislation also within the Social security law, Criminal law, Labour law as well as within the legislation regulating education, health and so on. The attention has to be focused also on system of rules of the Administrative law and Civil law, used primarily by intervention of the competent authorities in time, in case of a threat or violation of the rights of minors (decisions of authorities of social protection of children and social guardianship, court decisions).

In particular, the cooperation between the experts, no matter whether from the area of law or related non-legal disciplines, streamlines the process of social protection of children. Due to this cooperation, the objective can be achieved, which is, mainly, functioning of the family as the natural and appropriate environment for the child’s upbringing. Socially inappropriate environment usually affects and even can even negate efforts to reeducate the child. Even the positive influencing between the parents and children may lead to the reeducation. However, there are phenomena, which depend of the means of intervention do not bring any success, as far as the positive changes are concerned in their most complexed meaning.

Also in our contribution, we are focusing on interventional procedures, though which the undesirable events, which negatively affect the child development and education, might be prevented.

Law as part of the protection of rights and freedoms

The law is an integral part of the life of every person. It is an instrument that regulates relations throughout the society. It consists of a wide range of rights and obligations, which bind not only individuals, but also the whole society. Therefore and, it can be considered an integral part of our being and formation of behavior. Its effect causes the regulation of social relations, not only in terms of moral and ethical principles, but also in terms of enforceability of behavior in those relations.

The basic principles, which are applied within the law and each legal rule, are mainly the principles of legality, but also solidarity, subsidiarity, participation, social justice, and so on. The principle “What is not forbidden is allowed” confirms the binding force of law and legislation.

Various institutions and institutions that supervise the protection of the rights and freedoms of members of society are legitimated to enforce of law. According to the authors Kusin, Šebestová, Drábiková [4], between the morality and legal obligation exists discrepancy. The moral obligation is dependent on human subjectivity, that is on “ethically qualified moral will of the subject, which covers conscience; it not legally determined, but is determined by human qualities of moral will. Legal dimensions of responsibility are directed “out” into action, decisions defined by law. “

An individual, in relation to society, performs his basic functions and one of those functions is the reproductive function. The reproductive function is characterized by a social unit - the family, which is the basis of society and is under its protection. Family performs important functions, therefore there is given particular attention to the protection of the family in terms of law. Protection of the family is regulated within the international documents (the Convention on protection of children), adopted and ratified by the Slovak Republic, as well as national legislation of which has a particularly important role the Constitution of the Slovak Republic (hereinafter referred to only as “Slovak Constitution”). Slovak Constitution in Art. 41 guarantees the protection of family and gives particular attention to the protection of children and minors. This provision of the Slovak Constitution that governs the basic rights and duties of parents, the possibility of their limitations, as well as the right to assistance from the state. Other legal rules in field of family and children protection are within the legislation of lower legal force, in particular Act no. 36/2005 Coll. and Act no. 305/2005 Coll. and other legislation of a procedural nature (Act no. 71/1967 Coll. on administrative proceeding (Administrative Procedure Code), as amended, hereinafter referred to only as the “Administrative Procedure Code”, Act no. 99/1963. - Civil Procedure Code, as amended, hereinafter referred to only as “CPC”). The importance of implementation the laws into practice by the children’s rights protection is thus the direct realization via acceptance, as well as their practical application in the form of issuing individual legal acts. The fact that in Slovak republic, there is given a particular attention to the legislation on social protection of children and social custody, is documented and presented in a table of statistical indicators of the Ministry of Labour, Social Affairs and Family for the previous period 2010 to 2015.

The number of families and children in the reporting period of the years 2010 - 2014										
	2010		2011		2012		2013		2014	
	families	children	families	children	families	children	families	children	families	children
The number of new cases during the reporting year	26754	30376	22789	31802	21446	29159	20159	32990	21337	30357
The number of cases during the year for which Social protection arrangements have been made	128703	193257	121553	184079	120501	178240	78049	109503	59172	87560
The number of cases at the end of the reporting period	229640	342259	224432	338085	216466	325163	203664	292965	181203	255328

Dimension of social and legal the protection

The social and legal protection is presented by two concepts. The first part of the concept is social protection and the other part is legal protection. It refers to the protection of the relations within the society by the means of law. Specification of the concept of social and legal protection is stipulated in § 1 of the Act no. 305/2005 Coll. Quoted law defines social and legal protection of children and social guardianship as a set of measures and instruments which serves to 'ensure the prevention of crisis situations in the family, protection of rights and legitimate interests of children, prevention of deepening and repetition of failures in mental, physical and social development of children and adults and to prevent the rise of social pathological phenomena “.

Continuous link between the Act no. 305/2005 Coll. and in particular the Act. 36/2005 Coll., as well as other relevant legislation, not only in field of Family law (Administrative Procedure Code, CPC) shows its fixed linking the various sectors both public and private law. Above all, there is implemented the Convention on the Rights of the Child (hereinafter referred to only as “the Convention”) within its provisions, as well as other international documents, for example The European Convention and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Notification of the Ministry of Foreign Affairs of the Slovak Republic no. 380/2001 Coll.), Convention on the Civil Aspects of International Child Abduction (Notification of the Ministry of Foreign Affairs of the Slovak Republic no. 119/2001 Coll.), which the Slovak republic committed to respect and which documents guarantee the protection of the rights and interests of children. Therefore the Act. 305/2005 Coll. can be considered a product of the National Programme of social protection as a result of the conclusions of the Lisbon European Council in 2000 on the modernization of social protection systems.

Act no. 305/2005 Coll. is based on three basic premises. In the first premise, the protection of the child in line with his best interests in relation to the Convention, is guaranteed. Based on the Convention, which

has the character of an international document, in particular this document stresses the child's best interests. Stated principle implemented into all national laws of lower legal force, considers a family environment to be the universal model for the child. The family environment forms the emotional, moral, social and cultural basis of the child. The child in the family receives basic patterns of behavior, emotional stability and ability to shape healthy interpersonal relationships. The quality of family ties belongs to the fundamental determinants affecting child development. Changes of the values in the society, the rapid way of life, changing relations in the field of labour market, extreme mobility, cosmopolitan population, leaving the traditional wide family, too tolerant attitudes and so on, are the factors that contribute to the growth of negative phenomena in the area of family relations. Healthy family environment positively affects the child, while troubled family in terms of behavioral pathology affected by defects of the marital relationship, or family unable to emotional saturation, does not create an environment for social maturation of the child and his health interpersonal relationships. Despite of the fact, that the family is ontogenetic oldest context of human being, it is hard to substitute the natural family environment to children by any other form of care.

The goal of the second premise is the aim of the competent authorities to create a new environment for the children, who can not be brought up in natural family environment, in a quality of natural family environment. It is indisputable that the family and sibling bonds play in a child's life an important role. Selection of the substitute environment for a child, that would fully respect his best interests, as stated in the Convention, means selection of such a family environment that would remove any undesirable effects of a negative nature, which the child brought from the natural family environment. The best interest of the child, as a fundamental principle of the Convention, as well as the legal term "best interests of the child" contained in the legislation governing family relations has not been clearly defined until the amendment to Act no. 175/2015 Coll. has been adopted. By its nature, however, it presents the different elements that play in a child's life an important role, for example the possibility of the child to express freely its opinion on the matter, the possibility of contact with his close environment, health-care, access to education, protection from violence and superiority of the family environment to substitute environment and so on. In conclusion, the best interests of the child shall be considered in terms of the

individual child's needs to create an environment that would saturate in addition to the basic needs, the specific needs of the child. Best interests of the child is to create an environment that would ensure his physical and mental health for the purpose of positive mental development, as well as the development of his personality, in area of morality, ethics, education and social relations. According to Art. 5 of the Amendment to Act no. 36/2005 Coll.:

“The primary factor by decision-making proces about the all matters concerning the child, is to consider his interest interest. When identifying and assessing the interest of the minor, shall consider in particular

- a) the level of child care,
- b) the safety of the child, as well as safety and stability of the environment in which the child resides,
- c) protection of the dignity as well as mental, physical and emotional development of the child,
- d) the circumstances related to the health condition of the child or a child with disabilities,
- e) a threat to the child's development caused by infringement of his dignity and a threat to the child's development caused by affecting the mental, physical and emotional integrity of the person who is the child's close person,
- f) conditions to maintain the identity of the child and to develop skills and talents of the child,
- g) the child's opinion and possibility of its exposition to the conflict of loyalty and consequent feeling of guilt,
- h) conditions for the creation and development of relationship bonds with both parents, siblings and other close relatives,
- i) use of available resources to maintain the child's family environment when considering the interference with parental responsibility “.

Especially the inability to create these conditions in a natural family environment is creating the scope for upbringing and care by the subjects with the competence to carry out actions in accordance with the current legislation. Although the current legislation consider also institutions of insitutional care to be the alternate environments (personal care, foster care, institutional care), this form is rarely used. When choosing a suitable form of alternative care, it is necessary to proceed not only in accordance with the current legislation, but also very sensitive approach, at least in relation to the child and his rights, has to be

chosen, to carry out the actions in a way to avoid inadequate reactions of the child.

If the child is so intellectually (mentally) mature to be capable of assessing the importance of implemented measure, it is necessary to consider also the opinion of the child himself. Removing of the child from the natural family environment and his placement in institutional type of institution for social and legal protection and social guardianship, is used only if all other possibilities has been used to eliminate undesirable effects of family environment and other forms of alternative care would not be effective.

Within the third premise, it is necessary to focus on prevention, that means to prevent any undesirable effects that would result in defects of the physical, mental and social development of the child. Prevention is one of the most progressive, as well as the most commonly used instruments for the protection of children's rights. In terms of previous legislation, Act no. 195/1998 Coll. on social assistance as applied until the effectiveness of that Act no. 305/2005 Coll., the social prevention has been defined in § 5 as a "set of measures for preventing and eliminating the causes, broadening or repetition of failures in mental, physical or social development of citizens." The content of the mentioned provision is transformed into the § 1 ods. 1 of the current legislation. Forms of prevention are focused on both the search, correctional, rehabilitation, social reintegration activities, as well as the organization, programs and other activities to prevent family crisis situations.

Especially the area of family law relations it is characterized by one of the principles of law, the principle of solidarity. The principle of solidarity is stipulated in the Act. 36/2005 Coll. Solidarity between family members is a fundamental principle of its cohesion and it is not only a legal duty, but also a moral obligation of the family members. It is the relation between the subject of obligation and the corresponding beneficiary of the right to perform the duties set up by law. Solidarity between members of the family relations is considered to be a group solidarity. In the past, it was limited only to filiation. Those are the relations based on the family relations, because they are dealing with the problems of the family members, in contrary to inter-group, respectively global solidarity as for example the solidarity in social security. Solidarity is a product of moral maturity of its entities, as well as well as its social background - social inequality.

The principle of solidarity is stipulated in Art. 4 of the Basic principles of family law, which provides: "All family members have an obligation to help each other and according to their ability and capacity to provide improving the material and cultural standards of the family." The article in question of the fundamental principles is transformed into other provisions of Title III of the quoted Act, where there the solidarity in the family relations is clearly defined in § 19. The Act in that provision already by the marriage set up the obligation of the spouses to satisfy the family's needs jointly and severally. Family solidarity, which is the solidarity in relation to the close person, does not solve only a problem of the individual, but also a problem of whole family. In the given case it is the primary solidarity, because family members know each other, they have to each other close family relations that come out from the family ties. The family is not only a center of primary solidarity, but also the secondary solidarity, which is dependent on the structure of interpersonal relationships and the society as a whole (volunteering, on the other hand the social security law system - insurance system, state social support, social assistance).

Important role in area of solidarity has also the upbringing of the children. Prosocial behavior should be built from an early ages of child. Therefore the family environment can be considered to be a fundamental pillar in which the child acquires skills of pro-social behavior - sharing of the common toys, solidarity bonds of the parents and grandparents and so on.

Solidarity, as a fundamental principle in every social formation, however, is not limited only to close persons, but above all to the whole society. According to Giddens the solidarity shall be built on three pillars, namely the state, the market and the civil society Keller [3].

In our opinion, the ideal state of society would have been identified in relation to solidarity, provided that solidarity is not determined by reciprocity.

Author sees the quality of pro-social behaviour in mutual cooperation of the three components of responsibilities, what leads to self-regulation. He can not therefore be considered as an advocate of regulation only via legislative actions done by the state. Despite the various differences of opinion there is no question that the state is the main guarantor, who has an obligation to support vulnerable groups in society, including in particular families with minor children, persons with health

disabilities and other groups which are most dependent on secondary solidarity.

Economic security of families is one of the important factors that affect the smooth functioning of the family. The bad economic situation of the family raises tensions. The unfavorable economic situation in the family arises due to the family and work imbalance. Čavojská [2] in the category of disadvantaged jobseekers, dependent on active labor market policy, includes also the jobseekers caring for children before the end of compulsory education. Unemployment of a parent or even both parents is not only the result of the malfunctioning of ensuring the basic needs of the family, but causes undesirable tensions in family relationships, which may lead into alienation. This condition is a significant contributor in formation of negative educational environment, what is the cause, but also a result of when the competent authorities of child protection and social care have a duty to intervene in the parental education and child care. According Bánovčinová [1] researches „(e.g. Dogde et al, 1994; Gedbery, Bodnárová and Filadelfiová, 2007; Currie and Stabile, 2003, etc.)“ showed that poverty and its consequences in the family affect the ability of parents “to enter into a warm and encouraging interaction with their children and increase the risk of negative or punitive behavior”. It may be said that in the economic situation of the family shall not be held responsible only family members, but also state, that affects the functioning of the family through its social and family politics. On the other side, the family with its biological function affects the population policy of the state within which to deal with current demographic problems.

Preventive measures, the mean of protecting children's rights

Pavelková and col. [6] defines upbringing as “right and duty to govern the conduct of a child, to use the appropriate means in order not to affect the dignity of the child and in any way harm his health, his mental, physical, emotional, intellectual and moral development, and to exercise supervision over the child corresponding to the degree of his development.” The law understands under the term upbringing, the development as physical as well as mental abilities of the child. Upbringing, however, is a wider range of rights and duties, compared with personal care, which provide the child with basic needs. The term upbringing consists, in addition to the normal needs of the child, of granting the right to emotional development, intellectual development, health care,

influence its behavior, child care and education, decisions about the child, as determined by Art. 41 of the Constitution, § 178 paragraph. 1 CSP, as well as Art. 29 paragraph. 1 of the Convention on the Rights of the Child.

Therefore, a proper attention is given to the upbringing not only in terms of theory, but also in terms of legislation in force. Despite all the efforts, in the natural family environment, it is necessary to take measures, that is such interventions in favour of the child, which will eliminate the negative impact of some of the family members or the family as a whole. If necessary and if it is in the interest of the child, it can be used as one of the types of measures aimed at isolating the child from negative influences (in the case if the child is left without any care, danger to life or health of a child - torment, abuse).

But this is a breach of the rights of the child only unless clearly necessary, because modern progressive trends have their place also in protecting the interests of the child, which can be confirmed by finding new, but also the upgrading of existing educational methods and programs enshrined in existing legislation (Act no. 305 / 2005 Coll.). Given the practice is questionable whether it is desirable to create differentiation criteria for creating new concepts of educational programs, which form the basis for the preventive protection of the child in the framework of existing legislation. By setting criteria for the evaluation of educational programs for the purpose of removing the social causes of the failure of those responsible for the upbringing of the child, the level of protection of children's rights should be increased, as illustrated by the data of the survey of the table of the Ministry of Labour, Social Affairs and Family of Slovak republic.

		Group programs									
		2010		2011		2012		2013		2014	
		the number of children	the number of involved parents resp. persons who personally caring for a child	the number of children	the number of involved parents resp. persons who personally caring for a child	the number of children	the number of involved parents resp. persons who personally caring for a child	the number of children	the number of involved parents resp. persons who personally caring for a child	the number of children	the number of involved parents resp. persons who personally caring for a child
	Educational group program	222	75	215	120	192	114	298	264	283	119
	undertaken by the office	12	0	9	0	0	0	6	6	7	0
	thereof undertaken with the alternative care	210	78	206	120	192	114	292	258	276	119
	Social group program	154	66	239	199	251	142	145	98	186	36
	undertaken by the office	10	6	0	0	0	0	0	0	23	0
	thereof undertaken with the alternative care	144	57	239	199	251	142	145	98	163	36
	Educational and recreational group program	765	298	820	486	708	342	614	361	518	177
	undertaken by the office	25	59	24	0	0	0	0	0	16	0
	thereof undertaken with the alternative care	740	277	796	486	708	342	614	361	502	177

We can conclude, that the fault behavior in individuals is influenced by biological premises, that is the genetic equipment, family environment, as well as the fact that parents are not able to fully fulfill their parental role, but also the social environment (its value system, the nature of ideology, economic potential) that either with its tolerance or negative impact disrupts or hinders the normal child development. Authors Olah and Roháč [5] place importance on the protection of minors in educational, legal, psychological and sociological aspects. Both legislation and practice prefer preventive measures to repressive measures to protect the rights of minors.

For implementing preventive measures it is necessary for its implementation also the material means, in addition to professional supervision. Prevention is dependent on state power, market and civil society, as well as on the forecast of the institution concerned, which deals with those issues. To create the balance between the governmental, the private and the non-profit sector and to begin its active participation in running the prevention programs on child protection and co-creation of the conditions for the implementation of preventive measures, it is essential to have a financial coverage. It is necessary to support the efforts of individuals to solve the current problems of the Society. Problems of families with minor children are enhanced by new phenomena such as unemployment, low income, lack of access to housing, one of the parents work abroad and other objective causes that threaten the integrity of the family and thus the upbringing and care of children.

Although terms of the legislation in force, the conditions for the protection of children's rights from a methodological point of view, within the forms and methods, and the approaches to work with children at risk of social pathological phenomena has been improved, it can be observed imbalance in respect of preventive measures as means to prevent these phenomena and repressive practices.

Causes, as well as the consequences can be sought precisely in insufficient economic conditions of families with minors, that do not allow them to visit organized free-time activities filling up the free time during the child's parents workload. Especially the of the centers is multisource. State participates in the financing of accredited centers, in amount of 80% of the proven costs.

Institutions with skilled professionals, who are working with young people constitute one of the main mechanisms of prevention among children. Therefore the activities within the competence of the state

policy towards youth shall be welcomed, which lead to the creation of leisure centers whose establishment, which establishment is governed by Act no. 282/2008 Coll. on support of the work with youth and on the amendment of Act no. 131/2002 Coll. on universities and on amendments to certain acts as later amended by the Act no. 375/2013 Coll. Funding

Despite all preventive measures, parents not always fulfill their parental duties in relation to minor children. The reasons may be of an objective as well as subjective character. The situation can be resolved by the decision of the authority for social protection and social guardianship ordering the educational measures in accordance with § 12 of Act no. 305/2005 Coll. or in accordance with the § 37 of Act no. 36/2005 Coll. The lawmaker determines the conditions under which the competent authority may impose educational measures to avoid the negative behavior of the the child, whose behavior violates the rights of others, that are, the individuals or society as a whole, as well as the behavior of the child's parents that negatively affect child development. Parents or legal person to whom the child was entrusted to the personal care, as well as other individuals that interfere in education and child care, can influence a child's upbringing by thier conduct, but also by their passivity, that is, failure to perform their duties or abuse of their rights in relation to the child.

From the point of view of the procedures mentioned above, the competent authority, which is the Court, as well as the authority of child protection and social guardianship, may impose educational measures to the child or his parents or person holding the child in his custody by a court decision. The Act no. 36/2005 Coll. within the provisions of § 37 may order given educational measures so that:

- "Shall warn young child, his parents and individuals whose behavior threaten or interfere the child's proper upbringing in appropriate manner,

- Decide about the minor's upbringing supervision; supervision is carried out mainly in cooperation authority for social and legal protection of children, municipalities, schools, non-governmental actors and institution in which the minor child is placed,

- impose to a minor child restriction in a limited extent necessary for the prevention andto avoid harmful influences which may endanger or disrupt his positive development; compliance of the imposed restriction is supervised by the cooperation of the municipality,

- impose to a minor child and his parents the duty to undergo social counseling or other expert advice. “

If necessary in the interest of the child, because the educational measures did not lead to reparation, the court shall take a child away from parents or person who has the child in his custody and shall order to stay for the period no longer than six months in a institution that provides the specialised diagnostics, or in case of drug or other addictions shall arrange a specialised help within the same time period in institution, which provides the re-socialization programs to implement a resocialisation programs.

Court is entitled to impose to the person responsible for the child's upbringing, a cooperation with the institutions and other entities that provide the social and legal protection of children, or other duty. Court monitors the effectiveness of educational measures in cooperation with all entities competent in the field (authority for social and legal protection and social custody, municipality, non-governmental body, the relevant institution).

Competences of the authority of child protection and social custody in the field of educational measures are stipulated in § 12 of Act no. 305/2005 Coll., as well as Act no. 453/2003 Coll. on state administration in the field of social affairs, family and employment services and on amending and supplementing certain acts as amended. The authority of social and legal protection of children and social custody can impose the following educational measures:

“a) warns, in an appropriate manner, the child, the child's parents or the person who has a child in custody, if their behavior may threaten or disrupt the positive mental development, physical development and social development of the child,

b) imposes to the child to undergo the diagnosis of specialized ambulatory care, if it is necessary to apply adequate measures of social and legal protection of children and social custody for children and the diagnosis can not be provided by other means,

c) imposes the duty to the child to participate in treatment in specialized ambulatory care,

d) imposes the duty to the child to participate in an educational program or social program. “

To the parents or to the person having a child in his custody, the competent authority for social and legal protection and social custody may impose a duty to cooperate with the institutions and other entities that perform social and legal protection of children, or other duty.

Warning of the child, child's parents or other person in whose care the child is, is an used educational measure for less serious violations of rights and duties. Professional diagnostics in specialized ambulatory institutions is used in case of defects of the behavior of the child, or the consumption of narcotics and psychotropic substances.

To the expert diagnosis is related also an other form of educational measure - treatment in specialized ambulatory care. It refers to the treatment of addictions in ambulatory institutions set up for this purpose.

The authority of social and legal protection and social custody can impose, the same as the court, a duty to cooperate with the relevant institutions, as an other appropriate duty in favour of the child's rights.

Participation in educational or social program is a commonly used measure in the case of a child who lives in unsuitable family environment, whether in terms of hygiene, social contacts and so on. The bodies of social and legal protection and social custody, which organize educational programs with an individual focus on specific excluded groups (Roma community, physically disadvantaged people and so on.) offer a child, as his parents specific activities that affect not only the child, but comprehensively the family as a whole. Educational measure may be carried out by the body social and legal protection of the child and social custody itself, municipality, as well as an accredited entity.

Division of competences in the field of educational measures between the court and the authority of social and legal protection and social custody may seem redundant. It can not, however, omit to think about, what reason had the lawmaker when setting up this manner of distinguishing the measures addressed to the both parents, as well as to the child. Even the co-operation of the court with authorities of social and legal protection and social custody in tracking the effectiveness of educational measures ordered by the court itself, gives room for better implementation of educational measures.

The provision of the § 13 Act no. 305/2005 Coll. widens the circle of entities that may be involved in meeting the objectives of educational measures. In addition to the authority for social and legal protection and social custody, the municipalities, towns, cities and autonomous regions contributes to those measures as well within the defined competencies. It may also be an accredited entity, an individual or a legal person who has acquired competencies in the accreditation procedure.

Educational measures are more of preventive nature, although their punitive character can not be denied. A legal duty is to review the purpose of educational measures in the time period specified in the Act. If the competent authority finds that educational measures do not fulfill the purpose for which they were ordered, may restrict the rights of the child and his parents by some other measure.

	Educational measures														Contribution of alternative care
	2010							2011							
	number of							number of							
	children	from that from the reason of the social custody from the column no.1	parents, or the persons who have the child in their care	imposed educational measures	cancelled educational measures together in current year	from that from the column no.5 imposed in previous years	number	children	from that from the reason of the social custody from the column no.1	parents, or the persons who have the child in their care	imposed educational measures	cancelled educational measures together in current year	from that from the column no.5 imposed in previous years	number	
a) Educational measures imposed by the body of social and legal care and social custody (SPOD) according to the Act no. 36/2005 Coll. on family	1	2	3	4	5	6	7	1	2	3	4	5	6	7	
Warning	451	523	214	526	162	36	102	233	159	200	202	168	93	64	
Duty to take part in treatment in specialised ambulatory care	202	149	166	164	85	21	2	105	80	130	105	99	45	3	
Duty to take part in educational or social program	3	2	7	3	0	0	0	2	1	1	2	16	16	14	
Duty to undertake specialised diagnostics in specialised ambulatory care	207	167	0	151	73	13	100	100	68	67	79	47	29	40	
Duty to undertake social counseling and specialised advise in spec. institutions	10	5	15	8	5	1	0	16	10	2	16	6	3	7	
b) Educational measures imposed by the SPOD according to the Act no. 36/2006 Coll. on family	358	227	266	258	199	116	9	332	193	194	223	145	84	15	
Warning	111	102	131	104	74	46	1	87	84	86	74	64	38	0	
Supervision	225	106	125	131	116	69	8	212	99	108	134	78	44	13	
Restriction	0	0	0	0	2	0	0	0	0	0	0	0	0	0	
Duty to undertake social counseling and specialised advise in spec. institutions	22	19	10	23	7	1	0	13	10	0	15	3	2	2	
Together educational measures imposed by the SPOD (a)+b)	789	550	480	584	361	152	111	535	352	394	425	313	177	79	
c) Educational measures imposed by the court	605	215	267	348	199	129	41	748	345	334	497	232	179	17	
Warning	33	7	37	12	2	2	3	64	49	38	48	8	4	6	
Supervision	382	91	137	182	93	82	23	428	135	168	256	140	122	7	
Restriction	3	2	2	2	2	2	0	1	1	2	1	0	0	0	
Duty to undertake social counseling and specialised advise in spec. institutions	20	9	27	16	10	6	1	60	15	66	37	7	10	3	
Stay in institution of specialised diagnostics	121	72	48	95	68	28	10	109	83	38	90	47	26	7	
Stay in specialised institutions	16	8	6	12	17	5	0	45	28	12	31	17	8	0	
Stay in socialisation center for drug addicted people	30	25	10	29	9	4	4	41	34	10	34	13	9	0	
	2012							2013							
	number of							number of							
	children	from that from the reason of the social custody from the column no.1	parents, or the persons who have the child in their care	imposed educational measures	cancelled educational measures together in current year	from that from the column no.5 imposed in previous years	number	children	from that from the reason of the social custody from the column no.1	parents, or the persons who have the child in their care	imposed educational measures	cancelled educational measures together in current year	from that from the column no.5 imposed in previous years	number	
a) Educational measures imposed by the body of social and legal care and social custody (SPOD) according to the Act no. 36/2005 Coll. on family	1	2	3	4	5	6	7	1	2	3	4	5	6	7	
Warning	374	197	266	255	176	59	75	394	179	136	247	159	60	80	
Duty to take part in treatment in specialised ambulatory care	231	111	184	159	120	37	14	267	85	126	152	110	38	4	
Duty to take part in educational or social program	0	0	0	0	1	1	1	0	0	x	0	0	0	0	
Duty to undertake specialised diagnostics in specialised ambulatory care	132	77	72	87	51	21	58	117	87	x	85	44	22	75	
Duty to undertake social counseling and specialised advise in spec. institutions	11	9	10	9	4	0	2	10	7	x	10	5	0	1	
b) Educational measures imposed by the SPOD according to the Act no. 36/2006 Coll. on family	334	193	148	228	141	78	5	479	162	34	243	123	59	9	
Warning	84	68	59	59	58	34	0	70	35	29	49	33	16	2	
Supervision	211	86	71	131	71	38	5	378	119	x	164	86	42	4	
Restriction	0	0	0	0	1	0	0	0	0	x	0	0	0	0	
Duty to undertake social counseling and specialised advise in spec. institutions	39	39	18	38	11	6	0	31	8	5	30	4	1	3	
Together educational measures imposed by the SPOD (a)+b)	708	390	414	483	317	137	80	873	341	170	473	282	120	76	
c) Educational measures imposed by the court	799	347	88	541	257	152	22	696	320	71	489	195	130	24	
Warning	25	22	24	30	6	3	0	21	9	12	14	5	1	0	
Supervision	517	139	14	293	132	97	5	424	153	x	263	99	75	12	
Restriction	0	0	0	0	0	0	0	1	1	x	1	0	0	0	
Duty to undertake social counseling and specialised advise in spec. institutions	59	8	50	37	22	11	4	79	18	59	68	18	13	2	
Stay in institution of specialised diagnostics	111	97	0	101	56	19	5	83	72	x	70	36	16	3	
Stay in specialised institutions	27	23	0	24	16	6	1	28	18	x	20	15	5	1	
Stay in socialisation center for drug addicted people	60	58	0	56	25	16	7	60	49	x	53	22	20	6	

Educational measures							
	2014						Contribution of alternative care
	number of						
	children	from that from the reason of the social custody from the column no.1	parents, or the persons who have the child in their care	imposed educational measures	cancelled educational		
					together in current year	from that from the column no.5 imposed in previous years	
1	2	3	4	5	6	7	
a) Educational measures imposed by the body of social and legal care and social custody (SPOD) according to the Act no. 36/2005 Coll. on family	375	277	62	239	149	79	106
Warning	193	139	62	119	97	42	2
Duty to take part in treatment in specialised ambulatory care	0	0	x	0	0	0	0
Duty to take part in educational or social program	174	130	x	112	47	34	104
Duty to undertake specialised diagnostics in specialised ambulatory care	8	8	x	8	5	3	0
b) Educational measures imposed by the SPOD according to the Act no. 36/2006 Coll. on family	425	273	46	209	134	81	3
Warning	65	60	32	52	39	15	0
Supervision	339	196	x	137	86	61	2
Restriction	1	1	x	1	1	0	0
Duty to undertake social counseling and specialised advise in spec. institutions	20	16	14	19	8	5	1
Together educational measures imposed by the SPOD (a)+b))	800	550	108	448	283	160	109
c) Educational measures imposed by the court	709	469	36	471	200	144	7
Warning	27	24	10	18	10	6	0
Supervision	470	273	x	267	105	87	5
Restriction	0	0	x	0	0	0	0
Duty to undertake social counseling and specialised advise in spec. institutions	66	27	26	53	30	22	2
Stay in institution of specialised diagnostics	90	90	x	80	34	14	0
Stay in specialised institutions	13	13	x	10	6	3	0
Stay in resocialisation center for drug addicted people	43	42	x	43	15	12	0

Educational measures can be considered as preventive measures to prevent the exclusion of the child from the family environment, as illustrated by the table and the number of ordered forms of educational measures in relation to both the parents as well as minor children.

Institutional care - a form of alternative care

From the current legislation it is clear, that the authority of social and legal protection and custody is obliged to provide all conditions for proper physical and social development, especially there where the family environment failed to the extent that it is at risk of physical and mental development of the child and from this reason the “solution of the child care can not be postponed” (§26 paragraph. 2 of Act no. 305/2005 Coll.). As a threat it is considered also the fact that the child is left without any care of parents, legal guardians or persons established by a court decision. Placement of children outside the biological families is a measure of social protection if all other options to avoid negative impacts on the child has already been used.

With the court decision on placement of the child outside the family environment does not end the duty of the authority of social and legal protection and social custody to work with the family of the child and to participate in the rehabilitation of the family environment in order to return the child back to the natural family environment. The statistical data shows that the selection of a particular institution for the placement of children under the implementation of the court decision is given by law in force. However, the court on the basis of documents, finding out the real situation of the case, shall decide on the particular form and particular institution to which the child is placed.

Court when deciding about the custody of the child takes into consideration factors such as sibling ties, but also to the fact that affects parental contact with the child after placement (distance of the institution from the parents) in order to maintain family ties.

	2011										2012										2013										2014																	
	the number of children during the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution	to the January 1 of the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution	to the January 1 of the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution	to the January 1 of the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution	to the January 1 of the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution	to the January 1 of the year considered	the number of new placements of children during the year considered	the number of children together	the number of visits in the families(during the custody care in institutions)	the number of visits in institution																		
Crisis centers	166	337	199	223	504	515	254	356	146	271	375	558	273	336	171	241	450	570	222	329	1311	258	212	391	166	337	199	223	504	515	254	356	146	271	375	558	273	336	171	241	450	570	222	329	1311	258	212	391
Resocialisation centers	38	40	33	45	111	90	43	62	42	60	143	120	60	51	52	63	103	169	53	49	42	59	50	128	38	40	33	45	111	90	43	62	42	60	143	120	60	51	52	63	103	169	53	49	42	59	50	128
Diagnostic centers	40	73	54	43	111	90	46	101	61	75	171	130	60	67	72	42	141	110	30	62	41	38	62	58	40	73	54	43	111	90	46	101	61	75	171	130	60	67	72	42	141	110	30	62	41	38	62	58
Homes of social services	344	3	51	290	349	342	231	0	50	182	273	368	181	3	36	147	236	208	149	0	39	109	116	171	344	3	51	290	349	342	231	0	50	182	273	368	181	3	36	147	236	208	149	0	39	109	116	171
Foster homes	4098	887	999	4033	5326	4471	4266	967	1007	4358	5992	8777	4342	936	1015	4426	4359	8129	4280	790	866	4351	3002	8390	4098	887	999	4033	5326	4471	4266	967	1007	4358	5992	8777	4342	936	1015	4426	4359	8129	4280	790	866	4351	3002	8390
Reduction centers US	626	177	252	563	1136	949	537	197	199	563	1108	1086	562	162	197	520	946	981	510	152	737	439	843	807	626	177	252	563	1136	949	537	197	199	563	1108	1086	562	162	197	520	946	981	510	152	737	439	843	807
Reduction centers OV	45	45	10	57	89	86	53	13	19	52	115	107	54	10	21	42	66	61	43	15	16	39	47	52	45	45	10	57	89	86	53	13	19	52	115	107	54	10	21	42	66	61	43	15	16	39	47	52
Institutions for the execution of the decision together	5357	1579	1598	5256	7704	6550	5430	1696	1524	5571	8377	11146	5522	1565	1564	5491	6301	10228	5287	1397	1372	5293	4332	9937	5357	1579	1598	5256	7704	6550	5430	1696	1524	5571	8377	11146	5522	1565	1564	5491	6301	10228	5287	1397	1372	5293	4332	9937

§ 54 of the Act no. 36/2005 Coll. regulates institutional care with taking into account the interests of the child. The quoted legislation in § 54 in paragraph 3 stipulates that “a serious threat or serious disruption of upbringing of the minor are not considered poor housing conditions or financial circumstances of the parents of a minor child.”

This is a new provision amended with effect from 1/1/2016 within the recodification of Act no. 36/2005 Coll., which does not consider a serious threat to be the problems with housing or financial situation of families, which undoubtedly has an impact on a young child. It may be discussed, however, whether inadequate housing, and economic situation indeed endanger the health and life of the child, that is whether those reasons can not be regarded as seriously endangering the child’s upbringing. The actual practice shows that inadequate housing conditions and financial situation of families with minor children are involved in the health damage of minors, cause even their death (fires when using unsuitable radiators in unsuitable housing areas, poor housing conditions in shelters without heating, without heat insulation, unfavorable conditions for the preparation for school, truancy, etc.).

As already mentioned, law understands under the upbringing the development as physical as well as mental abilities of the child. The concept of upbringing is a wide range of not only rights but also duties of parents in relation to the child and to his needs. It is clear, that the term also includes the provision of adequate housing and nutrition and all needs related to the child’s needs.

It is believed that it would be more acceptable if the lawmaker adds to the mentioned provision the phrase “unless the law provides otherwise”, while subsequent provisions would regulate the conditions under which housing and financial circumstances are considered to be a serious threat or serious impairment of the child’s upbringing. Existing provisions of the Act evokes an interpretation that parents can stay with a child in unhealthy and abusive conditions, also do not need to provide a child any economic needs and thus they do not violate the right of the child to proper upbringing.

Perhaps the opinion can be expressed that the legislation and its application brings into the practice many question marks, whether its provisions are consistent with the best interests of the minor child and that just under a misinterpretation can violation of children’s rights happen.

Conclusion

Legislation and practice confirms that a healthy family climate is essential for a smooth and trouble-free child development. Therefore, the effort to current legislation in the field of social and legal protection also ensures a family environment that will meet all legally required attributes of the proper upbringing of the child. Another considerable element, which in addition to the family environment influences the child's upbringing, is the wider environment in which the child resides. Therefore reflection of the wider environment (school, leisure activities, cultural events, as well as groups with risk behavior) in which the child moves, can be as positive as well as negative factors for his upbringing and may even be a risk factor due to the nature of the group.

In this context it should be mentioned that the Family Act and the Act. 305/2005 Coll. authorise to execution of parental rights both parents, regardless of whether they are married or not. The Society puts this condition to the both parents, despite the fact that a healthy family environment may be at risk if the parents do not live together. Common household of the parents, as the most suitable model for raising children, may be disturbed also by the legitimate factors, such as work of one of the parents and thus the absence in the family because of the distance of the work place from the place of residence, but also disturbed family environment because of the child's parents divorce. In particular, the divorce is an intervention into the family environment, which is for a child difficult to accept.

To the competent authority for social and legal protection of children and social custody are obliged to examine whether by parents or at least by one of them there are conditions for the proper upbringing of the child. When deciding on the child's upbringing, the court relies mostly just on the opinion of the authority for social and legal protection and social custody, which has a duty to examine the conditions in which the child is raised in the terms of evidence.

From the present perspective, it is clear that the competent authorities of social and legal protection and social custody and the court will deal carefully with the issue of examining the environment in which the child will grow up. The most important question is, who is the best person for the child's upbringing, whether both parents or one of them, alternatively another individual who will be responsible in terms of law for the upbringing of the child.

Given the complexity of view, from the content of the contribution it is clear, that the Society has sufficient legislative and other means of guaranteeing the respect of the rights of minors.

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Additional list of applied legal rules

The Convention on the Rights of the Child published a notice in the Official Journal in form of The Notice of the Federal Ministry of Foreign Affairs under no. 104/1991 Coll.

The Constitution of the Slovak Republic Act no. 460/1992 Coll. as amended Charter of Fundamental Rights and Freedoms was adopted by the Federal Parliament of the Czech and Slovak Federal Republic through Constitutional Act. 23/1991 Coll.

Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Notification of the Ministry of Foreign Affairs of the Slovak Republic no. 380/2001 Coll.)

Convention on the Civil Aspects of International Child Abduction (Notification of the Ministry of Foreign Affairs of the Slovak Republic no. 119/2001 Coll.)
Act no. 36/2005 Coll. on Family and change and amendment of certain acts as amended

Act no. 305/2005 Coll. on social and legal protection of children and social custody as amended

Act no. 71/1967. on administrative proceedings (Code of Administrative Procedure), as amended

Act. 99/1963 Coll. - Code of Civil Procedure, as amended,

Act no. 282/2008 Coll. on support of the work with youth and on the amendment of Act no. 131/2002 Coll. on universities and on amendments to certain acts as later amended Act no. 375/2013 Coll.

Act no. 453/2003 Coll. on state administration bodies in the field of social affairs, family and employment services and on amending and supplementing certain acts as amended