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# Family and Current Sociolegal Measures for its Members in the Slovak Republic

## 1. Introduction

The family represents a community of close persons, among which there are close family bonds, psychosocial, emotional, economic and other ties. Even though the concept of a family is very variable in the social realm, one cannot overlook that the basis of family ties is traditionally just a biological link to the family's bloodline. The existence of the various forms and family resemblances during its historical development, does not preclude that the family remains the main determinant of sustainable social development. As stated in Bujdová: "The family is a unique and irreplaceable institution of the society, because it combines the personal interests of adults for the benefit of partners and children with a universal interest in the society on the stabilized

cohabitation of men and women and the socialization of relatives.”<sup>1</sup> The family is an ever-evolving group that is affected by socio-economic, demographic trends and factors at different levels. Over the last decades, the family has undergone significant changes. That is why in the scientific literature we come across different views of the family, whether from a scientific or non-scientific point of view and its various perceptions of society. The development of globalization, labour migration, study and the associated increase in the number of international families contribute to its transformation. Mixing of different customs, traditions, and often religions in international families may not only come up with positive responses. Some different attitudes may result in significant family conflicts. These often result in severe international family disputes in which children are particularly victims. One of the major trends of today is work abroad due to better financial earnings. The problem may be the fact that not only men, fathers of children, leave for work abroad, but for several years we are witnessing a significant increase in the number of such working mothers whose children remain with the wider relatives. This greatly changes the overall family behaviour, and this trend also brings about negative consequences that may also be related to various forms of family ties. Therefore, interventions by the state in a wide range of measures aim to provide the family and its members with the necessary professional assistance, support, but especially protection.

The State, within the system of family policy measures, declares the adoption of solutions for the reconciliation of work and family life, creating conditions for the harmonious development of families throughout the complex of tools for family policy. Therefore, it is necessary to emphasize the importance of the only form of family that has long been recognized in the Slovak society, namely that of a traditional marital family.

## 2. Family as a basic unit of society and its cardinal importance

The family is a multidimensional, complex and sensitive social phenomenon, so the relationship between family and society is very narrow. The life of society is reflected in the everyday life of the family, its members, and vice versa. It is easier to define the concept of a family as a group of people who are

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<sup>1</sup> N. Bujdová, *Alternative care in Slovakia*, Publisher: LIRAPRINT Ukraina 2015, p. 8.

connected by matrimonial or family relationship and a common way of life.<sup>2</sup> As a unique institution, the family, based on the diversity of its relationships and emotional backgrounds, provides an optimal environment for all its members, especially for children and their full development. Despite the changing socio-economic and social conditions, and constant changes in family life, the family continues to remain a stable body that is entitled to full support and assistance from the state.

For many years, the family has been the object of exploring different scientific disciplines that examine it from a variety of expert perspectives in order to find the most relevant and the most comprehensive definition, as well as its content and other attributes. Therefore, the diversity of definitions of this concept is not a surprising phenomenon.

In this paper, only a few definitions of family are suggested, from a sociological, psychological, pedagogical point of view, in order to focus on the field of legal theory.

Generally from a sociological point of view, a family in a traditional, narrower sense is defined as a group of people, which is connected by a kinship or eventual legal bond, such as adoption. The family can also be considered a group of people who declare their mutual attachment and live in a common household. The family is biologically significant to society and its existence is based on the primary care for children.<sup>3</sup> Also, according to other experts, the family is a primary social group based on the long-term, solidary coexistence of persons who are associated with a family bond and involve the coexistence of at least the parents and the child/children.<sup>4</sup>

An important point made from the psychological point of view, is that by the significant Czech psychologist, Prof. Matějček, who emphasized that “the family, despite the changes, is a very conservative social unit. Up to the present day, some traditional standards are being applied in the family and children are also being raised by them. These most basic principles and values still remain and are transmitted to the future. People will always love their children, they wish for them, and children will satisfy their basic

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<sup>2</sup> J. Lazar. et al., *Civil substantive law. 1st volume. Second complete and edited edition*, Bratislava 2018, IURIS LIBRI, p. 238.

<sup>3</sup> O. Matoušek, *Family as an institution and relationship network*, Third, extended and edited edition. Prague: Sociologické nakladatelství, 2003, p. 9-10.

<sup>4</sup> J. Jandourek, *Dictionary of sociological terms*, Praha 2012: Grada Publishing, a.s., p. 164 et seq.

needs by their presence. Most adults need to have children and children need their parents. It is a family that is at the beginning of the development of the human personality and influences the development of the child at its most sensitive stage. It is a pattern of interpersonal relationships that a child will bear in life and according to which it will consider all its other relationships.”<sup>5</sup>

Despite attempts to educate children in any other environment, similar to the family environment, all results confirm the truth that the family environment is irreplaceable. Prof. Gabura understands the family not as a set of individuals, but rather, as a system of relationships. If family members are able to work efficiently in an external environment and create an optimal social network, it is also due to positive experience of the family environment.<sup>6</sup> Therefore, the current form of the family and the attitude of society to the family is the result of the longer-term development, including the traditional cultural patterns of behaviour of its individual members.

In this respect, a pedagogical view is also important, which examines the family from the point of view of its educational impact on children from birth to adulthood. Therefore, the role of the family in child upbringing is irreplaceable and has a dominant role vis-à-vis other institutions. Family is the chronologically first institution that interferes and influences the life of a child. It is the family environment that “forms the basis of its personality, intellectual, social and cultural characteristics. The child needs to be loved, accepted, feel safe, have an adult pattern, show without hindrance and fear, have optimism in life, critical thinking and versatile development. Some experiences can only be gained by the child in the family, e.g. to be loved only because it exists. These experiences will later be reflected in the ability to find oneself.”<sup>7</sup> Therefore, the core of the proper family upbringing of a child is the family itself, in which, besides love, the values of mutual respect and consideration also belong to the basic values. Only a harmonious and happy family can create conditions for the healthy development of children.

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<sup>5</sup> Z. Matějček, *About the own family, stepfamily and alternative family*, Praha: Portál, 1994. Rádcí pro rodiče a vychovatele. p. 12 et seq.

<sup>6</sup> J. Gabura, *Family Theory and Family Process*, Bratislava: IRIS. 2012, p. 18 et seq.; *Strengthening Families*, eds. J. Stala, J. Garmaz, Kraków 2016; *The Contemporary Family: Local and European Perspectives*, eds. E. Osewska, J. Stala, Kraków 2015.

<sup>7</sup> P. Tománek, *Family – Education – Society: Challenges and Perspectives*, Tribun EU. 2015, p. 25-26.

A number of families are currently confronted with serious problems and the children are not only witnesses, but often also direct participants in their solution and decision-making.

Although the family is a legal concept but without a legal definition in the legal order of the Slovak Republic, it is subject to regulation of the legal order of the Slovak Republic. The constitutional foundations of family law, which regulate and adjust the relationship between married couples and family relationships, are enshrined in the Constitution of the Slovak Republic.<sup>8</sup> International treaties and legal acts of the European Union are also part of our legal order, in accordance with Articles 7 (2) and 7 (5) of the Constitution of the Slovak Republic.<sup>9</sup> Although family law in Europe remains the exclusive competence of individual Member States, migration of the population and the founding of international families requires a gradual convergence of some family law standards, while respecting the basic constitutional principles for marriage and the family of individual states. Major international family conventions and the protection of the rights of the child are primarily conventions of the UN, the Council of Europe and other international organizations.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) regulates e.g.: in Article 8 “(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” Further Article 12 of the

<sup>8</sup> Constitutional act no. 460/1992 Coll. Available at: [https://www.slov-lex.sk/static/pdf/1992/460/ZZ\\_1992\\_460\\_20170601.pdf](https://www.slov-lex.sk/static/pdf/1992/460/ZZ_1992_460_20170601.pdf) (22.08.2018).

<sup>9</sup> Article 7 (2) “The Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union. Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be executed by law or a government ordinance pursuant to Article 120, para. 2.”

Article 7 (5) “International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws.”

Convention states “Men and women who are marriageable, have the right to marry and to found a family, according to the national laws governing the exercise of this right.”<sup>10</sup>

In the UN Convention on the Rights of the Child (1989) is child protection highlighted in many provisions, e.g. Article 12 - the right of the child to express his or her opinion in all matters affecting the child, Article 16 - the prohibition of arbitrary or unlawful interference with his or her privacy, family and home of the child, Article 18 - the common responsibilities of both parents for the upbringing and development of the child in the best interests of the child.<sup>11</sup> The fundamental principle of the Convention in article 3 para. 1 gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The expression “primary consideration” means that the child’s best interests may not be considered on the same level as all other considerations.<sup>12</sup>

The Council of Europe, in a document entitled “The Council of Europe Strategy on the Rights of the Child for 2016-2021”,<sup>13</sup> emphasizes the importance of the family as a basic unit of society and a natural environment for the growth and well-being of children. Therefore, in accordance with the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, all necessary protection and assistance should be provided to families in order to fulfil their important role. The Charter of Fundamental Rights of the European Union regulates, e.g. in Article 7: “Everyone has the right to respect for his or her private and family life, home and communications,” under Article 9 “The right to marry and the right

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<sup>10</sup> Published as Statement FMZV no. 209/1992 Coll. Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/209/20100601> or <https://rm.coe.int/1680063765> (22.08.2018).

<sup>11</sup> Published as Statement FMZV no. 104/1991 Coll. Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/104/20021118> or <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (22.08.2018).

<sup>12</sup> In more detail: General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. Available: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en) (22.08.2018).

<sup>13</sup> 3. Available at: [www.coe.int/children](http://www.coe.int/children) (22.08.2018).

to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” Every child under Article 24 para. 3 “shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.” Under Article 33 para. 1 “The family shall enjoy legal, economic and social protection.”<sup>14</sup>

The legal order of the Slovak Republic contains a number of other international conventions and treaties relating to the family protection and its members.<sup>15</sup>

### 3. Constitutional regulation of family protection in the Slovak Republic

To a family, which performs indispensable functions in our state,<sup>16</sup> is state-guaranteed highest, constitutional protection. Although the concept of family or parenthood is unambiguously defined in Slovak legal theory, nobody doubts the fundamental importance of these institutions, even in the legal sense. Significant constitutional principles relating to marriage and the protection of family life are enshrined in the separate Article 41 of the Constitution of the Slovak Republic. According to Article 41 para. 1, marriage is defined as “a unique tie between man and woman. The Slovak Republic universally protects the marriage and helps its good. Marriage, parenthood and family are protected by law. Specialized protection of children and adolescents is guaranteed.” This amendment confirms and emphasizes the uniqueness of marriage as the bond of one man and one woman into a

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<sup>14</sup> Charter of Fundamental Rights of the European Union (2007/C 303/01, 2012/C 326/02). Available at: <https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=celex%3A12012P%2FTXT> [ (22.08.2018).

<sup>15</sup> For example: UN Convention on the Recovery Abroad of Maintenance (1956), the Hague Conference on Private International Law - the Convention on the Law Applicable to Maintenance Obligations (1973); The Hague Convention on the Civil Aspects of International Child Abduction (1980), the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and others.

<sup>16</sup> In particular, the biological-reproductive function, economic function, socialization function, emotional function, educational function, regulatory function, religious function, regenerative and relaxation function – see in: 13. P. Tománek, *Family - Education - Society: Challenges and Perspectives*, Tribun EU. 2015. p. 18-20.

permanent and harmonious life community, aimed at ensuring the proper education of children. It also means that rights and obligations arising out of marriage cannot be established otherwise. The so-defined constitutional definition of marriage and family is an explicit rejection of any other models and is contrary to the public order of the Slovak Republic. The whole society has a duty to protect this unique matrimonial tie all the time and to support its good. , Apart from marriage, parenthood and family the law also gives special protection to children and adolescents as guaranteed in the Constitution of the Slovak Republic.

National Family Law in Act no. 36/2005 Coll. on the Family and on Amendments to Certain Acts (the 'Family Act')<sup>17</sup> describes the above-mentioned institutes from the point of view of law. Under the fundamental principles of the Family Act, it is clearly established in Article 2 that "A family founded by marriage is the basic cell of society. The society universally protects all forms of family."<sup>18</sup> A natural family founded by marriage is considered to be the most appropriate environment for the healthy development of children while respecting their best interests. However, it should be remembered that the state is also obliged to protect and support families where the child/children live with only one parent (e.g. a family of widowed, divorced parents). Support for all forms of family is based, in addition to the international treaty, on the other constitutional principle in Article 41 para. 3 of the Constitution of the Slovak Republic, according to which "Children born in and outside the marriage have the same rights." This principle is respected not only in family law but throughout all national law. The international treaties binding on the Slovak Republic do not specify in more detail what the level and forms of assistance and support by the state are, but in relation to vulnerable family members,

<sup>17</sup> Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/36/2017070> (22.08.2018).

<sup>18</sup> Other fundamental principles in the Family Act concerning marriage, parenthood and family, based on Art. 41 Constitutions of the Slovak Republic, are mainly: Article 1 – "Marriage is a tie between man and woman. Society protects this unique bond broadly and helps its good. Husband and wife are equal in rights and duties. The main purpose of marriage is to establish a family and to bring up children." Article 3 "Parenthood is an exceptional mission for women and men recognized by society. Society recognizes that for appropriate and harmonious development of the child, the family created by father and mother is the most suitable stable environment. Society provides parenthood not only protection but also necessary care, in particular material parental support and help in exercising parental rights and responsibilities."

especially children, it is necessary to take measures to implement them in the best interests of a child.

From the point of view of long-term changes, the degree of interference by the state into the sphere of family should be subject to a very deliberate, society-wide consensus in line with family protection. As Tománek points out: “Family policy as part of social policy creates some background and certainty for the functioning of the family. Family functions should also be provided through state support and legislative action.”<sup>19</sup> Family policy should be at the centre of interest of the social policy of the state, with the consistent application of the constitutional principle of marriage as a unique tie between man and woman to protect society, to help its good.

Based on the above context, the Government of the Slovak Republic also declares, in the current Program Statement of the Government of the Slovak Republic - part Social Policy, that “it will support a family that is not only the basic cell of society but also the main bearer of basic human, cultural, social, civic and spiritual values. They consistently apply solutions that enable them to fulfil their mission in fulfilling their duties. The government will strengthen the financial support of the care for relatives and close relatives of children, whose biological parents do not care for them in order to bring up as many of such children as possible in a family environment. At the same time, it will support the availability of various forms of assistance to endangered and risky families with children aimed at supporting the fulfilment of family functions, and will continue the process of deinstitutionalisation of substitute care, including childcare assistance for their parents, or more precisely the return of children to parental care. When submitting drafts of laws, they will consider their impact on marriage and family, particularly from a social, economic and financial point of view. Family support is seen as a priority tool to address negative demographic development.”<sup>20</sup>

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<sup>19</sup> P. Tománek, *Family – Education – Society: Challenges and Perspectives*, Tribun EU, 2015, p. 358.

<sup>20</sup> See the Program Statement of the Government of the Slovak Republic for the years 2016–2020, p. 39-40. Available at: <http://www.vlada.gov.sk/programove-vyhlasenie-vlady-sr-na-roky-2016-2020/> (22.08.2018).

#### 4. Sociolegal measures of the state for the family members

As discussed above, the present family is affected by a wide range of negative events that, without the quality of internal family mechanisms and also without external forms of assistance, jeopardize its core functions. Different long-term family problems and their frequent ignorance by family members, inadequate family support, and others, cause paralysis of a family that is getting into, not only, a material but also spiritual and value crisis. The persistent consequences of family members' unemployment, their low qualifications, insufficient motivation and loss of responsibility to deal with the situation combined with different forms of dependency are relatively often the causes of family reliance on state assistance.<sup>21</sup> In accordance with the respect for private and family life, the state interferes with family life to the extent necessary to provide professional assistance, support and protection for the family and its individual members, in particular the most vulnerable group which is composed of the children. Family members are considered, in the Slovak national law, as persons living together in a common household and are called 'close family.' The Family Law as a core family-law standard regulates the basic areas of family-law relationships that elaborate the constitutional principles of marriage and family. These are relationships between spouses, relationships between parents and children (and other relatives), and relationships imitating them (including adoption); the last group is relationships that replace the exercise of some parental rights and duties (guardianship, custody, foster care, and entrustment of a child into substitute personal care). Another amendment to the Family Act<sup>22</sup> introduced a number of fundamental changes since 1 January 2016, including the introduction of the principle of best interests of the child, the legal sequence of forms of substitute care, the specification of reasons for institutional care, the mediation of child adoption, the regulation of educational measures (especially educational measures of a residential character). Some institutes of family law are further elaborated in a separate legal regulation, which is the Act no. 305/2005 Coll. on the Social Protection

<sup>21</sup> In more details: 13. P. Tománek, *Family – Education – Society: Challenges and Perspectives*, Tribun EU. 2015, p. 315-320.

<sup>22</sup> Act no. 175/2015 Coll. amending Act no. 36/2005 Coll. on the Family and on Amendments to Certain Acts, as amended, and amending certain laws. Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/175/20160701> (22.08.2018).

of Children and on Social Welfare, and on Amendments of Certain Acts as amended (the 'Act no. 305/2005 Coll.').<sup>23</sup>

Act no. 305/2005 Coll. is a *lex specialis* act of a public law nature which, under Section 1 (1) lays down measures for the social-legal protection of children and social guardianship (the "measures") :

- ensuring the protection of the rights and interests of the protected interests of children in accordance with the Convention on the Rights of the Child;
- preventing the emergence of crisis situations in the family and limiting and eliminating negative impacts;
- prevention of the exacerbation and recurrence of mental development disorders, physical development and social development of children and adults;
- avoidance of socio-pathological phenomena.

According to Section 3 para.1 of Act no. 305/2005 Coll. these measures are implemented for "a child, an adult, a family, a group and a community, in particular through social work, methods, techniques, and practices corresponding to the knowledge of social sciences, and knowledge of the state and development of socio-pathological phenomena in society."

The primary objective of social-legal measures for a specific group of children is that their primary protection is essential to the well-being of the child and respects the best interests of the child, and to provide the necessary support to families so that children can grow up and be educated in a family environment in the care of their parents. However, these measures cannot in any way replace the parental responsibility arising from the fulfilment of their statutory parental responsibilities.<sup>24</sup> Social-legal measures are also intended for those children who can not be raised in their own v AZfamily and it is therefore the responsibility of the relevant entities to provide the child with a substitute family environment.<sup>25</sup>

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<sup>23</sup> Available at: <https://www.slov-lex.sk/pravnepredpisy/SK/ZZ/2005/305/20180401> (22.08.2018).

<sup>24</sup> Under Section 28 (1) of the Family Act are part of parental rights and obligations in particular a) continuous and consistent care for the upbringing, health, nutrition and all-round development of a minor child, b) representation of a minor child, c) administration of the minor child's property.

<sup>25</sup> See Section 1 (2) of Act no. 305/2005 Coll.

The current revised law<sup>26</sup> with effect from April 1, 2018 (some provisions of the law to come in force January 1, 2019) has responded not only to the improvement of the measures resulting from the amendment of the Family Act, the Program Statement of the Government of the Slovak Republic, but especially the application in practice which has highlighted the need of professional services for children and their families (ambulatory and field), including the need to modify the conditions for the performance of the measures in the facilities, the clarification of the requirements to keep records, the conditions to grant the accreditation of bodies and the obligations of accredited bodies and others.<sup>27</sup>

Act no. 305/2005 Coll. regulates a whole range of measures to rehabilitate the family environment. This variety of measures allows decision-making bodies to provide assistance and support in a targeted, appropriate, effective and rapid manner, depending on the specific situation of the child or family, always respecting the rights of the child and family members. Depending on the specific situation, the measures are provided in ambulatory, field and residential form, based on court decision or agreement, according to clients' needs in the territorial districts of the authorities of the social and legal protection of children (the 'SPOD'). The forms of measures can be appropriately and purposefully combined.

In view of the broad scope of all the measures set out in this legal regulation, this paper focuses only on the groups of measures which are very frequently applied in national practice.

Measures to prevent the emergence of crisis situations in the family are defined in Section 10 of this Act with the main focus on organizing or mediating participation in programs, trainings and activities, including self-help activities aimed at supporting the fulfilment of parental rights and duties, performing family functions, strengthening relations between spouses, parents and children, the ability to solve problematic situations, programs aimed at preventing socio-pathological phenomena, mediating cultural interest and other activities aimed at promoting the appropriate use of children's free time.

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<sup>26</sup> Act no. 61/2018 Coll., amending Act no. 305/2005 Coll.

<sup>27</sup> See more in: 21. Explanatory Report - General section on the Government Bill amending Act no. 305/2005 Coll. Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=6588> (22.08.2018).

Another group of measures, as defined in Section 11 (1) of this Act are measures to limit and eliminate negative impacts threatening the psychological development, physical development or social development of a child and an adult, in particular offering or mediating assistance to a child, parent or other adult in addressing educational problems or family problems, to monitor the negative impacts on children and the family, to identify the causes of their occurrence and implementing measures to limit the impact of adverse impacts, to organize or mediate participation in programs aimed at helping children and adult individuals threatened by a family member's behaviour or the behaviour of others, to prevent the social exclusion of children and adults in the environment in which they usually reside.

Also, in relation to the divorce (split-up) of parents, legal measures aimed at recommending social counselling to the child as well as to his/her parents are the option of recommending psychological assistance to parents in order to restore marriage or to help the child's parents avoid the unfavourable effects of divorce on the child. Psychological help can be provided or recommended to the child even after parental divorce, if necessary.<sup>28</sup>

If a family needs help because members are unable to solve family problems or conflicts, they have a specific problem, or if they are unable to cope with the new situation, the authority for the social and legal protection of children and the social guardianship (the 'SPOD body') will propose some of the expert methods e.g. to adapt to the new situation in the natural family environment, to support the resolution of educational problems, social problems and other family and interpersonal problems, to support the renewal or development of parental skills, and others mentioned in Section 11 (3) of this Act.

The group of measures that are on the border of prevention and the intervention of the state into the legal relationship between the parent and child include educational measures. The power to decide on them falls within the competence of the SPOD and the courts.<sup>29</sup> Among experts, the first group of educational measures is called '*soft*' measures. These are the most profound educational measures that are regulated in Section 12 (1) of

<sup>28</sup> More specifically, Section 11 (2) of Act no. 305/2005 Coll.

<sup>29</sup> J. Lazar. et al. 2018. Civil substantive law. 1st volume. Second complete and edited edition, Bratislava 2018, IURIS LIBRI, p. 412 et seq.

Act no. 305/2005 Coll. The imposition of measures from this group is solely decided by the SPOD in the administrative procedure. If necessary in the interest of the child, the SPOD can properly alert the child, his/her parents or the person who personally cares about the child that their behaviour can threaten or interfere with the child's development, furthermore, require members of the family (including the child) to undergo specialist diagnosis in specialized outpatient care, to impose a child's obligation to attend specialized outpatient care, based on the recommendation of a specialist doctor, to require members of the family (including a child) to participate in an educational program or a social program. The second, more stringent group of educational measures, which are regulated in Section 37 (2) of the Family Act (admonition, supervision of minors, restrictions, social or other professional advice) may be imposed either by a court or the SPOD body. If the imposition of the educational measures provided for in Section 12 of Act no. 305/2005 Coll. or in Section 37 (2) of the Family Act, the SPOD body may not take the child out of the family by deciding to impose an education measure. The decision to impose the most serious, *'hard'* educational measures fall within the exclusive jurisdiction of the court. There is an exceptional measure (the term "court stay"), which is the temporary removal of a child from the family, if necessary, in the interest of the child and if previous educational measures do not lead to rectification. Under Section 37 (3) of the Family Act, the court, on the basis of an assessment of necessity, orders the child to stay in a specialized facility for the purpose of providing professional diagnostics for a maximum of six months or for the child's professional assistance or for ensuring adjustments of family and social relationships in the facility for a maximum of six months or resocialization of drug addiction and other addictions in the facility that carries out resocialization programs for drug addicts and other addicts.

Control mechanisms to assess the effectiveness and efficiency of educational measures with the participation of designated bodies are provided by statutory standards. In the case of the ineffectiveness of educational measures in practice and persisting problems in the family, the court may interfere with the exercise of rights and obligations of the child's parents or the person who takes care of the child personally, but always in the best interest of the child.

The most serious measure in our law system is to take the child from his/her permanent family environment and to place them in alternative care or adoption. The Slovak Republic fully respects Article 20<sup>30</sup> and Article 21<sup>31</sup> of the UN Convention on the Rights of the Child concerning alternative care for the child and adoption. In accordance with international and constitutional principles, the Family Act defines three legal forms of alternative care, which are:

1. alternative personal care
2. foster care
3. institutional care

These three legal measures follow up each other, but they replace only the personal care of parents of a minor child. They do not replace the parental responsibility itself, which is still preserved and cannot be cancelled by the alternative care judgement. Alternative care does not create a relationship between the child and the alternative parent identical to that between the child and its parents, and the relationship of the child particularly with the original family are not interrupted.

Adoption is a special legal means which is not a part of alternative care forms. In the systematics of the Family Act, adoption is classified as a separate institute. Our family law is based on the principle that the exclusive function of adoption is to create a new family environment between adoptive parent and the adopted child (just a minor child under 18 age old). Adoption can

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<sup>30</sup> Article 20 CRC: "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (22.08.2018).

<sup>31</sup> Article 21 CRC: "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;" Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (22.08.2018).

be understood as creating a relationship between the adoptive parent and the adopted child which is equal to that of a child to its biological parents. Between the adopted child and relatives of the adoptive parent a kinship is established. There may be no blood relationship between the child and the adoptive parent - this condition is not stipulated by family law but is consistent in judicial practice. The adoptive parents may be natural persons only, whose lifestyle and other legal conditions guarantee a positive effect for the adopted child and society. The adoption judgement shall be taken by the competent court upon the proposal by adoptive parents. Adoptive parents have the same responsibility and the same rights and obligations in bringing up the child. Prior to the court's judgement regarding the adoption, the child must have been in the care of the future adoptive parent, at their own expense, for at least nine months. During this period the SPOD body shall examine the execution conditions of the pre-adoption care and the report is sent to the competent court.<sup>32</sup>

The institution of the family has a strong tradition in the Slovak Republic. This is reflected by the fact that the majority of children who cannot be brought up by their biological parents are entrusted to alternative family care of other family members, most frequently grandparents or other close relatives of children. The SPOD body arranges to find a new family environment for the child only when child care cannot be provided by other members of their family. The Family Act stipulates in Section 56 that alternative personal care and foster care always have precedence over institutional care.

In the procedures for alternative family care (foster care or adoption)<sup>33</sup> the SPOD bodies play important role and in specific measures, the accredited bodies indeed. The preparation of applicants for foster care or adoption is executed by the SPOD body or the accredited bodies pursuant to the accreditation granted by the Ministry of Labour, Social Affairs and Family of the Slovak Republic.

The most appropriate form of alternative family care is alternative personal care ("NOS"), which, as other forms of alternative care, is decided by the competent court. On the proposal of the SPOD organ or other

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<sup>32</sup> More specifically – the procedure in adoption cases under the Act no. 161/2015 Coll., Non-Contentious Civil Procedure Code. Available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/161/20160701](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/161/20160701) (22.08.2018).

<sup>33</sup> See Section 33 para 1 of Act no. 305/2005 Coll.

persons, NOS may be ordered only in those cases where parents do not provide or cannot provide personal care for the child, and the child cannot remain in that environment. The subjective reasons on the part of parents are e.g. alcoholism, drug addictions of parents, childlessness, abuse or neglect of a child, severe child-raising problems if its development is at risk. Objective reasons include, e.g. parent's death, very serious parental illness, imprisonment of the parent and others.

The State has a strong interest to support personal care and foster care, two forms of alternative family forms in accordance with the Program Statement of the Government of the Slovak Republic by increasing the financial contributions, legally addressed to the child and the alternative parent.<sup>34</sup>

In the alternative form hierarchy is institutional care listed as last legal possibility, an exceptional state measure. It applies if it is necessary to exclude the child from the family environment and to place him/her into the appropriate institution for child care. Under the Family Act, the competent court in the judgement ordering the institutional care must also namely mark the institution for the children in which the child shall be placed. During the institutional care procedure the court has always to take into account the emotional ties of a child to its parents, siblings and close relatives. The court will also take into account the possibilities of court enforcement to ensure that the family and close relatives can meet with the child, thereby preserving the family and emotional relationships of the child, his/her parents and siblings.

For the implementation of various forms of measures, resulting from Act no. 305/2005 Coll. a new kind of multifunctional facility for children and their families (from former childcare homes, crisis centres and resocialization centres) has been created under the title Centre for Children and Families (the 'Centre').<sup>35</sup> The Centres, with effect from January 1, 2018, will provide expert assistance and fulfil the purpose based on the selection of focus from the offer, but this must be in the context of local and regional needs. The Centre for Labour, Social Affairs and Family as the ultimate national SPOD body will be responsible for the minimum state

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<sup>34</sup> See more in the Act no. 627/2005 Coll. on allowances to support substitute care of a child in the wording of later amendments and supplements. Available at: <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2005/627/20160701> (22.08.2018).

<sup>35</sup> Section 45 et seq. of Act no. 305/2005 Coll.

aid network and its availability through accredited bodies. Centres within their legal spheres can also set up municipalities or higher territorial units. Certain statutory provisions regarding centres for qualitative improvement of assistance provided to children are specified in the new Decree to Act no. 305/2005 Coll.<sup>36</sup> The following years will be a testing period for a new legal regulation with the basic aim of improving professional support for children and their families.

Throughout whole process of alternative care or adoption, all relevant authorities, including SPOD bodies, must always take into account the paramount principle of our law which is the best interest of the child.

## 5. Conclusion

As mentioned above, the family is the first institution that shapes and influences the life of the child. That is why the expression of opinion by Prof. Matějček emphasizes the need to protect the family as a universal institution: “The family, despite the changes, is a very conservative social unit. Up to the present day, some traditional standards are being applied in the family and children are also being raised by them. These most basic principles and values still remain and are transmitted to the future.”<sup>37</sup> Therefore, the core of the proper family upbringing of a child is the family itself, in which, besides love, the values of mutual respect and consideration also belong to the basic values. Despite attempts to educate children in any other environment, other than the family environment, all the results confirm the old truth about the irreplaceable family environment. Only a harmonious and happy family can create conditions for the healthy development of children.

Family, as the oldest and basic social unit of society, is also subject to regulation of the legal order of the Slovak Republic. The constitutional foundations of family law, which regulate and adjust the relationship between

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<sup>36</sup> Decree no. 103/2018 Coll. - Decree of Ministry of Labour of Social Affairs and Family of the Slovak Republic no. 103/2018 Coll., which implements some provisions of Act no. 305/2005 Coll. on social protection of children and on social welfare and on the amendment and supplement of some laws as amended. Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/103/20180401> (22.08.2018).

<sup>37</sup> Z. Matějček, *About the own family, stepfamily and alternative family*, Praha: Portál, 1994. Rádci pro rodiče a vychovatele, p. 12 et seq.

married couple and family relationships, are enshrined in the Constitution of the Slovak Republic. Family policy as part of social policy of the Slovak Republic creates some background and certainty for the functioning of the family.

The fact that a variety of negative events are affecting the present family and its members, legislative measures need to be set in a targeted and effective manner. In accordance with respect for private and family life, the state interferes with family life only to the extent necessary to provide professional assistance, support and protection for the family and its members, in particular, the most vulnerable group – children.

In our contribution, we dealt only with some of the current social-legal measures regarding the main legislation in the Slovak Republic and their application in practice.

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