Parental Power Versus Parental Responsibility. Polish and East-Central European Case in Historical Perspective[1]

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Abstract:
Until the early 19th century, the selection of educational measures available to parents in relation to the children under their care was not usually legally restricted. A change in this issue can be observed with the emergence of family law regulations in European civil law codifications. In the case of the Polish territories that had been under Russian, Prussian/German and Austrian rule since 1795, the laws enacted on this issue were not of a native, Polish character, but were imposed by the three ruling states. Each of these laws, which were in force in the 19th century, explicitly referred to the parental authority. Due to the political distribution of power at the time, the same provisions (Russian, German and/or Austrian) were in force in other regions of East-Central Europe, which today constitute the territory of Estonia, Latvia, Lithuania, Belarus, Ukraine and Czechia. The exception to this was the Kingdom of Hungary (including present-day Slovakia), which enjoyed wide legal autonomy under the Austrian Empire and later the Austro-Hungarian Monarchy, as well as Kingdom of Romania (including present-day Moldova), which was creating its own legislation. The situation changed after the First World War, when newly established or reborn independent states adapted existing laws to their needs or enacted their own, and after the Second World War, when the whole of East-Central Europe found itself in the Communist Eastern Bloc. In that time, we can observe an increasing interference in the autonomy of parents, when, for example, in Polish provisions disciplining disappeared from the catalogue of explicitly mentioned

1 The present article is an expanded and enriched with new threads version of a speech that the author delivered at the 18th (Golden Jubilee) World Conference of the International Society of Family Law, held from 12–15 July 2023 in Antwerp, Belgium, under the title "Rethinking Law's Families & Family Law?".

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educational measures. Attention should also be paid to international law, especially the Convention on the Rights of the Child, and its implementation into the legal order of former socialist states. The author attempts to review and briefly summarize the regulations on parental authority in the basic legal acts in force in Poland and other East-Central European states throughout history.

Keywords: parental authority; parental responsibility; family law; children's rights; Poland; Central Europe; Eastern Europe

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1. Introduction

Throughout history parental authority in many legal systems has been unlimited and absolute, a characteristic of ancient times and the patriarchal family structure[3]. The father was not only free to determine and apply the chosen methods for the upbringing of his child and thus also to decide on his chastisement and punishment, but even to dispose of his child's freedom and life. With the development of family law in correlation with the development of human and children's rights, such powers gradually became subject to more and more restrictions.

In the codes and other laws regulating family relations in force in the Polish territories of the 19th century, as well as in other areas of East-Central Europe at that time, we no longer find provisions giving the rights of parents the character of absolute power over the child. Such inhumane and archaic rights as the ability to sell one's minor offspring or to freely dispose of his or her life were abandoned. New provisions also included the parents' duties towards their child, such as the duty to bring it up, feed it and clothe it. However, the possibility of disciplining the child for educational purposes, which amounted to physical discipline and was explicitly allowed as a right of the parent or guardian, was not abandoned.

In pre-partition Poland flogging was a traditional element of upbringing, irrespective of status, education or wealth[4]. The Polish Lithuanian Commonwealth left behind no written family law[5], while customary law and models widely promoted by moralists, teachers and the clergy of the time even encouraged a strict upbringing based on the corporal disciplining of the youngest[6]. Any interference with parental authority was considered highly

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3 BRĄGIEL, J. Historia zainteresowań przemocą wobec dzieci w odsłonach [The History of Interests of Child Abuse – in Scenes]. *Chowanna*, 2010, Vol. 1, pp. 51–52.

4 BOŁDYREW, A. Kara i strach w wychowaniu dzieci w polskich rodzinach w XIX w. [Punishment and Fear in the Upbringing of Children in Polish Families in the 19th Century]. *Dziecko krzywdzone. Teoria, badania, praktyka* [*Abused Child. Theory, Research and Practice*], 2009, Vol. 28, No. 3, p. 32.

5 FIEDORCZYK, P. Rozwój prawa rodzinnego na ziemiach polskich. In: GUZOWSKI, P. – KUKLO, C. (ed.). *Rodzina i jej gospodarstwo na ziemiach polskich w geografii europejskich struktur rodzinnych do połowy XX wieku*. Białystok: Instytut Badań nad Dziedzictwem Kulturalnym Europy, 2019, p. 222.

6 Regulations on the chastisement of children in the Polish lands throughout history have been described by the author of this paper in: TRUSZKOWSKI, B. K. Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś [Disciplining Children on Polish Territories. Legal Regulations from the 19th Century to the Present Day]. *Miscellanea-Historico Iuridica*, 2020, Vol. 19, No. 1, p. 41.

controversial and unpopular, so each successive enclosure was innovative and modern for its time[7]. It was not until the 1870s that the model of keeping the child disciplined without the use of aggression and violence began to be popularised. Such educational innovations were slower to reach the countryside and working-class communities, where violence was an everyday feature of family relationships even in the interwar period[8].

In other parts of Central and Eastern Europe, the autonomy of parents in raising their children in the 18th century was also very wide or almost limitless. In the nineteenth century, it began to be limited to the development of family law and the sciences of upbringing, although this was a gradual and slow process. In the nation states that emerged after the First World War on the ruins of the German Empire, the Austro-Hungarian Monarchy and the Russian Empire, the evolution of parental authority was not favored by political circumstances, which made it difficult or impossible to develop or adopt family laws suited to the needs of individual countries and nations. As a result, in this part of Europe, during the interwar period, 19th century regulations were still largely in force, on top of which they were often enacted by empires that had already collapsed. It may be regarded as a giggle of history that the dynamic development of family law did not take place in the individual countries of this region until after the Second World War, i.e. under the conditions of the undemocratic and Soviet-subordinated Eastern Bloc.

The present article is intended to be cross-sectional, organizing and outlining for the English-speaking reader the legal acts and the provisions concerning parental authority that were in force in the particular countries of Central and Eastern Europe[9], with particular emphasis on the communist era. Simply finding specific provisions can raise significant problems, the same applies to the determining period in which they were in force and the extent to which they were amended. Particular importance has therefore been attached to the indication of original titles of the acts, official journals or other publications where the text of the act in question can be found, as well as the dates of entry into force of the given provisions. The aim of the article is to highlight the most important regulations concerning parental authority in the individual countries studied and their most important amendments, as well as to compare them on a comparative-legal basis.

2. Parental authority in Poland from the 19th century to the present day

2.1 The partition period (1795–1918) and the Second Polish Republic (1918–1939)

The independent Polish state ceased to exist in 1795. Since that time, the recent Polish territories were governed by laws inspired or directly imposed, depending on the place and

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7 ŻÓŁCIŃSKI, Z. J. Zróżnicowane ramy prawne ojcowskiej władzy rodzicielskiej obowiązujące na ziemiach polskich w pierwszej połowie XIX wieku [Different Ranges of Paternal Power According to Binding Regulations Existing in Polish Territories in the First Half of the 19th Century]. *Biuletyn Historii Wychowania* [*The Bulletin of the History of Education*], 2013, No. 30, p. 43, 48.

8 LESZCZYŃSKI, A. *Ludowa historia Polski* [*A People's History of Poland*]. Warszawa: Wydawnictwo W.A.B., 2020, pp. 378–380.

9 Due to the extensiveness of the work, it does not discuss the legal order of countries that can be classified as both Central and Western Europe (Austria), or those that can be classified as both Eastern and Southern Europe (Bulgaria and the countries of the former Yugoslavia).

period in question, by the particular partitioners[10]. Given that, until the new political order that followed World War I, the territories of today's East-Central European countries were part of the three hegemons – the Russian Empire, the German Reich and the Austro-Hungarian Monarchy – the legal orders of these powers functioned there.

In the Polish state reborn in 1918, the 19th-century civil and family law regulations that had been developed and enacted by each of the partitioning powers remained in force throughout the entire interwar period (the Austrian ABGB of 1811[11], the Civil Code of the

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10 The oldest legal act regulating family relations in the 19th-century Polish lands was the Prussian Landrecht (General State Laws for the Prussian States, German: *Allgemeines Landrecht für die Königlich Preussischen Staaten*) functioning in the areas incorporated into the Kingdom of Prussia, which entered into force on June 1, 1794. Initially, for the former Polish territories, it had the character of subsidiary law, from 1797 it was the basic source of law there, which lasted until 1900, when it was replaced by the BGB. See: KOROBOWICZ, A. – WITKOWSKI, W. *Historia ustroju i prawa polskiego (1772–1918)* [*History of the Polish Political System and Law (1772–1918)*], Warszawa: Wolters Kluwer Polska, 2012, p. 23; WĄSICKI, J. Zabór pruski 1772–1806 [Prussian Partition 1772–1806]. In: BARDACH, J. – SENKOWSKA-GLUCK, M. (eds.), *Historia państwa i prawa Polski. Tom III* [*History of the State and Law of Poland. Volume III*], Warszawa: Wydawnictwo PWN, 1981, pp. 30–31; FIEDORCZYK, Rozwój prawa rodzinnego, p. 223. The scope of the Landrecht included, among others, territories of present-day Western Poland, Russia (Kaliningrad Oblast) and Western Lithuania. Under the Landrecht, parental authority belonged exclusively to the father, and the mother could only obtain greater rights over the child on a custodial basis. She was, however, allowed to raise the child on an equal footing with the father in the day-to-day upbringing of the child, except that the father was to decide on the main directions of the upbringing. The only limitation on the choice of disciplinary measures was that they were not harmful to the child's health, which must be considered a very general term and not protective of the child from violence not affecting the more serious disorder of his bodily functioning, not to mention damage to his psyche. See, among others: § 61–66, § 70–75, § 86–101, § 108–114, § 121, § 210, § 213–214, § 228–229, § 561–563, § 612–615, § 621–624, § 628, § 632, § 644–646, § 753–757, § 770. Original text: *Landrecht: Dritter Band. Allgemeines Landrecht für die Königlich Preussischen Staaten*. *Zweiter Theil, erster Band*, Berlin, 1821, pp. 149–156, 168–171, 212–223, 237–239.

11 The Polish territories under Austrian rule entered the 18th century with the West Galician Civil Code (German: *Westgalizisches Gesetzbuch* or *Bürgerliches Gesetzbuch von Westgalizien*), issued specifically for these lands by an imperial patent of February 13, 1797, which came into force on January 1, 1798. Its validity was later extended to Eastern Galicia, thus covering the entire area of the Austrian partition of the former Polish-Lithuanian Commonwealth. The Code was an instrument of liquidating the legal separateness of the seized Polish lands. Soon, the regional Galician regulations were replaced by the pan-Austrian ABGB, the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) of 1811. The scope of the ABGB included lands of Cisleithania (Austrian part of Austria-Hungary), among others territories of present-day Southern Poland, Western Ukraine, part of Northern Romania and Czechia. Under the ABGB, a paternalistic approach prevailed with regard to the relationship between parents and children, as paternal authority, by its very name, did not belong to the mother. The maintenance of the child rested primarily with the father, while the mother was to be responsible for the daily care of the child. Disciplining was permissible for both parents, but mere dissatisfaction with the child's behaviour was not sufficient, as situations in which it was permitted were listed. Although they were very general and rather exemplary in their wording, they should be seen as a limitation on the interpretative discretion of the parents, as they had to demonstrate, in theory, the basis for the chosen disciplinary measure. See, among others: § 139–145, § 166–178, § 196–198, § 211, § 216. Original text: 946. Patent vom 1ten Junius 1811. In: *Seiner Majestät des Kaisers Franz Gesetze und Verfassungen im Justiz-Fache. Für die Deutschen Staaten der Oesterreichischen Monarchie. Von dem Jahre 1804 bis 1811. Dritte Fortsetzung der Gesetze und Verfassungen im Justizfache unter seiner jetzt regierenden Majestät Kaiser Franz*. Wien, 1816, pp. 295–305.

Kingdom of Poland of 1825[12], the Russian Digest of Laws of 1835[13], the German BGB of 1896[14]). Despite the attempts made and drafts prepared throughout the interwar period, it was not possible to unify and codify civil law or family law, and legislation at that time was limited to interpretation or slight corrections of individual solutions[15].

2.2 Decree of 22 January 1946 – Family Law

The binding force of the individual post-partition regulations was quickly repealed after the Second World War. In the new political reality of communist-ruled People's Poland,

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12 Chronologically, the third (after Landrecht and West Galician Civil Code) legal act regulating family relations on Polish soil was the Napoleonic Code (French: *Code Napoléon*), in force in the Duchy of Warsaw from May 1, 1808. The Napoleonic Code was in force in parts of the former Polish-Lithuanian Commonwealth taken from the three partitioning powers by the French Empire, as well as in the early years of the Kingdom of Poland, established in 1815 by the resolutions of the Congress of Vienna. On the territory of this state, completely dependent on the Russian Empire, a new set of civil law was in force from 1826 – the Civil Code of the Kingdom of Poland (Polish: *Kodeks Cywilny Królestwa Polskiego*). The Code conferred parental authority on both parents, with the father's powers being more extensive. Both parents were empowered to discipline their children, for which the displeasure of either parent was sufficient, but there were also two restrictions on the well-being of the child. The first restriction was aimed at the physical protection of the child and his or her corporeality, while the second referred to principles and patterns outside the Code and related primarily to medicine, psychology and the science of upbringing. See, among others: Art. 336–345, Art. 467–468. Original text: Kodex Cywilny Królestwa Polskiego. In: *Dziennik Praw Królestwa Polskiego*, 1825, Vol. 10, No. 41, pp. 179–186, 257.

13 In the territories incorporated into the Russian Empire, family relations were regulated by Volume X of the Digest of Laws of the Russian Empire (Russian: *Свод законов Российской империи*), which came into force on January 1, 1835. In the lands of the former Polish-Lithuanian Commonwealth, it was in force from September 1840. On the one hand, the Digest of Laws granted parental authority to both parents, but on the other hand, it made the child so dependent on the parents (including adult descendants) that they were essentially legally handicapped. The legislation did not in any way specify the choice of disciplining measures or set limits to them. In addition, the possibility for children to complain about insults and personal insults against their parents, both civilly and criminally, was taken away. However, this did not apply to situations involving the commission of criminal acts by parents under the criminal laws, in which case the local authorities were obliged to provide the oppressed with appropriate care and the court to investigate the case in accordance with the criminal laws. See, among others: Art. 164–179. Original text: *Свод законов Российской империи. Том десятый. Часть I. Законы гражданские*. Санкт-Петербург, 1857, pp. 33–36.

14 From January 1, 1900, the provisions of the Prussian Landrecht were replaced by the All-German Civil Code (German: *Bürgerliches Gesetzbuch*). The scope of the BGB included territories of present-day Western Poland, Russia (Kaliningrad Oblast) and Western Lithuania. Under the BGB, as a rule, paternal authority was also vested in the mother, unless the father's opinion and will conflicted with her decisions. The only determination of the manner in which the father could discipline the children was the "appropriateness" of the choice of the means of upbringing, which could hardly be considered a sufficient limitation setting the framework for the proceedings. The court could assist the father in this matter, but only at his request, which reduced his actions in this case to an advisory function, not a protective one for the minor. On the other hand, situations in which not only the physical, but also the spiritual well-being of the child could be endangered were quite broadly defined. It did not explicitly mention chastisement, but, inter alia, abuse of custody and immoral conduct of the father, which were quite general but also broad terms. Very importantly, the harm to the child did not necessarily have to have already occurred, the mere threat of it was enough. This was a modern, innovative and broader approach to the subject of child protection, as it was intended not only to exterminate pathologies that had arisen, but also to prevent potential ones. See, among others: § 1601–1603, § 1617–1635, § 1665–1666, § 1673–1686, § 1697–1708. Original text: (Nr. 2321.) Bürgerliches Gesetzbuch. Vom 18. August 1896. *Reichsgesetzblatt*, 1896, No. 21, pp. 469–483.

15 FIEDORCZYK, Rozwój prawa rodzinnego, p. 229.

they were replaced by laws uniform for the whole country[16]. The Decree of January 22, 1946, was the first Polish legal act comprehensively treating the matter of family law. Despite attempts to rebuild the post-war country in the likeness of the USSR, the Decree was not modelled on Soviet law, in which the characteristic feature was the separation of family law from civil law and giving it the status of an independent branch of law[17]. In fact, the 1946 decree was a reworked draft of Professor Stanislaw Gołąb's from the interwar period[18].

The general direction of the relationship between parents and child was set by Art. 16, which proclaimed that they were obliged to support each other. There was no separation in the powers of the parents, as parental authority (Polish: *władza rodzicielska*) was to be exercised jointly by the spouses (Art. 20 § 1) until the child came of age (Art. 23). They were to exercise this power for the good of the child and in the interests of society (Art. 20 § 3) and in the event of disagreements, the guardianship authority (*władza opiekuńcza*) was to decide on disputes (Art. 20 § 2).

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16 Dekret z dnia 22 stycznia 1946 r. – Prawo rodzinne [Decree of 22 January 1946 – Family Law] (Dziennik Ustaw [Journal of Laws, further: Dz.U.] 1946 No. 6, item 52).

17 FIEDORCZYK, P. Radzieckie prawo rodzinne jako przedmiot recepcji w Polsce i innych państwach Europy Środkowo-Wschodniej [The Soviet Family Law as a Subject of Reception in Poland and in Other States of Central-Eastern Europe]. *Studia nad Autorytaryzmem i Totalitaryzmem* [*Studies of Fascism and Nazi Crimes*], 2009, Vol. 31, p. 355, 375. On the work on the Polish Civil Code in the first years after World War II, see: MOSZYŃSKA, A. Work on the Polish Civil Code in Stalinist Period (1948–1956). *Právněhistorické studie*, 2019, Vol. 49, No. 2, pp. 30–38.

18 FIEDORCZYK, Rozwój prawa rodzinnego, p. 232. It is worth mentioning more extensively the drafts regulating parent-child relations developed by the 1919-established Codification Commission (*Komisja Kodyfikacyjna*), specifically by the Subcommittee on Kinship and Guardianship Law (*Podkomisja Prawa o Stosunkach z Pokrewieństwa i Opieki*). Work on the unification of family and guardianship law had been underway since 1925, and the first unified draft by Prof. Stanislaw Gołąb became the subject of the Subcommittee's deliberations and was published in print in 1934. See: *Rodzina. Projekt działu polskiego kodeksu cywilnego o stosunkach prawnych rodziców i dzieci opracowany przez prof. Stanisława Gołąba* [*Family. Draft of the Section of the Polish Civil Code on the Legal Relations of Parents and Children, Developed by Prof. Stanislaw Gołąb*], Komisja Kodyfikacyjna [Codification Commission], Podkomisja Prawa o Stosunkach z Pokrewieństwa i Opieki [Subcommittee on Kinship and Guardianship Law], Zeszyt 1 [No. 1], Warszawa 1934; LECIAK, I. Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej [Polemics around codification of family and tutelary law in II Republic]. *Studia Iuridica Toruniensia*, 2013, Vol. 13, p. 81. The author of the project departed from the path laid out by the Napoleonic Code of recognizing the father's authority as supreme, with the rights and interests of the child being secondary. Further work by the subcommittee resulted in the preparation of a second version of the draft, expanded to include the issues of majority and legal capacity, as well as a separate draft on the Guardianship Office (*Urząd Opiekuńczy*). Both were jointly published in print in 1938. See: *I. Projekt prawa o stosunkach rodziców i dzieci wraz z przepisami o zdolności do działań prawnych. II. Projekt przepisów o Urzędzie Opiekuńczym. Uchwalone w pierwszym czytaniu przez Podkomisję Prawa o Stosunkach z Pokrewieństwa i Opieki Komisji Kodyfikacyjnej* [*I. Draft Law on the Relations of Parents and Children with Provisions on Legal Capacity. II. Draft Legislation on the Guardianship Office. Passed on First Reading by the Subcommittee on Kinship and Guardianship Law of the Codification Commission*], Komisja Kodyfikacyjna [Codification Commission], Podkomisja Prawa o Stosunkach z Pokrewieństwa i Opieki [Subcommittee on Kinship and Guardianship Law], Zeszyt 2 [No. 2], Warszawa 1938. The second reading of the drafts in the Codification Commision took place in January 1939, and further work on them was halted by the death of Prof. Gołąb in March 1939. They could not be resumed until the start of World War II. See: LECIAK, Polemika wokół, p. 83.

Parents were to bear the burden of raising their children, and the obligation to support them was to last until they reached the age of majority (Art. 18 § 1). The parents were to direct the upbringing of the child and were obliged to prepare the child for a future profession in accordance with his or her abilities and taking into account his or her physical and spiritual qualities and inclinations (Art. 24).

According to Art. 25 § 1, the child owed obedience to the parents until the termination of parental authority. Parents were empowered to discipline (*karcić*) their children, but without harming their physical or moral health and within the limits indicated by the purpose of upbringing (Art. 25 § 2)[19]. The protection of the child was to be served by Art. 40, which made it possible for the guardianship authority to issue corrective orders in the event of a parent neglecting his or her duties arising from parental authority or committing acts seriously endangering the welfare of the child. A prolonged obstacle to the exercise of parental authority could entail its suspension by the guardianship authority (Art. 41). On the other hand, parental authority could be withdrawn if a parent was unable to exercise parental authority, if he or she had committed neglect or abuse that made it impossible to continue exercising the rights deriving from it, or if the holder of parental authority had remarried (Art. 42 § 1). However, it could also be restored at the request of either parent (Article 42 § 2). Suspension or termination of parental authority did not, however, result in release from the obligation to maintain and raise the child (Art. 44 § 1).

The 1946 decree made it possible to discipline children, but this was clearly intended to serve an educational purpose, and the equalisation of parental rights also applied to this issue. The measures taken could not adversely affect the minor's health, a distinction being made between physical and moral health. The latter term can be described as rather surprising, since the psychology or spirituality, which has appeared uniformly interpreted in analogous provisions so far, has been replaced by morality. Such a change is a direct indication of the legislator's abandonment of the commitment to universal principles having their origin in religion, but also of the lesser importance attached to science in education. A vague morality, more in line with socialist ideals, was now to take the lead.

2.3 Act of 27 June 1950. Family Code

The provisions of the 1946 Decree were of remarkably short duration, as they were repealed[20] and replaced by the new Family Code as early as 1950[21]. According to its Art. 35, the parents were to have custody of the child's person and property, to take care of the child's physical and spiritual development, and to endeavour to provide for the child's maintenance and upbringing in such a way that, according to the child's talents, he or she was duly prepared to work for the good of society. Both parents were obliged to bear the burdens of the child's maintenance and upbringing (Art. 39 § 1).

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19 FIEDORCZYK, P. *Unifikacja i kodyfikacja prawa rodzinnego w Polsce (1945–1964)* [*Unification and Codification of Family Law in Poland (1945–1964)*]. Białystok: Wydawnictwo Uniwersytetu w Białymstoku, 2014, p. 61.

20 Ustawa z dnia 27 czerwca 1950 r. Przepisy wprowadzające kodeks rodzinny [Act of 27 June 1950. Introductory Provisions to the Family Code] (Dz.U. 1950 No. 34, item 309).

21 Ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny [Act of 27 June 1950. Family Code] (Dz.U. 1950 No. 34, item 308).

It was emphasised that parental authority was vested in both parents (Art. 56 § 1), and in the absence of one of them or if it could not be exercised, it fell to the other parent (Art. 56 § 2). The child remained under it until the age of majority (Art. 53), and it included in particular the right and duty to direct the children (*prawo i obowiązek kierowania dziećmi*), to represent them and to manage their property. Although the term "directing" can be associated as primarily managing legal and property affairs, it can also be interpreted as a basis for requiring certain attitudes from the child. Each parent could apply to the state authorities for assistance if the proper exercise of parental authority required it (Art. 55).

The guardianship authority could "safeguard" the child, which allowed it to issue appropriate orders in the event of improper exercise of parental authority (Art. 60). In particular, it could subject one or both parents to the restrictions placed on the guardian, it could also entrust the management of the child's property to a curator. The guardianship authority could even go one step further and suspend parental authority in the event of a temporary obstacle to its exercise (Art. 61 § 1) and terminate it in the event of a permanent obstacle, gross parental neglect or abuse (Art. 61 § 2). If neither parent had parental authority, a guardianship order (Art. 62) was established for the child, and the guardianship authority could even prohibit the parents deprived of parental authority from having personal contact with the child (Art. 63).

The 1950 Code introduced an important innovation, as it did not mention disciplinary measures in the catalogue of parental powers. At the same time, they were not prohibited, which on the one hand lowered the threshold of consent to autonomous decision-making on the types and degree of punishment and on the other hand was silent on the subject[22].

2.4 Act of 25 February 1964 – Family and Guardianship Code

The provisions of the 1950 Code lasted a little longer than its predecessors, after a decade and a half they were replaced by the 1964 Family and Guardianship Code[23], which is still in force. In the original version of the text promulgated, the general direction in the relationship between parents and children was set by its Art. 87, which stated that they should support each other. A child with income from his or her own work and living with his or her parents was to contribute to the family's living expenses (Art. 91 § 1) and, if living with his or her parents and dependent on them, was obliged to help them in the common household (Art. 91 § 2).

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22 According to I. Andrejew, such a procedure was a deliberate action of the legislator, who wanted in this way to place disciplining outside the margin of acceptable behaviour. Indeed, such a power-obligation as an undesirable element should not have been mentioned *expressis verbis* in the law. See: ANDREJEW, I. *Oceny prawne karcenia nieletnich* [*Legal Assessments of the Punishment of Minors*], Warszawa: Państwowe Wydawnictwo Naukowe, 1964, p. 66. In the commentary to the thesis of I. Andrejew, S. Szer stated, "(…) that it is not the business of the socialist legislator to decree whether and to what extent the disciplining of children by their parents is permissible (…)". See: SZER, S. Recenzja pracy: Igor Andrejew: Oceny prawne karcenia nieletnich. Warszawa 1964, PWN, s. 130 [Review: Igor Andrejew: Legal Assessments of the Punishment of Minors. Warsaw 1964, PWN, p. 130]. *Państwo i Prawo* [*State and Law*], 1965, No. 1, p. 124.

23 Ustawa z dnia 25 lutego 1964 r. – Przepisy wprowadzające kodeks rodzinny i opiekuńczy [Act of 25 February 1964 – Introductory Provisions to the Family and Guardianship Code] (Dz.U. 1964 No. 9, item 60). Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [Act of 25 February 1964 – Family and Guardianship Code] (Dz.U. 1964 No. 9, item 59).

Parental authority over the child lasted until the child reached the age of majority (Art. 92) and was vested in both parents (Art. 92 § 1). In the event of the death of one parent, the loss of full legal capacity, or the suspension or termination of parental authority, it was vested in the other parent (Art. 94 § 1). If it was vested in both parents, each of them was obliged and entitled to exercise it (Art. 97 § 1), but in important matters they were to decide jointly (Art. 97 § 2). In the absence of agreement, the guardianship court (*sąd opiekuńczy*)[24] could intervene. If for some reason neither parent had parental authority, a guardianship had to be established for the child (Art. 94 § 3). This included, in particular, the duty and right to exercise custody over the child's person and property and to bring the child up (Art. 95 § 1) and was to be exercised in accordance with the required welfare of the child and the interests of society[25] (Art. 95 § 3). The parents were to raise and direct the child, care for the child's physical and spiritual development and prepare the child properly for work for the good of society in accordance with the child's talents (Art. 96). The child, on the other hand, owed obedience to the parents (Art. 95 § 2). The guardianship court and other state authorities were obliged to assist in the proper exercise of parental authority by the parents (Art. 100).

If the child's welfare was endangered by the improper exercise of parental authority, the guardianship court was to make appropriate orders (Art. 109). In particular, it could subject their powers to restrictions as in the case of a guardian and place the child in a foster family or an educational institution. A temporary hindrance to the exercise of parental authority could result in its suspension (Art. 110 § 1), while a permanent hindrance, abuse of parental authority or gross neglect of the duties entailed could result in its termination (Art. 111 § 1). A restriction of parental authority could also be imposed on one parent if the parents were living apart and could not agree on its exercise (Art. 107 § 1–2). The deprivation of parental authority could also be included in a judgment declaring a divorce or annulment of marriage (Art. 112). It could be modified if the child's best interests required it (Art. 106), on the same basis it could lead to prohibiting parents deprived of custody from having personal contact with the child (Art. 113).

The 1975 amendment[26] to the 1964 Code extended and specified the catalogue of relevant orders issued as a result of the improper exercise of parental authority. The guardianship court could, among others[27], oblige the parents and the minor to behave in a certain way and determine what activities could not be performed by the parents without the court's permission (Art. 109 § 2). In the added Art. 112[1] it was stipulated that, unless the

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24 Under the 1950 Family Code, orders in family matters were issued by the guardianship authority (*władza opiekuńcza*), whereas in the 1964 Family and Guardianship Code, the guardianship court (*sąd opiekuńczy*) was entrusted with tasks in this regard.

25 The indicated term "interests of society" was a typical vague term from the socialist period, which allowed for any interpretation, depending on the needs demonstrated in a given case by the state authorities or services of the authoritarian state.

26 Ustawa z dnia 19 grudnia 1975 r. o zmianie ustawy Kodeks rodzinny i opiekuńczy [Act of 19 December 1975 Amending the Act Family and Guardianship Code] (Dz.U. 1975 No. 45, item 234).

27 The court could also place the exercise of parental authority under the permanent supervision of a probation officer, send the minor to an organization or institution established for professional training or to another institution for the partial custody of children, order the placement of the minor in a foster family, a family foster home or in institutional foster care, or temporarily entrust the function of a foster family to spouses or a person who does not meet the conditions for foster families.

court decided otherwise, the duty of upbringing and custody over the person of a minor placed in a foster family or care institution belonged to that family or institution. Paragraph 2 was added to Art. 113, which made it possible to limit personal contact with a child of parents whose parental authority was limited by placing the child in a foster family or care institution.

2.5 The 2010 amendment

The real revolution came in 2010, when a clear and firm ban on the physical disciplining of minors was brought about, defined as a ban on corporal punishment (*zakaz stosowania kar cielesnych*)[28], which has the character of a significant interference in the autonomy of the choice of means of upbringing and the way parental authority is exercised. There is no mention here of the use of measures that do not violate the physicality of the child but cause them psychological harm, although such a proposal was included in the government's 2009 draft[29]. However, the prohibition of corporal punishment should be regarded as revolutionary and as a response to advances in the sciences of psychology, upbringing and human relations[30], in line with the directions pushed by international law[31]. Although at the same time it could be perceived in some ways radical, highly controversial and arousing wide debate not only in legal circles[32]. It is also worth noting the recent amendment to the 1964 Code and certain other laws[33], which, among other things, provides for

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28 Ustawa z dnia 10 czerwca 2010 r. o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw [Act of 10 June 2010 Amending the Act on Counteracting Domestic Violence and Certain Other Acts] (Dz.U. 2010 No. 125, item 842).

29 Uchwała Senatu RP z 28 maja 2010 r. w sprawie ustawy o zmianie ustawy o przeciwdziałaniu przemocy w rodzinie oraz niektórych innych ustaw (Druk nr 3095) [Resolution of the Senate of the Republic of Poland of 28 May 2010 on an Act Amending the Act on Counteracting Domestic Violence and Certain Other Acts (Print No. 3095)], http://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/3095 <accessed 11 December 2023>. See: RÓŻYCKA-JAROŚ, S. Karcenie psychiczne dzieci w świetle obowiązujących regulacji prawnych [Psychological Punishment of Children in the Light of Current Legislation]. *Studia Iuridica*, 2012, No. 55, p. 189.

30 JĘDREJEK, G. Art. 96(1). In: JĘDREJEK, G. (ed.). *Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany [online]* [*Family and Guardianship Code. Commentary Updated [Online]*]. LEX Legal Information System, https://sip.lex.pl/#/commentary/587750929/596243 <accessed 11 December 2023>. GAJDA, J. Art. 96^1 (Zakaz stosowania kar cielesnych wobec dzieci) [Article 96^1 (Prohibition of Corporal Punishment of Children)]. In: PIETRZYKOWSKI, K. (ed.). *Kodeks rodzinny i opiekuńczy. Komentarz* [*Family and Guardianship Code. Commentary*]. Legal Information System Legalis <accessed 11 December 2023>.

31 SŁYK, J. Art. 96^1 (Zakaz stosowania kar cielesnych wobec dzieci) [Article 96^1 (Prohibition of Corporal Punishment of Children)]. In: OSAJDA, K. (ed.). *Kodeks rodzinny i opiekuńczy. Komentarz* [*Family and Guardianship Code. Commentary*]. Legal Information System Legalis <accessed 11 December 2023>. SPUREK, S. 6.3.4. Zakaz stosowania kar cielesnych [6.3.4. Prohibition of Corporal Punishment]. In: *Izolacja sprawcy od ofiary. Instrumenty przeciwdziałania przemocy w rodzinie [online]* [*Isolating the Perpetrator from the Victim. Instruments to Counter Domestic Violence [Online]*]. LEX Legal Information System, https://sip.lex.pl/#/monograph/369266621/279406 <accessed 11 December 2023>.

32 SOKOŁOWSKI, T. Art. 96(1). In: DOLECKI, H. – SOKOŁOWSKI, T. (ed.). *Kodeks rodzinny i opiekuńczy. Komentarz* [*Family and Guardianship Code. Commentary*]. LEX Legal Information System, https://sip.lex.pl/#/commentary/587289184/152405 <accessed 11 December 2023>.

33 Ustawa z dnia 28 lipca 2023 r. o zmianie ustawy – Kodeks rodzinny i opiekuńczy oraz niektórych innych ustaw [Act of 28 July 2023 Amending the Act – Family and Guardianship Code and Certain Other Acts] (Dz.U. 2023, item 1606).

the implementation of the Serious Case Reviews procedure and introduces new standards for the protection of minors[34].

3. Czechoslovakia

3.1 The three Czechoslovak republics (1918–1938, 1938–1939 and 1945–1948)

In interwar Czechoslovakia, as in Poland, in the field of family law the codes and laws of the former powers were invariably in force: the Austrian ABGB (Czech and Moravian territory), the German BGB (Hlučín Silesia) and Hungarian legislation (Slovak territory). Although it was possible to re-regulate some issues, such as adoption and protection of illegitimate children, the relationship between children and parents continued to be defined by the above-mentioned provisions[35]. The legal status on this issue also did not change in these territories during the period of the Protectorate of Bohemia and Moravia, as well as the Slovak Republic (1939–1945). The situation in this regard changed in the reborn Czechoslovak state after World War II, but only after the communist coup in 1948.

3.2 The 1949 Family Law Act

The Polish Family Code of June 27, 1950, and the Czechoslovak Family Law Act (Czech: *Zákon o právu rodinném*) of December 7, 1949[36], were almost identical in content as far as relations between parents and children were concerned, as they were the joint fruit of the codification work carried out in the Ministries of Justice of both countries[37]. The Polish draft, which was subjected to bilateral consultations, contained a provision establishing the child's duty of obedience towards the parents. They were to have the right to use chastisement if the proper upbringing of the child required it, but without damaging the child's physical and moral health. Czechoslovak lawyers did not agree with this formulation, which determined its absence from the Polish 1950 Code.

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34 The legislation introduces systemic protection of the youngest from harm, including regulations for situations where they have suffered death or serious injury as a result of the actions of a parent or guardian. On its basis, it will be determined, among others, why no action was taken before the child was harmed and what can be done to prevent such incidents. The draft amendment was submitted in May 2023 on a wave of outrage following the death of eight-year-old Kamilek from Częstochowa, who was brutally battered by his stepfather (hence the bill is commonly referred to as "lex Kamilek").

35 KRÁLÍČKOVÁ, Z. Czeskie prawo rodzinne: powrót do europejskiej tradycji prawnej [Czech Family Law: a Return to European Legal Tradition]. *Miscellanea Historico-Iuridica*, 2010, Vol. 9, p. 16, 18–19.

36 Zákon ze dne 7. prosince 1949 o právu rodinném [Act of 7 December 1949 on Family Law] (Sbírka zákonů republiky Československé [Collection of Laws of the Czechoslovak Republic] 265/1949).

37 FIEDORCZYK, *Unifikacja i kodyfikacja*…, pp. 147–151, 213, 221; FIEDORCZYK, P. Debata nad uchwaleniem polsko-czechosłowackiego prawa rodzinnego w czechosłowackim Zgromadzeniu Narodowym w 1949 r. [The Debate on Passing the Polish-Czechoslovak Bill of Family Law in Czechoslovak National Assembly in 1949]. *Studia Iuridica Lublinensia*, 2013, Vol. 19, pp. 131–132; FIEDORCZYK, P. Polski kodeks rodzinny z 1950 r. Czy przełom? [Polish 1950 Family Code – a Turning Point?]. *Zeszyty Prawnicze* [*The Legal Journal*], 2011, Vol. 11, No. 2, p. 129, 131–132; KUKLÍK, J. – SKŘEJPKOVÁ, P. Changes in Family Law and the Adoption of the Family Act in 1949. *Právněhistorické studie*, 2019, Vol. 49, No. 2, pp. 24–25.

3.3 The 1963 Family Act

The viability of the Polish Code of 1950 and the Czechoslovak Act of 1949 also proved to be almost identical, as the latter was replaced by the Family Act (*Zákon o rodině*) of December 4, 1963[38]. The new law was in force from April 1, 1964, having only been repealed in 2014[39] (in Slovakia, the law was in force until 2005[40]).

Parents were to take care of their children's education but were to do so in "inseparable unity" with state and social organisations, especially the Czechoslovak Youth Union (*Československý svaz mládeže*, § 30). The primary educational task was to influence the emotional, intellectual and moral development of children in the spirit of the moral principles of a socialist society (*socialistické společnosti*, § 31). Through their upbringing, children were to acquire a wide education, a responsible attitude to work and moral principles, such as love of the fatherland, friendship between nations, protection of social property, subordination of personal interests to the interests of the whole, and voluntary and conscious adherence to the principles of socialist coexistence.

Parents were to play a decisive role in the upbringing of their children and set an example with their personal lives, behaviour and attitude to society (§ 32). They were also to be responsible to society for the all-round development of their children, to take care of their upbringing and nourishment and to guide their behaviour so that they would grow up to be healthy and informed citizens (§ 33). Parental rights and duties (*rodičovská práva a povinnosti*) were vested in both parents, excluding those who did not have full legal capacity (§ 34). The parents were also entitled and obliged to represent their minor children and manage their affairs (§ 36), if they had full legal capacity and were not deprived of parental rights (§ 37). Neither parent could represent their children in legal actions in which there might be a conflict of interest between parents and children or between children and each other (§ 38).

Society was to ensure that parents were able to properly exercise their rights and responsibilities in the upbringing of their children (§ 41). Parents had the right to turn to the school, the national council (*národní výbor*)[41], the courts and other state bodies and social organisations for assistance in this matter. Citizens and social organisations were entitled to draw attention to the misbehaviour of children or serious violations of the rights and duties of parents, and they could intervene in this matter to the national council, court or other state body, which were then obliged to take appropriate educational measures (§ 42).

The national council could, if the social interest related to the proper upbringing of children required it: 1) admonish in an appropriate manner the minor, his parents and citizens obstructing his proper upbringing; 2) establish supervision over the minor and exercise

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38 Zákon o rodině ze dne 4. prosince 1963 [Act of 4 December 1963 on the Family] (Sbírka zákonů Československé socialistické republiky [Collection of Laws of the Czechoslovak Socialist Republic] 94/1963).

39 Family law issues, including relations between parents and children, are regulated in the new Czech Civil Code. See: Zákon ze dne 3. února 2012 občanský zákoník [Act of 3 February 2012 Civil Code] (Sbírka zákonů Česká republika [Collection of Laws Czech Republic] 89/2012).

40 Zákon z 19. januára 2005 o rodine a o zmene a doplnení niektorých zákonov [Act of 19 January 2005 on the Family and on Amending and Supplementing Certain Acts] (Zbierka Zákonov Slovenskej Republiky [Collection of Laws of the Slovak Republic] 36/2005).

41 National council (*národní výbor*) – in the years 1945–1990, the national council was a body of Czechoslovak state administration at the level of a municipality, city, urban district, county or province. The national councils had their formally elected bodies.

it with the help of the school, social organisations in the place of residence or place of work; 3) impose restrictions on the minor in order to prevent detrimental influences on his upbringing, in particular attendance at establishments and entertainment unsuitable for the minor due to his personality (§ 43). The measures indicated could also be taken by the court (*soud*).

If a serious obstacle prevented the parents from exercising their rights and duties and if the social interest in the proper upbringing of their children required this, the court could restrict their parental rights (§ 44). It could also do so if the parents did not properly exercise their parental rights or duties. On the other hand, if they abused their rights or seriously neglected their duties, the court could terminate their parental rights. The national council and the court were to continuously monitor the implementation of the educational measures they had taken and evaluate their effectiveness (§ 47).

The 1963 Family Act was saturated with communist newspeak, contained many references to socialism and characteristically dealt with the participation of society (in principle state bodies) in the upbringing of children by parents. It was not seriously amended until 1998[42] (in Slovakia until 2002[43]), when, among other things, § 30 was repealed and the comments on the moral principles of a socialist society were removed. It is worth noting that both the Family Law Act of 1949 and the Family Act of 1963 did not include an explicitly articulated right of parents to discipline their children. The powers of state authorities to intervene in the upbringing of children by parents should be regarded as extensive[44]. It was characteristic of the authoritarian government of the time that many of these powers were entrusted to national councils, i.e. state administrative bodies, which was a simple way of implementing political repression.

4. Hungary

4.1 The 19th century, the interwar period and the first years of post-war Hungary

In the 19th century in the Hungarian part of the Austrian Empire and later the Austro-Hungarian Monarchy, the so-called historical private law was invariably in force, which was based on customary law dating back to the Middle Ages (except in the area of Transylvania, where the Austrian ABGB was in force from the mid-19th century until the 1940s)[45].

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42 Zákon ze dne 3. dubna 1998, kterým se mění a doplňuje zákon č. 94/1963 Sb., o rodině, ve znění pozdějších předpisů, a o změně a doplnění dalších zákonů [Act of 3 April 1998 Amending and Supplementing Act No. 94/1963 Coll., on the Family, as Amended, and Amending and Supplementing Other Acts] (Sbírka zákonů České republiky [Collection of Laws of the Czech Republic] 91/1998).

43 Zákon z 22. februára 2002, ktorým sa mení zákon č. 94/1963 Zb. Zákon o rodine v znení neskorších predpisov [Act of 22 February 2002 Amending Act No 94/1963 Coll. on the Family, as Amended] (Zbierka Zákonov Slovenskej Republiky [Collection of Laws of the Slovak Republic] 127/2002).

44 The 1963 Act even opened a way to perform social experiments, such as the so-called "large families". See: STÁREK, L. Substitute Family Care in the Czech Republic and its Aspect in Special-needs Pedagogy. *Studia Edukacyjne* [*Educational Studies*], 2019, No. 54, p. 311, 318–320.

45 VERESS, E. Projekt węgierskiego Kodeksu prawa prywatnego z 1928 r. – znaczenie z perspektywy historyczno prawnej [Historical Significance of the Hungarian Civil Code Project from 1928]. *Krytyka Prawa. Niezależne Studia nad Prawem* [*The Critique of Law. Independent Legal Studies*], 2020, Vol. 12, No. 4, p. 178, 186–187; MATEFI, R. – ŞCHIOPU S.-D., A Short Historical Overview of the Inheritance Laws

In the meantime, codification currents intensified among the Hungarian authorities and jurisprudence. Despite many years of work and drawing up numerous drafts of the Hungarian civil code (which also contained family law provisions), none came into force, so customary law continued to apply in most of the Hungarian territory[46].

4.2 The 1952 Act on Marriage, Family and Guardianship

A change in this matter took place when the first Hungarian family law was regulated in the form of Act No. 4 of 1952 on Marriage, Family and Guardianship[47]. In the wording of § 70 of the 1952 Act after several amendments[48], before its repeal in 2014, a minor child (Hungarian: *kiskorú gyermek*) was to remain in the care or custody of his or her parents. Parental authority (*szülői felügyeletet*) was to be exercised in accordance with the interests of the minor child (§ 71). The parents were obliged to ensure that their child was able to express his or her opinion when making decisions that affected him or her, with the child's opinion being taken into account according to his or her age and maturity. Parental authority included the right and duty of care, upbringing, direction and legal representation of the minor child, as well as the right to appoint a guardian and to exclude the child from guardianship.

Parental authority was to be exercised jointly by both parents, even if they no longer lived together, unless they agreed otherwise (§ 72). Unless the law provided otherwise, the guardianship authority (*gyámhatóság*) ruled on matters of parental authority in which the parents exercising parental authority could not agree, with the exception of matters of freedom of conscience and religion (§ 73). The court (*bíróságnak*) and the guardianship authority were obliged to hear both parents during the proceedings on the exercise of parental authority and the placement of the child in foster care, as well as on the change of placement (§ 74). In justified cases, including at the request of the child, the child could be heard directly or by an expert. If the child had reached the age of fourteen, the decision to place him or her in an institution (*az elhelyezésére vonatkozó döntés*) could only be taken with the child's consent, unless the institution of his or her choice endangered his or her development. In deciding whether to hear the child directly, the court had to take into account the child's age and maturity.

As part of parental authority, the parents had the duty to care for the child, to maintain the child and to take care of the child's physical, intellectual and moral development (§ 75). The parents were obliged to provide the minor child with a permanent residence in their own household (*háztartásukban*, § 77). The child's permanent residence was to be considered to be the permanent residence of the parents, even if the child temporarily

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Applied on the Romanian Territory (19th–20th Century). *Bulletin of the Transilvania University of Braşov*, 2016, Vol. 9, No. 2, pp. 177–178, 180–181.

46 FÉZER, T. Re-Codifying Civil Law in Hungary. *Studia Prawnicze. Rozprawy i Materiały* [*Studies in Law. Research Papers*], 2014, Vol. 15, No. 2, p. 73.

47 1952. évi IV. törvény a házasságról, a családról és a gyámságról [Act No. IV of 1952 on Marriage, Family and Guardianship] (Magyar Közlöny [Hungarian Gazette] 1952).

48 See, inter alia: 1986. évi IV. törvény a házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról [Act No. IV of 1986 Amending the Act No. IV of 1952 on Marriage, Family and Guardianship]; 1995. évi XXXI. törvény a házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról [Act No. XXXI of 1995 Amending the Act No. IV of 1952 on Marriage, Family and Guardianship].

resided elsewhere, unless a final judgment or decision of the guardianship authority stated otherwise. The custodial parents and the child were to jointly determine which career path the child should take, taking into account the child's likes, physical and intellectual abilities and other circumstances (§ 78). In the event of a dispute, the guardianship authority was to decide.

The parents exercising parental authority had the right and duty to dispose of all of the child's property that was not excluded from their administration under the law (§ 79). They also had the right and duty to represent the minor child in both personal and property matters (§ 86).

The court terminated parental authority if: 1) the reprehensible behaviour of the parent seriously damaged or endangered the welfare of the child (*gyermeke javát*), in particular the child's physical well-being, intellectual or moral development; 2) the child was placed with another person or in a foster care institution and the parent was alleged to have seriously violated the child's welfare; 3) if the court sentenced the parent to imprisonment for an intentional offence committed against the person of one of his or her children (§ 88). The court could also terminate parental authority on the grounds that a parent was in cohabitation with another parent who had been deprived of parental authority and, as a result, there is a serious concern that parental care will not be properly provided. The court could restore parental authority if the reason for the termination of parental authority had ceased and there were no other grounds for termination (§ 89). Parental authority could also be suspended in certain cases, e.g. if a parent was incapacitated or limited in capacity, or if a parent resided in an unknown place or was actually disabled (§ 91).

The above provisions were in force until 2014[49], when they were replaced by the family law regulations of the 2013 Civil Code[50]. To some extent, the 1952 Act reflected the social norms and practice of the parent-child relationship at the time[51]. Changes in this regard were influenced by international law. In 1957 and in 1965 Hungary adopted the provisions of the New York and Hague Conventions on the child support and maintenance, in 1986 it adopted the Hague Convention on the Civil Aspects of International Child Abduction and in 1991 and in 1993 it adopted provisions both from the New York Convention on the Rights of the Child[52] and from the European Convention on Human Rights[53]. The child was increasingly becoming a subject of family law rather than an object.

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49 SZEIBERT, O. Family Law Book as Fourth Book of the New Hungarian Civil Code. *International and Comparative Law Review*, 2018, Vol. 13, No. 2, p. 85.

50 2013. évi V. törvény a Polgári Törvénykönyvről [Act No. V of 2013 on the Civil Code] (Magyar Közlöny [Hungarian Gazette] 2013/31).

51 WEISS, E. Changes in the Modern Era Lead to the Evolution of Hungarian Family Law and Children's Rights. *California Western International Law Journal*, 2000, Vol. 31, No. 1, p. 75.

52 For more on the Convention's impact on Hungarian law, see: SZEIBERT, E. Convention on the Rights of the Child and Some Aspects of Civil Law and Family Law. *Miscellanea Historico-Iuridica*, 2020, Vol. 19, No. 1, p. 187.

53 WEISS, *op. cit.*, p. 76.

5. Romania

5.1 The 1864 Civil Code

As in most legal systems of the time, family law in the 19th century Romanian state was regulated within the framework of the Civil Code (Romanian: *Codul Civil*)[54]. The code itself was older than the Kingdom of Romania, as it was adopted in 1864, a time when the Romanian United Principalities were a personal union of the principalities of Wallachia and Moldova. The Code was largely based on the solutions of the Napoleonic Code, with the inclusion of some norms contained in Italian law, Belgian law and also old Romanian law[55].

In the Civil Code of 1864, issues relating to parental authority (*puterea parintesca*) were regulated within the framework of Articles 325–341. A child remained under the authority of his or her parents until the age of majority or emancipation (*majoritate sau emancipare*, Art. 326). A paternalistic model prevailed in this aspect, as during the marriage the authority was to be exercised exclusively by the father (Art. 327)[56], and without his consent the child could not leave the family home (*casa parinteasca*, art. 328).

In Article 329, a father with serious reasons for being dissatisfied with his child's behaviour was given the power to apply corrective measures (*mijloace de îndreptare*). If the child was under the age of sixteen, the father could place the child under house arrest (*casa de arestu*) for a period of one month, at the discretion of the president of the district court (*preşedintele tribunalului de districtu*), who would issue a detention order at the father's request (Art. 330)[57]. From the age of sixteen until the child came of age or

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54 Codul Civil din 26 noiembrie 1864 [Civil Code of 26 November 1864] (Monitorul Oficial nr. 271 din 4 decembrie 1864 [Official Gazette No. 271 of 4 December 1864]).

55 TOMA, M.-E., Family in the Romanian Law History. *International Journal of Social and Educational Innovation*, 2014, Vol. 1, No. 1, p. 49, 54–55; UNGUREANU I.-C., Usages – Source of Civil Law in the Regulation of the Romanian Civil Code. *International Journal of Academic Research in Business & Social Sciences*, 2018, Vol. 8, No. 5, p. 978, 980; BODA, G. Family and Society in the Civil Code of 1864 and in the Family Code of 1954 in Romania. *Istoria* [*History*], 2020, Vol. 55, No. 1, p. 47, 50.

56 DANCIU, E. T., The Evolution of Romanian Civil Law in the Modern Times. *Revista de Ştiinţe Politice. Revue des Sciences Politiques* [*Political Science Review*], 2014, Vol. 43, p. 66, 70.

57 These solutions were almost a copy of the provisions of the Napoleonic Code contained in Articles 375–383. A child up to the beginning of his or her sixteenth year could be kept in confinement for a maximum of one month, at the father's request, a detention order being issued by the president of the civil tribunal of the first instance (French: *président du tribunal d'arrondissement*, Art. 376). Such detention (*la détention*) amounted to a periodic deprivation of liberty by temporary imprisonment in a place of confinement and was not the same as institutional imprisonment in an adapted detention centre or institution that followed a court sentence. This institution had its origin in the old French common law, which allowed a father to imprison his child of any age (from 1673 onwards only a minor) without the consent of the court. We could also find an age demarcation in the Code, as a descendant who had already begun his or her sixteenth year could also be detained until he or she came of age or became emancipated for a period of no more than six months. In this case, however, this could not happen through the father's sole decision. Indeed, he had to refer the matter to the aforementioned president of the tribunal, who, after consultation with the government commissioner (*le commissaire du Gouvernement*), could grant the father's request (and at the same time reduce the requested sentence) or reject it (Art. 377). The above procedure did not require any formalities other than a detention order, which did not state the reasons for the detention, and a written undertaking by the father to pay all costs and maintenance of the arrested person (Art. 378). At any time, the father could reduce the time of confinement and, in the event of a repeat offence, apply this type of punishment again (Art. 379). In the case of remarriage, he was in turn obliged to comply with Article 377 in respect of his

became emancipated, the father could only request his arrest for a period not exceeding six months by applying to the president of the court, who, after consultation with the public prosecutor (*procurorul*), would issue or refuse an order of arrest (Art. 331).

The role of the court in this matter was reduced to the legal confirmation of the paternal request for the offspring's confinement, only in the case of an older minor did the court participate in the decision. The mother was almost excluded here, as she could only exercise this power as a widow or in relation to a natural child. The Romanian Civil Code of 1864 did not contain any provisions explicitly referring to the use of corporal punishment against children, but more importantly, it also did not contain any measures restricting or capable of providing protection against it.

5.2 The 1953 Family Code

After many changes, the Civil Code 1864 remained in force until 2011, but the family law regulations were previously replaced by the Family Code of 1953[58]. The relationship between parents and children was included in the third title. According to Art. 97, both parents had the same rights and obligations (*drepturi şi îndatoriri*) in relation to their minor children, regardless of whether they were married or not, and they were to exercise parental authority only in the interest of the children. Parents were to make decisions regarding the personal and property interests of their children by mutual consent (Art. 98). In the event of the death of one of the parents, deprivation of parental rights, prohibition or inability to express one's will for any reason, the other parent was to exercise parental rights alone. In the event of a dispute between the parents as to the exercise of parental rights or duties, the guardianship authority (*autoritatea tutelara*), after listening to the parents, was to decide in accordance with the best interests of the child (Art. 99). A minor child was to live with his or her parents (Art. 100). If the parents did not live together, they were to jointly decide which of them the child should live with. In the absence of an agreement between the parents, the court was to decide on this matter, after hearing the guardianship authority and the child, if he or she was over ten years old.

Parents were obliged to take care of the child, bring up the child, take care of his or her health and physical development, education and professional preparation, according to his or her capabilities, in accordance with the aims of the people's democratic state (*statului democrat popular*), to make him or her useful to society (Art. 101). The guardianship authority could consent to a child, at his or her request, changing the type of education or vocational preparation determined by the parents after reaching the age of fourteen, or to change the place of residence required to complete education or vocational preparation (Art. 102). If the child's physical, moral or intellectual development was at risk in the

child from his first marriage, even if he was under sixteen (Art. 380). A widow could also apply to arrest her child, but only jointly with her husband's two closest relatives (Art. 381). If a child had personal property or held office, his or her liberty could be restricted only by means of a request under Art. 377, even if he or she was under sixteen (Art. 382). Such an imprisoned minor could apply to the government commissioner, who, after gathering evidence and reviewing the case, could modify the order issued by the president of the court of first instance. The possibility of confinement was also extended to legally recognised natural children, the subject of entitlement here being both father and mother (Art. 383). See: *Code civil des Français : édition originale et seule officielle*. Paris, 1804, pp. 93–95.

58 Lege nr. 4 din 4 ianuarie 1953 Codul familiei [Act No. 4 of 4 January 1953 Family Code] (Buletinul Oficial nr. 13/18 aprilie 1956 [Official Bulletin No. 13/18 April 1956]).

parents' home, the guardianship authority was to apply to the court to entrust the child to a care institution or to another person with its consent (Art. 104).

The guardianship authority was obliged to exercise effective and constant control over the manner in which the parents performed their duties towards the person and property of the child (Art. 108). The representatives of the guardianship authority had the right to visit children in their homes and to find out in any way what their care was like in terms of their health and physical development, education, study and professional preparation, in accordance with the objectives of the people's democratic state. If the child's health or physical development was jeopardized by the manner in which parental rights were exercised, if there was abuse or gross negligence in the performance of parental duties, or if the child's upbringing, training or professional preparation was not in a spirit of devotion to the Romanian People's Republic (*devotament faţă de Republica Populara Română*), the court, at the request of the guardianship authority, was to adjudicate on depriving a parent of parental rights (Art. 109).

The guardianship authority was to allow a parent deprived of parental rights to maintain personal ties with the child, unless such ties would jeopardize the child's upbringing, education or professional preparation (Art. 111). The court was to restore the exercise of these rights to a parent deprived of parental rights if the circumstances that led to the deprivation of parental rights ceased (Art. 112).

Parental authority was vested in both parents, but at the same time ample opportunity was provided for state services to interfere. The Romanian legislator chose not to provide parents with the possibility to discipline their children. The 1953 Family Code was amended several times, e.g. references to the socialist state were abandoned. Its regulations were replaced by family law provisions[59] contained in the new 2009 Civil Code[60].

6. Eastern union republics of the Soviet Union

6.1 The interwar codes

In the Russian state after the October Revolution, new family law regulations were adopted very quickly[61]. On December 18, 1917, the Decree on Civil Marriage, Children and Keeping of the Civil Status Books (Russian: *О гражданском браке, о детях и о ведении книг актов состояния*)[62] was issued. This was followed on September 16, 1918, by the RSFSR

[59] BUDA, D. The Administrative Reform in Romania: The New Civil Code and the Institution of Marriage. *Transylvanian Review of Administrative Sciences*, 2012, Vol. 36, p. 27, 28–30; FLORIAN, E. Romania. In: SOSSON, J. – WILLEMS, G. – MOTTE, G. (eds.), *Adults and Children in Postmodern Societies. A Comparative Law and Multidisciplinary Handbook*. Intersentia, 2019, p. 451.

[60] Lege nr. 287 din 17 iulie 2009 privind Codul civil [Act No. 287 of 17 July 2009 on the Civil Code] (Monitorul Oficial nr. 511/24 iulie 2009 [Official Journal No. 511/24 July 2009]).

[61] The nature and principles of Soviet family law, including the background to the work and enactment of the individual decrees and codes, have been described in: LITYŃSKI, A. *Prawo Rosji i ZSRR* 1917–1991 czyli historia wszechzwiązkowego komunistycznego *prawa* (bolszewików). Krótki kurs [*Legal Order in Russia und USSR 1917–1991 – History of Communist (Bolshevik) Law. A Short Course*]. Warszawa, C. H. Beck: 2017, pp. 278–307.

[62] Декрет ВЦИК и СНК «О гражданском браке, о детях и о ведении книг актов состояния». 18 декабря 1917 г. [Decree of the All-Russian Central Executive Committee and the Council of People's Commissars «On Civil Marriage, Children and Keeping of the Civil Status Books». 18 December 1917]. In: *Декреты Советской власти. Том I. 25 октября 1917 г. – 16 марта 1918 г.* [*Decrees of Soviet Authority. Volume I.*

Code of Laws on Civil Status Records, Marriage, Family and Guardianship Law (Russian: *Кодекс законов об актах гражданского состояния*, *брачном*, *семейном и опекунском праве)*[63], which was not only the first codification of Soviet family law, but the first Soviet legal code in general[64]. Political changes in the Soviet Union soon led to further reforms in this area, made separately in the individual union republics.

In the Russian Soviet Federative Socialist Republic, the following law was adopted: the Code of Laws on Marriage, Family and Guardianship (Russian: *Кодекс законов о браке, семье и опеке*) of November 19, 1926. It is worth paying attention to the Code of Laws on Family, Guardianship, Marriage and Civil Status Records of the Ukrainian SSR (Ukrainian: *Кодекс законів про сім'ю, опіку, шлюб і акти громадянського стану УРСР*) of May 31, 1926[65], which was even legislatively a few months older than its RSFSR counterpart. Another of these types of acts was the Code on Marriage and Family of the Belarusian SSR (Belarusian: *Кодэкс аб шлюбе і сям'і БССР*) of January 27, 1927[66]. With various amendments, all three codes remained in force until 1969. However, all of them were similar to each other and contained provisions that were identical in content with regard to the duties and powers of parents in relation to the youngest.

According to them, parental rights were to be exercised only in the interests of the children and parents could be deprived of them in the event of unlawful behaviour. All actions in relation to the children were to be taken jointly by the parents and, in the absence of parental consent, individual issues were to be decided by the guardianship authority. Parents were obliged to care for their minor children, in particular to bring them up and prepare them for a socially useful life. In the event of the parents' failure to fulfil their obligations, the unlawful exercise of their powers in relation to the children, and in the event of child abuse or cruel treatment, the court had the right to take the children away from the parents and place them in the care of the guardianship authority and to decide on child maintenance from both parents. The guardianship authority could independently order the removal of the child from both parents if the child was in danger. The decision was later subject to court approval.

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25 October 1917 – 16 March 1918]. Москва: Гос. издат-во политической литературы [Moscow: State Publishing House of Political Literature]: 1957.

63 16 сентября. Кодекс законов ВЦИК об актах гражданского состояния, брачном, семейном и опекунском праве // Проект: «Протоколы», стр. 173–203 [16 September. Code of Laws of the All-Russian Central Executive Committee on Civil Status Records, Marriage, Family and Guardianship Law // Draft: «Protocols», pp. 173–203]. Кодекс закон ов: «Собрание Узаконений» № 76–77, ст. 818 [Code of Laws: «Collection of Legislation» No. 76–77, Art. 818].

64 FIEDORCZYK, *Radzieckie prawo rodzinne*, p. 362.

65 Кодекс законів про сім'ю, опіку, шлюб і акти громадянського стану УРСР від 31.05.1926р [The Code of Laws on Family, Guardianship, Marriage and Civil Status Acts of the Ukrainian SSR of 31.05.1926]. Затверджений 3-ю сесією ЦВК УРСР 31.05.1926 р. // ЗУ УРСР. – 1926. –. № 67–69. – Ст. 440 [Approved by the 3rd session of the Central Executive Committee of the Ukrainian SSR on 31.05.1926 // Collection of Legislation of the USSR – 1926 No. 67–69 – Art. 440].

66 О введении в действие Кодекса законов о браке, семье и опеке : постановление ЦИК Белорус. ССР, 27 янв. 1927 г. [On Enactment of the Code of Laws on Marriage, Family and Guardianship : Decree of the Central Executive Committee of the Belarusian SSR, 27 January 1927] // Собр. законов и распоряжений Рабоче-крестьян. правительства Белорус. Социалист. Совет. Респ. – 1927. – Отд. 1. – № 7. – Ст. 26 [Collected Laws and Orders of the Workers' and Peasants' Government of Belarusian SRR – 1927 – Chapter 1 – No. 7 – Art. 26].

The possibility of depriving parental authority in the case of unlawful behaviour allowed for almost arbitrary interpretation, which the Soviet courts eagerly took advantage of when dealing with all real and imagined enemies of Soviet power. Among the reasons for taking children away from their parents, cruel treatment of minors was explicitly mentioned, which could have strengthened child protection. In the case of imminent danger, the guardianship authority could itself have had the child taken away, which was a preventive measure. Under the conditions of the totalitarian and anti-humanitarian Soviet state, however, the above provisions mostly failed to fulfil their protective role and were largely another weapon in the fight against family-owning citizens.

In 1940, following the Soviet Union's annexation of the territories of Lithuania, Latvia and Estonia and the establishment of further union republics therein, the force of the 1926 RSFSR Code of Laws on Marriage, Family and Guardianship was extended to these lands[67].

6.2 The 1969 codes

In the years 1969–1970, the above-mentioned codes were replaced by the Marriage and Family Code (Russian: *Кодекс о браке и семье*) in each individual republic. The codes coincided in their foundations, as their principles had previously been established by the USSR Supreme Council on July 27, 1968, in the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and Family[68]. Its adoption was the responsibility of the union republics of the Soviet Union. These include, among others:

- Marriage and Family Code of the Latvian SSR (Latvian: *Latvijas Padomju Sociālistiskās Republikas Laulības un ģimenes kodekss*) of April 18, 1969[69], which entered into force on October 1, 1969; the code expired on September 1, 1993, when the Civil Code of the Republic of Latvia (*Latvijas Republikas Civillikums*) of January 28, 1937[70] was reinstated, which contained provisions in the field of family law;

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67 OSIPOVA, S. Soviet Family Law: Genesis and Evolution from the Perspective of the Latvian SSR Experience. *Miscellanea Historico-Iuridica*, 2017, Vol. 16, No. 1, pp. 67–68, 79.

68 Верховный Совет Союза Советских Социалистических Республик. Закон СССР от 27.06.1968 об утверждении основ законодательства СССР и союзных республик о браке и семье [The Supreme Soviet of the Union of Soviet Socialist Republics. Law of the USSR of 27.06.1968 on Approval of the Fundamentals of Legislation of the USSR and Union Republics on Marriage and Family], Ведомости ВС СССР, N 27, 1968, p. 241 [Bulletin of the Supreme Council of the USSR, No. 27, 1968, p. 241].

69 Latvijas PSR 1969. gada 18. aprīļa likumā «Par Latvijas PSR laulības un ģimenes kodeksa apstiprināšanu» [Law of the Latvian SSR of 18 April 1969 «On Approval of the Marriage and Family Code of the Latvian SSR»] (Latvijas PSR Augstākas Padomes un Valdības Ziņotāja 1969 [Bulletin of the Supreme Soviet and Government of the Latvian SSR 1969]).

70 Latvijas Republikas Likums Par Latvijas Republikas 1937. gada Civillikumu [Law of the Republic of Latvia on the Civil Code of the Republic of Latvia of 1937] (Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs [Bulletin of the Supreme Council and Government of the Republic of Latvia], 4/5, 30.01.1992). Latvijas Republikas Likums Par atjaunotā Latvijas Republikas 1937. gada Civillikuma ģimenes tiesību daļas spēkā stāšanās laiku un piemērošanas karibu [Law of the Republic of Latvia on the Period of Entry into Force and Application of the Family Law Part of the Civil Code of the Republic of Latvia of 1937] (Latvijas Vēstnesis [Latvian Gazette], 35, 08.06.1993).

- Marriage and Family Code of the Belarusian SSR (Belarusian: *Кодэкс Беларускай Савецкай Сацыялістычнай Рэспублікі аб шлюбе і сям'і*) of June 13, 1969[71], which entered into force on November 1, 1969; the code expired on September 1, 1999, when the Code of the Republic of Belarus on Marriage and Family (*Кодэкс Рэспублікі Беларусь аб шлюбе і сям'і*) of July 9, 1999[72] entered into force;
- Marriage and Family Code of the Ukrainian SSR (Ukrainian: *Кодекс про шлюб і сім'ю Української Радянської Соціалістичної Республіки*) of June 20, 1969[73], which entered into force on January 1, 1970; the code expired on February 26, 2002, when the Family Code of Ukraine (*Сімейний кодекс України*) of January 10, 2002[74] entered into force;
- Marriage and Family Code of the Lithuanian SSR (Lithuanian: *Lietuvos Tarybų Socialistinės Respublikos santuokos ir šeimos kodeksas*) of July 16, 1969[75], which entered into force on January 1, 1970; the code expired on July 1, 2001, when the Civil Code of the Republic of Lithuania (*Lietuvos Respublikos civilinis kodeksas*) of July 18, 2000[76] entered into force, which contained provisions in the field of family law;
- Marriage and Family Code of the Estonian SSR (Estonian: *Eesti Nõukogude Sotsialistliku Vabariigi abielu- ja perekonnakoodeks*) of July 31, 1969[77], which entered into force on January 1, 1970; the code expired on January 1, 1995, when the Family Law Act (*Perekonnaseadus*) of October 12, 1994[78] entered into force[79];

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71 Об утверждении Кодекса о браке и семье Белорусской ССР : Закон Белорус. ССР, 13 июня 1969 г. [On Approval of the Code on Marriage and Family of the Belarusian SSR : Law of the Belarusian SSR, 13 June 1969] // Собр. законов, указов Президиума Верхов. Совета Белорус. ССР, постановлений и распоряжений Совета Министров Белорус. ССР. – 1969. – N 17. – Ст. 278 [Collection of Laws, Decrees of the Presidium of the Supreme Soviet of Belarusian SSR, Resolutions and Orders of the Council of Ministers of the Belarusian SSR – 1969 – No. 17 – Art. 278].

72 Кодэкс Рэспублікі Беларусь аб шлюбе і сям'і ад 9 ліпеня 1999 г. № 278-З [Code of the Republic of Belarus on Marriage and Family of 9 July 1999 No. 278-З] (Ведамасці Нацыянальнага сходу Рэспублікі Беларусь, 1999 г., № 23, ст. 419 [Bulletin of the National Assembly of the Republic of Belarus, 1999, No. 23, Art. 419]).

73 Закон Української РСР від 20 червня 1969 року "Про затвердження Кодексу про шлюб та сім'ю Української РСР" [Law of the Ukrainian SSR of 20 June 1969 "On Approval of the Code on Marriage and Family of the Ukrainian SSR"] (Відомості Верховної Ради УРСР, 1969 р., N 26, ст. 204 [Bulletin of the Supreme Council of the Ukrainian SSR, 1969, No, 26, Art. 204]).

74 Сімейний кодекс України [Family Code of Ukraine] (*Відомості Верховної Ради України*, 2002, № 21–22, ст. 135 [Bulletin of the Supreme Council of Ukraine, 2002, No. 21–22, Art. 135]).

75 Dėl Lietuvos Tarybų Socialistinės Respublikos santuokos ir šeimos kodekso patvirtinimo [On the Approval of the Marriage and Family Code of the Lithuanian Soviet Socialist Republic] (Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios [Bulletin of the Supreme Council and Government of the Lithuanian SSR] 1969, Nr. 21–186).

76 Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas [Law on Approval, Entry into Force and Implementation of the Civil Code of the Republic of Lithuania] (Valstybės žinios [State Gazette] 2000, Nr. 74-2262).

77 Eesti NSV abielu- ja perekonnakoodeks [Marriage and Family Code of the Estonian SSR] (Eesti NSV Teataja [Estonian SSR Official Gazette] 1969, 31).

78 Perekonnaseadus Vastu võetud 12.10.1994 [Family Law Act Adopted on 12.10.1994] (Riigi Teataja [State Gazette] I 1994, 75, 1326).

79 The 1994 Family Act was subsequently replaced by the 2009 Family Act. See: Perekonnaseadus Vastu võetud 18.11.2009 [Family Law Act Adopted on 18.11.2009] (Riigi Teataja [State Gazette] I 2009, 60, 395)

- Marriage and Family Code of the Moldavian SSR (Moldavian: *Codul căsătoriei şi familiei al Republicii Sovietice Socialiste Moldoveneşti*) of December 26, 1969[80]; the code expired on April 26, 2001, when the Family Code (*Codul Familiei*) of October 26, 2000[81] entered into force.

In all the above-mentioned codes, the rights and duties of parents towards their children were to be equal, even in cases where the marriage between them had been dissolved. Parents were to have the right and duty to bring up their children, to care for their health, physical, spiritual and moral development, to educate them, to prepare them for socially useful work, to bring them up as worthy members of socialist society. The protection of the rights and interests of minor children was to be the duty their parents. Parental rights could not be exercised in conflict with the interests of children. If one of the parents improperly fulfilled their upbringing duties or abused their parental rights, children could turn to the guardianship and custody authorities for protection of their rights and interests.

Parents or one parent could be deprived of parental rights if they were found to have shirked their child-rearing responsibilities or abused their parental rights, treated the children cruelly, exerted a harmful influence on the children with their immoral or antisocial behaviour or were chronic alcoholics or drug addicts. The restoration of parental rights was to be allowed if the welfare of the child required it and if the child was not adopted. The termination of parental rights and the restoration of parental rights was to take place only before a court. It should be taken into account that, similarly to the Soviet codes from the interwar period, many liberal or pro-social provisions of the 1969 codes existed only on paper, and the basis for all decisions, including those concerning family relations, was still the omnipotence of the communist party.

7. Conclusion

The content of the rights and duties in the relationship between parents and their children in Central and Eastern Europe has not changed significantly from the time of the first comprehensive family law regulations to the present day. Parents had, first and foremost, the duty to care for their children, to provide for them, to meet their basic needs, and they could also decide on the direction of their upbringing and preparation for adult life. However, with the development of social relations, children's rights and the science of upbringing, the nature of the individual rights and duties of parents changed, their wide range of autonomy was gradually reduced, and the emphasis was placed on the welfare of the children and the possible consideration of their opinions.

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80 Codul căsătoriei şi familiei, aprobat prin Legea R.S.S. Moldoveneşti din 26 decembrie 1969 [Marriage and Family Code, Approved by the Law of the Moldavian SSR on 26 December 1969] (Veştile Sovietului Suprem şi ale Guvernului R.S.S. Moldoveneşti [Bulletin of the Supreme Soviet and the Government of the Moldavian SSR], 1969, nr. 12, art. 213).

81 Cod Nr. CP1316/2000 din 26.10.2000: Codul Familiei [Family Code] (Monitorul Oficial [Official Gazette], 2001-04-26, N° 47).

The original term "paternal authority" has been extended to "parental authority", and nowadays, thanks to international law, there is more and more talk of "parental responsibility", which is also reflected in legislative amendments[82]. Other interchangeable terms are also being discussed, such as "parental care", "parental liability" and "parent-child relationship", as exemplified by the work on the current Hungarian civil code[83].

In the analysed period of over two centuries in Central and Eastern Europe, we could come across many different solutions for establishing parent-child relationships. In the 19th century, a liberal approach prevailed in the sense of broad parental autonomy, which was reflected, for example, in the right to discipline a child, and the restrictions of which were mainly limited to general terms such as "appropriate" or "moderate" choice of punishment. There were greater differences in the issue of child protection, which in some provisions were poorly marked or not very specific, while in others they were given more importance. More serious changes took place only in the post-war laws and codes, when state authorities gained greater opportunities to interfere with parental authority, and in many cases, by including discipline on the list of parental rights.

In all the countries analysed above, the new codes or laws that regulated family law relations were drafted (although some were based on pre-war drafts) and adopted in the first years after the end of the Second World War. This was facilitated primarily by the lack of a real political opposition, which in the Eastern Bloc was not only hampered but often outlawed and even physically liquidated. In these undemocratic conditions, it was not difficult to push through exactly the law demanded by the communist party in power in each of these countries. The second factor influencing the speed of the adoption of new family law regulations was the need to break away from the old liberal provisions in terms of the autonomy of parental authority and to reorganise the family life of citizens, primarily in the direction of increasing state control over the basic social cell, the family. To this end, the various codes and laws on family law were saturated with references to workers' ideals, socialist values and the subordination of the individual to the state.

Although, after the change of regimes in the various countries, as well as the independence of the former Soviet republics, the various codes and laws on family law were usually amended quite rapidly, they have not stood the test of time and have been replaced by new legislation over the last three decades. This demonstrates the eventual rejection of the solutions adopted in the Stalinist era, as well as the continuous evolution of parental authority powers. An exception in this respect is the Polish Family and Guardianship Code

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82 See for example: SÁPI, E. Family Protection Under Public and Private Law in Hungary. In: BARZÓ, T. – LENKOVICS, B. (eds.), *Family Protection From a Legal Perspective*. Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing: 2021, p. 111, 133–134, 140–145; KRÁLÍČKOVÁ, Z. Czech Republic: The Content of the Right to Parental Responsibility. In: Sobczyk, P. (ed.). *Content of the Right to Parental Responsibility: Experiences – Analyses – Postulates. Studies of the Central European Professors' Network*. Central European Academic Publishing: 2022, pp. 73–75.

83 BARZÓ, B. Hungary: the Content of the Right to Parental Responsibility. In: Sobczyk, P. (ed.), *Content of the Right to Parental Responsibility: Experiences – Analyses – Postulates. Studies of the Central European Professors' Network*. Central European Academic Publishing: 2022, p. 105.

of 1964, which is still in force, but which, after numerous systemic changes in its character, bears little resemblance to its 1960s prototype.

This is all the more reason to highlight the real legal revolution in Poland in 2010, when a clear and strict ban on physical punishment of minors was introduced, which was defined as a ban on corporal punishment. Therefore, although in Poland the statutory term is still "parental authority", it can be said that this change has become a real shift towards the evolution towards "parental responsibility".