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István HOTTÓ

<https://orcid.org/0009-0006-1993-3769>

University of Pécs, Doctoral School of the Law

PhD – Student

e-mail: hotto.istvan@ajk.pte.hu

Context, criteria and vision of parental responsibility, custody and contact rights under Hungarian Family Law

Abstract

In Hungary, parent-child contact is one of the most sensitive central issues in the case of the dissolution of a marriage in the event of a joint child. As communication between parents is usually minimised during and after the dissolution of marriage in most cases, efforts should be made to achieve personal contact with the child towards both parents, which in theory requires the parents to cooperate with each other in the care of the child.

It should be considered in all possible cases that unrestricted, and therefore unregulated, contact under joint supervision, but at least as many arguments could be made in favour of the practice of detailed regulated contact. After all, if the parents on one side show full cooperation in the exercise of parental authority, what is to prevent them from agreeing in detail on the future development of contact, which should in all cases be in the best interests of the child.¹

This article provides a historical overview and critical analysis of the impact of changes in Hungarian family law on parental responsibility, child custody and contact rights, drawing on relevant literature. The aim of the study is to provide a historical analysis of Hungarian child custody laws and to examine the impact of recent legislative changes.

Keywords: Hungarian Family Law, Hungarian Legal System, Parental Responsibility, Parental Supervision, Child Custody, Shared Parenting, The Tripartium.

¹ Balázs Somfai, *Kapcsolattartás, mint a gyermek emberi joga (Contact as a Human Right of the Child)*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, 2007, p. 148.

Introduction

This article aims to provide an in-depth analysis of the evolution of Hungarian family law regarding parental responsibility and child custody, with a particular focus on the 2022 legislative amendments. The central hypothesis of this study is that the recent reforms, which allow for joint parental custody, better serve the best interests of the child compared to the previous sole custody model.

This paper utilizes a legal-historical methodology to critically analyze the Hungarian family law framework, drawing on relevant legal literature to evaluate the impact of legislative reforms on parental responsibility and child custody.

The aspects outlined in this scientific article, which relate to the parent-child relationship after the break-up of the family, have become increasingly topical in the light of social and legal changes.

In most cases, joint parental custody and shared care are in all respects better for the child than sole parental custody and the unfortunate situation whereby the separated parent has disproportionately less time with the child than the other parent.

The above finding is firmly based on the best interests of the child, as a similar proportion of the role, presence and role model of both parents is essential in the child's life.

From the 20th century, the patriarchal family model, which was also prevalent in Hungary, was replaced by a view based on equal rights of parents, as in other European countries, according to which parents have equal rights and obligations towards their children. As a result, parental custody is generally exercised jointly, with a few exceptions provided for by law. The exercise of joint parental authority by the parents lasts not only as long as they live together but also, in the event of a family breakdown, until the child's fate is settled otherwise, either by court or out of court.² In order to understand the current Hungarian legislation and court practice on child custody, it is worth looking back into the past and examining the legal history of the issue.

² András Kőrös, Különélő szülők - közös szülői felelősség, első lépések a Ptk. szülői felügyeletre vonatkozó szabályainak gyakorlatában (*Separating parents - joint parental responsibility, first steps in the practice of the rules of the Civil Code on parental supervision*), in: F. O. – Gárdos, A. Menyhárd (eds.), *Az új Polgári Törvénykönyv első öt éve*, Társadalomtudományi Kutatóközpont Jogtudományi Intézet, Budapest, 2019, pp. 83-97.

1. From Werbőczy's Book of Three through the Family Law Act to the Family Law Act (1514–1952)

In Hungary, until the end of the 19th century, the churches were responsible for the regulation of marriage obligations, their settlement and adjudication.³

The first real initiative for serious change in the spirit of the ideas and thoughts of the 1848 War of Independence was initiated and submitted by Dániel Irányi, member of Parliament, in the form of his bill on religious freedom in 1868, which was rejected during the debate. The bill submitted contained provisions at the level of principle, which considered marriage to be a civil contract and sought to bring cases before ecclesiastical courts before civil courts. In any case, the unsuccessful initiative had the effect that from then on the idea of civil marriage and divorce was regularly on the agenda. In 1873, the Fourth Hungarian Assembly of Jurists again raised the issue of civil marriage. As a result, in 1880, Zoltán Sztehlo, a Member of Parliament, drafted a bill on the conclusion and dissolution of marriage. The majority opinion of the then Assembly of Lawyers was that it was time to apply a general clause enabling the court to dissolve a 'marriage which was internally broken and destroyed'. At the time, there were eight parallel legal systems in force in Hungary. These were the canon law, the law of the Greek Orthodox, Romanian and Serbian churches, the law of the Unitarians, the law of the Israelites, the law of the Reformed Church of the Augustinian faith, the law of the Reformed Church in Transylvania and the law of the Evangelical Church in Transylvania.⁴

This marriage right, which could be considered fragmented, was abolished by the Marriage Act XXXI of 1894 (Act XXXI of 1894), which contained unconditional (absolute) and conditional (relative) breakdowns. Here, the fact that the Ht. Article 95 of the ECHR provided that the parents could agree on which of them should raise their children after the dissolution of the marriage. The provisions of Art. Article 103 of the Matrimonial Covenant provided, inter alia, that a parent who was not raising his or her child had the right to control the upbringing of his or her separated child and to have contact with the child.⁵

In Hungary, the content and exercise of parental custody rights has changed a lot throughout history.⁶ In Hungary, the parental duty was first formulated in

³ Balázs Somfai, i.m. p. 68.

⁴ Tímea Barzó, *A házasság jog és a házassági vagyonyjog fejlődésének rövid történeti bemutatása (A brief history of the development of marriage law and matrimonial property law)*, HVG-ORAC, Családi Jog IV. évf. 1. sz., Budapest, 2006, pp. 2-3.

⁵ Ottó Csiky - Erika Filó, *Magyar Családjog. 2. átdolgozott kiadás (Hungarian family Law. 2nd revised edition)* - Budapest. HVG-ORAC Lap- és könyvkiadó, Budapest, 2003, pp. 84-85.

⁶ Csabáné Herger - Erika Katonáné Pehr, *Magyar Családjog (Hungarian Family Law)*, Novissima Kiadó, Budapest, 2021, p. 202.

Chapter 8 of the Book of Stephen I: "Patres enim idcirco sunt patres, ut nutroant filios", according to which "fathers are fathers in order to feed their children, and if the father is no longer alive, the widowed woman is obliged to care for her children. The institution of paternal authority derives from Roman law, but in Hungary, after the spread of the Christian religion, it was granted a more relaxed and limited authority than the rights granted under Roman law.⁷

In Hungarian law, St Stephen said in chapter 8 of his Code of Laws, "Fathers are fathers in order to feed their children." Werbőczy's Book of Three gave the father dominion over the "people of the house", whereby the father could chastise his child, lock him up, reclaim him from anyone. However, the father's power did not include the obligation to raise and support the child, as this was considered to be the natural duty of the parents.⁸

The Tripartium⁹ completed in 1514, gave the father the right to exercise authority over the whole of the people of his house, he could even imprison his child, but he could only exercise his right of discipline over his child to the extent that it was not yet harmful to the child's health.¹⁰

Article 13 of Act XX of 1877 - Part on the Settlement of Custody and Guardianship Matters In the case of legal separation, the decision as to which parent should keep the child and which parent should bear the costs of maintenance and upbringing shall be made by the court in accordance with the existing legislation. This decision shall be notified to the guardianship authorities ex officio. Until such time as the decision of the courts in this respect has become final, and if the parents have not so agreed, the guardianship authority shall, after

⁷ Tibor Papp, *Magyar Családjog, Kari jegyzet (Hungarian Family Law, Faculty Note)*, Pécsi Tudományegyetem Állam- és Jogtudományi kar, Pécs, 1978, pp. 306-307.

⁸ Ottó Csiky - Erika Filó, i.m. p. 247.

⁹ Tripartium, Werbőczy István Hármaskönyve. "Nemes Magyarország szokásjogának Hármaskönyve (*Tripartium: István Werbőczy's Book of Three. "The Tripartite Book of the Customary Law of Noble Hungary*) - this was the original title of the work completed in 1514 by István Werbőczy, who was later elected as a magistrate and later became a governor, and which was the "bible" of Hungarian religious thought for many centuries until 1848. Originally written in Latin, the Tripartium collected and systematised the rules and theories of customary law of the time. Apart from the preface, the work is divided into three parts: noble private law, noble procedural law, urban and serf law. Its most important thesis is the four saffron privileges of the sameness, the basic law of their freedom as a class: personal liberty, subjection to royal court, exemption from taxation and the right of resistance derived from the Golden Bull. The unified system of noble privileges is evidence of the process by which the common nobility became increasingly involved in and shaped the power of the state, as marked by the Holy Crown. The Book of Three was first published in 1517, and its first Hungarian translation appeared in 1565. Although the collection of customs adopted by the Diet never became law because of the initial opposition of the barons, it was always included in the collection of Hungarian laws known as the *Corpus Iuris*." <https://www.parlament.hu/web/orszaggyulesi-muzeum/kozepkor-harmaskonyv> (accessed on: 03.12.2023)

¹⁰ Csabáné Herger - Erika Katonáné Pehr, i.m. p. 202.

ascertaining the facts and hearing the next of kin, make a provisional decision. The provisions of this section shall also apply where the parents, although not legally separated, are permanently separated and have not made adequate provision for the maintenance and care of their children. Minor children shall normally be left with their mothers until they reach the age of 7, and minor daughters shall normally be left with their mothers after the age of 7, unless the guardianship authorities consider that, for important reasons, different measures are necessary. "¹¹

Act XX of 1877 on Guardianship and Guardianship Matters mentioned the administration of property, legal representation and the right of guardianship among the paternal powers (Art. 15 of the Act). The custody of minors could be exercised jointly by the parents. The exact nature of the powers of custody of a minor was a matter of debate in the legal literature, but judicial practice understood it to mean the concepts of education and guardianship. It also included the training of the child and the definition of the child's first name.

In addition to these rights, there were also duties, according to which the parent was obliged to keep the child with him or her, to designate his or her place of residence or domicile, to keep a close watch over the physical well-being of the minor, to do everything possible to ensure his or her preservation, and to have him or her cured in the event of illness (Gyt. 26 and 92), to provide for the child's physical, mental and moral education and training in a manner appropriate to the child's talents and inclinations and his or her financial circumstances, in which respect the parent has a free hand (Art. 103, which provides that a 'parent may also have regular contact with and control over the upbringing of a child not entrusted to his care, implies that the mother had unlimited rights of upbringing and control over the children entrusted to her care, while the father had no more rights over the child than to have contact with the children entrusted to his care and to control their upbringing on a regular basis.¹²

Article XXXI of the Marriage Act of 1894 introduced the concept of child custody.

§ 95 The judge shall also decide in the divorce judgment on the custody and maintenance of the minor children. Unless the parents have agreed otherwise, the children shall remain with their mother until they are seven years of age, after which age the children shall be placed in the care of the parent who is not at fault, or, if both parents have been found at fault, the sons in the care of their father and the daughters in

¹¹ 1877. évi XX. törvénycikk a gyámsági és gondnoksági ügyek rendezéséről (*Article XX of the Law of 1877 - on the settlement of guardianship and trusteeship cases*) <https://net.jogtar.hu/getpdf?docid=87700020.TV&targetdate=&printTitle=1877.+%C3%A9vi+XX.+t%C3%B6rv%C3%A9nycikk&referer=1000ev> (accessed on:11.25.2023)

¹² Kálmán Csorna, *Magyar Magánjog*, szerk. Szladits Károly (*Hungarian Private Law, ed. by Károly Szladits*), Grill Károly könyvkiadó, Budapest, 1938, pp. 341-342.

the care of their mother. However, the judge may, taking into account the culpability of the parents and other personal circumstances, take measures in the apparent best interests of the children which differ from the agreement of the parents and the above rules, and may even entrust the children to the care of a third person. The costs of the maintenance and upbringing of joint children shall be borne by each parent in proportion to his or her income if the children's property is insufficient to cover them. In the event of danger, both the court and the guardianship authorities may order the children to be provided with the maintenance prescribed.

§ 96 If the judge does not find the facts established in the trial sufficient to decide on the custody and maintenance of the children, he shall dispense with the order to that effect and, at the conclusion of the trial, shall refer the case-file to the guardianship authority for action.

§ 97 If the judge has decided in the divorce decree on the custody and maintenance of the children, but his decision is no longer in the best interests of the children as a result of changed circumstances: the guardianship authority may take measures different from the judge's decision.¹³

On the basis of Decree 10470/1945 ME, Hungarian law changed the concept of "paternal authority" into "parental authority", refined it, the element of authority disappeared, these rights were softened in the conceptual term to parental supervision. Some legal systems still retain the term parental authority, but in their content they conceal parental rights and duties; other legal systems have broken with the term authority in the name of the legal relationship. Hungarian law refers to it as parental authority, while other laws refer to it as parental rights or parental responsibility.¹⁴

2. The Family Law Act 1952

In Hungary, like in the countries of the Soviet bloc, Hungarian family law was regulated in a separate code in Act IV of 1952, the Family Law Act (Csjt.). The law was based on the Soviet legislation immediately after the establishment of the proletarian dictatorship, mainly with the dominance of left-wing radical feminism and disregarding the 'bourgeois law' approach.¹⁵

The Csjt. the original wording of the 1952 Act retained the age and sex distinction. It omitted fault but provided that sons over six years of age should be placed with the father and sons under six with the mother - as a rule. This wording caused a lot of complication because, although the legislation said that as a general rule, not in all cases, and stated that this rule could be derogated from in the best interests of the child, unless the courts and the parents agreed. Con-

¹³ 1894. évi XXXI. törvénycikk a házassági jogról (*Act XXXI. of 1894 on Marriage Law*) <https://net.jogtar.hu/ezer-ev-torveny?docid=89400031.TV> (accessed on: 14.11.2023)

¹⁴ Emilia Weiss, *Családjogi alapismeretek*, (*Basic Knowledge of Family Law*) ELTE Jogi Továbbképző Intézet kiadása, Budapest, 1999, p. 89.

¹⁵ Csabáné Herger - Erika Katonáné Pehr, im. p. 19.

sequently, for a short period of time, courts applied this method of child custody, which was not very fair and insensitive to the child's needs, almost mechanically.¹⁶

The previous age limit of seven was changed to six because it was considered that children's intellectual development had accelerated and they were starting school at a younger age than before.¹⁷

At the beginning of the 1950s, the courts were still doing their best to ensure that parents stayed together if they had a minor child: 'the aim was to restore as soon as possible the parents' broken relationship in order to fulfil the work of raising and caring for the child together.'¹⁸

With older children in particular, it should also be borne in mind that the change that takes place within their family, the restoration of an atmosphere of exemplary harmony between their parents, of peaceful and mutually supportive understanding, can be of crucial importance for their education, for the foundation of their future well-being and for the development of their moral outlook.¹⁹

It was generally desirable to maintain the marriage in the best interests of the child, but looking at all the circumstances, it was conceivable that it would be in the child's best interests if the parents were to divorce. The interest of the moral development and education of the child in the right direction, requires the dissolution of a marriage which has become broken and untenable.²⁰

The rules on child custody can be found under the heading Parental care:

2. Parental care

§ 75 (1) Within the scope of parental supervision, parents shall have the duty to care for and educate the child and to promote his or her physical and mental development. They shall endeavour to ensure that the child becomes a healthy, cultured, moral person, loyal to his people, loving his country, and contributing to the building of socialism by useful work. It is their right and their duty to do everything necessary to achieve these goals and to refrain from doing anything that hinders or makes it more difficult.

(2) A child shall respect and obey his parents and shall do all in his power to promote the efficiency of their efforts.

§ 76 (1) In the matter of the custody of the child, in the absence of agreement between the parents, the court shall.

In such a case, a male child over the age of six will normally be placed with his father, and a female child and a male child under the age of six will normally

¹⁶ Katalin Visontai - Szabó, A szülői felügyeleti jogok gyakorlása rendezésének jogi keretei, pszichológiai háttere és problémái (*Legal framework, psychological background and problems of the settlement of the exercise of parental rights*), Doktori értekezés, Szegedi Tudományegyetem, 2014, p. 8.

¹⁷ Jenő Bacsó - Géza Rády - Viktor Szigligeti: A családjogi törvény, (*The Family Law Act*), Közgazdasági és Jogi Könyvkiadó, Budapest, 1955, p. 277.

¹⁸ Pf.I.22.294/1953

¹⁹ Pf.I.22.726/1953

²⁰ Pf. III. 23.048/1953

be placed with his mother. However, it is possible to derogate from this rule and place the child elsewhere in the best interests of the child.

(2) A parent with parental authority may require the surrender of the child to the person who has you are unlawfully keeping.

(3) A child who has attained the age of sixteen may leave the parental home or other place of residence designated by the parents without the consent of the parents, with the permission of the guardianship authority, if there is an important reason for doing so.

§ 77 The parents who have parental responsibility for the child shall decide on the child's career path are determined by. The child should be given a life path that is suited to his or her inclinations, physical best suited to his or her personal and intellectual abilities and other circumstances.²¹

The first amending amendment to the Csjt., Act I of 1974 on the Amendment and Consolidation of Act IV of 1952 on Marriage, Family and Guardianship, abolished the distinction according to the age and sex of the child.

§ 76 (1) In the matter of the custody of the child, in the absence of agreement between the parents, the court shall decide. The parent may request the child's placement. In the best interests of the minor, the guardianship authority or the a prosecutor can also bring a case. The child should be placed with the parent who has the most favourable physical, their intellectual and moral development is ensured. If placement with a parent is in the best interests of the child the interests of the child, the court may place the child elsewhere in the best interests of the child.²²

The second amending amendment to the Csjt., Act IV of 1986 amending Act IV of 1952 on Marriage, Family and Guardianship, did not substantially change the rules on child custody.

Act IV of 1952 on marriage, family and guardianship was repealed on 15 March 2014.

3. Ptk.²³, the Civil Code

Under the Hungarian legal system, there is no such thing as a legally abandoned child, who has an unconditional right to have his or her best interests looked after. The child may be under parental care or guardianship, the two be-

²¹ 1952. évi IV. törvény a házasságról, a családról és a gyámságról (*Act IV. of 1952 on Marriage, Family and Guardianship*) https://jogkodex.hu/jsz/csjte_1952_23_tvr_5270266 (accessed on: 14.11.2023)

²² 1974. évi. I. törvény a házasságról, a családról és a gyámságról szóló 1952. évi IV. törvény módosításáról és egységes szövegéről (*Act I. of 1974 amending and consolidating Act IV. of 1952 on marriage, the family and guardianship*) <https://mkogy.jogtar.hu/jogszabaly?docid=99200016.TV> (accessed on: 14.11.2023)

²³ A Polgári Törvénykönyvről szóló 2013. évi V. törvény (*Act V of 2013 on the Civil Code*, <https://net.jogtar.hu/jogszabaly?docid=a1300005.tv> (accessed on: 26.11.2023)

ing mutually exclusive. Parental custody is a form of natural legal relationship arising from the family bond between parent and child, usually by descent, which is automatically granted to the parents in the event of marriage, but in certain cases may be established by an official procedure, such as adoption or the judicial establishment of paternity.²⁴

Act V of 2013, which entered into force on 14 March 2014, opens a new chapter in family law. During the preparation of the Act, increased emphasis was placed on incorporating the principles and guidelines developed over decades of judicial practice into the Family Law Book. The rules on child custody have also been amended, primarily because of the difficulties caused by the fact that the Hungarian term had previously differed greatly from international usage. In European countries, child placement generally refers to the situation where a child is placed by a court with a third party other than the parents because the parents are for some reason not fit to raise the child. In the future, in the event that the parents' relationship breaks down and they are no longer able to raise the child together, they will have to apply to the court for an order to exercise parental rights. This is in fact only a difference in wording from the previous rules, which have not changed from the previous rules, as the parents will continue to exercise custody jointly even if they do not live together. The change is of particular importance because the new wording, parental custody, is closer to the term used in Europe: child custody decision and parental responsibility.²⁵

When the new Civil Code was drafted, the Family Law Act lost its autonomy and all the rules relating to family law were incorporated into Book IV of the Civil Code, which also contains the rules that were previously related to child custody. We now call this the regulation of the exercise of parental rights. The most common cases where the issue of child custody had to be decided by a court in the context of proceedings were when a marriage breaks down, when the cohabitation of the parties is terminated and the married parties file a petition for divorce with the court and at the same time seek a settlement of the exercise of parental rights, and in the case of cohabitants, when the cohabitation is terminated.

In addition, there may be cases where the parents cannot agree on the issue of joint parental responsibility, in which case the matter could be referred to the guardianship authorities. Hungary has acceded to the 1989 New York Convention on the fundamental rights of the child. This convention, which Hungary has ratified, requires courts and the competent authorities to hear the child in all cases. This means that, in the event of a dispute over the custody of children being taken to court, the best interests of the child must be a primary consideration, regardless of which decision-making body is involved. This means, in effect, that the child's mental, moral and physical development must be taken into account as to where this is best safeguarded. In all cases, the court or judge must ensure, possibly with the help of an expert, that the child is competent to judge,

²⁴ Csabáné Herger - Erika Katonáné Pehr, *im.* p. 202.

²⁵ Katalin Visontai - Szabó, *im.* p. 106.

that is to say, that he or she is able to respond appropriately to questions and that he or she has had appropriate and realistic experiences of what has happened to him or her. If the court or the expert considers that the child has the capacity to judge, the child should be interviewed. If there are several children, the youngest child will be heard first, followed by the older children in turn. It is important to note that parents and legal representatives are not present at these hearings. The judge and the court reporter listen to the children in a specially designed children's hearing room, so that the children can say what they want to say in a relaxed atmosphere and in a calm and intimate atmosphere.

In principle, parental rights are exercised jointly by the parents, taking into account the child's views. Exercising joint parental authority means that the parents have the same, identical rights in relation to the child. The right to exercise parental authority includes the choice of the child's name, care, upbringing, education and career, which are matters which the parents decide on together as a general rule.

In the event of the break-up of the family unit, the dissolution of a spousal or common-law partnership, we are obviously talking about separated parents, but both parents obviously have parental custody rights and the same rights remain unchanged. There may be restrictions, for example, one of the most important being where the minor child is placed and how regularly he or she can have contact with the other separated parent.

It is necessary to decide who is obliged to pay maintenance to whom, in what amount and with what regularity, and then to determine the quality and method of contact. From this point of view, account must be taken of the circumstances which the child will say at the hearing, which the parents will say on the basis of the court, and on the basis of which the court will have to decide where the best possible place is to provide the child with all the conditions he or she needs.

There may also be events and circumstances where a child has to be removed from the family because of serious failures in the exercise of parental authority, which is primarily a guardianship issue, in which case the guardianship office is entitled to initiate proceedings and may go as far as deciding on the temporary placement of the child or placing the child with a third party and removing the child from the family. The first and most important thing is that the parents should try to reach an agreement. If the agreement is successful in deciding which parent will have custody of the child, the amount of maintenance, the way in which the other parent will maintain contact with the child, then only the divorce and other issues will be decided by the court. If the parents cannot agree on the issue of parental custody, this is also a matter for the court to decide in each case, where the best interests of the child are always the main consideration. Brothers and sisters, it is not necessarily necessary to ask for an expert opinion when several children are placed with you, as in most cases the court can decide without experts which parent will best ensure the physical,

mental and moral development of the child. The main criterion is that the siblings should not be separated, unless there is a special, overriding reason for not doing so, they should be placed together, i.e. the court will decide which parent the children will be placed with.

In many ways it is right to try to reach an amicable agreement between the parents, as in a divorce case it is not always the same whether the children have to appear in court, no matter how child-friendly the environment in which they are heard. It is unfortunate for the children to have to go through this high stress situation. Of course, the situation is different when the children reach adulthood, because they may still be in care and maintenance, so they need to be looked after, but in such cases they can make a statement in their own right, but otherwise the court must take into account the views of the children, but equally the parents must take into account the views of the child when they make joint decisions. But it should be stressed that, in addition to listening to the child and asking for his or her opinion, the responsibility for the decision must be taken off their shoulders, which is the court's task. After all, a child-centred decision-making system should be pursued. In fact, in the procedure, where children are involved, children should always be at the centre and only then do parents come.

Once a decision has been made, if a parent is dissatisfied with it, they have the right to appeal against the court's decision, and such decisions can be appealed. Such decisions are dealt with in the first instance by the district courts, and on appeal the case is heard by the second instance chamber of the tribunal, where a panel of three judges will hear the case. Obviously, they will look more closely at whether or not the decision is well-founded and correct.

The Civil Code²⁶, which entered into force on 15 March 2013, codified what can be considered conceptually rather minor changes in the overall regulation of parental custody. Obviously, these were partly due to the fact that the new legislation retained the concept and institution of child custody, which had been used since the end of the 19th century, only in the case of placement of the child with a third party, but no longer considered it applicable when the parents or one of them continued to raise the child. Although, at the time of the entry into force of the Civil Code, it was described as a specific solution and as not changing the substance of the earlier rules on child placement.²⁷

If, after the proceedings have begun, the court places the child with one of the parents, using the new terminology, one of the parents is entitled to exercise exclusive parental authority over the child, that parent exercises the rights, but the parents must continue to act jointly on important matters concerning the

²⁶ A Polgári Törvénykönyvről szóló 2013. évi V. törvény (*Act V of 2013 on the Civil Code*, <https://net.jogtar.hu/jogszabaly?docid=a1300005.tv> (accessed on: 26.11.2023))

²⁷ Emilia Weiss, *Az új Polgári Törvénykönyv Családjogi Könyvéről. (The Civil Code. Family Law Book)*. Jogtudományi Közlöny, 2013/9., pp. 405 - 414.

child's fate. These essential matters are the child's place of residence, his or her school, his or her residence abroad and his or her career. It is very important that the child's views are heard. Once a child has reached the age of 14, a decision on placement can only be taken with his or her consent. However, current judicial practice allows for a decision to be taken for children under 14 years of age.

The fourth part of the Civil Code on parentage regulates the issue of parental custody, which *ipso iure* follows from parental status. This set of rules covers the principles of exercising parental authority, the rights and obligations that constitute the content of parental authority, since it is important that, unlike in the past, the Civil Code now defines the rights and obligations of the separating parent in a separate section, and, closely related to this, the most important legal power is the right of the separating parent to maintain contact.

In Hungary, the Civil Code. The Fourth Book of the Civil Code deals with family law, and the Title on parental custody has undergone major changes in both content and scope compared to the previous provisions of the Civil Code, as the Title on parental custody has been doubled from 24 to 48 §. At the head of Title XII, the Family Code lays down the principles governing the exercise of parental authority, i.e. ensuring the physical, mental and moral development of the child, the duty of parents to cooperate and the equality of parents in the joint exercise of parental authority (§ 4:147), the involvement of the child in decisions and the due weight to be given to the views of the child, who has the capacity to judge, in view of his or her age and maturity (§ 4:148). (§ 4:149.) In relation to the parents, the law has then abandoned the term "custody", which was used previously, in so far as the court must decide on the exercise of parental custody between the separated parents.²⁸

4. 1 January 2022

On 1 January 2022, Hungary saw a major change in its family law and in the regulation of parental custody. Although the amendment to the Fourth Book of the Civil Code regulating family law only added a sentence to two paragraphs and introduced one new paragraph to the previous ones, it nevertheless introduced changes whose significance cannot be overestimated.²⁹

²⁸ András Kőrös, *Különélő szülők – közös szülői felelősség, első lépések a Ptk. szülői felügyeletre vonatkozó szabályainak gyakorlatában (Separating parents - joint parental responsibility, first steps in the practice of the rules of the Civil Code on parental supervision)*, in: F. O. – Gárdos, A. Menyhárd (eds.), *Az új Polgári Törvénykönyv első öt éve, Társadalomtudományi Kutatóközpont Jogtudományi Intézet, Budapest, 2019*, pp. 83-97.

²⁹ Orsolya Szeibert: *Új mérföldkő a hazai családjogi szabályozásban: a bíróság által elrendelhető közös szülői felügyelet és váltott gondoskodás, (A new milestone in Hungarian family law:*

In 2021, Hungary's Minister of Justice, Judit Varga, submitted a proposal to the Hungarian Parliament to amend the Civil Code, which in every respect served the interests of the child and the previously disadvantaged separated parent, thus ushering in a revolutionary and modern era for parental custody. Prior to the Act promulgated on 17 November 2021, Hungarian family law did not allow judges to make a judgment granting joint parental custody to both parents of the child after the dissolution of the marriage or civil partnership, so parental custody could be awarded exclusively to one parent, the mother or the father. It did not matter that both parents possessed the moral and human qualities indispensable for bringing up the child, i.e. that they were both equally good parents and had the right to be expected to have an orderly existence, the rigidity of the Civil Code did not allow for joint parental custody.

This legal framework was, in my view, arguably unfair and seriously prejudiced the best interests of the child and irreversibly disadvantaged the separated parent following the court's decision, while it gave a monopoly to the custodial parent who had sole custody. The decision has brought about and caused numerous instances of unresolvable conflict between the two parents and has also given rise to numerous cases of abuse by the carer in terms of the continuity and periodicity of contact and the impossibility of such contact, resulting in several cases in the complete separation of the child from the separated parent.

I am convinced that in several cases judges have been forced into a situation of powerlessness to resolve this unjust situation, lacking the appropriate and effective tools that a modern legal framework should have provided.

In fact, the previous legislation penalised parents who lost custody of their children, as the legislation effectively denied them the right to have a say in their child's treatment in case of illness, to attend their child's school parent-teacher meetings and reception hours, to have an opinion on what extra lessons or sports activities, special interest groups or optional school activities their child should attend.

According to Judit Varga, the amendment has been a long-standing demand of civil society, and the proposal to amend the Civil Code was widely welcomed and supported by civil society actors, including the Híntalóvön Children's Rights Foundation and the Apas Heart Association. The amendment, which also includes the proposals of the Civil Working Group on Family Law set up in 2020, is also supported by the broad-based Working Group of Experts on Family Law that has been established, he added. According to the minister, joint parental custody and alternating care ensure that if both parents are capable of caring for the child, the child does not have to be separated from either parent and can

court-ordered joint parental custody and shared custody), Családi Jog, ORAC Kiadó, 2022/1., Budapest, pp. 10-15. <https://ptk2013.hu/szakcikkek/szeibert-orsolya-uj-merfoldko-a-hazai-csaladjogi-szabalyozasban-a-birosag-altal-elrendelhető-kozos-szülői-felügyelet-es-valtott-gondoskodás-csj-2022-1-10-15-o/8128> (accessed: 01.12.2023.)

remain in an intimate relationship of the same intensity with both parents. An essential element of the change is that the court must carefully consider all the factors involved in deciding whether the conditions for exercising joint parental authority are met and whether it is in the best interests of the child. The amendment provides an additional opportunity for the court to make a better decision than at present, taking into account the best interests of the child,

the minister said. Judit Varga also said that international experience and the latest research clearly show that joint parental custody and shared care are better for the child than living with only one parent. Even when the relationship between the parents is not particularly cooperative, children can still benefit from the advantages of shared care because it encourages and promotes cooperation between the parents because both parents are effectively involved in the child's upbringing.

The minister also pointed out that in the vast majority of EU countries, shared parental responsibility is the rule and that it is considered exceptional when only one parent has it. In most countries, the court can also decide on joint custody at the request of one of the parents, so "we will continue to work on shortening procedural deadlines in family law cases."³⁰

With this change, the Civil Code provides the possibility for the court to order a so-called alternate placement at the initiative of one of the parents, which was not possible in the past, which means that the child can live with the mother for up to two weeks and with the father for two weeks after the breakdown. In my opinion, it is regrettable that in Hungary this was previously not a legal possibility at all, only in the case of an agreement, provided that the agreement was based on the consent of both parents. In many cases, one parent did not give his or her consent, which put him or her in a monopoly position, so that the so-called alternating placement could not be implemented, thus placing the separated parent in an undignified and vulnerable position compared to the caring parent, the parent with parental custody. In the vast majority of cases, the father was the victim of this, despite the fact that he was otherwise equally capable of exercising parental authority, but was placed in this position by the previous "rigidity" of the Civil Code. In my opinion, this change has been forced by life, time has passed beyond the rigidity of the Civil Code. It is clear that this solution can guarantee that the parents' relationship with their child, even in the event of separation, is the least burdensome. Parents can be placed in a position of subordination rather than the undesirable subordinate and superior status they have enjoyed up to now, and both parents' actual relationship with the child can be equal, as the best interests of the child require. The change will give judges much more leeway, but also greater responsibility, more sophisticated empathy, situational awareness and experience than in the past, as each

³⁰ <https://kormany.hu/hirek/varga-judit-a-gyermek-erdeket-szolgalja-a-polgari-torvenykonny-modositasa> (accessed: 10.11.2023)

case before them is different and therefore requires a different and individual approach.

Many have raised concerns that the new legislation may make it easier for children to be placed in abusive environments without control than before.

It is important to underline that the new amendment to the law stipulates that joint parental custody can only be ordered in the best interests of the child, so if the judge becomes aware of circumstances during the litigation that clearly entail further conflicts that may surface later, he or she cannot and will not decide in favour of joint parental custody, of course.

Amendment of Act V of 2013 on the Civil Code

76. §

Paragraph of Article 4:164 of Act V of 2013 on the Civil Code shall be replaced by the following:

"(1) Parental custody shall be exercised jointly by the parents, even if they no longer live together, unless otherwise agreed or ordered by the guardianship authority or the court. Joint parental authority may also be exercised by alternating the parents' right and obligation to bring up and care for the child for the same period."

77. §

"(1) In the absence of an agreement between the separated parents, the court shall decide, on application or of its own motion in the best interests of the child, which parent shall have parental custody. The court may also decide on the joint exercise of parental custody at the request of one of the parents if it is in the best interests of the minor child."

78. §

The following § 4:167/A shall be added to Act V of 2013 on the Civil Code:

"§ 4:167/A [Judicial settlement of the exercise of joint parental authority]

- (1) In the case of a decision on joint parental custody, the court may, taking into account the best interests of the minor child, order that the parents take turns in caring for the child for the same period of time, or, failing this, regulate contact with the child and decide on the maintenance of the child. In the case of an order for joint parental custody, the court shall designate the child's place of residence.
- (2) If the court authorises the parents to take care of the child alternately for the same period, it shall decide on the extent of the period of care to be exercised by the parent independently, including holidays and vacations, the manner of handing over and taking over the child, and, if necessary, the keeping of the child.
- (3) If the court gives the parents alternate rights to the care of the child for the same period, the court may also be requested to change the decisions under paragraph (2)."³¹

³¹ T/17282. számú törvényjavaslat egyes igazságügyi tárgyú, valamint kapcsolódó törvények módosításáról (T/17282. amending certain laws on justice and related matters) <https://www.parlament.hu/irom41/17282/17282.pdf> (accessed: 17.11.2023)

Conclusions

In this article I examined the evolution of parental responsibility and child custody in Hungary, focusing on the 2022 Civil Code amendments that introduced joint custody as a significant reform. The hypothesis stands, as joint custody better serves the child's interests, though its success relies on proper judicial application.

According to Orsolya Szeibert, if a poll had been conducted in Hungarian society in 2019, asking what happens to the child after the parents' marriage breaks up, most people would most likely answer that the court will place the child with either the mother or the father. Even today, lawyers and judges typically explain custody arrangements to people involved in proceedings by referring to the 'old custody arrangements' and comparing them with today's options.³²

In connection with this new, forward-looking provision, many people in the course of applying the law ask whether the change in the legal environment can be assessed as a change of circumstances that constitutes the basis for a new arrangement of parental custody.³³

The changes to the law have given judges greater flexibility and latitude, allowing them to make decisions that are truly in the best interests of the child. This is particularly important as each case requires an individual approach. These changes have brought Hungary closer to modern thinking and standards. Shared parental responsibility should be the default practice in most cases, which serve to protect the rights of the child and ensure equal rights for parents.

Although the legislative environment has moved in a positive direction, future judicial practice and social acceptance will be the key to how the changes will actually work. For example, how shared parental responsibility will be applied in practice and how possible abuses or conflicts will be resolved. In addition to further improving the legal environment, a key objective is to ensure that the new approach is put into practice as soon as possible by judges and that procedural deadlines in family law cases are effectively reduced to make decision-making faster and more efficient.

No research results or statistics are yet available on the incorporation of the new provision into court decisions and on the establishment of the new ap-

³² Orsolya Szeibert, Egy nagy túlélő - a "gyermekelhelyezés" a Magyar családjogban (*A great survivor - "child custody" in Hungarian family law*), In: V. Lamm, A. Sajó (eds.) A Ptk. kodifikációja előtti és utáni helyzet, *Studia in Honorem Lajos Vékás*, Budapest, HVG-ORAC, 2019. p. 290.

³³ Zsuzsanna Kósa Kövesné - Annamária Tancsik: A jogszabályváltozás, mint körülményváltozás a szülői felügyelet gyakorlása megváltoztatásának feltételrendszerében (*The change of law as a change of circumstances in the conditions for changing the exercise of parental authority*) 2022, <https://kuria-birosag.hu/hu/kuriai-dontesek/1-dr-kovesne-dr-kosa-zsuzsanna-dr-tancsik-annamaria-jogszabalyvaltozas-mint> (Letöltés: 27.11.2023)

proach, but hopefully the further efforts of decision-makers and law enforcers in this direction will, in the foreseeable future, establish a practice in Hungary which, in all aspects of parental custody, will indeed put the best interests of the child and the equal rights of parents first.

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Kontekst, kryteria i wizja władzy rodzicielskiej, prawa do pieczy nad dzieckiem i kontaktów z dzieckiem w węgierskim prawie rodzinnym

Streszczenie

Na Węgrzech kontakty rodziców z dziećmi są jedną z najbardziej drażliwych kwestii w przypadku rozwiązania małżeństwa w przypadku wspólnego dziecka. Ponieważ w większości przypadków kontakty między rodzicami są zazwyczaj ograniczone do minimum w trakcie i po ustaniu małżeństwa, należy dołożyć starań, aby nawiązać osobisty kontakt z dzieckiem wobec obojga rodziców, co teoretycznie wymaga od rodziców wzajemnej współpracy w zakresie opieki nad dzieckiem.

We wszystkich możliwych przypadkach należy wziąć pod uwagę, że kontakt nieograniczony, a więc nieuregulowany, prowadzony pod wspólnym nadzorem, ale co najmniej tyle samo argumentów można by przytoczyć na rzecz praktyki szczegółowego kontaktu regulowanego. W końcu, jeśli rodzice z jednej strony wykazują pełną współpracę w wykonywaniu władzy rodzicielskiej, cóż stoi na przeszkodzie, aby szczegółowo uzgodnili przyszły rozwój kontaktów z dzieckiem, co powinno w każdym przypadku leżeć w najlepszym interesie dziecka.

W artykule przedstawiono rys historyczny i krytyczną analizę wpływu zmian w węgierskim prawie rodzinnym na odpowiedzialność rodzicielską, prawo do opieki nad dzieckiem i prawo do kontaktów z dzieckiem, opierając się na odpowiedniej literaturze. Celem badania jest przedstawienie analizy historycznej węgierskiego prawa dotyczącego opieki nad dziećmi oraz zbadanie wpływu ostatnich zmian legislacyjnych.

Słowa kluczowe: Węgierskie prawo rodzinne, węgierski system prawny, władza rodzicielska, nadzór rodzicielski, opieka nad dzieckiem, naprzemienne rodzicielstwo, trójstronność.