PUBLICISATION OF FAMILY LAW IN CZECHOSLOVAKIA IN THE 20TH CENTURY[1]

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ABSTRACT

This article analyses the development of Czechoslovak family law in the 20th century, with emphasis on changes in family and marriage, status of women in the family, marriage, and society, and changes in the legal status of children (with a focus on state interest in child education). In particular, we introduce the results of our research on the foundation of the system of state social care for children, the emancipation of children and women from the dominance of their fathers, and a communist experiment to place the family under socialist state supervision. We draw attention to how these changes introduced public law elements into family law and how family law became an independent legal branch. To research these topics, we analysed the following legal acts: Act No. XXXI of 1894 on the Marriage Law, which was in effect in Czechoslovakia from the establishment of Czechoslovakia in 1918 until 1950, was amended through Czechoslovak Act No. 320 of 1919 Coll. on Marriage Contract Ceremonies; Family Law Act No. 265 of 1949 Coll., which was in effect from 1950 to 1964; Family Act No. 94 of 1963 Coll. that was in effect from 1964 to 2005; and Act No. 36 of 2005 Coll. on a family currently in effect. In addition, we worked with case law, sociological research, archival sources, etc. In conclusion, the most turbulent turnover in family law occurred in our territory in the 19th century through the Hungarian Act of 1894. The 20th century, however, was the most turbulent regarding the number of changes, some of which the authors analysed in this article.

KEYWORDS

development of the Czechoslovak family law in the 20th Century
status of family members
state interest
marriage
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women
emancipation

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1. Introduction

Family law, which is effective in present-day Slovakia,[4] has undergone essential changes since the 19th century. The demands for secularisation and limitations of the church's influence on marriage led to the introduction of a civil form of marriage and the dissolution of marriage *inter vivos* – said otherwise–divorce. However, traditional rural Slovak society observed these changes from a distance and continued to live according to traditions. The voices calling for further secularisation became louder after the creation of Czechoslovakia, particularly in the Czech countries, with the there-effective Austrian marriage law being less progressive than the Hungarian one. A legislative compromise led to the drafting and adoption of Act No. 320 of 1919 Coll. For Slovakia, this meant that Hungarian law remained in effect (i.e., Act No. XXXI of 1894 on the Marriage Law, hereinafter referred to as the Marriage Act of 1894), in some articles amended through Act No. 320 of 1919 Coll. Therefore, in Slovakia, since 1919, it became possible to conclude civil and church marriage - both completely equal. The failure of Czechoslovak codification efforts in the field of substantive civil law ultimately led to the survival of the dual legal arrangement of family law until 1948/1949. The Austrian Civil Code (ABGB) applied in Bohemia, Moravia, and Silesia, whereas the Hungarian Marriage Act of 1894 applied in Slovakia, both of which were amended by Czechoslovak Act No. 320 of 1919 Coll. on Marriage Contract Ceremonies. The breakthrough change occurred in Czechoslovakia during the so-called People's Democracy with the adoption of the Ninth-of-May Constitution of 1948 and Family Law Act No. 265 of 1949 Coll., which definitively secularised marriage and put families under totalitarian surveillance. Even raising children, an intimate family affair, became a regulated and controlled public matter that remained in socialist Czechoslovakia after the adoption of Family Act No. 94 of 1963 Coll. The liberation of family law from the shackles of totalitarian power occurred through several amendments adopted after 1989, notably Act No. 36 of 2005 Coll. on Family.

In this simplified timeline, it is possible to identify some fundamental turning points in the history of national family law. In the following pages, we introduce these changes, including relevant legislation, court practices, and the social-political background. As part of the development of Czechoslovak family law in the 20th century, we draw the reader's attention to the following issues: a) changes in family and marriage, b) changes in the status of women in family, marriage, and society, c) changes in the status of children (with a focus on state interest in child education).

These changes introduced public law elements into family law. Moreover, family law became an independent legal branch due to the legal diversification promoted by socialist jurisprudence, aiming to shift from bourgeois (liberal) family law based on 'property relations'. Thus, following questions arise: 1. How did the family change in Czechoslovakia during the 20th century? 2. How did the status of family members change? 3. What interest did the state have in the transformation of the family or in female emancipation and why did it try to penetrate the intimacy of the parent-child relationship? Answers to these essential questions will help us clarify the development of Slovak family law.

4 | Until 1918, Slovakia was part of the Hungarian Kingdom. After 1918, it was part of Czechoslovakia.

2. Changes in family and marriage

The transformation of marriage and family in Slovakia started with the adoption of the Marriage Act of 1894, which was in effect in Slovakia until the end of 1949 (as amended by Czechoslovak Act No. 320 of 1919 Coll). The Marriage Act of 1894 raised the threshold of a new era that was more liberal and free and more open to new challenges, clearly rejecting the preservation of the past.[5] Mandatory civil marriage ceremonies were confronted with the conception of marriage as a sacrament,[6] and the dissolution of marriage that became a 'requirement of the new times' clashed with the Christian concept of indissolubility of marriage.[7] The Marriage Act of 1894 avoided defining the institution of marriage, even though a shift from the sacramental understanding of marriage towards its civil contractual character was evident.[8] Jurisprudence in this era settled on the perception of marriage as a contract. However, the fundamental change that matrimonial (and family) law underwent in Slovakia at the end of the 19th century and at the beginning of the 20th century did not have as radical an impact on contemporary Slovak rural society as expected.[9] For traditional Christian Slovak society, marriage was a sacrament, and its dissolution was perceived as negative, even during the first half of the 20th century.[10] After the establishment of Czechoslovakia, the demand for secularisation of marriage appeared prominently in Czech countries. This is evident from the proposal to amend the provisions of the ABGB on marriage law, which had already been submitted at the first constituent meeting of the National Assembly in November 1918.[11] The struggle for the modernisation of marriage culminated in May 1919 and resulted in the adoption of Act No. 320 of 1919 Coll. on the Ceremonies of the Marriage Contract, Separation, and Impediments to Marriage (the Marriage Amendment or Separation Act).[12] Slovakia only introduced the equality of civil and church marriage (i.e. the engaged couple could choose how to enter marriage) and amended marriage announcements.[13] Thus, the dual regulation of family and matrimonial laws continued, which was

5 | Gábriš, 2012, p. 50.
6 | Lanczová, 2018, pp. 15–18.
7 | Laclavíková, 2017, pp. 65–66; see also Petrasovszky, 2016, pp. 29–34.
8 | Herger, 2012, p. 138.
9 | Interesting conclusions on the ethnological research of the Slovak family in this period are available in Botíková, Švecová and Jakubíková, 1997.
10 | 'According to statistics, a 3.3% divorce rate in the 1920s increased to 5.2% in the 1930s, which is a minimal increase for people living in this period … It shows that the changes were slow, more of an individual character, occurring in the urban environment, among non-peasants, mainly intellectuals and the rich. The wider stratum of society inclined to the traditional, as much as possible, unchanging arrangement of relationships.' Lanczová, 2019, p. 276; see also Lanczová, 2017.
11 | The suggested amendment was brief, requiring civil marriage and the possibility of divorce. Its provisions were not to apply to Slovakia, where the effect of the adopted Hungarian regulation was to continue. The suggested amendment by Dr. Bouček et al. is available at: https://www.psp.cz/eknih/1918ns/ps/tisky/t0001_00.htm (Accessed: 10 March 2023).
12 | Veselá, 2003, p. 76.
13 | In Slovakia and Subcarpathian Ruthenia, only Secs. 1 to 12, further on Secs. 25, 26, and 29 of the Marriage Amendment Act applied. On the contrary, Secs. 13 to 24 (on dissolution of marriage and separation from the bed and board), Sec. 27 (on reconciliation attempts) and Sec. 28 (on invalidity of marriage) did not apply here. In these matters, the adopted Hungarian Marriage Act of 1894 remained valid.

supposed to be solved through the expected codification of civil law. However, lawmakers did not complete the Czechoslovak Civil Code for various reasons, especially due to the upcoming events of the Second World War. Moreover, the Civil Code Draft submitted to the National Assembly in 1937 missed articles on family law because of ongoing professional and political disagreements on whether to include them in the Civil Code or codify them separately.[14] When Czechoslovakia was reestablished after WWII in 1945, the dual regulation of family law in the unified state continued. The problems resulting from this legal dualism served as fertile ground for changing family law on a new ideological basis.

The Ninth-of-May Constitution of 1948 declared the protection of marriage and family,[15] as seen in Sec. 10 'Marriage, family, and motherhood are under the protection of the state. The state ensures that the family provides a healthy basis for the national development.' Thus, the Ninth-of-May Constitution became not only an interpretative tool for new judicial practice but also a norm with new revolutionary principles changing family relations (equality between men and women in the family and equal rights for children regardless of their origin) that was directly applied and referred to by the general courts.

The representatives of the People's Democratic regime set as one of the main priorities the transformation of family relations associated with property (and thus demagogically associated with the criticised 'bourgeois family') to primarily personal, in the spirit of socialist coexistence. The new Czechoslovak legal doctrine highlighted that such a transformation occurred in the Soviet Union.[16] The essence of the transformed family law was to deprive the family of its private (intimate) nature and strengthen its public importance.[17] Regulation and control by the state represented a decline in society from capitalism to socialism.[18] The transformation of the legal order in People's Democratic Czechoslovakia was the result of the legal biennium, a reform process initiated under Act No. 265 of 1949 Coll. on Family Law (hereinafter referred to as the Family Law Act of 1949).[19] It introduced the idea of creating socialist family law as a separate legal branch[20] that enshrined both private and property relations between spouses. The Explanatory Report on the Government Family Law Act Draft of 1949 and the entire parliamentary debate during the legislative process showed signs of a fundamental tendentious criticism

14 | Salák, 2017, p. 37.

15 | Constitutional Act No. 150 of 1948 Coll. introduced the new People's Democratic regime.

16 | 'Soviet family law regulates a specific area of social relations, namely legal relations between spouses and between family members, the characteristic feature of which in a socialist society is that personal relations prevail over property relations. … From the beginning, the revolutionary legal consciousness of the Soviet people grasped this fundamental difference between the nature of civil law relations as property relations, and the nature of family law relations, in which the personal, moral and socio-educational elements prevail. … legislation in matrimonial and family issues is therefore not a matter of chance in the Soviet legal system, but results directly from the socialist perception of marriage and family in which the interests of the society correlate to the highest degree with personal interests, but are far from property interests. Bourgeois legal systems understand marriage and family primarily as economic units, the purpose of which is to create, collect and secure family property, and therefore naturally include family law in civil law.' Viktory, 1952, pp. 115–116.

17 | These opinions were already present in the Manifesto of the Communist Party (1848).

18 | Kuklík, 2009, p. 575.

19 | Knapp, 1985, pp. 445–446.

20 | 'The new family law, freed from property rights interests, should not have had its place in civil law, which primarily regulates property relations.' Letková and Martincová, 2018, p. 52.

of bourgeois (capitalist) family law[21] and an emphasis on constitutional principles that changed the character of society and the state.[22]

In the Preamble, the Family Law Act of 1949 defined marriage as

> [...] a voluntary and permanent life partnership between a man and a woman, established in a legal manner, which, as the basis of the family, will in the future serve the interests of all its members and the benefit of society in accordance with its progressive development.

This new socialist marriage was supposed to stand upon the deep emotional relationship between equal spouses. The contractual nature of marriage[23] was rejected as a relic of the bourgeois era. The Family Law Act of 1949 recognised the mandatory civil form of marriage, allowing religious marriage ceremonies only after civil weddings with no legal relevance.[24] The Act of 1949 abolished the factual termination of marriage called 'separation from bed and board' that had existed in legal orders of Christian Europe since the medieval times. Instead of exhaustively listing reasons for divorce, the Act introduced only one general reason: the deep and permanent breakdown of marriage caused by grave problems.[25] The justification for only one general divorce ground[26] was that no list is 'extensive enough to cover diverse and various possibilities' that might lead to divorce.[27]

21 | 'The disintegration of the old capitalist society had an influence on the family, so even now, some broken marriages still exist. One can see this because of separations and all the other accompanying phenomena of corrupt capitalist morality, such as infidelity, moral offenses, prostitution, alcoholism, etc. still occur. But even here today, we can already notice a sharp downward trend in all these sad phenomena, which indicates that marriage and the family in a people's democratic state are recovering as a result of improved economic conditions and morals. It turns out that the best cure for all these social ills is the provision of suitable living conditions - allowing people to lead moral lives only as socialism does, not succumbing to decaying forces and immorality. Honest work, earnings sufficient for a good living, decent clothing and good housing, and the certainty that one does not have to worry about illness, injury, or old age, literally work miracles. The unworthy suddenly become exemplary individuals, and the bad human qualities vanish. We see this each day as the new world collides with the old order, which yet persists in people's thinking and feeling. It is at this time of transition from the old social order to a higher social order that everyone who has eyes to see and ears to hear should realise how the material side of our lives contributes to how permanent marriages will be, how strong basis will the family become for the nation's development. A new morality grows out of construction work. The pioneers of this new socialist morality are our strikers, men, and women, who become role models for their acts for others. We issue a new act so that our working people do not follow the family regulations governed by the morals of an exploitative society, hostile to the working people.' Quoted from the speech of the Minister of Justice Dr. A. Čepička as part of the discussion on the report of the constitutional and legal committee on the government's draft on family law at the 37th session of the National Assembly on 7 December 1949. Steno protocols. Print 382. [Online]. Available at: https://www.psp.cz/eknih/1948ns/stenprot/037schuz/s037004.htm (Accessed: 10 March 2023).
22 | Šošková, 2016, p. 27.
23 | Bělovský, 2009, p. 467.
24 | However, for political reasons, the provision on the permission of religious ceremonies did not appear in Sec. 1 of the Family Law Act of 1949 but in Sec. 7.
25 | Subsection 1 of Sec. 30 of the Act on Family Law of 1949: 'If there has been a deep and irretrievable breakdown between the spouses for serious reasons, the spouse can ask the court to terminate the marriage by divorce.'
26 | The court examined who caused the marriage breakdown (who was guilty of the marriage breakdown).
27 | Laclavíková and Zateková-Valková, 2020, p. 58.

The new socialist family was supposed to be subordinated to the interests of the totalitarian state, as idealistically explained in the Explanatory Report to the Family Law Act of 1949:

> However, the socialist family has a completely different mission in society. The cornerstone of a family is a voluntary and free union of a man and a woman, their affection, and mutual respect. Through a family, healthy people fulfil their natural desires and, above all, educate their children. A socialist family is a solid collective whose members provide each other with moral and material help and care for each other. A socialist family is a collective of workers whose interests are not in conflict with the interests of society but which primarily pursues the common interest of all, the interest of society, which will ensure an increase in the standard of living of all workers and the undisturbed development of their mental abilities'![28] Thus, a progressive higher type of family was to be born, not based on 'property, but on mutual emotional affection to create a healthy basis for the successful education of the children, the future citizens of a new, higher form of state.'[29]

The paradox of time was that the ordinary reality of life pointed to the dysfunctionality of this model. In contrast, an insufficient supply and lack of goods and services strengthened the economic function of the family (and extended family) by searching for 'ways' to ensure self-sufficiency.[30]

The socialist character of the family was strengthened through the following socialist regulations of family law: Act No. 94 of 1963 Coll. on Family (hereinafter referred to as the Family Act of 1963). The recodification of family law began with the Constitution of the Czechoslovak Socialist Republic of 1960,[31] which declared that socialism in Czechoslovakia won. Like the Ninth-of-May Constitution of 1948, it placed 'motherhood, marriage, and the family under the protection of the state.' Further on, Article 26 specified that 'the state and society ensure that the family is a healthy basis for the development of the youth.' The new Family Act followed the previous Act of 1949 and was based on the same ideological principles.[32] The influence of the state and its interference in the family–that is, the etatisation of society increased and intensified. One piece of evidence is the socialist demand for uniform education of children by parents, the state, and social organisations.[33]

In Article I of the Family Act of 1963, in the core principles, we find the definition of the socialist marriage and its purpose: 'Marriage in our society stands for strong emotional

28 | Explanatory Report to Act on Family Law of 1949 [Online]. Available at: https://www.psp.cz/eknih/1948ns/tisky/t0378_02.htm (Accessed: 10 March 2023).
29 | Presentation of the reporter Dr. Z. Patschová on the Act on Family Law of 1949, which took place at the Constitutional Committee of the National Assembly, which discussed the government's draft of 7 December 1949. Steno Protocols. Print 382. [Online]. Available at: https://www.psp.cz/eknih/1948ns/stenprot/037schuz/s037001.htm (Accessed: 3 May 2020).
30 | Hamplová, 2010, p. 5.
31 | Constitutional Act No. 100 of 1960 Coll.
32 | These principles primarily included: the consistent secularisation of family law relations, the equality of men and women in marital relations and towards their children, and the equality of children regardless of their origin. In contrast, it was no longer a requirement for a court to examine the fault for the marriage breakdown. Thus, for the termination of a marriage by divorce it was necessary to take into account only the objective ground for marriage breakdown and the interests of minor children.
33 | Planková, 1964, p. 25.

relationships between a man and a woman, both equal in this bond. The main social purpose of matrimony is the founding of a family and the proper upbringing of children.' The family established by marriage became the 'cornerstone' of society, and it was the society that was supposed to 'protect family relationships in all respects.'[34]

Society protects families because of its crucial functions (biological, economic, and educational),[35] including ideological education. In the spirit of the promoted ideas, economic function was supposed to gradually lose its importance (hands-in-hand with the increase in services provided by the state), together with the weakening of the family as an economic unit.[36] The most important function of the family was education. The family was supposed to be the most suitable environment for upbringing guided by the state, the first place where the child came into contact with social norms and perspectives, and where the child acquired habits, first experiences, and opinions.[37] In education, the socialist state saw the potential to preserve ideals by creating individuals dedicated to the regime.

What were the interests of the totalitarian (people's democratic and subsequently socialist) state? During totalitarianism, the family became the basic unit of society and the centre of the state's interest. According to the rhetoric of the 1950s and the 1960s, existential problems disappeared, which was an advantage over an uncertain life under capitalism. In exchange for the freedom of individuals, from the 1970s, the state led a policy of social corruption (providing marriage loans, social security support, housing for young families, institutionalised childcare–a network of schools, kindergartens, nurseries, etc). The family changed from private to public. However, these measures did not achieve their goals. Society passively accepted social security, and the decline in the population curve became (as in other parts of the world) a new trend.[38]

34 | Art. II of the Family Act of 1963.
35 | Pávek, 1973, p. 56.
36 | In 1964, Oľga Planková indicated that this is essentially a utopian vision that can only become real under communism: 'A family in our society can fulfil the function of providing material security for its members only under the assumption of managing a family household, within which family members mutually assist each other not only in the form of monetary contributions but also by acts of personal care and sharing housework. Despite the great efforts in society to liberate women from heavy housework, there is no complete equality between women, burdened by housework, and men with regard to female work in production, politics, and culture. In most of our families, the house chores exclusively or predominantly burden the women. Here, the remnants of the old division of labour in the family, still preserved today, get manifested. … In the process of building a communist society, this will disappear by gradually transferring the economic function of the family to society, facilitating difficult and time-consuming work, mechanising households, building a dense network of services for citizens, and improving the quality of these services, especially by evenly dividing the increasing household work between men, women, and other family members. In our society, taking care of the household cannot be only a woman's duty, but shall be the duty of the entire family.' Planková, 1964, pp. 15–16.
37 | Planková, 1964, pp. 15–16.
38 | Oľga Planková identified the following as the causes of the declining birth rate: 1. high differentiation in the standard of living of childless families or families with one child on the one hand and families with more children on the other, and 2. the contradiction between maternal duties and women's work and social employment. Planková, 1964, p. 10.

3. Transformation of a woman's position within marriage, family, and society

The revolutionary principle of the Ninth-of-May Constitution enshrined in Article 1(2) establishing equality between men and women in the family and society,[39] was a breakthrough in family law. Nevertheless, the equality principle was not unknown in Czechoslovak law. The Constitution of 1920, containing Article 106(1)[40] proclaimed general equality but did not influence family law, which was traditionally based on inequality between spouses and parents. Even back in the 1940s, the excellent Slovak civil lawyer Štefan Luby stated:

> The principle of gender equality is imperfect and favours the husband, to whom the marriage and family law grants certain prerogatives. These privileges of the husband do not result from the weakness of the female sex (ob imbecillitatem sexus) but from the family structure and the nature of marriage. The co-decision of both spouses is not good for marriage. It needs an individual chief for possible conflict resolution. In current legal systems, the chief is the husband as the head of the family and the head of the household.[41]

The spouses (parents) had unequal rights over their children. Only the father who held the patria potestas[42] was the legal representative of a minor child, had the right to decide who could or could not become the guardian after his death, and had the right to manage and dispose of the child's property. The wife (mother) was responsible for the upbringing of the children while respecting traditional family roles, especially the privileged position and rights of the husband (father). The Act on Family Law recognised joint parental responsibility only in 1949.

The new regime was supposed to introduce true equality between men and women in families and society. It wanted to 'liberate women' from family ties and place them in the work process in the new spirit of proletarian equality. However, the process of emancipation began relatively slowly in predominantly rural Slovakia. The 'female liberation' from the narrow family circle became an often-emphasised replica of the new communist

39 | Ninth-of-May Constitution, Art. 1(2) 'Men and women have the same status in the family and society and equal access to education and all professions, offices, and ranks.'
40 | The Czechoslovak Constitution of 1920 in Art. 106(1) stated that: 'Privileges based on sex, gender, and occupation are not recognised.'
41 | Luby, 1944, pp. 4, 6. To express the mutual relations between spouses, Luby also used the term 'incomplete equality', which he justified by the fact that achieving complete equality of spouses would threaten the unity of the family, forcing the need for frequent court decisions to resolve marital conflicts in the management of (ordinary) affairs. Luby, 1944, p. 8.
42 | Act No. XX of 1877 on Guardianship and Curatorship, Art. 15.

jurisprudence. The model for 'female liberation' was the Soviet Union,[43] highlighting the end of 'slavery of women' and 'overloading women with the housework', which made it impossible for them to become successfully integrated into work beneficial for society, to get a job, to participate in public life, etc.[44]

The constitutional proclamation of equality led to a problematic situation in the Czechoslovak legal order when a specific constitutional provision negated one of the basic principles of family law. The equality principle influenced the personal relations between spouses, alimony, parental rights, and duties (especially the concept of paternal power), that is, many relationships were previously based on the unequal status of husband and wife. The 'bourgeois' family law clashed with the Ninth-of-May Constitution. The only solution was to apply this revolutionary constitutional principle directly to court decision-making activities.[45] Thus, judges faced the difficult task of examining the constitutionality of an act before deciding on its merits[46] (often with the consequent necessity of direct application of the Constitution). This direct application of the Constitution was typical in disputes concerning the right of the husband to determine the place of joint residence of the spouses, alimony, denial of the child's marital origin, etc.[47] Overall, decisions from the 1950s show high judicial activism, ideologically based decision-making,[48] and a distorted mission of law as a tool for the ideological transformation of society.[49] For instance, this was obvious in the decision of the Regional Court in Olomouc on 13 February 1950 No. R II 35/50:

> Our socialism-building society recognises complete equality of men and women in all branches of social life. Women have access to education and all professions, offices, and ranks (Ninth-of-May Constitution, Art. 1). … Under People's Democracy, the inequality of the sexes

43 | Explanatory Report to the Act on Family Law of 1949: 'The equality of men and women exists only in socialism. The bourgeoisie sometimes recognises it in words but does not implement it in deeds and often not even in legal regulations. The Soviet Union showed the whole world the great process of liberating women from centuries of oppression and excellently enabled women to take part in building socialism. Men and women have equal rights not only in the legislation of the socialist state but also in civil and family life. Also, in the countries of people's democracy, a new type of woman is growing up, who fully participates in the working efforts of the nation and at the same time is fully aware of the importance of motherhood and socialist family life.' [Online]. Available at: https://www.psp.cz/eknih/1948ns/tisky/t0378_02.htm (Accessed: 12 March 2023).
44 | 'If a woman stays at home, she is exposed to the danger of bourgeois ideas penetrating the family.' Ulč, 2016, p. 199.
45 | The conformity of the interpretation and use of other legal regulations taken over into the legal order with the Constitution was to be ensured by Art. 171(3) of the Constitution: 'The interpretation and application of all legal acts must be in accordance with the Constitution.'
46 | Kühn, 2005, pp. 35–36.
47 | 'Since the effect of the Ninth-of-May Constitution, the mother also was entitled to deny the marital origin of the child.' The decision of the Regional Court in Prague from February 19, 1949, No. Co XX 11/49, published under serial (publication) number: 59/1949 in the Collection of opinions of the Slovak Supreme Court and decisions of the courts of the Slovak Republic.
48 | Judicial activism meant that the judge applied the law and actively created it, shaped it, and determined its meaning through his interpretation 'to decide ideologically correctly and not to hide behind the wall of legal formalism.' Vojáček, Kolárik and Gábriš, 2013, p. 93.
49 | It was the judge who, as an instrument of change, 'had to apply pre-socialist law in the light of new social realities,' i.e. to apply the new and crucial principle of equality between men and women. Kühn, 2005, p. 19.

> vanished. That was a typical feature of a society divided into antagonistic classes where the woman, condemned to manage the household, performed a private service to her husband and was economically dependent on him. … As our legal order guarantees a woman full employment in social production and supports this employment, her work cannot be the reason to deny her the child custody.[50]

In this case, the question was whether an employed mother could raise and take care of her minor child, for whom the petitioner (father) requested custody. This was based on the principle of equality between men and women.

The direct application of the Ninth-of-May Constitution was legally ensured through Act No. 265 of 1949 Coll. on Family Law[51] and Act No. 266 of 1949 Coll. on Temporary Changes in Some Civil Legal Matters, which repealed the previous legal regulations of family law (relevant provisions of the ABGB, Marriage Act. No. XXXI of 1894, Act No. 320 of 1919 Coll. on Marriage Contract Ceremonies, etc.[52]). However, in the 1950s, courts continued to emphasise the necessity of applying the constitutional principle of equality between men and women. This confirms the slow adoption of this radical novelty in traditionally conservative family law relations, especially in the Slovak part of the Republic.

Socialist Constitution of 1960[53] guaranteed the equality of men and women through compensatory assistance from the state, as is clear from the wording of Article 27:

> The possibility for women to equally engage in family life, work, and public activities is possible because of special adjustment of working conditions, special health care during pregnancy and maternity, the development of facilities and services enabling women to use all their abilities to participate in the society.

The subsequent legal reforms through Act No. 94 of 1963 Coll. on family enshrined the principle of equality between men and women in the first article of the Fundamental Principles, along with the definition of marriage.

However, does this principle bring true equality to the spouses in a material sense? Sociological research reveals that this equality was formal and revolutionary. Barbara Havelková[54] identified three stages of gender policy in socialist Czechoslovakia: the first was the legislative change and enforcement of the concept of equality in family and society (1948–1962); second, the period of consideration (1962–1968); third the period of social corruption (1968–1989).

50 | The decision of the Regional Court in Olomouc from 13 February 1950, No. R II 35/50, published under serial (publication) number: 187/1950 in the Collection of opinions of the Slovak Supreme Court and decisions of the courts of the Slovak Republic.
51 | The purpose of new legal regulation was clear from the Preamble of Act No. 265 of 1949 Coll. on Family Law: 'To bring into life the principles of the Constitution on the equal status of men and women … to ensure the protection of marriage and the family so that the family becomes a healthy basis for the development of the nation.' Equality of men and women influenced all provisions of the new family law code and, of course, the related procedural regulation.
52 | Derogatory provision (Art. 46) of Act No. 266 of 1949 Coll. remembered the peculiarities of the Slovak sources of law and cancelled 'all provisions on matters regulated by this act and family law, including customary rules in the case-law and other sources.'
53 | Constitutional Act No. 100 of 1960 Coll.
54 | For more information see Havelková and Oates-Indruchová, 2015.

She said that, on the one hand, the social, legal, and economic conditions for women in Czechoslovakia had improved, which was significantly evident compared to Western Europe. On the other hand, she criticised formal and material aspects, leading to the retention and acceptance of the concept of a double burden.[55] It is also possible to point out the pragmatism of the people's democratic and socialist legislators in ensuring the policy of female employment, resulting in the feminisation of some work sectors, unequal remuneration,[56] and weakening of the traditional family by breaking ties within it,[57] complemented by the emergence of a new protective position for the state.

4. Transformation of the child's position – Child and his upbringing in the centre of interest of the state

The turn of the 20th century was crucial because of the emancipation of the child from patria potestas and its becoming an object of state interest in health and social policy.[58] In Czechoslovakia, the question arose as to whether the old concept of state care for children was sustainable, especially in Slovakia and Subcarpathian Ruthenia, which preserved the Hungarian system of state children's homes.[59] It emerged alongside the requirement of continuous philanthropy and the conservation of a certain degree of self-help that already existed in society (orphanages and childcare associations). In those times, people had to deal with the devastating consequences of the First World War, which triggered social and health threats affecting children (illnesses, hunger, malnutrition, parental alcoholism, unemployment of family members, labour migration of the breadwinners, out-of-wedlock relations, death of parents and related problems including wandering and begging, relatively high employment of children and youth, mostly in agriculture, etc.). They justified the state's interference in the child protection system. Simultaneously, similar to the women's liberation movement, these issues helped

55 | 'What the double burden meant for women is well demonstrated, for example, in research of the State Population Commission from the early 1960s. Among other things, it focused on how men and women spent their ordinary days. A woman with two children spent an average of nine hours a day working and commuting to and from work, from five to five and a half hours shopping and taking care of the household, a maximum of an hour and a half interacting with the children, an hour and forty minutes taking care of herself, and six hours she spent sleeping. Her husband had four hours more free time each day than she did. In the early 1960s, when women in Western Europe and the United States were complaining about limited life possibilities, the women in Eastern Europe were just absolutely overworked and exhausted.' (Havelková, 2009, p. 197) The jurisprudence addressed the concept of double burden in relation to the economic role of the family, often with the idealistic utopic conclusion that the communist society would solve this problem because families would no longer have economic functions. Planková, 1964, p. 16.

56 | Women did 'male work' for 'female wages' since the people's democracy.

57 | Šošková, 2009, p. 2718.

58 | Franc et al., 2021, pp. 347–348.

59 | State children's homes existed in the old Hungarian system, based on Act VIII of 1901 on State Children's Homes (so-called asylums or menhely in Hungarian). After the establishment of Czechoslovakia, state children's homes remained preserved in Slovakia and Subcarpathian Russia. Though, they did not exist in Bohemia, Moravia, and Silesia.

establish children's rights, including the right to support and care,[60] and public social care for children and youth if the natural family could not or did not provide adequate care, help, and protection.[61] The state verified whether families fulfilled responsibilities towards their children and provided social and legal services for children.[62] In the first half of the 20th century, the Slovak children's social care system was a hybrid system of associations (a network of territorial associations of District Youth Care established in the Czech model) coexisting with state institutions, which became active when the family, as the priority natural environment for the child, failed. However, the state had limited possibilities of truly solving the complex social problems of children, as in the rest of Europe, it struggled with economic crises, epidemics, unemployment, and other threats after the Great War. Before 1948, the failure to solve social problems and problems related to illegitimate origins was severely criticised.

Until the middle of the 20th century, the basis of the relationship between parents and children was the paternal power of the privileged family member, the father, in the position of the breadwinner and protector. Since 1948, patria potestas have been subjected to massive criticism for preserving the unequal status of men and women in the family. Furthermore, it prevented the mother from acting towards children, and, last but not least, it had 'unacceptable bourgeois Roman law origin.' After 1948, Czechoslovak lawmakers introduced the parental authority, which was slowly implemented in practice in the traditional Slovak patriarchal environment. Both Czechoslovak family law codes enforced the principle of equal responsibility of both parents for their children, and this parental authority applies to Slovakia and Czechia until the present day.

The Ninth-of-May Constitution placed marriage, family, and motherhood under the protection of the state. It emphasised that the origin of a child must not be a ground for discrimination, thus definitively eliminating the difference between children born in marriage and those born out of wedlock.[63] This guaranteed 'special benefits and support' to families with more children. In addition, it was closely linked to the state population policy, as seen in Article 11(1): 'The state guarantees children special care and protection; in particular, it takes systematic measures for the population development.' New possibilities for state interventionism emerged. The family, as the basic unit of a socialist society, was primarily supposed to raise children, the foundation and future of the

60 | In September 1924, the League of Nations adopted the Geneva Declaration of the Rights of the Child.

61 | Rákosník, Tomeš and Koldinská, 2012, p. 350.

62 | The legal basis of the new social politics concerning children in Czechoslovakia was Act No. 256 of 1921 Coll. on Protection of Children in Foreign Care and Illegitimate Children and related implementing regulations issued in the 1930s. Furthermore, Act No. 4 of 1931 Coll. on Protection of People Entitled to Alimony, Education or Care (Alimony Act) regulated more effective fulfilment of alimony duty. Act No. 117 of 1927 Coll. on Wandering Gypsies regulated the special regime for children of the wandering Gypsies. Act No. 412 of 1919 Coll. regulated the compulsory vaccination against smallpox (variola) in the Czech countries (not in Slovakia and Subcarpathian Ruthenia, where the Hungarian acts of 1876 and 1887 remained in effect). Act No. 241 of 1922 Coll. on Combating Venereal Diseases regulated controlling and combating venereal diseases. Act No. 86 of 1922 Coll. on Restricting the Serving Out of Alcohol regulated the measures to prevent alcohol use and alcoholism. Act No. 420 of 1919 Coll. on Child Labour regulated the work done by children, etc.

63 | Art. 10(1) of the Constitution of 1948: 'The state protects motherhood, marriage, and the family.' Art. 11(2) of the Constitution of 1948: 'The origin of children shall not harm their rights.'

nation. Education had to comply with the Soviet model: 'A well-educated Soviet youth… should be deeply ideological, alert, optimistic, devoted to the motherland and a believer in the victory of communism, so as not to be afraid of obstacles and able to overcome any difficulties.'[64] Through children, the state was securing the future of its regime. New perspectives on the education of children and youth emerged, emphasising the role and importance of collective education in schools and preschools, including the necessity of the ideological organisation of children and youth into three hierarchical groups (Sparklings, the youngest children; Pioneers, older children; Unionists, young adults ready to join the Communist Party). The main aim of supervision was to shape the 'moral and political profile of a young person.'[65] The State continued to interfere with child education even after 1960, when the Czechoslovak Socialist Constitution of 1960 and the Family Act of 1963 came into effect. This was because, despite the declared victory of socialism, the process of creating a socialist marriage and family continued.[66] In Article 24 of the Constitution of 1960, we find the right to education and its ideological framework in the totalitarian state: 'All education and all teaching are based on a scientific world view and on the close connection of the school with the life and work of the people.' According to Article 26, the state protected motherhood, marriage, and the family – 'the state and society should ensure that the family is a healthy basis for the development of youth.' State and social organisations supplemented the upbringing of children in families.[67]

The 1963 Act on Family harmonised the system of children and youth care[68] with new family law principles, intending to cancel the dual role of the family and state and the dualism of the private and public.[69] Thus, the Act on Family acquired a mixed character. It no longer uses the terms social and legal care for children. Instead, the lawmakers used the expression 'participation of society on the exercise of the rights and obligations of parents.' The education of a young person, the constructor of a new society, became the role of parents, state authorities, and the entire socialist society.

64 | Knapík and Franc et al., 2018, p. 103.
65 | Šolcová et al., 1984, p. 303.
66 | Explanatory Report to the Government Draft on Family Act of 1963 [Online]. Available at: https://www.psp.cz/eknih/1960ns/tisky/t0146_01.htm (Accessed: 10 March 2023).
67 | Glos et al., 1965, p. 191.
68 | The social protection of children and youth underwent a fundamental transformation during the People's Democracy. In 1947, with Act No. 48 of 1947 Coll. on the Organisation of Youth Care, the sector became public, and the private features got abolished (Youth Protection Offices and, since 1956, National Committees substituted the former associations of District Youth Care). Act No. 69 of 1952 Coll. on Social and Legal Protection of Youth fortified the state interference, too. For instance, this was visible in foster care. According to the Explanatory Report: 'Preferred is the placement in collective-care facilities. The collective way of life and upbringing in the collective (in educational facilities for children older than three years, such as children's homes, youth homes, boarding schools of state labour reserves, and homes for working adolescents) reliably instils in the youth the right attitude towards the collective, and make them conscious members of a socialist society.' The Act on Social and Legal Protection of Youth allowed placing minor child/children in families that guaranteed the upbringing of children with love for the people's democratic state and creating an environment favourable to their development. Explanatory Report to the Act on Social and Legal Protection of Youth of 1952 [Online]. Available at: https://www.psp.cz/eknih/1948ns/tisky/t0633_01.htm (Accessed: 10 March 2023).
69 | Explanatory Report to the Government Draft on Family Act of 1963 [Online]. Available at: https://www.psp.cz/eknih/1960ns/tisky/t0146_01.htm (Accessed: 10 March 2023).

National committees played a crucial role in ensuring this task. Parents were responsible to the socialist society itself for the development and upbringing of their children.[70] According to Article V, a socialist society cares for children and their education, including satisfying material and cultural needs, through state bodies, social organisations, schools, cultural facilities, learning centres, and medical centres. Legal science tried to ideologically justify the state's interference in education as a matter of the unity of the state and society:

> Our society appropriately complements the upbringing of children in families with social education in schools, nurseries, kindergartens, youth groups, youth organisations and through the press, radio, and television. Thus, youth education goes beyond the narrow framework of the family environment and becomes a social issue. The upbringing of children in the family and in social institutions and organisations should complement each other and be uniform with regard to content and worldview. ... The most frequently reported defect is the inconsistency of the worldview presented in the family and at school, caused by the remnants of idealistic worldview in some families. As a result, there is an ideological disorientation, or even a split in the character of a child, which can very unfavourably affect all aspects of the child's mental development.[71]

As a matter of course, it was necessary to prevent this 'disorientation'.

5. Conclusion

Under national law, the state began to interfere with family law in the 20th century. This happened primarily through establishing a public system of children's social care, the emancipation of children and women from patria potestas, and a communist experiment to turn the family into a basic unit of socialist society placed under state supervision. Some of these processes also occurred in democratic European countries, but some were typical only of the Eastern Block. Family, marriage, and care for children, including their education as private law institutes, first became supervised and later partially or fully regulated by the state. The family, perceived as a possible 'centre of resistance to the regime,' became the target for sharing the new ideology and scientific worldview. Within the family, the regime could control the individual, his thinking, and actions, thereby influencing society and shaping it according to ideology. The totalitarian state aimed to achieve the loss of privacy, values, traditions, and intimacy, albeit unsuccessfully.

70 | According to Art. IV of the Act on Family of 1963, parents became responsible to society for the versatile mental and physical development of their children, and, especially, for their proper education, so that the unity of the interests of the family and society strengthened.
71 | Planková, 1964, p. 13.

Families were fences[72] – some of them blocked democratic values, although many were protectors.

72 | 'Most ideologies that strive for a radical transformation of the way of life try to "liberate" a person from dependence on close people (and therefore mainly on the family) intending to instigate them to search for support and role models thanks to this newly acquired "freedom" in a different type of social environment – perhaps a party or a political movement. However, the family is, in principle, hostile to revolutions because of the sense of loyalty and respect for values and norms taught within the family. In the family, a person learns the values and moral principles that guide him for the rest of his life, and the family keeps reminding him of these values and principles. A stable family is simultaneously an emotional and social haven for children and parents. The communist regime tried to weaken the family and thus remove the obstacle that prevented the reconstruction of society according to communist ideals. On the other hand, the political leadership set a goal of maintaining a relatively high birth rate, whether for the sake of increasing the prospective number of the workforce or later for prestigious reasons in an attempt to prove that socialist states are not affected by the decline in the birth rate that the West has been experiencing since the 1960s.' Hamplová, 2010, p. 3.

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