



Safeguarding Futures: The Impact of the Best Interest Principle on Children in Alternative Care

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Abstract. Globally, the principle of the 'best interest of the child' has been recognised as a crucial standard for guiding decisions affecting children. It is considered integral to both policy-making and daily practice, ensuring that the rights and needs of children are prioritised in all care-related decisions. In Slovakia, this principle is firmly embedded within both national legislation and the nation's commitments under international law. Accordingly, this article delves into the issue of alternative care for children, particularly focusing on the application of best interest principle. By exhaustively examining historical contexts, legislative frameworks, and current practices, the research elucidates the evolution of the child welfare system and fundamental importance of prioritising children's well-being. From tracing the origins of institutional care to analysing the contemporary landscape of foster care and adoption, the study provides a comprehensive overview of the various care options available to children isolated from their familial environment. It explores the legal provisions and procedural mechanisms guiding decision-making processes, emphasising the central role of the best interest principle in safeguarding children's rights and ensuring their holistic development. Drawing on statistical data and case studies, the study offers insights into the current state of alternative care in Slovakia, highlighting trends, challenges, and areas for improvement. It underscores the need to reduce reliance on institutional care while promoting family-based alternatives. Consequently, the study advocates for a child-centred approach that prioritises the unique needs and circumstances of individual children. It calls for concerted efforts to embed the best interest principle into policymaking, service delivery, and societal attitudes, thereby fostering environments where children can thrive and reach their full potential.

Keywords: best interest of the child, children's rights, alternative care, foster care, institutional care

1. Introduction

In the complex and evolving field of child welfare, the 'best interest of the child' principle has been universally recognised as a crucial standard for guiding decisions affecting children. This principle, integral to both policy-making and daily practice, ensures that the rights and needs of children are at the forefront of all care-related decisions. Globally, this standard is not only a moral directive but also a legal obligation, reflecting a broader consensus on the importance of safeguarding children's welfare. The significance of this principle is particularly pronounced in the domain of alternative care, where children without the support of their biological families face increased risks and vulnerabilities. Here, the best interest standard is not just a guideline but a lifeline, shaping interventions that can dramatically alter the trajectories of young lives.

In Slovakia, the best interest principle is firmly embedded within both national legislation and the nation's commitments under international law. These legal frameworks are designed to ensure that children who are separated from their families – whether due to abandonment, abuse, or other distressing circumstances – are provided the care and protection they deserve. Despite these robust provisions, the real-world application of the best interest principle frequently encounters significant hurdles. The transition from legal theory to effective practice involves numerous challenges, including bureaucratic inertia, resource constraints, and varying interpretations of what constitutes 'best interest' in complex family situations.

This article aims to critically examine the application and operationalisation of the best interest principle within Slovakia's alternative care system. Through an in-depth exploration that includes reviewing policy documents, interviews with key stakeholders, and analysing relevant case studies, this study seeks to uncover the practical application of the principle and its shortcomings. The research investigates the discrepancies between the theoretical commitments enshrined in Slovak law and tangible experiences of children in alternative care settings.

By analysing how Slovakia navigates the delicate balance of rights, responsibilities, and realities in implementing child welfare policies, this article offers insights into both the accomplishments and areas that need improvement within the system. The objective is to identify and understand both systemic strengths and weaknesses, thereby providing a grounded basis for proposing concrete, actionable recommendations.

In contributing to the broader discourse on child welfare, this study not only highlights the specific context of Slovakia but also offers lessons and insights that are applicable internationally. By dissecting the intricacies of Slovak child welfare practices, the research contributes to a deeper, more nuanced understanding of how nations can protect and empower children placed in alternative care. For policymakers, practitioners, and academics, this article serves as a critical resource for re-evaluating and enhancing the strategies employed to safeguard the rights and welfare of children, ensuring that their best interests are not just a legal formality but a lived reality.

2. Brief History of Children in Alternative Care in Slovakia

Historically, the practice of raising children outside of parental care is far from contemporaneous, with its roots deeply embedded in ancient civilisations. The societal norms in ancient Greece and Rome particularly underscored the low value placed on children's lives. In these cultures, paternal rights extended to the grim authority of infanticide, where fathers could legally terminate the lives of their children. This brutal practice disproportionately affected girls, as historical demographics often show a higher proportion of males, suggesting that female infanticide was more prevalent.

In Roman culture, the value of a child's life began to be recognised through certain rituals and societal practices. A kind of social birth was conferred upon a child through the ritual of name-giving, symbolising societal acceptance and protection. Similarly, in Germanic traditions, the commencement of oral feeding marked the child's right to survival and integration into the community. Despite these cultural practices, it was not until the advent of formal legislative measures that significant strides were made towards protecting children. Emperor Trajan's 'alimentaria' laws, enacted in 103 CE, represented early efforts to support and nourish the young, while Constantine's laws, following his conversion to Christianity in 313 CE, further emphasised the sanctity of life.¹

The turning point in the legal protection of children, however, came with the enactment of a law in 374 CE by Emperor Valentinian, which formally outlawed infanticide.² This law marked a pivotal shift in the legal framework, reflecting a growing societal recognition of children's intrinsic human rights. Malformed newborns, who were previously not considered humankind and typically killed immediately after birth, began to receive protection under these evolving legal standards.

1 Obladen, 2016, pp. 56–61.

2 Obladen, 2022, pp. 1–8.

Despite the rich historical context provided by these developments, the extent and focus of this article necessitate a more targeted examination. Subsequent sections will bypass the historical narrative to concentrate specifically on the evolution of the foster care system within our region and its relevance to the objectives of this study. This approach will allow for a more focused exploration of modern frameworks and practices that shape the current state of alternative care for children.

The history of institutional care for children in Slovakia dates back to the 18th century, with the earliest known orphanage being established in 1763 in Tomášikov. This institution laid the groundwork for the structured care of vulnerable children, setting a precedent that would be expanded upon in subsequent centuries. The inception of orphanages was largely spearheaded by religious institutions, with Catholic and Evangelical churches playing pivotal roles in their establishment.³ Until the turn of the 20th century, these orphanages were predominantly managed by church authorities and, to a lesser extent, local municipalities.

By the dawn of the 20th century, the state recognised the necessity of a more formalised approach to child welfare, culminating in the adoption of the Act on Institutional Care in 1901. This legislation marked a significant turning point as it transferred the responsibility of caring for abandoned children from religious and municipal entities to the state.

This legislation was the cornerstone in the evolution of child welfare in Slovakia, demonstrating a paradigm shift towards state intervention in cases where familial structures failed to protect children. The legal framework established by the Act comprised critical statutes: Article VIII/1901, pertaining to 'state orphanages', and Article XXI/1901, relating to 'care for children'. These laws collectively signified a formal recognition of the state's duty to safeguard children's rights through institutional care when private familial support was inadequate. These articles dealt with the provision of state-maintained orphanages as well as the care of children above the age of seven in need of public aid.⁴ The primary objective of this law was to safeguard children by providing them with institutional care, reflecting an evolving understanding of child welfare and state responsibility. According to the law, 'abandoned children' were defined as those aged below 15 who were destitute and lacked the support of their families or relatives. This definition aimed to identify and assist the most vulnerable segments of the population, ensuring that they received the care and protection necessary to uphold their rights and well-being.

Under this new legal framework, the state began to establish a more systematic network of orphanages and care facilities, modelled after institutions in Košice and Rimavská Sobota. These facilities were not just shelters but served as

3 Kušniráková, 2022, pp. 155–169.

4 Pettko-Szandtner, 1930, p. 26.

comprehensive care environments where children's basic needs were met, alongside the provision of educational and emotional support. The legislation thus not only facilitated a transfer of responsibility but also underscored the state's commitment to the holistic welfare of its youngest citizens, recognising their rights and needs in the absence of family care. This marked the beginning of a more proactive and protective approach to child welfare in Slovakia, driven by legislative action and state oversight.

Until 1945, both church-run and state-operated institutions in Slovakia played crucial roles in the care of orphaned and abandoned children. These two types of institutions coexisted, each contributing to the framework of child welfare in distinct ways. Alongside these institutional arrangements, the concept of foster family care also gained prominence, particularly during the inter-war period. During this time, experts began to recognise and emphasise the benefits of placing children in foster families rather than institutional settings.

Experts at the time noted significant differences in the outcomes and operational methods between institutional and family-based care. Although institutional settings could offer comprehensive healthcare services owing to their structured environment, they lacked the personal and emotional nurturing found in a family setting. 'There is a noticeable difference between institutional care and family care in terms of operation and results. [...] the institution provides more health care [...] but the lack of a home of their own is evident in their rudeness, garrulousness, distrustfulness [...]'.⁵

These observations led to growing advocacy for foster care, which was seen as providing a more natural, family-like atmosphere that could better fulfil the emotional and developmental needs of children. The emphasis was on the importance of a loving and secure home environment that foster care could provide, which was believed to contribute positively to the psychological well-being and social development of children. This period marked an important shift in the perception of childcare, with an increasing acknowledgment of the value of family settings over institutional care for the holistic development of children.

In 1920, Slovakia saw significant legislative progress with the enactment of Act No. 256/1921, titled 'On the Protection of Children in the Care of Others and of Children Born Out of Wedlock'.⁶ This law marked a pivotal advancement in the legal framework governing child welfare, specifically addressing the needs of vulnerable children who were either in the care of individuals other than their parents or were born out of wedlock. The legislation was amended in 1939, with Government Decree No. 29/1939 Coll. refining and expanding its provisions. The revised law outlined a more structured approach to institutional care through

⁵ Štampach, 1933, p. 138.

⁶ Act No. 256/1921 Coll. on the Protection of Children in the Care of Others and of Children Born Out of Wedlock.

the establishment of what was referred to as the foster care system. This system was designed to bridge the gap between institutional care and placement in a permanent foster family.

Under this system, children's homes served as interim environments for those requiring special care or undergoing the process of being placed with a foster family. These homes were not merely holding facilities but were integral to the foster care system, providing immediate and necessary support to children in transition. The focus of these homes was to ensure that children received the care and attention needed to prepare them for a more stable and permanent family environment. This legislative framework underscored a commitment to improving the care and protection of vulnerable children, ensuring that their needs were met promptly and appropriately while suitable long-term arrangements were made.

In 1947, Slovakia underwent a pivotal transformation in the field of child welfare with the passage of Act No. 48/1947 Coll.⁷ This legislation led to a sweeping reform of institutional care, placing the care of children and youth entirely under state control. This period marked a significant shift as the state assumed full responsibility for all aspects of child welfare, aligning with broader socialist policies that prioritised collective education.

During the socialist era, the ideological focus on collective upbringing intensified. In line with this emphasis, traditional foster care systems were dismantled as of 1950, and the majority of children in need of care were placed in institutional settings. These institutions, often referred to as residential orphanages, operated under a collectivist principle, which prioritised the group over individual needs. It was not until 1973 that a reevaluation of this approach led to the reinstatement of foster care, acknowledging its benefits for the individual development of children.

By 1989, the childcare setting in Slovakia was heavily dominated by residential orphanages, with almost 95% of children in care living under this system. These facilities were large, with an average home accommodating 61 children, and the largest facility housing as many as 204 children.⁸ Within these institutional settings, children often faced challenges that hindered their prospects for a successful career and personal development. They grew up in environments that, despite providing basic needs, lacked the personal attention and familial support crucial for holistic development. This era highlighted the limitations of a solely institution-based approach to childcare, eventually leading to calls for reform and the reintegration of foster care systems.

By 1997, the administration of the foster care system in Slovakia was segmented among three distinct government ministries, reflecting a specialised approach

7 Act No. 48/1947 Coll. on the Organisation of Youth Care.

8 Mikloško, 2008.

to different aspects of child welfare. The Ministry of Health was responsible for infant institutions, focusing on the youngest and most vulnerable children, while the Ministry of Education oversaw all institutions caring for children up to age 18, including their educational and developmental needs. Meanwhile, the Ministry of Labour, Social Affairs and Family was tasked with organising foster family care and specialised care for severely disabled children.

In the same year, a significant restructuring placed children's homes and orphanages under the jurisdiction of the Ministry of Labour, Social Affairs and Family. This change marked the beginning of a new philosophical approach to care provided in these institutions. There was a concerted effort to make life in orphanages more closely resemble family-like conditions. This shift aimed to improve the emotional and psychological well-being of children by creating environments that were less institutional and more akin to home settings.

This emerging philosophy was legislatively supported by the introduction of family-type children's homes, which were formally recognised in Slovak legislation through Act No. 195/1998 Coll. on Social Assistance. This act allowed children's homes to offer care either directly in family settings for the professional implementation of foster care or through a network of independent groups.⁹ This legislative framework not only provided a structure for these new forms of care but also emphasised the state's commitment to creating more personalised and supportive environments for children in the foster care system, aligning more closely with the dynamics of family life.

In 2002, the Slovak government took a significant step towards improving child welfare by adopting the National Action Plan for Children. This strategic document underscored the government's commitment to fulfilling its obligations and protecting the rights of children. Among its various objectives, a key focus was the transformation of children's homes to elevate the standard of care provided.

This transformation encompassed more than just physical renovations; it also included substantial changes to the educational environment, staff composition, and economic management of these institutions. The aim was to transform children's homes from an institutional to a more family-oriented model of education, where an individualised approach to children's needs and development was prioritised.

In this model, children began to play an active role in daily life decisions that would typically occur within a family setting. They participated in tasks such as purchasing food and clothing, which not only involved them in routine life skills but also helped prepare them for independent living. Additionally, the children were encouraged to engage in activities that facilitated their integration into society and to learn self-care tasks. This approach represented a significant departure from

9 Act No. 195/1998 Coll. on Social Assistance.

the more impersonal, residential style of care, aiming to provide a more nurturing and empowering environment that reflected the dynamics of family life.

In 2009, the Ministry of Labour, Social Affairs and Family in Slovakia introduced the Concept of Residential Care for the period of 2009–2012, primarily aimed at enhancing the quality of institutional care to mimic the nurturing environment of a natural family setting more closely. The strategy was comprehensive, addressing multiple facets of care to ensure a supportive and enriching environment for children. Key to this concept was the prioritisation of placing children in professional foster families rather than traditional institutional settings. This approach was aimed at providing a more personalised and stable environment for each child. Additionally, the concept emphasised the importance of an individual approach to children's needs, ensuring that their unique circumstances and requirements were carefully considered and catered to.

Another critical aspect of the initiative was the respect for and support of sibling relationships. Recognising the emotional and psychological benefits of maintaining these bonds, the policy encouraged the placement of siblings together whenever possible to preserve family ties and provide mutual support within the foster care system. The concept also focused on enhancing the future prospects of young adults transitioning out of the care system. This involved preparing them for independence and adult responsibilities, ensuring they had the skills and support necessary to navigate life beyond institutional care. Furthermore, the policy underscored the importance of systematic training for staff in children's homes. This training was designed to equip caregivers with the skills to offer compassionate, effective care and to apply the latest best practices in child welfare.

Overall, the Concept of Residential Care marked a significant shift in the approach to child welfare in Slovakia, aiming to create a more family-like, supportive, and effective system for caring for children in need. According to the Commissioner for Children, it turns out that:

the transformation of children's homes cannot be successful as an isolated process. Real change in the care of abandoned and at-risk children can only be achieved through a comprehensive change in the philosophy and system of care and education. The state, as the guarantor of social policy, should become the initiating agent of support and assistance to the biological or foster family in order to effectively promote its inner potential and exercise it in the interests of the successful functioning of the whole family.¹⁰

10 Mikloško, 2008.

Children's homes in Slovakia currently accommodate nearly 5,000 children¹¹ and have experienced significant transformational shifts aimed at improving the quality of care provided to these vulnerable groups. The reform process initiated with the restructuring of large, residential children's homes into smaller, more personalised settings. These settings are organised into separate groups housed in self-contained family homes or apartments, designed to emulate a typical family-living environment.

Further advancing these reforms, the institute of professional parenting was established, introducing a more structured and supported approach to foster care, where trained caregivers provide a stable and nurturing environment akin to biological parenting, but with professional oversight and resources.

Currently, efforts are ongoing to de-institutionalise foster care completely, so that placing children in institutional care becomes a truly exceptional measure, reserved only for situations where no other viable options exist. The intent is to ensure that every child has the opportunity to grow up in a family-like setting that provides stability, affection, and individual attention necessary for healthy development. This comprehensive approach not only redefines physical living arrangements but also entails a deep-seated change in the philosophical approach to childcare. It emphasises prevention and family support as primary strategies, aiming to maintain or reintegrate children into their biological families as far as possible, and resorting to institutional care only as a final option. This shift reflects a broader commitment to safeguarding children's rights and ensuring their well-being through the most family-oriented means available.

The passage of Act No. 61/2018 Coll., which amends Act No. 305/2005 Coll. on Social Protection of Children and Social Guardianship,¹² signifies a major shift in the landscape of childcare in Slovakia. This legislative update marks a significant step towards the phasing out of traditional children's homes as we currently know them, potentially leading to the disappearance of the term 'children's home' altogether. The transformation reflects a strategic move towards more integrated, family-centred care options that better address the individual needs of children requiring state intervention.

It is imperative for those studying this area to grasp the underlying philosophy of the legislative amendment. Accordingly, we can look to the provisions laid out in the explanatory memorandum of the Act.¹³ According to this memorandum, Act No. 305/2005 Coll. is a public law regulation that outlines the framework for social protection measures and social guardianship. The law

11 According to the information provided by the Office of Labour, Social Affairs and Family, the number of children residing in children's homes in Slovakia in 2023 was 4,994.

12 Act No. 305/2005 Coll. on Social Protection of Children and Social Guardianship.

13 Explanatory memorandum to the government bill amending Act No 305/2005 Coll. on social protection of children and on social guardianship.

specifies the circumstances under which various social protection measures should be applied, advises when professional assistance should be offered or recommended, and delineates the conditions that necessitate immediate intervention. This framework aims to ensure that interventions in the lives of children are transparent, appropriate, and tailored to specific needs, promoting the welfare of children in a structured and legally sound manner. By moving away from a one-size-fits-all approach in institutional care, the amendment encourages a more nuanced and flexible approach to child welfare, where interventions are customised and oriented towards maintaining the child's connection with a family-like environment whenever possible. This approach not only aligns with international best practices but also supports the emotional and psychological development of children by providing care settings that more closely resemble a natural family structure.

Central to this approach is a strong emphasis on maintaining or reconstructing familial bonds wherever possible. The legislation firmly establishes that placing a child in a facility for the enforcement of a court order should only be considered as a last option, and should be seen strictly as a temporary measure. Additionally, whether in an alternative family environment or a facility, efforts must be made to preserve and support the child's relationships with their parents and extended family.

The underlying principles of the legislation include:

1. **Primacy of the Natural Family Environment:** This principle prioritises retaining children within their natural family setting. If a child is displaced, efforts to return the child to the same environment are considered critical. The goal is to maintain the child's familiar social and emotional bonds, recognising the importance of these connections for the child's development.
2. **Priority of Non-Institutional Care Placements:** For children who cannot be raised in their natural families, the legislation prioritises placement with relatives in foster care. If placement with relatives is not feasible, other foster care options are considered preferable to institutional settings. This aligns with the broader aim to provide a more personalised and nurturing environment.
3. **Preference for Professional Family Settings in Legal Interventions:** When court-ordered social protection or guardianship is necessary, placing a child in professional foster families is favoured over moving to larger, more impersonal institutional units. This preference supports the integration of the child into a family-like setting, even within the parameters of legal intervention.
4. **Execution of Court Decisions in Family-like Settings:** Whenever possible, court mandates concerning childcare should be executed in self-organised

groups that operate in separate houses or flats, rather than institutional environments. This structure aims to mimic a home setting, providing a more normal life experience and reducing the psychological impact of legal proceedings on the child.

5. **Maintenance of Sibling Relationships:** The legislation emphasises the importance of not separating siblings. Holding siblings together supports their emotional health and provides mutual psychological support, which is crucial during challenging times.
6. **Proximity to the Natural Family Environment:** For children who cannot remain with their parents, placements should ideally be as close as possible to their original home environment. This helps maintain a sense of continuity in the child's life and facilitates easier visits or interactions with their natural family.
7. **Integration of Children Requiring Special Care:** Children who need special or increased care owing to disabilities or other conditions should be integrated into settings that provide tailored support while still promoting inclusion and interaction with other children.

These principles represent a holistic and child-centric approach to child welfare, emphasising the importance of family, stability, and personalised care in fostering the well-being and development of children under state protection.

Experts acknowledge that both children and their families often require professional assistance to navigate challenging situations effectively. Insights from the Society of Friends of Children from Orphanages Smile as a Gift research indicate that the majority of parents with children in institutional care are not unwilling or inherently incapable of looking after their children.¹⁴ Rather, they are individuals who lack the necessary skills or resources to provide adequate care. This group predominantly includes parents who are overwhelmed by the demands of childcare due to various factors, including economic hardship, limited education on child-rearing practices, or lack of familial support. Consequently, these parents should not face punitive measures but rather constructive support and education to develop the necessary skills to care for their children effectively. Addressing this need involves providing targeted interventions that offer skill development and ongoing support. This could include parenting classes that teach basic childcare, financial management, and coping strategies for stress, as well as access to services such as counselling and home visits from social workers. By equipping parents with these tools and supporting them through their challenges, it is possible to enhance their capacity to provide a stable and nurturing environment for their children, potentially reducing the need for institutional care placements.

14 Mikloško and Žarnay, 2007.

The proposed changes in child and family services were driven by the urgent need to provide professional assistance that is not only timely but also meets the required quality and scope. During expert discussions, there was consensus around the foundational idea that the social protection system for children and families should promote self-help and self-reliance in addressing their needs. It has been recognised that depending solely on the expansion of social services is not sufficient.

Accordingly, experts advocated for the creation of a new type of multifunctional facility that focuses on developing outpatient and field services, as well as providing opportunities for voluntary, temporary stays that facilitate intensive professional work with children and their families. These facilities aim to foster a more proactive and preventive approach in social care, enabling families to access support in their communities without the need for more drastic interventions like long-term institutional care. This approach aims to empower families, helping them build resilience and capabilities through accessible, high-quality support services tailored to their specific situations. By enhancing outpatient and field services, the system can deliver help where it is most needed, promoting the well-being of children and the stability of families directly in their own environments.

The proposed changes in the administration of services within facilities dedicated to child welfare are fundamentally aimed at enhancing the quality and effectiveness of the care provided. These changes include:

1. **Clarification of Roles:** A clear distinction is now being made between ‘control’ and ‘assistance’ within the bodies responsible for the social protection of children and social guardianship. This is crucial to ensure that while oversight remains a component of care, the primary focus shifts towards supportive interventions that genuinely aid children and families.
2. **Transformation of Existing Institutions:** Traditional facilities such as children’s homes, crisis centres, and re-socialisation centres are being restructured into new, multifunctional institutions known as Centres for Children and Families. They are designed to maintain the core principles that govern the enforcement of court decisions in the realm of social protection and guardianship, yet provide a more holistic approach towards addressing the needs of children and families.
3. **Flexibility in Service Provision:** The new centres are not required to fulfil all legislated purposes but can instead tailor their services to meet various needs as outlined by law. This flexibility allows the centres to combine different forms of enforcement and purposes in a manner that is both appropriate and effective, adapting to the specific circumstances of the children and families they serve.
4. **State Responsibility for Service Availability:** There is an increased responsibility on state administration to ensure the availability of measures

carried out in both outpatient and field formats, as well as those conducted in residential forms based on agreements tailored to the needs of clients within the territorial districts of the child and social protection authorities.

5. Creation of a Supportive Network: The plan includes the development of a network of facilities that extends beyond state-run entities to include non-state accredited centres. This network aims to broaden the reach and accessibility of services, ensuring that more children and families can benefit from specialised support in a community-based setting.¹⁵

These changes are intended to create a more dynamic, responsive, and effective system that better supports the evolving needs of children and families, ensuring that interventions are not only comprehensive but also compassionately delivered.

The social protection of children encompasses a comprehensive suite of measures designed to safeguard the welfare and overall well-being of children, always prioritising their best interests. These measures not only aim to protect children but also actively promote their upbringing and holistic development within their natural family environment. This approach underscores the belief that a family setting is most beneficial for a child's growth and development.

However, when it is not feasible for children to be raised within their own family owing to various circumstances such as neglect, abuse, or parental incapacity, social protection measures step in to provide a suitable alternative environment. This representative setting seeks to replicate the nurturing aspects of a family to the greatest extent possible, ensuring that the child receives the necessary care, love, and support. The goal of these interventions is two-fold: to protect children from harm and ensure a conducive environment that supports their education, emotional health, and social skills. This dual focus helps prepare children for a successful transition into adult life, regardless of their early life circumstances. Such measures are a testament to the commitment of social protection systems to uphold the rights and dignity of every child, making sure that their fundamental needs are met in a manner that respects their individuality and potential.

The Act governing social protection establishes a clear hierarchy of preferences when selecting and implementing measures for the care of children. It prioritises measures that enable the upbringing and comprehensive development of the child within their own family by their parents. This approach underscores the fundamental belief that a child's development materialises within the familial structure, where parents are primarily responsible for nurturing and guiding their growth. However, if parental care is not feasible, the Act prioritises the child's relatives as the next best option for upbringing. This preference for familial care reflects a commitment

15 Explanatory memorandum to the government bill amending Act No 305/2005 Coll. on social protection of children and social guardianship.

to maintaining the child's connection to their biological roots and cultural heritage, which is seen as vital to their identity and emotional stability.

In situations where neither parental nor extended family care is possible, the authority for the social-legal protection of children and social guardianship intervenes to arrange alternative solutions such as foster care or adoption, collectively referred to as 'substitute family care'. This measure ensures that the child continues to benefit from a family-like environment, even when biological connections are not an option.

According to Act No. 36/2005 Coll., institutional care is considered the last resort in the spectrum of substitute care options for a child.¹⁶ This stance is based on the principle that children thrive best in a more personalised, family-centric environment rather than institutional settings, which are considered only when all other closer-to-family options have been exhausted.

Since 2000, the number of children placed in foster care has decreased by 52%, while adoption rates have declined 35%. These statistics point to a broader systemic issue or change in societal, legal, or procedural frameworks that could be influencing these downward trends.

Conversely, one segment of alternative care – substitute personal care – has seen substantial growth, registering a 65% increase since the beginning of the millennium. This particular form of alternative care typically involves caregivers who provide personalised, one-on-one care, often for children with special needs or those requiring more intensive support. The rise in this specific care model suggests a growing recognition and need for specialised, individualised care environments that cater to the unique requirements of certain children within the foster system.

3. Overview of Existing Legal Frameworks and Practices Governing Children in Alternative Care

Data from the Ministry of Labour, Social Affairs and Family reveal a modest albeit steady increase in the number of children in alternative care in Slovakia over the past two decades. While the rise in numbers has been gradual, the implications of children living outside of their familial environment are profound and far-reaching. For example, recent statistics show that approximately 14,000 children, or about 1.38% of children in Slovakia, currently live away from their families. This figure represents a marginal increase of 0.052% from 2022.

Breaking down these figures further, about 60% of these children, accounting for over 8,000, are in foster care, guardianship, or substitute personal care, while the remaining 40%, or around 5,500 children, are in institutional settings. In 2023

16 Act No. 36/2005 Coll. on Family.

alone, 1,377 children were placed in children's homes, including 530 children transitioned from special boarding schools under institutional care orders. Among those living in children's homes last year, 321 returned to their family homes, 173 were adopted, 134 moved into foster care, and 61 transitioned to substitute personal care. Notably, the average duration spent in children's home was four years in 2023, down from four years and nine months the previous year, signalling a positive trend in reducing the time children spend in institutional care.¹⁷

These numbers, while reflecting the factual representation of the situation, often mask individual stories of the children affected. Behind each statistic, there is a child with unique strengths and vulnerabilities. It is crucial to move beyond considering these children merely as beneficiaries or subjects of bureaucratic processes and legal frameworks. Each child represents unique potential and resilience, embodying our collective responsibility. Accordingly, it becomes clear that these children are not just cases to be managed but young lives to be nurtured. They remind us of the importance of compassion and empathy, driving us to commit to their well-being and integration into society. Therefore, it is crucial to ensure a legal framework that protects the best interests of these children.

In Slovakia, the legal framework regulating family relations is encapsulated within Act No. 36/2005 Coll., commonly referred to as the Family Act. This legislation has undergone amendments to better address the dynamics of modern family needs. A key provision of this Act, found in Section 44, outlines the legal mechanisms available when the personal care of parents for a minor child is lacking because the parents are either unable or unwilling to provide such care. The legal remedies provided under the Family Act include:

1. **Substitute Personal Care:** This involves entrusting a minor child to the care of a natural person other than the parent. This option is considered when it is in the best interest of the child to remain in a non-parental but nevertheless personalised care setting that replicates the familial environment.
2. **Foster Care:** Foster care places a child in the home of a family that has been vetted and approved to provide a nurturing and supportive environment. This setting aims to provide the child with stability and a semblance of normal family life, where personal attention to the child's needs can be adequately provided.
3. **Institutional Care:** When other, more family-centric options are not feasible, a child may be placed in institutional care managed by local authorities. This option involves care in a more structured environment, such as residential homes, where children are looked after by professional staff.

17 According to the information provided by the Ministry of Labour, Social Affairs and Family.

Each of these solutions is designed to substitute for parental care that is lacking, with the overriding aim of ensuring the welfare and best interests of the child are maintained. These legal provisions reflect Slovakia's commitment to providing children with safe and supportive care environments when primary family care is not available.

3.1. Substitute Personal Care

In cases where the welfare of a minor child necessitates special consideration, Slovak courts have the authority to place the child under substitute personal care. This decision is made only if it aligns with the child's best interests. Eligibility to become a caregiver under this arrangement requires that the individual be a natural person with permanent residence in Slovakia, have full legal capacity, and possess suitable personal qualifications – including medical, personal, and moral suitability. Additionally, the lifestyle of the prospective caregiver and other individuals residing in the same household must collectively ensure a nurturing and safe environment conducive to the child's development.

This form of care is reserved for those who demonstrate a lifestyle that actively supports the child's welfare, thereby aligning with the overarching goal of promoting the minor's best interests. It is crucial to note that anyone who has been legally deprived of the right to care for their own minor child by a court cannot be considered for providing alternative personal care to another minor during the period of such deprivation. This safeguard ensures that only individuals capable of providing stable and competent care are entrusted with the responsibility of caring for a minor child under such circumstances.

When deciding to entrust a minor child to alternative personal care, the court typically prioritises relatives of the child, provided they meet the necessary pre-conditions. This preference for family members underscores the importance of maintaining familial bonds and ensuring continuity in the child's social and familial environment, which is deemed beneficial for their emotional and psychological well-being. In such cases, the court's decision clearly outlines the rights and responsibilities of the person entrusted with the care of the minor. This delineation ensures that the caregiver fully understands their obligations and the extent of their authority in matters concerning the child.

The individual who assumes the role of providing alternative personal care is expected to cater to the needs of the minor to the same extent as parents would. This includes day-to-day care and emotional support, ensuring the child's health, education, and overall well-being are maintained. While the caregiver has the authority to represent the minor child and manage the child's property in routine matters, they have limited power regarding significant decisions.

In instances where the caregiver believes that a decision made by the minor's legal guardian (typically the parent) in substantial matters does not serve the child's best interests, they have the right to challenge it. The caregiver can petition the court to review the guardian's decision, advocating for a course of action that better aligns with the child's needs and welfare. This mechanism provides an additional layer of protection for the child, ensuring that all significant decisions are scrutinised and in the best interests of the minor.

Parents of a minor child maintain their parental rights and responsibilities, but their scope is limited to areas that do not overlap with the duties of the individual to whom the child has been entrusted for substitute personal care. This arrangement ensures that while the substitute caregiver assumes day-to-day and critical responsibilities, the biological parents retain a meaningful role in their child's life.

The parents are also entitled to maintain contact with their child. This right is fundamental to preserving the parent–child relationship, even when the child is under substitute care. If disagreements arise about the terms of this contact between the parents and the substitute caregiver, either party can petition the court to resolve the issue. Such a legal provision ensures that any disputes regarding visitation rights are fairly adjudicated, prioritising the best interests of the child.

Furthermore, according to Section 45, para 7 of the Family Act, the financial responsibility of the parents towards the minor child remains unaffected by any court decision to place the child in substitute care. This means that parents remain obligated to contribute to the child's maintenance and meet any financial needs as prescribed by law, regardless of the child's living arrangements. This legal requirement reinforces the principle that parental responsibilities extend beyond physical custody and include providing financial support to ensure the child's well-being and development.

According to Section 45, para 9 of the Family Act, the Slovak court is mandated to conduct a review of the alternative personal care arrangement at least every six months. This review is carried out in collaboration with the authority for the social–legal protection of children or other individuals who are knowledgeable about the child's circumstances. The primary focus of these evaluations is to assess the quality of childcare being provided under alternative personal care and determine whether the biological parents are now in a position to resume personal care for their child. This periodic review ensures that the child continues to receive the highest standard of care and that any changes in the family's situation or the child's needs are promptly addressed.

In instances where it is deemed appropriate for a child to be cared for by a relative, the Slovak court has the authority to formalise the arrangement. The court's decision outlines specific rights and duties for the caregiver, ensuring they understand their

legal responsibilities and the expectations of their role. Additionally, the court may also stipulate the child support obligations of biological parents. This ensures that while the caregiver provides day-to-day care, the parents continue to fulfil their financial responsibilities towards the child. This comprehensive approach balances the need for stable care arrangements with ongoing parental involvement, supporting the child's overall development and well-being.

3.2. Foster Care

In situations where parents are unable or unwilling to provide personal care for their minor child, and it is deemed necessary for the child's welfare, the court has the authority to move the child to foster care. This decision is contingent on finding a suitable foster parent – a natural person who is not only interested in fostering the child but also meets specific criteria set forth by law.

To qualify as a foster parent in Slovakia, an individual must have permanent residence within the country, possess full legal capacity, and demonstrate personal qualifications such as good health, strong character, and moral integrity. Furthermore, the potential foster parent must be officially registered on the list of applicants for foster care according to a special regulation. It is essential that both the lifestyle of the foster parent and household environment guarantee that the foster care provided serves the best interests of the minor child.

Once appointed, a foster parent assumes responsibilities akin to those of the child's biological parents. This includes providing personal care to the child to the extent expected of a biological parent. The foster parent also gains the right to represent the minor in routine matters and manage the child's property.

However, for decisions deemed substantial or crucial to the child's welfare, the foster parent does not have automatic decision-making authority. Should the foster parent believe that a significant decision made by the child's legal representative (typically the biological parent) does not align with the best interests of the child, they have the right to request a judicial review. This process ensures that all critical decisions are scrutinised by the court to confirm they genuinely reflect what is best for the child, maintaining the child's welfare as the paramount concern in foster care arrangements.

A minor child residing in a household with a foster parent is expected to contribute to the family's common needs. This may involve personal assistance with household tasks and, if the child earns an income from their own work, a financial contribution from that income. This arrangement encourages a sense of responsibility and integration within the foster family, creating an environment of mutual support and cooperation.

During the period of foster care, the biological parents of the minor child retain their parental rights and obligations, but these are limited to areas that

do not overlap with the rights and responsibilities assigned to the foster parent. Importantly, biological parents maintain the right to have contact with their child. Should there be a disagreement between the biological and foster parent regarding visitation rights, the court is tasked with resolving the issue based on an application filed by either the biological or the foster parent. This judicial oversight ensures that the child's best interests remain paramount in arranging contact with the biological parents.

Furthermore, when a court decides to place a minor child in foster care, it also specifies the extent of the financial responsibilities of the parents or any other natural persons legally obligated to provide maintenance for the child. Additionally, the court mandates that these maintenance payments be directed to the child welfare authority responsible for the foster care arrangement. This procedure ensures that the financial support necessary for the child's upbringing is adequately managed and directed through appropriate legal channels, supporting the child's needs while in foster care.

3.3. Institutional Care

Substitute personal care and foster care are prioritised over institutional care in the legal framework governing child welfare. This prioritisation underscores a commitment to maintaining a more family-like environment for children wherever possible. Before a court can order institutional care, it must first thoroughly assess whether the child can be adequately supported through substitute personal care or foster care. This requirement ensures that institutional care is considered only as a last resort when other, more personalised care options are not viable.

Institutional care is considered by the court only under specific circumstances where the child's well-being is at significant risk. This may be the case if the child's upbringing is seriously endangered or impaired and other educational measures have failed to rectify the situation. Alternatively, institutional care may be deemed necessary if the parents are unable to provide personal care due to severe reasons, and no suitable substitute personal care or foster care options are available.

Importantly, inadequate housing or financial conditions of the parents are not sufficient grounds for deeming a child's upbringing as seriously threatened or impaired. This stipulation prevents children from being placed in institutional care solely because of economic disadvantages, thus avoiding unnecessary separation from their family environment.

Unless the court specifies otherwise, the parents retain their role as legal representatives of the minor child, including the responsibility to manage the child's property. This maintains some degree of parental involvement and rights, despite the child's placement in institutional care.

In exceptional cases, the court may order institutional care without previous educational measures having been attempted. In such situations, the necessity for bypassing these measures must be convincingly demonstrated, affirming that the unique circumstances of the case warrant immediate and direct intervention through institutional care.

This approach ensures that the decision to place a child in institutional care is made with careful consideration of all other, less disruptive alternatives, maintaining a focus on the child's best interests and the efficacy of potential interventions.

When a court directs institutional care for a child, it is mandatory to identify the specific institution where the child will be placed. This decision is not made informally; the court must consider what is in the best interests of the minor, with a particular focus on maintaining any existing emotional ties, especially with siblings, to help preserve these important familial relationships. Furthermore, the court possesses the authority to extend the duration of institutional care beyond the child's age of majority for significant reasons. This provision allows for continuity of care when it is deemed beneficial for the young adult's well-being, providing stability as they transition to adulthood.

Institutional care is specifically designed for minors who have yet to reach the age of eighteen. The process for ordering such care can be initiated either *ex officio* by the court itself or upon application. Importantly, the court is not restricted to strictly follow the applications or suggestions made by the parties involved in the proceedings. It retains autonomy to implement any educational measures it deems necessary and appropriate, prioritising the minor child's best interests above all.

Regarding legal representation and property management, the parents of a minor placed in institutional care typically retain their role as legal representatives and are responsible for managing the child's property. However, in certain cases, if the court finds it necessary for the child's welfare, it may appoint a guardian or a guardian *ad litem* to assume these duties. This ensures that the child's assets and legal rights are properly managed, protecting their interests while they are under institutional care. This approach reflects a comprehensive consideration of both the child's emotional and material needs during their time in institutional care.

4. Conclusions

This study underscores the critical importance of adhering to the best interest principle in the care and protection of children separated from their familial environments. Over the past two decades, although the number of children in alternative care in Slovakia has risen marginally, efforts to refine and improve the

conditions and duration of such care have shown positive trends. The gradual reduction in the average length of stay in children's homes testifies to the ongoing commitment to enhance the care system and better serve the needs of these vulnerable children.

The principle of the child's best interest must remain at the forefront of all policies and practices in child welfare. It compels us to continually assess and adjust the care options available, ensuring that each child receives the most familial and supportive environment possible, whether through foster care, guardianship, or institutional settings. This principle not only guides legal and procedural frameworks but also imbues the care system with a moral compass that prioritises the welfare, rights, and potential of every child.

Going forward, it is essential to maintain a holistic approach that integrates the best interest principle with practical measures. This includes improving support systems for foster and adoptive families, reducing reliance on institutional care, and fostering conditions that enable children to return safely to their biological families or transition smoothly into adulthood. Each step taken should aim to not only meet the immediate needs of children in alternative care but also equip them with the tools and opportunities necessary for a secure future.

By focusing on the best interests of these children, we not only adhere to our legal obligations but also fulfil a deeper societal commitment to nurturing the next generation. The children discussed in this study are not mere statistics; they are young individuals with potential and dreams. Our shared responsibility is to ensure that their journey through care systems leads them towards fulfilling and empowered lives. This commitment to their best interests is not just an investment in individual futures but in the health and integrity of our society as a whole.

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