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# Affirmation of Children’s Rights versus Children’s Responsibilities to the Family<sup>2</sup>

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## Abstract

Everyone’s personal dignity guarantees freedoms and rights regardless of age, which means these freedoms and rights are also granted to children. Children’s rights highlight children’s subjectivity and draw attention to their special status, which is, in fact, determined by the child’s dependence on adults, but is still not passive or submissive. This emphasis on the child’s rights sort of equalises the child’s legal situation which is results from their physical and mental immaturity and dependence. However, every human being – including a child – has duties in addition to rights, which remain in relative balance. Thus, they contribute to the formation of the child’s personality in a balanced manner. Focusing solely on the enjoyment of rights and simultaneously neglecting duties distorts this balance and contributes to the development of attitude of taking everything for granted, laziness, and choosing to live at the expense of others. It seems therefore necessary to restore the balance between the focus on children’s rights and the marginalisation of their responsibilities.

**Keywords:** rights of the child, personal dignity, responsibilities of the child, family welfare.

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## Introduction

It is common to draw public attention to children's rights as a way to emphasise children's subjectivity. However, in addition to a rather extensive set of rights, the child also has certain responsibilities – which are covered much less frequently. The discussion offered in this paper aims to juxtapose children's rights (which are absolutised) and responsibilities (which are marginalised) as it appears that any attempt to restore the latter's rightful place in the educational process is considered detrimental to the welfare of the child. Meanwhile, it should be clearly emphasised that all rights are relational since they are always related to duties, obligations, and responsibilities. Rights can exist only if there exist duties to which they are a natural counterbalance – but which seem to be increasingly driven out from the public consciousness. This paper is an attempt to restore the balance between the focus on children's rights and the marginalisation of their duties. At the same time, only the duties included in the Family and Guardianship Code<sup>3</sup> have been analysed – the duty of parents and children to support each other, the duty to contribute to the family's living expenses, the duty to help in the common household, and the duty to obey parents. These duties are referred to as non-maintenance obligations – as opposed to maintenance obligations, which will not be discussed further due to its specificity. The duties mentioned above are only a part of this vast issue. Nevertheless, they need to be taken into account in the process of upbringing as a very important element that shapes the child's system of values, attitudes, and behaviour – as well as a sense of responsibility for their family. This is of great importance because the values and behavioural patterns that a child adopts in the process of upbringing will determine how they relate to and deal with others in interpersonal relationships later on. The child's responsibilities require them to be involved in family affairs, remaining committed to integrating and stabilising the relationships in the family. They help define family relationships and are an expression of intergenerational solidarity. This has not only an individual dimension, aligned with the idea of the child's well-being, but also – due to the social nature of human beings – a community dimension, which is obviously in the public interest.

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<sup>3</sup> Act of 25 February 1964 – Family and Guardianship Code, uniform text 2020, item 1359 as amended, hereinafter: FGC

The preparation of the child for life in society is the responsibility of the parents, whose relationship with the child is determined by the institution of parental authority. In accordance with the intention of the legislator, it includes, in particular, the duty and right of parents to exercise custody over the child's person and assets, and to bring up the child with respect for the child's dignity and rights (Article 95 § 1 of the FGC). "Parental authority, by its very nature, is marked by certain special characteristics as a subjective right. Its essential characteristic is that its attributes are also the duty of the parents, while its primary purpose is to provide protective to the child".<sup>4</sup> In a broad sense, upbringing is understood as the entirety of interactions of the upbringing environment with a specific person or group of people, aimed at achieving a specific goal in accordance with the adopted programme. In a narrow sense, upbringing primarily means influencing a person's personality, the process of developing and stimulating the mental qualities and behaviour of the person being brought up. The general function of upbringing activities is to bring about possibly lasting and positive changes in a person's activity and behaviour.<sup>5</sup>

## The child as a beneficiary of rights

The FGC does not offer a legal definition of a child. For the purposes of this paper, it seems reasonable to use the definition provided under Article 2(1) of the act of 6 January 2000 on the Ombudsman for Child Rights,<sup>6</sup> according to which a child is any human being from conception to adulthood. The concept of a child is similarly defined by Article 1 of the Convention on the Rights of the Child,<sup>7</sup> according to which a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. A person ceases to be a child when they come of age, but this does not mean that they automatically become fully independent and mature – especially mentally. Until the child reaches the age of majority, they remain under parental authority, which, as a rule, is exercised by both parents who take care of and remain responsible for them. Also, a person never ceases to be a child of their parents no matter how their relationship may be.

<sup>4</sup> Supreme Court's resolution of 8 March 2006, III CZP 98/05, LEX no. 172365

<sup>5</sup> A. Czerederecka, *Rozwód a rywalizacja o opiekę nad dziećmi*, Warszawa 2019, pp. 110–111.

<sup>6</sup> Act of 6 January 2000 on the Ombudsman for Child Rights, uniform text in the Journal of Laws of the Republic of Poland of 2023, item 292, hereinafter: AOOR.

<sup>7</sup> Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, Journal of Laws of the Republic of Poland 1991, no. 120, item 526.

Regardless of age, the very fact of being a human being makes a child entitled to exercise human rights inherent to everyone, which, due to the special status of the child, have been further specified in the form of children's rights. Human rights are a set of subjective rights derived from the inherent and inalienable dignity of the human being, and their purpose is to make a person able to develop and grow.<sup>8</sup> Human rights are universal, which means they belong to all people in every community; they are fundamental, i.e. they do not need to be proven or justified by invoking any other rights; they are not absolute, i.e. they may be subject to exceptional limitations. And these are not just some lofty ideals, but concrete entitlements that serve as the basis for claims.<sup>9</sup> Human rights are granted to all equally, without any discrimination on the grounds of race, colour, sex, ethnicity, age, language, religion, political views, national or social origin, disability, wealth or any other circumstances. Nevertheless, "Despite the process of universalisation of human rights, there is no uniform understanding of these rights. The apparent agreement on this issue comes down only to verbal assurances and statements of all sorts. The different understanding of human rights comes from the different underlying social philosophies, different conceptions of freedom, equality, the state and its role in the realisation of human rights".<sup>10</sup> Such diverse bases for understanding what is and what is not a human right translate into a lack of a unified interpretation of them.

The right to life is surely a fundamental human right without which other 'subjectless' frames of reference are meaningless. The right to life is the first and most basic condition for the respect of all other freedoms and rights – it makes it possible to guarantee them, regardless of the adopted concept of human rights underlying local domestic laws and international law. Protection of the right to life is a crucial element of respect for human dignity.<sup>11</sup> It should be added that the right to life is granted from the beginning of its existence and understood most intuitively – i.e. from the moment of conception, which occurs when the male and female reproductive cells unite, which means that the factor that determines the conception of a child is the difference in biological sex. This is the moment when a human being is created and all consequences of this act begin. This is because the foetal stage of life is the first phase of life – even if still a non-autonomous one.

<sup>8</sup> M. Piechowiak, *Prawa człowieka*, [in:] A. Maryniarczyk (ed.), *Powszechna encyklopedia filozofii*, Volume 10, Lublin 2009, p. 335.

<sup>9</sup> W. Osiatyński, *Filozofia i historia praw człowieka*, [in:] J. Węgrzyn (ed.), *Prawa człowieka a Policja. Ku standardom europejskim w procesie nauczania. Materiały pokonferencyjne*, Szczepno 2000, p. 16.

<sup>10</sup> S. Jasionek, *Prawa człowieka*, Kraków 2004, p. 12

<sup>11</sup> K. Stępień, *Filozoficzne źródła sporu o rozumienie praw dziecka. Studium z filozofii prawa i praw człowieka*, Lublin 2016, p. 279.

It is impossible to acknowledge that a human being / child comes to be only at birth and that they are some indeterminate creation with barely potential capacity for life during the period of their growth and development in the womb. The process of human growth and maturation is continuous, running smoothly from the stage of foetal life in the womb to independent life after birth. This is because humans are subject to biological processes of ontogenesis, which consists of two basic periods. The first – pre-birth (prenatal) – period begins with the conception (insemination) and covers the ongoing development in the mother's body until birth. The second – postnatal – period lasts from the moment of birth until death. Thus, since human life begins at the moment of conception, this is the moment that marks the onset of being a human – although one in the early stages of ontogenesis. This is also the moment when the legal protection of life guaranteed under Article 38 of the Polish Constitution begins.<sup>12</sup> This means that from the very beginning of a human being's existence, they can exercise their human rights in a full and unconditional manner – including the rights of the child until the coming of age. From a human rights perspective, age cannot be a discriminatory factor. The Constitutional Tribunal has rightly determined that the value of human life may not be judged based on age, health, expected duration or any other criteria.<sup>13</sup>

A child is a full-fledged human being entitled to enjoy the same social status as the rest of society. In light of the above, they may exercise the same rights as any member of society – plus special rights granted to them under the status of a child. "Children's rights – as human rights – are universal, vested in every child. They are inherent and inalienable rights; therefore, they are granted to any child regardless of their actions – and irrespective of international human rights law and lawmaking initiatives".<sup>14</sup> These rights determine the child's role in the family, society and the state, and grant the child special rights, alleviating their dependence on adults.

Children's rights are realised in and through the family, whose integrity and autonomy remain under the protection and care of the state – which also ensures the protection of children's rights. A special body – the Ombudsman for Children – has been established to guard the rights of the child. It's a specialised body that takes measures to ensure the full and harmonious development of the child, with respect for their dignity and subjectivity – especially to protect the right to life and health, the right to upbringing in the family, the right to decent social conditions,

<sup>12</sup> G. Kowalski, *Założenia prawa rodzinnego w świetle Konstytucji Rzeczypospolitej Polskiej*, [in:] P. Kasprzyk, P. Wiśniewski (eds.), *Prawo rodzinne w dobie przemian*, Lublin 2009, p. 45

<sup>13</sup> Constitutional Tribunal's judgement of 20 September 2008, KK 44/07, LEX no. 441911.

<sup>14</sup> M. Piechowiak, *Preambula*, [in:] T. Smyczyński (ed.), *Konwencja o prawach dziecka. Analiza i wykładnia*, Poznań 1999, p. 24.

and the right to education. The Ombudsman also engages in initiatives aimed at protecting children against violence, cruelty, exploitation, demoralisation, neglect, and other maltreatment (Article 3 of the AOOCR). There is absolutely no doubt that providing a child with special protection from harm is fully legitimate. On the other hand, there is a risk that children's rights might be used to diminish their responsibilities to their parents under parental authority, which include activities involved in the process of upbringing. These activities include making demands on the child, imposing obligations, and holding them accountable for the carrying out of their duties. "There is a threat that the rights of the child might be used to undermine the authority of parents and to settle parental authority cases according to the adversarial model of proceedings, in which the plaintiff is the child and the adversary is the parents".<sup>15</sup> In an ideologised liberalised world, where recognised authorities are being undermined and values relativised in favour of an indiscriminate concept of freedom in human life, with no duties and no responsibilities, this is particularly dangerous for the relationship between parents and children. This is because imposing obligations on the child and enforcing their fulfilment can potentially lead to conflict and serve as a basis to question the decisions of parents. Reducing the rights of the child exclusively to needs, promoting a hedonistic and consumerist lifestyle that rejects responsibility and often also common sense, and absolutising the rights of the child at the expense of the rights of others leads to a misconception that it is possible to live without obligations, to defy the will of parents – using the state to do so. It causes a conflict of interests and turns various rights against each other. This is particularly alarming when it comes to invoking children's rights in order to make the child stand in opposition to their parents. This makes it possible to promote ideologies, views, and values that contradict the parents' beliefs underlying their idea of upbringing in practice. And this leads, in turn, to replacing the authority of parents with pseudo-authorities created for the moment, who aim primarily not at acting for the good of the child, but rather for to fulfil their own interests – which are usually commercially or politically motivated. The illusion of easy solutions or an idealised image of life can be appealing – especially to a person who is at the stage of forming their own personality, free from the burden of life experiences, eagerly accepting anything they are offered without becoming aware of the potential consequences of the choices they are to make.

The absolutisation of children's rights and the simultaneous marginalisation of their duties leads to the formation of attitudes of entitlement and the develop-

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<sup>15</sup> T. Smoczyński, *Prawo dziecka do wychowania się w rodzinie*, [in:] T. Smoczyński (ed.), *Konwencja o prawach dziecka. Analiza i wykładnia*, Poznań 1999, p. 152.

ment of egocentrism, which causes family misunderstandings that often turn into mutual dislike and, as a result, weakening of relationships, serious disappointments, and life failures in adulthood. Thus, it is rightly stressed that in the context of modern confusion, misunderstanding, and misinterpretation of human freedom, perhaps the most important aspect of upbringing is teaching responsibility – and therefore for responsible freedom. There is a close connection between freedom and responsibility. The attitude of responsibility is the discovery and realisation of the positive dimension of freedom – “being free to do something”. And being a parent involves helping their child discover that they are free to become fully human, to assert their dignity.<sup>16</sup>

The realisation of children's rights correlates with the principle of child welfare. And child welfare “is a constitutional general clause which shall be reconstructed by reference to constitutional axiology and general systemic guidelines. (...) The order to protect the welfare of the child is the fundamental, overriding principle of the Polish family law system; one to which all regulations applicable in the sphere of relations existing between parents and children are subordinated”.<sup>17</sup> It is assumed that the welfare of the child means “a set of intangible and material values necessary to ensure the proper physical and spiritual development of the child and to properly prepare them to work in line with their talents. These values depend on a broad range of factors (the structure of which depends on the content of the applicable legal norm and the specific – current – situation of the child), assuming the convergence of the child's welfare so understood with social interest”.<sup>18</sup> Yet, the principle of the welfare of the child or the rights of the child cannot be absolutised in a way that does not provide for any exceptions by allowing situations in which the interests of the child prevail over the interests of adults. After all, it is ultimately the adults – not the child – who decides what is beneficial for the child, who, due to the period of adolescence and the associated process of shaping of their personality and the threats of the environment in which they function, is unable to consciously protect their own welfare.<sup>19</sup>

<sup>16</sup> A. Skreczko, *Wychowanie do odpowiedzialności*, [https://opoka.org.pl/biblioteka/1/ID/w\\_do\\_odp.html](https://opoka.org.pl/biblioteka/1/ID/w_do_odp.html) (access: 10.03.2022).

<sup>17</sup> Constitutional Tribunal's judgement of 28 April 2003, KK 18/02, LEX no. 78052. The Constitutional Tribunal also emphasised that the welfare of the child is the core of all legislation governing the rights of the child, an instrument for interpreting the applicable norms and a directive when applying them, as well as a criterion used when deciding on matters affecting the child and resolving conflicts of interest of the child with the interests of others – especially parents.

<sup>18</sup> W. Stojanowska, *Dobro dziecka jako instrument wykładni norm Konwencji o prawach dziecka oraz prawa polskiego jako dyrektywa jego stosowania*, [in:] T. Smyczyński (ed.), *Konwencja o prawach dziecka – analiza i wykładnia*, Poznań 1999, p. 98

<sup>19</sup> W. Lis, *Prawo rodziców do zapewnienia dzieciom wychowania i nauczania moralnego i religijnego zgodnego ze swoimi przekonaniem*, Toruń 2020, p. 19.

## Duty of mutual respect and support

“Parents and children are required to respect and support each other” (Article 87 of the FGC), which seems obvious given the kinship and emotional relationship between them. The above only proves the natural relationships that exist between those closest to each other – relationships that don’t need to be created or sanctioned. This is because they stem from the most primal instincts connecting parents and children. Normalising the obligation to respect and support each other does not bring anything new to the relationship between parents and children. Its significance has only a moral dimension, boiling down solely to emphasising the role of such a model of family in Polish family law. The indicated duties are grounded in specific norms on parental authority, maintaining contact with the child, and maintenance obligations.

Obligated subjects are parents and children – including adopters and adoptees since adoption establishes between those persons a relationship like that existing between parents and children (Article 121 § 1 of the FGC). For the existence of a duty of mutual respect and support, the fact that the parents are married and live with each other is irrelevant, although this will actually affect the frequency of contact and therefore support. The duty of mutual respect and support exists regardless of parental authority and the age of the child as it exists invariably as long as the subjects of the family-legal relationship are alive. It should also be added that in normative terms, the duty of mutual respect and support reaches only as far as to first-degree relatives in the direct line. It does not encompass either the relations between grandparents and grandchildren or between siblings.

Respect means the mutual relationship between parents and children, manifested in the attitudes adopted and behaviours displayed, in the way both parties relate to each other and communicate with each other. It should mark the entirety of the relationship between parents and their child. In common language, respect is honour, esteem, recognition, and acknowledgement that go beyond the normative, legal protection of personal property and moral rights. Respect means prohibition of making or publishing insulting or ridiculing statements, prohibition of humiliating each other, of acting to each other’s detriment, of denouncing each other or initiating legal proceedings without just cause – which may not deprive anyone of the right to defend oneself against another party’s actions that are inconsistent with the same principles.<sup>20</sup> However, the duty of respect – despite the statutory emphasis on reciprocity – by its very nature transcends the bilateral

<sup>20</sup> P. Wicherek, *Komentarz do art. 87, punkt 4*, [in:] M. Fras, M. Habdas (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021.



parent-child relationship. Mutual respect between parents and children should also be manifested in external relations (e.g. it obliges the parent to respect the child when dealing with the child's peers, teachers, etc.; the same applies to the child).<sup>21</sup> Respect is a prerequisite for positive relationships between parents and children – relationships that strengthen their willingness and readiness to support each other in every sphere of life.

Supporting each other, in turn, means selfless aid, depending on the life situation of parents and children. The duty to support each other means helping each other in and with a wide variety of issues and affairs. The duty to support each other includes material assistance, as well as mental and moral support in times of suffering, illness or disability, intellectual assistance in making important decisions or dealing with difficult life issues, or physical assistance in performing different everyday activities.<sup>22</sup> In addition, the duty to support includes behaviours that cannot be considered as acts of assistance in the strict sense of the word in certain situations, but are an expression of positive emotions, remembering, or consist in staying in touch with family members to prevent them from feeling lonely.<sup>23</sup> It should be added that material assistance should not be reduced to maintenance obligations, which are regulated under Article 128 of the FGC.<sup>24</sup> This is because the obligation of support in the form of material assistance – unlike maintenance obligations – is not subject to any conditions. Moreover, mutual respect and support given to each other is not limited in time, which means that it is lifelong, i.e. it lasts for the rest of the parents' or children's lives.

The duty of mutual respect and support is bilateral, which means that one party's fulfilment of this duty is the other party's fulfilment of this duty – as in the case of reciprocal obligations.<sup>25</sup> In view of this, the obligated party may not refrain from fulfilling their duty just because the other party does not fulfil their analogous duties. Indeed, the essence of the obligations to be fulfilled under the relationship between parents and children does not imply that one party's failure to fulfil an

<sup>21</sup> A. Sylwestrzak, *Komentarz do art. 87, punkt 1*, [in:] *Komentarz do wybranych przepisów Kodeksu rodzinnego i opiekuńczego*, Warszawa 2020.

<sup>22</sup> H. Ciepła, *Komentarz do art. 87*, [in:] K. Piasecki (ed.), *Kodeks rodzinny i opiekuńczy z komentarzem*, Warszawa 2000, p. 539.

<sup>23</sup> A. Sylwestrzak, *Komentarz do art. 87, punkt 2*, [in:] *Komentarz do wybranych przepisów Kodeksu rodzinnego i opiekuńczego*, Warszawa 2020.

<sup>24</sup> According to Article 128 of the FGC, "The obligation to provide maintenance and, if necessary, means of upbringing (maintenance obligation) is imposed on relatives in the direct line and siblings."

<sup>25</sup> A. Cisek, *Pozalimentacyjne obowiązki dziecka wobec rodziców w świetle k.r.o.*, "Acta Universitatis Wratislaviensis" 1995, 31, p. 148. Pursuant to Article 487 § 2 of the Act of 23 April 1964 – Civil Code (uniform text in the Journal of the Republic of Poland of 2022, item 1360 as amended, hereinafter: the CC): "A contract is reciprocal when both parties agree to create an obligation in such a way that the performance of one party corresponds to the performance of the other party".

obligation entitles the other party to act in a similar manner.<sup>26</sup> Resulting from the obligation of mutual respect and support for each other, the mutual acts of respect and support of parents and children need not be identical or equivalent – as they are not interdependent. Reciprocity – or mutuality – means that parents and children have similar – analogous – obligations. However, the fulfilment of the duty of mutual respect and support should be considered in the context of the principles of community life. It would be difficult to expect a child willing to show respect to their parents who took no interest in the child's affairs, acted with violence or cruelty, maltreated, exploited or deprived the child.

## Duty to contribute to the family's living expenses

It is the child's duty to contribute to the family's living expenses if the following two circumstances occur at the same: the child earns income from their own labour and lives at their parents' place (Article 91 § 1 of the FGC). The adopted solution corresponds with the provisions of Article 101 § 2 of the FGC, which excludes the child's earnings from the parents' administration. On the other hand, the obligation to contribute to the family's living expenses is not imposed on children who do not earn income from their own labour even if they have the capacity to work.

The beneficiary of the child's obligation is the family, which includes the parents and other relatives with whom the child lives in a common household. The family is the most 'original' group of all social groups in which humans exist. It's the most natural environment in which they are born, grow, and function. A typical family is based on marriage, which is the result of the free decision of two people – a man and a woman. The membership of the children born in the family it does not depend on the child's will or intention, but is a consequence of natural events.<sup>27</sup> Thus, in the context of the child's obligation to contribute to the family's living expenses, it would be necessary to use the concept of a householder to make it clear that only a family member who is also a householder and, conversely, only a householder who is a family member is eligible to benefit from this obligation.<sup>28</sup> In most common situations, these will usually be either grandparents or the child's siblings. The prerequisite of living at the parents' place is also fulfilled if the child

<sup>26</sup> J. Ignatowicz, *Glosa do orzeczenia z dnia 15 kwietnia 1959 r., Cr 511/59, "Orzecznictwo Sądów Powszechnych"* 1961, 4, p. 121.

<sup>27</sup> T. Smyczyński, *Prawo dziecka do wychowania się w rodzinie*, [in:] T. Smyczyński (red.), *Konwencja o prawach dziecka. Analiza i wykładnia*, Poznań 1999, p. 150.

<sup>28</sup> A. Sylwestrzak, *Obowiązki dziecka wobec rodziców*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2001, 3, p. 66.

lives with only one parent, which means that the obligation to contribute to the family's living expenses is imposed on the child only with respect to that parent.<sup>29</sup> This applies both when the child resides with only one of the parents as a result of the parents' separation – whether after the parents' divorce or their actual separation if the parents lived in cohabitation – and when the child's parents have never lived together and the child has always resided with only one of them, and even when the child's father is unknown and the child resides only with the mother.<sup>30</sup> When parents are temporarily absent from the joint household, the child is not exempt from the obligation to contribute to the family's living expenses since it is clear from the wording of the provision that it is a matter of living "at the parents' place" and not "with the parents".<sup>31</sup> Living at the parents' place should be understood as permanent residence, so to speak, i.e. a residential situation that is not merely temporary or short-term.<sup>32</sup>

Doubts may occur if the child lives with one parent and their partner or non-parent spouse and their children. It seems that in practice it would be impossible to isolate the parent's and the child's obligation to contribute to household maintenance in the presented situation. But the wording of Article 91 § 1 of the FGC does not legitimise the formulation of the child's obligation to contribute to living expenses of persons other than their family within the meaning of the provisions of the FGC.<sup>33</sup>

The fulfilment of the obligation to contribute to the family's living expenses is an economic act as it boils down to monetary contributions, i.e. transferring part of the income earned to the family. The source of this income must be the child's own labour<sup>34</sup> regardless of the legal basis for its provision. Income earned from one's own work thus includes not only remuneration earned under an employment relationship, but also under civil law contracts – such as a specific work contract

<sup>29</sup> J. Ignatowicz, *Komentarz do art. 91*, [in:] K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2012, p. 860.

<sup>30</sup> P. Wicherek, *Komentarz do art. 91, punkt 3*, [in:] M. Frasz, M. Habdas (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021.

<sup>31</sup> A. Sylwestrzak, *Obowiązki dziecka...*, p. 66.

<sup>32</sup> P. Wicherek, *Komentarz do art. 91, punkt 2*, [in:] M. Frasz, M. Habdas (red.), *Kodeks rodzinny...*

<sup>33</sup> J. Słyk, *Komentarz do art. 91, punkt 7*, [in:] K. Osajda (series editor), M. Domański, J. Słyk (volume editors), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2022.

<sup>34</sup> Minor children's capabilities to engage in gainful activity are determined by Article 190 et seq. of the Polish Labour Code of 26 June 1974 (uniform text in the Journal of Laws of the Republic of Poland of 2022, item 1510, as amended, hereinafter: the Labour Code). As a rule, it is forbidden to employ children under the age of 15. However, it is permissible to employ juveniles, i.e. people who are at least 15 years of age but still under 18 and who have completed at least 8 years of elementary school and have presented a medical certificate which proves that the work they intend to engage in does not endanger their health

or a contract of mandate, and in general any other income earned by a child in the course of gainful activity (including business activity), and regardless of whether such activity is pursued as a natural person or a legal entity. With an increasing number of available forms of earning, such a standpoint seems completely legitimate since there is no legal basis for differentiating the obligations of a child solely on the basis of the type of legal relationship under which they earn their income. After all, the essence of the provision boils down to the obligation to use one's own income to participate in the family's living expenses, and the legal form of earning this income should not obscure the core purpose of this provision.<sup>35</sup> This does not, however, apply to the child's other income that is not an outcome of their work – meaning pensions, compensation, donations, rent.<sup>36</sup> The income generated from the child's assets are to be administered by the child's parents. If the child's assets generate income, according to Article 103 of the FGC, pure income should be primarily used to maintain and bring up the child and their siblings who are being raised with them, while the surplus should be spent for other legitimate needs of the family. If the income generated from these assets reaches an amount sufficient to cover the child's maintenance and upbringing, this relieves the parents of their child support obligation.

It should be stressed here that this is about the income actually earned, not the income that the child could have earned using their earning capacity. The legislator does not require the child to earn an income or make efforts to earn one in order to cover even the most essential needs of the family. Whether a child takes up a job depends solely on their own will and life circumstances. However, if they do take up a job, they accept the obligation to contribute to the living expenses of their family<sup>37</sup>. The child's hypothetical earning capacity is irrelevant to the existence of this obligation since it is not maintenance obligation. Thus, if a child does not earn an income – even if they have the capacity to do so, the obligation to contribute to the family's living expenses will not occur.

In formulating the child's obligation under Article 91 § 1 of the FGC, the legislator applied the concept of contribution, which is narrower than the concept of provision, which means that the child's assistance offered to the family should not be its only source of maintenance, but only a certain addition to the totality of assets used to satisfy its needs.<sup>38</sup> The above implies that the child is expected to

<sup>35</sup> P. Wicherek, *Komentarz do art. 91, punkt 10*, [in:] M. Fras, M. Habdas (red.), *Kodeks rodzinny...*; G. Jędrejek, *Komentarz do art. 91, punkt 3*, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany*, Warszawa 2019.

<sup>36</sup> J. Stryk, *Komentarz do art. 91, punkt 4*, [in:] K. Osajda (series editor), M. Domański, J. Stryk (volume editors), *Kodeks rodzinny...*

<sup>37</sup> A. Sylwestrzak, *Obowiązki dziecka...*, p. 67.

<sup>38</sup> P. Wicherek, *Komentarz do art. 91, punkt 5*, [in:] M. Fras, M. Habdas (eds.), *Kodeks rodzinny...*

contribute to the living expenses borne by themselves and the family members with whom they live in a common household. The duty to contribute to the family's living expenses does not mean burdening the child with the responsibility of supporting themselves or their family.

The legislator did not specify the scope of the duty to contribute to the family's living expenses as it always depends on the general situation of the child and their family. When taking into account the extent to which this duty is fulfilled, such circumstances as the child's age, their school activities, the amount of their earnings, the financial situation of their parents, the urgency of the needs of other members of their family to the child – due to illness or temporary unemployment – are considered as well.<sup>39</sup>

According to the views of legal academics and commentators, the fulfilment of the duty to contribute to the family's living expenses may also involve paying all or part of the costs of care and upbringing of a minor child who is the beneficiary of the duty in question. The fulfilment of this obligation consists then in relieving the family of the burden of bearing these expenses. However, whether this duty is fulfilled as expected should always be judged on the basis of the material situation of a particular family.<sup>40</sup> It seems, however, that the essence of this provision concerns a collective entity – such as a family. Although a child is undoubtedly part of a family, the emphasis has been not so much on satisfying their own needs, but on meeting the needs of all family members. The adopted solution has a pedagogical rationale, which has to do with the shaping of an attitude of responsibility for one's close relatives and partners – and, to a broader extent, with social solidarity. This also translates into the realisation of the principle of equal living standards for the entire family.

## Duty to assist in maintaining a common household

It is the duty of a child who lives at their parents' place and is dependent on them to help them maintain their common household (Article 91 § 2 of the FGC). In order for this obligation to become legitimate is the combined occurrence of both of the following circumstances: The fulfilment of this obligation involves the child's personal engagement in the various activities performed in the common household to make sure it functions normally, as expected. This, of course, refers to

<sup>39</sup> J. Ignatowicz, *Prawo rodzinne*, Warszawa 2000, p. 465.

<sup>40</sup> A. Sylwestrzak, *Komentarz do art. 91*, [in:] H. Dolecki, T. Sokółowski (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2010, p. 560.

activities that do not exceed the child's capabilities and do not impede their learning or compulsory schooling. Engaging the child in the affairs of a common household has an important educational value and can be considered an act of preparation to living an independent life later on, with a sense of responsibility for oneself and one's actions and decisions – as well as for those with whom the child will establish their own family and household. It should be added that since the duty to assist in maintaining a common household is a logical consequence of the fact that the child lives at their parents' place and is dependent on them, once the child becomes independent, which is manifested in the act of leaving their parents' place and living off their own labour or income from their assets, this duty automatically ceases.

When a child lives at their parents' place, it means that the child actually resides in a place that is their parents' centre of vital interests. The child's duty is not rescinded by the temporary absence of their parents as a result of e.g. going abroad or taking up employment in another locality if the resulting situation is not permanent.<sup>41</sup> A child's dependency means a situation in which the child does not support themselves from either their own labour or income gained from their assets and instead remains supported by their parents.

The scope of a common household includes the household, the manufacturing facility, the agricultural farm, and the workshop of the parents (or the parent at whose place the child lives).<sup>42</sup> The child's duty is limited only to assisting in maintaining the common household, thus relieving the parents of some of the activities that the child can successfully carry out without substituting the parents in performing these activities and being burdened with anything that is the responsibility of the parents. The scope of assistance in maintaining the household includes the entire range of household chores suitable for the age of the child. This means e.g. cleaning, washing dishes, preparing meals or helping with small household chores.<sup>43</sup> The situation of assisting in maintaining e.g. a farm, a manufacturing facility or a workshop will be different, of course. However, in each case, the extent of the assistance provided is determined primarily by the child's capacity. The intensity of this assistance can only be such that the child has an opportunity to prepare for future work – in line with their talents. The extent of said assistance should not interfere with the acquisition of relevant qualifications and preparation for the pursuit of the chosen profession. Also, it should never adversely affect the child's

<sup>41</sup> T. Smyczyński, *Alimentacja dzieci a obowiązek przyczyniania się do zaspokajania potrzeb rodziny*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1977, 2, p. 46.

<sup>42</sup> Supreme Court's resolution of 28 June 1989, III CZP 65/89, LEX no. 3556; J. Ignatowicz, *Prawo rodzinne...*, p. 465.

<sup>43</sup> P. Wicherek, *Komentarz do art. 91, punkt 16*, [in:] M. Fras, M. Habdas (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021.

physical and mental development. Any other approach would be contrary to one of the underlying principles of family and guardianship law – the principle of the welfare of the child.<sup>44</sup>

The duty to assist in maintaining a common household is gratuitous – and thus unpaid. This duty, which is a kind of equivalent of the assistance received, stems from the fact that the child lives at the parents' place and is dependent on them. Therefore, the child must not make their assistance conditional on their parents' support. This, of course, does not rule out the possibility of rewarding the child for the assistance provided – in the form of e.g. pocket money, but the incorporation of such upbringing methods is entirely at the discretion of the parents.<sup>45</sup> This is because the child is not entitled to claims for monetary remuneration in connection with assisting their parents in maintaining their common household.

## Duty to obey

The parents' duty to raise their child with the child's welfare and the general social interest in mind corresponds to the child's duty to obey, which is defined as the child's submission to the will of their parents. It stems from the child's immaturity and the need to make sure that the child develops properly both physically and spiritually. It is therefore rooted in the natural order of things, which implies that the stronger should care for and protect the weaker. The above finds confirmation in the wording of Article 95 § 2 of the FGC, according to which "A child under parental authority owes obedience to their parents, and in matters in which the child is able to make decisions and declarations of intent independently, the child should consider their parents' opinions and recommendations offered with the child's good in mind". It is reasonable for a child to benefit from the greater knowledge and life experience of his parents, who, guided by the child's well-being and welfare, can assist the child in making their own decisions. This is to protect the child from being harmed – both personally and financially – as a result of being granted total, unlimited freedom.

This provision is special in that it is a blanket provision because it does not indicate any specific actions the child is obligated to take. It is the parents who need to specify the scope of the duty of obedience in the course of exercising parental authority, based on the relationship existing between them and their child. Of course, the child's situation in relation to the duty to obey depends on the scope

<sup>44</sup> Supreme Court's resolution of 28 June 1989, III CZP 65/89, LEX no. 3556.

<sup>45</sup> A. Sylwestrzak, *Obowiązki dziecka...*, p. 79.

of parental authority vested in the parents, which means that the limitation of parental authority affects the scope of the duty to obey.

The duty of obedience to parents is a consequence of the parents' right to raise their child, and is closely related to the duty of mutual respect and support, which emphasises human dignity. It emphasizes the personalistic nature of the process of upbringing, which includes activities that help the child become a full, complete human being. "The essence of upbringing is about nothing less than the formation of a human being – not in the sense of the development of human as a species, but in the sense of perfecting each individual in all areas of their life and activities, meaning the formation of the human person".<sup>46</sup> Its scope covers e.g. teaching principles of morality and community life, promoting conscientiousness and diligence, and shaping character. It therefore includes the formation of the child's personality, emotional attitudes, and value system. It is also about equipping the child with the skills necessary to succeed in community life, inspiring a sense of reliability and responsibility, as well as a number of other qualities essential to proper functioning as an individual and a member of society. It covers all spheres and dimensions of human existence.<sup>47</sup> This requires the child to submit to the parents' will – i.e. to obey them.

It is emphasised that parents, when exercising parental authority, make an impact on the situation of the child through two types of interactions. Ones, aimed directly at the child, require a 'response' in the form of the child's behaviour (the sphere of obedience). Others do not require interaction with the child to be effective (the sphere of bearing) – even though they do concern the child, and the child's situation in this regard is to bear the consequences of the parents' actions. The duty to obey can only arise within the sphere of obedience. However, it is not absolute as parents always leave a certain amount of freedom to the child (the sphere of real independence), within which the duty to obey is only potential.<sup>48</sup> Within the sphere of obedience, the child's behaviour can manifest itself either in active form, through strictly defined activity, or – in the absence of activity – also in passive form. Thus, it is possible to speak of action and inaction – or activity and inactivity – as two possible ways to respond to parental influence. Moreover, obedience can be considered in the physical aspect – involving external manifestations of the child's behaviour, as well as in the mental aspect – concerning, for instance, the

<sup>46</sup> J. Majka, *Wychowanie personalistyczne wychowaniem chrześcijańskim*, [in:] F. Adamski (ed.), *Wychowanie w rodzinie*, Kraków 2010, p. 15.

<sup>47</sup> W. Lis, *Prawo rodziców do zapewnienia dzieciom wychowania i nauczania moralnego i religijnego zgodnego ze swoimi przekonaniami*, Toruń 2020, p. 21.

<sup>48</sup> A. Sylwestrzak, *Obowiązki dziecka wobec rodziców...*, p. 79.



adoption of certain views. However, it can sometimes be impossible to strictly distinguish between the two aspects from each other.<sup>49</sup>

The legislator does not indicate the means parents can apply to make their child obedient. It is acknowledged that parents should strive to raise their child through persuasion and gentle means of upbringing, avoiding the use of physical means of influence to enforce obedience by violating the physical integrity of the child. Corporal punishment, on the other hand, is prohibited, as guaranteed under Article 96<sup>1</sup> of the FGC, according to which “Persons exercising parental authority and having the care or custody of a minor are prohibited from using corporal punishment”, and under Article 217 § 1 of the Polish Penal Code,<sup>50</sup> according to which “Whoever strikes a human being or otherwise violates their bodily integrity shall be subject to a fine, restriction of liberty or imprisonment for up to one year”. The prohibition of corporal punishment serves as a general directive on educational and upbringing goals. Violation of the prohibition of corporal punishment can therefore legitimise court interference in the sphere of parental authority under Article 109 of the FGC – or by granting the minor the protection provided under penal law. As a side note, it is quite important to bear in mind that the introduction of the prohibition of corporal punishment poses a threat of parents replacing spanking used as a disciplinary tool with psychological reprimands, not at all less severe in its consequences. After all, eliminating one form of punishment will not automatically make all other forms of punishment disappear.

As the child matures, the duty to obey will evolve because the child's situation will change as they grow and acquire new skills to manage their behaviour. Parents must take this into account in the upbringing process if they want to maintain their authority and keep their child obedient. The maturation of a child leads to the expansion of the range of matters in which the child can make their own decisions and declarations of intent, but it's still necessary for the child to consider their parents' opinions and recommendations offered with the child's best interest in mind. After all, a child is a rational and conscious subject – rational and conscious in line with their age and maturity level. Matters in which a child can make decisions and declarations of intent independently include usually entering into an employment relationship (Article 191 of the Labour Code), managing their earnings (Article 21 of the CC), performing legal acts that do not lead to the incurring of obligations or the disposal of rights (Article 17 of the CC), performing legal acts concerning assets received from their legal representative to dispose of freely

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<sup>49</sup> Ibidem, p. 71.

<sup>50</sup> Act of 6 June 1997 – Penal Code, uniform text in the Journal of Laws of the Republic of Poland of 2022, item 1138 as amended.

(Article 22 of the CC), concluding contracts classified as contracts commonly concluded in minor current day-to-day matters (Article 20 of the CC). "Upon reaching the age of majority, an individual ceases to be a child, which results in the cessation of their parents' upbringing rights. However, this does not mean the cessation of their influence on their children, which is, after all, part of family life and an expression of lasting concern for the child, who can be supported in various ways regardless of age, marital status, social or professional position, wealth level, etc."<sup>51</sup>

## Conclusion

The harmonious development of a child's personality involves respecting their rights and teaching them their duties and obligations. This is because duties and obligations set boundaries, verify needs, teach responsibility, shape character, and make people realise that everything requires a certain equilibrium, balancing what can be done and what must be done. This, in turn, teaches respect for one's own and others' work, and enables one to set one's priorities right. "A child's duties, just like rights, are very important for proper – undisturbed – upbringing or self-education and socialisation in the broadest sense, i.e. preparing a young person to take on and perform certain roles and duties in dealing with their parents, peer group, class, or themselves. This is significant for the harmonious development of each child's personality and character".<sup>52</sup> How this development proceeds depends on whether the child becomes either an asset or a cost to society in the future. The responsibilities of a child are an individual matter that will be dealt with differently in each family. In each case, the type and scope of household chores are determined by the parents, who are responsible for taking care of the physical and spiritual development of the child and properly preparing the child to work for the benefit of society according to their talents and capabilities.

It is understandable, therefore, that the provisions of the FGC outline the basic duties of the child, which guide the child to discover the community nature of their existence, which is very significant from the perspective of their future education and socialisation. This, in turn, requires reconciling one's own interests and society's interests in a skilful, reasonable way. And this starts at the level of the smallest, most elemental and irreplaceable community – the family. It remains an environment of upbringing, one whose rightful position to raise its own offspring

<sup>51</sup> W. Lis, *Prawo rodziców do zapewnienia dzieciom wychowania...*

<sup>52</sup> J. Kuźma, *Prawa i obowiązki dziecka – deklaracje i rzeczywistość*, [in:] J. Wilk (ed.), *Stulecie dziecka. Blaski i cienie*, Lublin 2003, p. 80.

is legitimised on the basis of the natural law. This natural process of upbringing involves the participation of parents as the first 'upbringers' of their offspring and of children as individuals in care of their parents, born without the relevant socio-cultural factor. Therefore, in the family nature is humanised, achieves a human form.<sup>53</sup> The family is where a person is born and functions. It is the family that is this person's goal and reference framework of their activity. The family, by setting reasonable demands, requirements, and expectations, teaches a person the ability to live in a community and act for the community, fulfilling their obligations to it. These demands, requirements, and expectations are also the externalisation of social expectations, requiring the child to be actively involved in family affairs. As a result, they teach respect for the other, readiness to make sacrifices, strengthen family ties, foster integration, and boost the sense of solidarity among family members. Of course, the family is not the only institution of upbringing, but it is the first and most important one; all the others are only supplementary, auxiliary.

Non-maintenance obligations addressed in the provisions of the FGC are unenforceable, which means that they are not suitable for enforcement. Nevertheless, failure to fulfil such obligations produces certain indirect legal consequences, which include interference with parental authority (Article 109 of the FGC), provision of appropriate assistance to parents if such assistance is necessary for the proper exercise of parental authority (Article 100 of the FGC), termination of adoption (Article 125 of the FGC), evasion of maintenance obligation (Article 144<sup>1</sup> of the FGC), restriction of the minor's freedom to dispose of their earnings (Article 21 of the CC), revocation of a donation (Article 898 of the CC), grounds for disinheritance (Article 1008 of the CC), termination of a contract transferring ownership of an agricultural farm to a successor (Article 89 of the act on the social insurance for farmers<sup>54</sup>) or the application of an appropriate upbringing or corrective measure under the act on the support and social rehabilitation of minors.<sup>55</sup> Another aspect to bear in mind here is the right of parents to discipline their children – excluding corporal punishment. The above stresses the importance of the child's responsibilities and the harmfulness of focusing only on the rights of the child with the child's overall development and social interest in mind.

It seems that the legal solutions adopted and their practical application translates into the affirmation of the rights of the child while ignoring their duties and

<sup>53</sup> L. Melina, *Natura e famiglia: un nesso da esplorare*, [in:] L. Melina (ed.), *Il criterio della natura e il futuro della famiglia*, Siena–Roma 2010, p. 11.

<sup>54</sup> Act of 20 December 1990 on the social insurance of farmers, uniform text in the Journal of Laws of the Republic of Poland of 2023, item 208 as amended.

<sup>55</sup> Act of 9 June 2022 on the support and social rehabilitation of minors, Journal of Laws of the Republic of Poland of 2022, item 1700 as amended.

obligations. Protection of children's rights is guaranteed and enforced effectively at various levels of legislative and organisational arrangements. It is a subject of a heated public debate as part of which it is argued that children's rights have led to the empowerment of children, creating the false impression that they were treated as objects earlier on. At the same time, the importance of a child's non-maintenance obligations is hardly raised, considered as an individual – private – matter. Meanwhile, these obligations play a very important role in the child's socialisation and upbringing. Such a shift in emphasis can make a child draw wrong conclusions regarding the absence of their duties and obligations or the lack of need to fulfil them, which produces attitudes of entitlement, consolidates the conviction that there are only rights, teaches opportunism and the inclination to shift duties to others, and consequently reduces the sense of responsibility for the welfare of the family, undermines intergenerational solidarity, alienates the child from the family community and weakens family ties. The above calls for the rhetorical question of whether the absolutisation of children's rights is surely of benefit to children.

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