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| Study on children's involvement in judicial proceedings – contextual overview for civil justice – Slovakia  July 2014 (Research carried out between March 2013 and October 2013) |



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Abbreviations

CA Competent Authority

Civil Code Act No. 40/1964 Coll.

CPC Civil Procedure Code, Act. No. 99/1963 Coll.

CoE Council of Europe

Constitution Act No. 460/1992 Coll.

EC European Commission

EU European Union

Execution Code Act No. 233/1995 Coll.

Family Act Act No. 36/2005 Coll.

Mediation Act Act No. 420/2004 Coll.

# Introduction

Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study ‘to collect data on children’s involvement in judicial proceedings in the EU’ which supports the implementation of the Commission Communication of 15 February 2011 ‘[An EU Agenda for the rights of the child’](http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm), which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based poli­cies and is particularly evident in the context of child-friendly justice and the protection of children in vulnerable situations. Making the justice system more child-friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

to establish statistics and collect data based on structural, process and outcome indicators on children involved in civil judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;

to provide a narrative overview of children's involvement in civil judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.

* This report examines the safeguards in place for children involved in **civil judicial proceedings**. The [Council of Europe Guidelines on child-friendly justice](http://www.coe.int/t/dghl/standardsetting/childjustice/publicationsavailable_en.asp) serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

Structure and scope

This report describes the national **civil justice system** insofar as children’s involvement is concerned. If, in addition to general rules in civil judicial proceedings, there are specific rules in the fields of **family and employment law**, the safeguards in place for children involved in judicial proceedings in those two specific sectors will also be described.

**Chapter 2** of this report provides an overview of the Member State’s approach to children’s involvement in civil judicial proceedings. It includes a description of the competent authorities and services.

**Chapter 3** of this report is divided in sections (3.1, 3.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children according to the different role they may have in a civil judicial proceeding (plaintiff; defendant; witness; other roles).

The table below summarises the type of judicial proceedings applicable to the fields of family and employment law and the competent courts. For the sake of completeness, the table also indicates which sectors are examined in the [overview for administrative justice](http://bookshop.europa.eu/children-in-administrative-judicial-proceedings), i.e. asylum, migration, education, health, placement into care, administrative sanctions, and offences committed by children below the minimum age of criminal responsibility (MACR). In fact, in some countries, civil procedural rules also apply to judicial proceedings in some of these sectors, but in order to ensure a degree of consistency among the overviews on the 29 jurisdictions covered by this study, the breakdown set out in the table below has been applied for each and every country overview.

|  |  |  |  |  |  |  |  |  |  |
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| **Type of judicial proceedings and court competence per sector[[1]](#footnote-1)** | | | | | | | | | |
|  | **Contextual overview for civil justice** | **Contextual overview for civil justice** | **Contextual overview for administrative justice[[2]](#footnote-2)** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** |
| **Sectors:** | **Family** | **Employment** | **Asylum** | **Migration** | **Education** | **Health** | **Placement in care** | **Administrative sanctions** | **Offences < MACR[[3]](#footnote-3)** |
| **Type of proceeding applying in the sector** | Civil judicial proceedings | Civil judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings/ civil judicial proceedings | Civil judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings /civil judicial proceedings |
| **Competent Court(s)** | District courts | District courts | Administrative divisions of regional courts | Administrative divisions of regional courts | Administrative divisions of regional courts | Administrative divisions of regional courts/ district courts | District courts | Administrative divisions of regional courts | Administrative divisions of regional courts/civil courts |

# Overview of Member State’s approach to children in civil judicial proceedings and specialised services dealing with such children

## Brief description of judicial system and institutions

Legislative framework

Judicial protection in civil matters is provided by the [Code of Civil Procedure](http://www.zakonypreludi.sk/zz/1963-99)([CPC](http://www.zakonypreludi.sk/zz/1963-99)), Act No. 99/1963 Coll., which contains the rules applicable to civil procedures applied by courts.

The process of recodification of the [CPC](http://www.zakonypreludi.sk/zz/1963-99) has already started and new rules applicable to civil judicial proceedings are expected to be adopted in 2015. The plan is to divide the [CPC](http://www.zakonypreludi.sk/zz/1963-99) into three codes: Civil Contentious Code, Civil Non-contentious Code and Administrative Judicial Procedure Code. Proceedings regarding children (child custody, alimony, childcare, etc.), together with the rules applicable to personal enforcement, will be part of Civil Non-contentious Code.

Enforcement procedures are governed by the [Execution Code, Act No. 233/1995 Coll.](http://www.zakonypreludi.sk/zz/1995-233), on executors and execution procedure. Rules contained in this Code cover the enforcement of decisions on inter alia child alimony. Rules applicable to the so-called ‘personal enforcement’ procedures, i.e. enforcement of judicial decisions regarding the raising of children (e.g. under whose custody the child is placed, alternating custody, visiting the child, etc.), are contained in the [CPC](http://www.zakonypreludi.sk/zz/1963-99).

Under Slovak law, the main difference between **non-contentious** and **contentious procedures** lies in the way the facts are proved. In contentious proceedings, the obligation to prove facts and to bear the burden of proof is on the parties. The failure to meet this obligation may result in the loss of the case. In non–contentious proceedings the principle of investigation (inquisitorial) dominates. It means that in non-contentious proceedings the parties may state facts and propose evidence, but the court will investigate the facts and evidence instead of them. The court also has the right to take into consideration the evidence that was not proposed by the parties.

Moreover, non-contentious proceedings are decided in the public interest. In case of child care cases, which are of non-contentious nature, proceedings are initiated in order to protect children and to maintain their health and proper personal development. These proceedings may start *ex officio*, i.e. the court may initiate the proceeding by issuing a resolution, or upon request of any person (e.g. neighbours, school, police, state organisations). Contentious proceedings always start upon request of the parties.

The following cases are subject to **non-contentious proceedings** under the [CPC](http://www.zakonypreludi.sk/zz/1963-99):

* Judicial proceedings that concern the care of children[[4]](#footnote-4): proceedings that concern the upbringing of children and the provision of alimony to children, contact between a child and his/her parents or grandparents and brothers and sisters, placing a child under the custody of the entitled person, granting, limiting or terminating parental responsibility, tutorship, the approval of relevant legal acts of children, prolongation of the upbringing of the child in an institution after obtaining full legal age, etc. Slovak legislation is not exhaustive while listing the judicial disputes that concern the care of children.
* Ability to adopt[[5]](#footnote-5),
* Adoption[[6]](#footnote-6),
* Guardianship proceedings[[7]](#footnote-7),
* Proceedings for allowing marriages[[8]](#footnote-8).

Labour law issues are subject to **contentious** proceedings. There are no special rules that apply to these disputes, which implies that the same rules apply to labour law disputes as to any other contentious proceedings. As referred to above, the [CPC](http://www.zakonypreludi.sk/zz/1963-99) is currently subject to recodification. According to the Legislative Intention of the recodification of [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[9]](#footnote-9), special rules are planned to be elaborated for labour law disputes.

Substantive family law provisions are mostly contained in [Act No. 36/2005 Coll.](http://hurtaj.sk/dokumenty/36-2005_Zakon_o_rodine.pdf), Act on Family and Amendment and Supplementation of Certain Acts (Family Act).

Approach followed by legislation to deal with children

Children may be involved in both contentious and non-contentious proceedings as participants.

Reference to the roles of ‘plaintiffs’ and ‘defendants’ is contained only in legislation regulating contentious procedures. In non-contentious proceedings it is usual that there are more participants (e.g. mother, father, children) than just the persons initiating the claim and against whom the claim is filed. Therefore instead of using the term ‘plaintiff’ or ‘defendant’, with respect to non-contentious proceedings, the Slovak legislation refers to ‘participants’. In order to distinguish those who file a claim and against whom a claim is filed, the legislation refers to proposer/proposers (not plaintiff) and opponent/opponents (not defendant). It is noted however, that in many cases there is no proposer in the non-contentious proceeding, as it is initiated by the courts *ex officio*.

The rights and obligations of participants/parties depend on mainly the nature of the proceeding (i.e. depends on whether it is a contentious or non-contentious proceeding) and less on the role of the participant/party. On the basis of the same logic, children typically have different rights and obligations in contentious and non-contentious proceedings. Children are usually involved in non-contentious proceedings, as most of the family matters are adjudicated within such proceedings.

In contentious proceedings, children can participate in the procedures under the same rules as adults. There are two exceptions under the general rule: rules that concern the representation of the child in the contentious proceedings and rules concerning the child’s legal representative’s statement in certain property related disputes. The latter refers to cases where the approval of the child’s legal representative is not sufficient to decide over the property of the child (e.g. when the property concerned is of significant value) and the court’s approval is also required. These rules are also described under [Section 3.1](#_The_child_as) of this report.

In non-contentious proceedings, different approaches apply to adults and children. The whole procedure is governed in the best interests of the child and to his/her protection. The child is represented by his/her legal representative (mostly parents) or, in cases where a collision of interests arises between legal representative and the child, by the collision guardian (guardian ad litem).

In Slovakia **childcare related cases** are dealt with by courts and not by administrative authorities (within administrative procedures).

National Action Plan for children 2009-2012

Protection of children is one of the priorities of the Slovak Republic. For this reason Slovakia has adopted the National Action Plan for Children 2009- 2012 with the aim of fulfilling its duties arising from the UN Convention of the Rights of the Child (UNCRC), the Concluding Observations and recommendations of the UN Committee on the Rights of the Child. The National Action Plan for Children 2009-2012 also assesses the implementation of the UNCRC.

The strategic objectives of the Slovak Republic in the field of child protection are:

* coordination and monitoring of areas of interest in accordance with the Convention on the Rights of the Child (UNCRC),
* adoption and implementation of legislative and non-legislative measures to achieve progress on children’s rights,
* the improvement of the training and expertise of professionals working with children.

In addition to the strategic objectives, the National Action Plan for Children aims to achieve the following objectives for the implementation of children's rights:

* prevention of violations of children's rights and the negative influence of the society on children (like neglecting of childcare, drug use, etc.), in terms of compliance with the provisions of the Convention on the Rights of the Child (UNCRC),
* development and strengthening of protection systems in the institutions that carry out activities in relation to children,
* promotion of parental child care.

The National Action Plan for children for 2013 – 2017 was adopted in May 2013.

Institutional framework

General courts

**Civil judicial proceedings are dealt with by general courts in Slovakia. General courts (e.g. civil sections of courts) are part of the Slovak judiciary together with two separate courts, which are the Constitutional Court of the Slovak Republic and** Specialised Criminal Court[[[10]](#footnote-10)](#_Introduction).

**The Constitutional Court of the Slovak Republic** is an independent judicial body protecting constitutionality[[11]](#footnote-11). The [Constitution of the Slovak Republic](http://www.slovakia.org/sk-constitution.htm) lays down the status of the Constitutional Court. In addition to deciding on the conformity of lower legal norms with higher legal norms, the Constitutional Court also adjudicates in cases that involve competence conflicts between the central bodies of state administration, unless the law stipulates that another state authority shall decide on these disputes. The Constitutional Court also decides on various complaints, interprets the Constitution or constitutional statutes in disputed issues. A separate legal norm specifies details of the organisation of the Constitutional Court of the Slovak Republic[[12]](#footnote-12).

The **Specialised Criminal Court**[[13]](#footnote-13) is a first-instance court hearing serious criminal offences. It must be noted that the court does not deal with crimes committed by juveniles.

General courts are competent for deciding on disputes (within contentious proceedings) and other legal matters (within non-contentious proceedings) arising from civil, labour, family, cooperative and commercial relationships (including from business and economic relationships)[[14]](#footnote-14)**.**

**The system of general courts is composed of:**

* **The Supreme Court of the Slovak Republic,**
* **regional courts, and**
* **district courts.**

District courts are competent to adjudicate at first instance[[15]](#footnote-15). Regional courts hear cases as appeal courts and exceptionally may hear cases at first instance. The Supreme Court of the Slovak Republic has the function of an appellate review court, i.e. decides on extraordinary appeals or appeals when a regional court decides as first instance court.

The Supreme Court oversees the uniform interpretation and consistent application of laws and other acts of general application:

* through its own decision-making;
* by issuing opinions aimed at unifying the interpretation of laws and other acts of general application;
* by publishing final court decisions of key significance in the Reports of Opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic.

The courts decide in civil and criminal matters, they also review the lawfulness of decisions issued by administrative bodies (administrative justice). They hear cases in panels of judges unless the law provides that a single judge shall decide in the matter (e.g. in district courts a single judge decides).

General courts have specialised sections including civil (which is further divided into civil, family, and commercial subdivisions), and criminal sections. Criminal offences are decided by the criminal sections, whereas civil law disputes are heard by civil sections. The different sections adjudicate under different procedural rules. Rules applicable to criminal proceedings are set out in the [Criminal Procedure Code](http://www.zakonypreludi.sk/zz/2005-301), whereas civil judicial proceedings are regulated by the [CPC](http://www.zakonypreludi.sk/zz/1963-99).

Specialised institutions

Specialised institutions are typically involved in non-contentious proceedings. The presence of specialised institutions in non-contentious proceedings can be explained by the fact that in these proceedings, the court decides on sensitive matters related to the future status of children (e.g. education, upbringing, etc.) while in contentious proceedings, the subject matter of the dispute is less sensitive e.g. relates to property rights.

In contentious proceedings, specialised institutions are involved mainly as appointed guardians, if the court thinks that there might be conflict of interest between the legal representative of the child and the child him/herself.

The following specialised institutions play a key role in dealing with children:

* local offices of socio-legal protection of children and social guardianship and
* public prosecution service.

These institutions closelycooperate with courts.

**The public prosecution service** of the Slovak Republic is an independent government authority headed by the **general prosecutor.** Within the scope of its powers, the **public prosecution service** protects the rights and interests of individuals, legal entities and the state. The public prosecution service of the Slovak Republic has its own separate budgetary heading in the state budget.

The status and role of the prosecution service and of the general prosecutor is regulated by the [Constitution of the Slovak Republic](http://www.slovakia.org/sk-constitution.htm)[[16]](#footnote-16) and [Act no. 153/2001 Coll.](http://www.zakonypreludi.sk/zz/2001-153)on the public prosecution service. The Act regulates the powers of the general prosecutor and other prosecutors, as well as the organisation and management of the public prosecution service. The status, rights and responsibilities of prosecutors are set out in [Act no. 154/2001, Coll.](http://www.zakonypreludi.sk/zz/2001-154)on prosecutors and trainee prosecutors.

The competences of the public prosecution service include the following:

* Criminal prosecution of individuals who are subject to the suspicion of the commission of a crime, and supervision of compliance with the law both before the start of the criminal prosecution and during the preliminary proceedings;
* Supervision of the compliance of establishments where individuals are detained (i.e. where the personal freedom of individuals is deprived, or where individual’s personal freedom is restricted as a result of a court decision or the decision of any other authorised state body) with applicable laws;
* Exercise of powers in proceedings before the courts;
* Representation of the state in court proceedings, as provided by law;
* Supervision, to the extent defined by law, of the compliance of public administration authorities with applicable legislation;
* Participation in the preparation and implementation of measures to prevent breaches of the laws and other general legally binding regulations;
* Involvement in eliminating the causes of and conditions for criminal activities, as well as crime prevention and suppression;
* Participation in the preparation of legal regulations (participation in the legislation process);
* Fulfilment of any other duties provided by a separate law/act or international treaty promulgated in a manner stipulated by law.

The role of the public prosecutor in civil proceedings is described in the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[17]](#footnote-17), in accordance with which the prosecutor is in charge of: f**iling a motion to start civil proceedings and imposing protective educational measures against persons who due to their age cannot be held criminally liable and committed an act that would otherwise be a crime. The prosecutor may also join pending civil proceedings, if such proceedings concern the care of children and guardianship**[[18]](#footnote-18)**.**

Ministry of Labour, Social Affairs and Family; Central Office of Labour, Social Affairs and Family; Local Offices of socio-legal protection of children and social guardianship

At national level, the key institutions in charge of providing institutional care are the Ministry of Labour, Social Affairs and Family together with the Central Office of Labour, Social Affairs and Family. These organisations participate in policy/legislative planning and coordination activities.

The Ministry of Labour, Social Affairs and Family is in charge of elaborating the concept of social and legal protection for children and is the responsible agency for granting, prolonging, or withdrawing accreditation of private entities providing social and legal protection to children and social custody services.

The Central Office of Labour, Social Affairs and Family is in charge of elaborating the concept of institutional care and safeguarding the provision of professional training for staff providing social and legal protection for children and social custody.

Both organisations are responsible for the coordination of the implementation of the above mentioned concepts at local levels.

At local level, the local offices of socio-legal protection of children and social guardianship[[19]](#footnote-19) are in charge of protecting the rights of children in civil judicial proceedings and of ensuring their welfare and best interests. More specifically, the local offices of social protection of children and social guardianship represent children in court proceedings as guardians where, due to conflicting interests between the child and his/her legal representative or parent, or other situations, the child cannot be represented by his/her parent or other legal representative[[20]](#footnote-20). Furthermore, they interrogate children and examine conditions in which children live. Each office has its own psychologists who cooperate with social workers.

While fulfilling their tasks, state bodies may cooperate with both accredited and non-accredited non-state actors. The basic objective of such cooperation is to provide assistance to families so that children can grow up in the care of their parents. Non-state actors also play a preventive role in situations where the child's parents divorce, or where parents are unable to solve problems or conflicts in the family. Measures taken by these institutions include the provision of recommendations, social counselling, psychological support to families, and professional advice on the resolution of conflicts in the family and on the adaptation to new family situations (e.g. adaption to divorce). If necessary, these bodies may impose educational measures on families[[21]](#footnote-21).

Local offices of socio-legal protection of children and social guardianship may also submit the motionfor starting the civil proceedings, if while fulfilling its activities it becomes clear that the filing of a motion is necessary (e.g. the local offices find that the child is at risk).

Despite the lack of explicit legal provision, in practice courts often appoint members of the legal offices of socio-legal protection of children and social guardianship, to act as guardians. This is a well-established and widely used practice in Slovakia. The reason for this practice lies with the legal statues of these offices, i.e. that they have been established and governed by the Ministry of Labour, Social Affairs and Family with the explicit goal of taking care of children in the ways stated in [Act No. 305/2005 Coll.](http://www.daneauctovnictvo.sk/sk/legislativa/predpisy/zakon-c-305-2005-z-z-o-socialnopravnej-ochrane-deti-a-o-socialnej-kuratele-a-o-zmene-a-doplneni-niektorych-zakonov-v-z-n-p.p-414.html) on socio-legal protection of children and social guardianship.

Close cooperation between the court and the local offices of socio-legal protection of children and social guardianship may also be ensured by the following means: the court may organise meetings and discuss some issues with these offices. As described above (see previous paragraph), cooperation between the court and the local offices of socio-legal protection of children and social guardianship is rather informal.

Local offices of social protection of children and social guardianship also play an important role in the field of criminal and administrative law. They provide assistance and protection to children committing criminal or administrative offences. Children who have, for example, abused drugs or are addicted to drugs or other substances, and who suffer from behavioural disorders, can be subject to measures of social guardianship.

A child may be placed into the social protection and social guardianship facilities for children for the period of time while the child’s family situation is not stable enough or with the purpose of executing educational measures imposed by a court. These facilities are so-called crisis centres and re-socialisation centres which are operated at regional level by higher territorial units[[22]](#footnote-22) (*Vyšší územný celok*) or accredited bodies. Municipalities may also be founders of such centres.

In addition to the above listed institutions, the following bodies are also involved in the protection of children´s rights:

* institutions accredited by the Ministry of Labour, Social Affairs and Family, e.g. the Psychological counselling centre,
* civil society associations[[23]](#footnote-23) which provide legal aid and support to those in need, e.g. League of fathers, Council for Children's Rights, Civic Association Return, Human Rights League, etc.),
* self-governing units (e.g. regions),
* municipalities,
* other organisations founded by the state (Committee for Children and Youth, Centre for International Legal Protection of Children and Youth, Child ombudsman).

Committee for Children and Youth

The Committee is a permanent expert body of the Slovak Government Council for Human Rights, National Minorities and Gender Equality in charge of issues related to children and youth.

The Committee plays a role in ensuring that the commitments of the Slovak Republic with respect to the implementation of children's rights provisions of the UN Convention on the Rights of the Child are fulfilled, so that the best interests of the child become a primary consideration in all actions of public or private entities. The Committee also aims to ensure that conditions for the implementation and maintenance of procedures and mechanisms that allow for the participation of children and youth in the development of policies and measures affecting them are met.

The Committee meets as needed, usually before the council meeting. Committee meetings are public unless the committee decides otherwise.

Child ombudsman

The Ombudsman, as an independent body, is responsible for the protection of fundamental rights and freedoms of people. All persons who suspect that their fundamental rights and freedoms have been breached by decisions of public bodies, or their actions or failures to act, may file a claim to the Ombudsman. The competences, duties and rights of the Ombudsman are provided by law[[24]](#footnote-24), which stipulates that the ombudsman protects the rights of children.

Since 2008, the Office of the Ombudsman has been running a project for the protection of children (‘Ombudsman child project’). Teams of children at schools, orphanages and other institutions for children, participate in the project and choose 'ombudsmen for children' among themselves. The role of these ‘ombudsmen’ is to help their peers, as far as is possible, to find a solution to problems they encounter and/or report such cases directly to the Ombudsman if the cases reveal problems that can only be resolved with the intervention of competent authorities.

The office of ombudsman also operates a portal on its website with the aim of familiarising children in explicit form with their rights and the mandate of the ombudsman. The website also aims to provide children with the contact details of organisations that can help them. This site also offers children the opportunity to ask questions anonymously or write about their problems.

Centre for International Legal Protection of Children and Youth

The Centre for International Legal Protection of Children and Youth (“Centre") is a government body operating in the territory of the Slovak Republic. The Centre was established with effect from February 1993 by the Ministry of Labour, Social Affairs and Family as an organisation to provide security and legal protection to children and young people ‘in relation to abroad’, i.e. in proceedings with a foreign element regulated by international conventions and legal acts of the European Union. The Centre is not involved in domestic proceedings.

The competences of the Centre are defined by [Act. No. 305/2005 Coll.](http://www.daneauctovnictvo.sk/sk/legislativa/predpisy/zakon-c-305-2005-z-z-o-socialnopravnej-ochrane-deti-a-o-socialnej-kuratele-a-o-zmene-a-doplneni-niektorych-zakonov-v-z-n-p.p-414.html) on socio-legal protection of children and social guardianship.

The Centre performs tasks that relate to the implementation of international conventions and legal acts of the European Union, namely:

* fulfils the role of receiving and transmitting agency authority for recovery of maintenance[[25]](#footnote-25) in accordance with international conventions,
* fulfils the role of a central authority in the field of international child abduction cases defined by international conventions and legal acts of the European Union,
* plays the role of a central authority in inter-country adoption cases defined by international conventions,
* performs other tasks in connection with child protection cases that involve an international element, which cases are defined by special regulations,
* provides free legal advice in international family law, especially in the areas of ​​maintenance, taking care of children and their adoption,
* works with transmitting and receiving agencies[[26]](#footnote-26) of contracting states abroad, with the central authorities of the contracting states abroad, embassies, central government bodies, banks, branches of foreign banks, local government authorities and accredited bodies.

The Human Rights League

The Human Rights League is a non-profit organisation established in 2005 by lawyers and advocates involved in legal counselling provided to refugees and asylum seekers in Slovakia. Since 2005, The Human Rights League has extended the scope of its activities and currently provides assistance, not only to refugees, but also to foreigners from non-EU countries residing in Slovakia, concerning the different aspects of their residence and Slovak citizenship, or detention and forced return. The Human Rights League also provides information on the rules applicable to determining the country of origin and carries out research and analysis, organises Slovak language courses for clients and does many other activities with the aim of assisting its clients’ integration into society. The Human Rights League plays an important role in protecting unaccompanied minors.

Relationship between administrative, civil and criminal proceedings

Issues that arise from administrative law relations are dealt with by administrative authorities. As an example, an application for a residence permit is dealt with by administrative authorities and not by courts. Slovak law allows for judicial legal remedy against decisions of administrative authorities. Courts may be entitled to review the lawfulness of decisions issued by administrative bodies in the form of administrative judicial proceedings. This rule is applicable regardless of the age of the person involved in the administrative proceedings. In other words administrative law cases that concern children can also be referred to a judicial review.

Except for the rules applicable to the judicial review of administrative decisions, legislation contains additional rules regulating the link between administrative and civil proceedings. Pursuant to the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[27]](#footnote-27) courts are bound by the decisions of competent bodies establishing the commission of criminal offences, administrative infractions or other administrative offences, and by decisions concerning the personal status of individuals, the creation or dissolution of companies and registration of equity capital. Courts are not bound by the decisions of administrative authorities on, for example, parking tickets. If the decision of the court depends on the outcome of an administrative procedure, the court shall suspend the civil judicial proceeding. Although it is not spelled out in applicable legislation, in practice it is likely that cases, other than the ones where the outcome of the administrative procedure is necessary for the continuation of the civil procedure, would run in parallel.

Victim compensation cases arise when the victim claims for the compensation of the damages suffered as a result of the perpetrator’s offence. As far as damage compensation is concerned, victims (whether children or adults) can seek compensation for damages caused by the criminal offence from the offender directly in the criminal proceedings. The victim, who is entitled to damage compensation which had been caused by a criminal act, may ask the court to impose the duty on the defendant to compensate him/her for the damage suffered. The proposal must be applied at the latest by the termination of the investigation or summary investigation. The proposal must be clear on what grounds and to what extent a claim for damages is applied[[28]](#footnote-28). See also [Section 3.6](#_Right_to_be) on statutes of limitations. The criminal court is entitled to decide about the damage if it has not yet been decided in civil or other proceeding[[29]](#footnote-29). The court decides on the victim’s claim for damages caused by the criminal offence in so-called adhesion procedure, which is part of the criminal procedure.

In other words, the criminal court cannot take a decision with respect to the compensation of damages, if it finds that a civil court has previously adjudicated on the subject matter[[30]](#footnote-30). If the criminal court finds that the evidence gathered within the criminal procedure is not sufficient to decide on the civil claim of the victim, the criminal court may refer the victim to civil proceedings or to proceedings before other competent authorities[[31]](#footnote-31).

With respect to the link between civil and criminal proceedings, legislation does not contain additional rules.

Training requirements

Judges who are involved in cases that concern children (e.g. family law judges) are not required to undertake specialised training. Similarly, there is no obligatory training in child-related issues for attorneys. As a way of ensuring their personal development, judges are allowed to attend one or two-day trainings/courses. These courses are organised by the Judicial Academy.

The Judicial Academy was established by [Act No. 548/2003 Coll.](http://www.zakonypreludi.sk/zz/2003-548) on Judicial Academy and started to operate on 1 September 2004.

The Judicial Academy is an independent educational institution with nationwide competence that provides organised trainings to judges, prosecutors and court officials. It was established by law as a separate legal entity (i.e. budgetary organisation) of the Ministry of Justice.

The courses offered by the Judicial Academy are not compulsory, which implies that each judge may decide whether he/she wants to participate and on which courses. The courses offer an opportunity to judges to learn more about different areas of law and to obtain knowledge about other social and scientific disciplines, such as psychology. The Judicial Academy has a specialised department, called the ‘Department of the International and European law’ that provide courses on initial education and social science disciplines. Judges may also receive training on the treatment of children and young people in judicial proceedings, which may include training on the way to communicate with and treat children, especially during the questioning of the child/young person.

In Slovakia, judges are appointed for life. There is no system in place to control their abilities and judges are not subject to regular **vetting**. However in case of severe professional mistakes, judges can be subject to disciplinary proceedings.

Similarly to judges, prosecutors do not receive specialised trainings, neither are they subject to regular vetting.

Officers (social workers) of the local offices of socio-legal protection of children and social guardianship do not receive special trainings. Officers (social workers) of local offices are not subject to regular vetting.

This situation might change with the adoption of the National Action Plan for children for 2013 – 2017, which will provide for the continuous education of judges, prosecutors and other court officials. The proposal also calls for the reinforcement of adequate and systematic training of all professional groups (e.g. teachers, social workers and staff in institutions caring for children and special educational facilities, health personals, including psychologists, legislators, judges, lawyers, guardians of public order, civil servants, local authority representatives, etc.) working for and with children (education on children's rights, including activities aimed at the most vulnerable groups). The education and training will also cover the provision of information on the UN Convention on the Rights of the Child and on principles such as the best interests of the child.

Cooperation between professionals and competent authorities

There is currently no official cooperation on a permanent basis between courts and other institutions. However, different bodies have already initiated the organisation of conferences dedicated to this topic (e.g. the Local Office of Labour, Social Affairs and Family in Bratislava, the police and the Ministry of Justice have already initiated the organisation of such conferences).

To ensure that social workers interact in cases that involve children, the Ministry of Labour, Social Affairs and Family and Central Office of Labour, Social Affairs and Family have issued guidelines including information on how to work with children and what kind of behaviour can be expected from children of a certain age. These guidelines include details on how to proceed in cases that involve children, how to determine the threat level of the child, etc. These guidelines have the form of internal instructions, thus are not publicly available on the website of the Central Office of Labour, Social Affairs and Family, but can be obtained upon request[[32]](#footnote-32). Social workers have to possess certain qualifications, including education of at least first graduate degree (Bachelors degree) in the area of social work[[33]](#footnote-33).

It is also noted that each local office of socio-legal protection of children and social guardianship has its own psychologist or more psychologists and the social work shall be coordinated with them.

## General approach towards children under civil law: definition of child, principle of evolving capacities, best interests of the child, principle of non-discrimination

Definition of child

According to Article l of the UN Convention on the Rights of the Child, a ‘child’ is every human being under the age of 18, unless the law applicable to the child states that maturity can be achieved earlier.

Acquisition of maturity is regulated in the [Civil Code](http://www.zakonypreludi.sk/zz/1964-40)[[34]](#footnote-34), in accordance with which ‘maturity shall be considered as achieved at the age of 18. Before that age, maturity can be achieved only by marriage. Once acquired, maturity will not be lost even in the case of dissolution of marriage or declaring the marriage as null’.

Before achieving maturity the child does not have full capacity to act, neither does he/she have full procedural capacity (the capacity to act before the court for him/herself alone). The extent to which the child’s capacity to act is limited depends on his/her intellectual and mental maturity.

In order to protect the rights of children who do not have full procedural capacity to act, Slovak law requires for the representation of children in civil judicial proceedings. As a general rule, children should be represented by their parents or guardians. If this is not possible, the court needs to appoint a representative for the child.

Principle of evolving capacity

The principle of evolving capacity is not defined in legislation per se. It is considered to be covered by the legal concepts of capacity to act and procedural capacity to act (see also [Section 3.1.](#_The_child_as)), as these capacities are linked to the intellectual and mental maturity of the child, i.e. a child might have limited legal/procedural capacity to act or lack such capacity depending on his/her intellectual and mental maturity.

The principle of evolving capacity is also enshrined in the right of the child to express his/her views, as this right can only be made use of, if the child possesses the necessary age and maturity (see also [Section 3.5.](#_Protecting_the_child)).

The above referred rules enable courts to give due consideration to the maturity, autonomy and capacity of the child to express him/herself. They also allow the child to participate in decision-making processes that affect him/her. The more mature and intellectually developed the child is, the more the child can exercise his/her rights.

Considering the complexity of civil judicial proceedings and in particular the fact that understanding the legal consequences of procedural actions might be more difficult than understanding the consequences of taking other actions regulated by substantive civil law, such as entering into a contract (e.g. 16 year old may buy shoes but will not be capable to sue the seller for the liability for its defects), the court[[35]](#footnote-35) may decide to order the representation of the child even in cases, where the child due to his/her maturity (i.e. intellectual/ mental maturity) would be able to act independently. The court also orders the representation of the child, if considering the circumstances of the case legal representation is deemed to be necessary. The criterion of assessing the need for the representation of the child should be interpreted as the manifestation of the requirement of taking the best interests of the child into consideration. It is a well-established practice in Slovakia that children under the age of 18 are represented by their legal representative.

Best interests of the child

The general principle of the best interests of the child is not explicitly defined in substantive civil law. This however does not mean that the child’s best interests are not given due consideration, it is a primary concern in making decisions that may affect children. Moreover, despite the lack of explicit reference, the protection of the best interests of the child is enshrined in a number of substantive law provisions, and in particular in the [Family Act](http://www.zakonypreludi.sk/zz/2005-36)[[36]](#footnote-36).

The court shall consider the child’s best interests when deciding on divorce cases, disputes that concern the exercise of parental rights and duties, or when approving parental agreements governing the exercise of parental rights and duties. Most of the proceedings during which the court considers the best interests of the child are non-contentious in nature. As a general rule, in contentious proceedings, the court is not obliged to safeguard the child’s best interests. Exception under the general rule concerns the approval of the court on acts concerning the property of a child of significant value.

Parents have the duty to exercise their parental rights and fulfil their parental obligations in a way that protects the child’s rights.

The best interests of the child are reflected also in a number of provisions of the [CPC](http://www.zakonypreludi.sk/zz/1963-99). As in a few examples, evidence can be investigated by the court *ex officio* if it is deemed to be necessary for the protection of the child. Moreover, the court should decide, within a time-frame defined by legislation, on whether it has competence to adjudicate in a case that concerns a child. If the court finds that it lacks competence or that it would be for the best interests of the child if a different court would adjudicate in the case, it should *ex officio* transfer the case to the competent court.

In the best interests of the child, the court may start the procedure *ex officio*. The court on its own initiative may begin the proceedings on:

* Judicial proceedings that concern the care of children[[37]](#footnote-37): matters that concern the upbringing of children and the provision of alimony to the child, contact between the child and his/her parents or grandparents and brother and sisters, placing a child under the custody of the entitled person, granting or limiting or exonerating parental responsibility, tutorship, the approval of relevant legal acts of children, prolongation of the upbringing of the child in an institution after reaching full age, etc. Slovak legislation is not exhaustive while listing the judicial disputes that concern the care of minors.
* ability to adopt[[38]](#footnote-38),
* adoption[[39]](#footnote-39)
* guardian proceedings[[40]](#footnote-40),
* proceedings for allowing to marry[[41]](#footnote-41),
* interim measures proceedings[[42]](#footnote-42), and
* the enforcement of decisions concerning the raising of a child (not alimony)[[43]](#footnote-43).

Situations where more than one child is involved in the civil judicial proceedings are not regulated by the [CPC](http://www.zakonypreludi.sk/zz/1963-99). In practice however, the courts would assess the best interests of each child separately. This practice also determines the way courts treat conflicting interests between children, i.e. their interests would be assessed separately.

Slovak legislation remains silent about the factors (e.g. psychological, physical well-being and legal, social and economic interests of the child) that the courts should take into account while determining the child’s best interests. It falls under the discretion of judges to determine the child’s best interests.

It is not a legal requirement under Slovak law to involve the child in the assessment of the child’s best interests. In practice, however judges would seek for the opinion of the child before assessing the child’s best interests.

Non-discrimination

The Slovak National Centre for Human Rights[[44]](#footnote-44) performs tasks in the field of human rights (including in the field of children’s rights) and fundamental freedoms, and in particular monitors and evaluates the protection of human rights and the respect for the principle of equal treatment. The principle of equal treatment is defined by the [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365)[[45]](#footnote-45).

The [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365) came into force on 1 July 2004 and specifies the scope of the anti-discrimination regulation and its objective, i.e. to protect the fundamental rights and freedoms guaranteed by the Constitution. According to the [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365), the statutory obligation to respect the principle of equal treatment applies to ‘everyone’. In accordance with the principle of equal treatment, discrimination on the following grounds is prohibited: sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status.

Pursuant to the [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365), natural persons and/or legal entities who consider that their right to equal treatment has been breached can file a judicial complaint before a civil court of first instance.

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) provides the opportunity for the Slovak National Centre for Human Rights, as well as NGOs working to protect victims of discrimination, to join a pending court proceeding. They can intervene as a so-called ‘third party’ in court proceedings, on their own initiative or at the request of the claimant. The third party, whose intervention has to be approved by the court, can act only on its own behalf and has the same rights and obligations as the principal parties to the proceedings.

The [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365) applies to everyone, i.e. also to children who shall be treated equally. In the light of the above mentioned rules, every child has the right to seek for compensation in case their right to equal treatment has been breached.

The right to equal treatment is expressly stated also in the [Act on socio-legal protection of children and social guardianship](http://www.zakonypreludi.sk/zz/2005-305)[[46]](#footnote-46). If the rights or interests of a child to be treated equally were affected by the implementation of measures imposed by the authorities, he/she may seek legal protection at court, in accordance with the procedural rules set out in the [CPC](http://www.zakonypreludi.sk/zz/1963-99).

In the complaint, the plaintiff is obliged to identify the person who has allegedly violated the principle of equal treatment. The plaintiff in such procedures has ‘privileged’ position regarding the burden of proof, as it is the defendant who has the obligation to prove that there was no violation of the principle of equal treatment. Rules applicable to civil judicial proceedings that concern the violation of the principle of equal treatment, are governed by the [CPC](http://www.zakonypreludi.sk/zz/1963-99), unless the [Anti-discrimination Act](http://www.zakonypreludi.sk/zz/2004-365) provides otherwise. As indicated above, under the description of the definition of the term ‘child’, the extent to which children can participate in judicial proceedings in their own right depends on their procedural capacity to act. This implies that only those children who possess full procedural capacity to act (at the age of 18 or before the age of 18 if they are mature enough to act for themselves) can initiate judicial proceedings in discrimination cases in their own right. In judicial practice, children before the age of 18 are almost always represented and do not act for themselves.

As referred to above, the [CPC](http://www.zakonypreludi.sk/zz/1963-99) is currently subject to recodification. According to the Legislative Intention of the recodification of [CPC](http://www.zakonypreludi.sk/zz/1963-99), the new [CPC](http://www.zakonypreludi.sk/zz/1963-99) will contain provisions dedicated to anti-discrimination matters. With respect to the procedural rules, the [CPC](http://www.zakonypreludi.sk/zz/1963-99) will contain special rules, providing protection to those who have been subject to the discrimination.

Under Slovak law there are no special measures in place to protect or assist more vulnerable children.

Dignity and respect

The principle of safeguarding the child’s dignity and respect is not set out in applicable legislation. This however does not mean that the authorities do not need to make sure that the child’s dignity is respected. This obligation can be derived from the UN Convention on Children’s rights that Slovakia is party to. The provisions set out in the Convention are applicable, regardless of the child’s role in the civil judicial proceeding and his/her legal status or capacity to act.

# Child-friendly justice in civil judicial proceedings

## The child as an actor in civil judicial proceedings

Under Slovak law, there are two types of civil judicial proceedings, i.e. contentious and non-contentious proceedings (See Section 2).

As a general rule, civil, commercial and labour law disputes (e.g. liability for damages, contractual relations, tort law, labour law etc.) are subject to contentious proceedings.

The following proceedings are considered as non-contentious in accordance with the [CPC](http://www.zakonypreludi.sk/zz/1963-99):

* inheritance proceedings,
* childcare proceedings,
* adoptability and adoption proceedings,
* deposit proceedings,
* proceedings for redemption of documents,
* proceedings that concern legal capacity to act,
* proceedings on admissibility to health care institutions,
* guardianship proceedings,
* proceedings to declare a person dead,
* commercial register proceedings,
* proceedings concerning some issues related to companies and cooperatives.

Legislation applicable to contentious proceedings does not contain child-specific rules. This is in accordance with the principle of ensuring the equality of parties. Exceptions under the general rule (i.e. when due consideration is given to the fact that the person involved in the proceeding is a child) are linked to for example, the hearing of the child. The court may order the hearing of the child only if it is deemed to be necessary. The hearing of a child must be conducted in a child-friendly manner.

Another exception is linked to cases where the child’s property is at stake. In accordance with substantive civil law rules, contracts of smaller significance that concern the property of the child can be concluded by the child’s legal representative on the child’s behalf. Contracts that are not of small significance can only be concluded validly by the child’s legal representative, upon receipt of a court’s approval. This substantive civil law requirement is reflected in the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[47]](#footnote-47), which provides that the court may approve acts of the legal representative of the child only if they are in the child’s interests. This requirement is also applicable to procedural acts taken by the child’s legal representative (e.g. submission of the claim, choosing the legal representative - attorney)[[48]](#footnote-48). If there is a conflict of interests, the guardian ad litem must be appointed and he/she must ask for the approval of the act.

Finally, children as persons who lack full procedural capacity to act need to be represented in civil judicial proceedings (see below).

Rules applicable to contentious proceedings contain reference to different roles, i.e. to the role of the plaintiff, defendant and witness. This difference in wording however, does not affect the way children make use of their rights and fulfil their obligations during the civil judicial proceedings. In other words, regardless of the role of the child in contentious proceedings, the same rules apply. Where exceptions exist under this rule, the applicable provisions are clearly stated in this report. These exceptions concern, in particular, the rights and obligations of witnesses (e.g. duty to testify), plaintiffs (e.g. duty to state facts and evidence) or defendants (e.g. duty to file the reply to the judicial claim).

As opposed to contentious proceedings, legislation applicable to non-contentious proceedings contains child-specific provisions. Moreover, in non-contentious proceedings, every person involved in the procedure is called a ‘participant’, and as a general rule the same rules apply to all participants. This implies that in non-contentious proceedings, the person who files the claim to the court would have the same rights and obligations as the person who did not and whose rights and duties are being decided upon (e.g. the child). Similarly to contentious proceedings, the principle of ensuring the equality of parties applies, however the child’s interests are given paramount consideration.

**Considering this special characteristic of the Slovak judicial system, with respect to non-contentious proceedings it is not possible to break down the rights and obligations of the persons involved in the proceedings depending on their role.** The only exception lies with the rights and obligations of witnesses, as under Slovak law, witnesses are not considered as participants. With respect to the rights and obligations of witnesses, the same rules apply in non-contentious proceedings as in contentious proceedings.

On the basis of the above, it can be concluded that the rights and obligations of persons involved in civil judicial proceedings depend mainly on the type of the proceeding (in contentious proceedings the rules applicable to adults apply, whereas in non-contentious proceedings child specific provisions determine the role of the child) and less on the role of the child.

In both types of procedures, the child typically acts through his/her legal representative, as he/she does not have full procedural capacity to act. This implies that as a general rule, instead of the child, it is his/her legal representative who files a lawsuit and who represents the child during the proceedings.

In cases of both procedures, children who possess full procedural capacity to act or the necessary maturity, constitute an exception under the general rule. If the court finds that the child is mature enough, it may allow the child to file the lawsuit in his/her own right. Legislation does not require the provision of assistance to children who can file lawsuits in their own right. In practice, courts barely allow children to file lawsuits in their own right. Moreover, after filing a lawsuit, courts would typically order a legal representative for the representation of the child.

## Contentious proceedings

### General procedural rules applicable to children involved in civil judicial proceedings regardless of their role

A child has the capacity to have rights and obligations (legal capacity)[[49]](#footnote-49) and therefore he/she also has the capacity to participate in civil judicial proceedings (procedural legal capacity)[[50]](#footnote-50). These capacities are so-called ‘passive’ capacities as natural persons automatically possess them. In other words, these capacities are granted by legislation, thus natural persons do not need to do anything to obtain them. The capacity of natural persons to have rights and obligations[[51]](#footnote-51) is obtained by birth and ends with death (including when death is declared).

In light of the above, a child of any age can bring a case before domestic courts in his/her own name and in his/her own right.

The fact that children have full legal capacity and procedural legal capacity does not mean that children can take procedural actions before courts in their own right.

In order to act before a court alone, persons should have full procedural capacity to act. Procedural capacity to act is defined as the capacity of persons to act independently before courts as parties.

‘Procedural capacity to act’[[52]](#footnote-52) is linked to the persons’ legal capacity to act, which is a substantive civil law term, which could be defined as a capacity to acquire rights and undertake obligations[[53]](#footnote-53). The term legal capacity to act is defined in the [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) and in special laws, e.g. [Family Act](http://www.zakonypreludi.sk/zz/2005-36) (the acquisition of full legal capacity to act by marriage) or [Labour Code](http://www.zakonypreludi.sk/zz/2001-311) (the acquisition of full legal capacity in labour relations). The term procedural capacity to act is defined in the [CPC](http://www.zakonypreludi.sk/zz/1963-99).

As opposed to legal capacity and procedural legal capacity, which are passive capacities, legal capacity to act and procedural capacity to act are active capacities. This implies that these capacities are not granted automatically to individuals and one can possess them only if he/she has the necessary maturity and intelligence.

As a general rule, full legal capacity to act and thus also procedural capacity to act, are obtained at the age of 18. It can be acquired before, by marriage. In Slovakia the minimum legal age of marriage is 16. Between the age of 16 and 18, marriage is possible upon receipt of the consent of the court.

Before the age of 18 (16 in case maturity is gained by marriage) a child has limited legal/procedural capacity to act. The extent to which these capacities are limited, depends on the intellectual and mental maturity of the child[[54]](#footnote-54).

The intellectual (knowledge) component is assessed on the basis of the child’s capacity to understand perceptions, ideas and objects. Mental maturity refers to the ability of a child to understand the consequences of his/her actions. This implies that Slovak law does not link these abilities with specific age[[55]](#footnote-55). These abilities should be examined regardless of the age of the child.

In theory, the examination of these abilities can be abstract (i.e. the court should take into account the general level of maturity of minors of that age) or concrete (i.e. the court should take into account the maturity of a particular child). Academic literature contains pros and contras in this respect. The examination of these abilities in an abstract way can be justified by the purpose of ensuring legal certainty and the need for protecting the legitimate interests of third parties. Opinions in literature[[56]](#footnote-56) that call for the consideration of individual aspects have recently become stronger. This trend is partially due to the need of ensuring the protection of the individuals’ fundamental/human right to judicial protection, which is directly expressed in the [Constitution](http://www.zakonypreludi.sk/zz/1992-460).

Considering the complexity of civil proceedings, the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[57]](#footnote-57) allows courts to order the legal representation of children, even in cases where the child (due to his intellectual and mental maturity) would otherwise be able to act independently. The existence of this rule is due to a difference in severity between actions taken under substantive law and those required in civil proceedings (e.g. a 16 year old may buy shoes but will not be capable of being a plaintiff in a procedure that concerns the liability of the seller for the product). This flexibility mechanism[[58]](#footnote-58) should be seen as a manifestation of the principle of ensuring the best interests of the child. It is a well-established practice, that a child (i.e. person under the age of 18) is usually represented by a legal representative.

Children are typically represented by their parents. Both parents have the right to represent their child. If the parents are divorced, the court has to decide who will represent the child after divorce[[59]](#footnote-59). It might happen that even after the divorce this right will continue to belong to both parents.

Substantive law (i.e. typically [Family Act](http://www.zakonypreludi.sk/zz/2005-36)) specifies the persons who may represent the child, in cases where his/her parents are dead or are not in a position to represent him/her. These persons can be a trustee, guardian, foster parent, property guardian, guardian ad litem (this latter for example in case of collision of interests). Appointed guardians ad litem are typically officials of the local office of socio-legal protection of children and social guardianship.

There is no need to represent the child anymore if he/she attains the age of 18 during the proceedings. In this case, the court continues the procedure with the involvement of the person as a party and informs the representative about the developments of the procedure. Providing information to the legal representative is necessary as these persons are involved in the part of the procedure that takes place before the child attains the age of 18.

The child as a plaintiff

The general rules described above are applicable to plaintiffs.

The child as a defendant

With respect to child defendants’ positions in the civil judicial proceedings, the general rules apply. A child, regardless of his/her age, could be sued, given that the lawsuit arises from obligations and duties that the child can validly undertake. As an example, children can conclude contracts of small significance, even without the approval of their legal representatives. Contracts of bigger values can only be concluded by the child upon receipt of their legal representative’s approval and in some cases also with approval of the court.

A child can also be sued with respect to the property that he/she owns or the money that he/she inherits.

The child as a witness

Any individual could be asked by the court to testify. He/she must appear when summoned, tell the truth about what he/she has heard or seen or otherwise perceived, without withholding any information[[60]](#footnote-60).

This obligation concerns any person regardless of his/her age. This implies that even a person who lacks procedural capacity to act can be asked to testify. The agreement of the representative of the child is not necessary for the participation of the child in the proceedings as a witness.

Witnesses are obliged to testify. A witness can only refuse the provision of testimony if by the testimony he/she would accuse him/herself, or a person close to him/her (e.g. close relative) with the commission of a crime.

Witnesses are persons who provide evidence to the court. Thus, it is the very essence of their role to provide information to courts in person, and to be asked by the courts directly (i.e. not through their legal representative). Therefore witnesses, including child witnesses, cannot be represented while giving a testimony.

The fact that child witnesses give testimony in person does not mean that they participate in the proceedings in person. This is in accordance with the fact that child witnesses do not possess full procedural capacity to act. In contrary they are represented, except for in the trial when they are actually heard. Therefore subpoenas are served to the child’s legal representative and not to the child directly.

When considering the summoning of a child as witness, the court has to consider the maturity and ability of the child to tell the truth about what he/she has heard or seen or otherwise perceived and also the ability to express it.

The court shall take into account that the witness is still a child and conduct the hearing in a way that avoids causing damage to his/her mental development (see [Section 3.5](#_Protecting_the_child)).

Rules applicable to the provision of information to witnesses are established by law[[61]](#footnote-61). As a general rule, legal provisions do not differentiate between adults and children. As an exception under the general rule, when the witness is a child, the court reads the information to him/her and explains its meaning in a child-friendly manner. The purpose of this practice is to ensure that children understand their rights and obligations (see also [Section 3.2.](#_Provision_of_information)).

The child in any other role

Under Slovak law, in contentious proceedings, children cannot act in roles other than those of the plaintiff/defendant, witness and the intervener. An intervener is a person who ‘intervenes’ in a civil judicial proceeding on the grounds that his/her rights are concerned by the case. The intervener must prove his/her legal interest in the dispute.

As a general rule, an intervener has the same rights and duties as the party who he/she supports. An exception under this rule concerns the right to withdraw a complaint or conclude a settlement agreement, as these rights can only be exercised by the parties. If the acts of the intervener contradict those of the party, the court will assess them after consideration of all circumstances.

Considering the above, i.e. that the rights and duties of the intervener are mainly the same as those of the participant/party of proceedings, it can be concluded that the assessment provided above with respect to plaintiffs/defendants also applies to interveners.

## Non-contentious proceedings

### General rules applicable to children as participants in civil proceedings

Laws regulating non-contentious proceedings use the term ‘participants’. According to the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[62]](#footnote-62), the participant in a non-contentious proceeding is everyone who is referred to as a ‘participant’ in the applicable legislation. If the law does not refer to the participants, anyone whose rights are concerned by the disputes could be considered as participants and the court must involve them in the proceedings.

Children are participants inter alia in the following non-contentious proceedings:

* Childcare proceedings: (e.g. proceedings that concern the upbringing of the child; alimony provided to children; contacts between children and their parents, grandparents, brothers or sisters; the custody of the child; the granting, limitation or termination of parental responsibility; placing the child under tutorship; the approval of relevant legal acts of children (e.g. if the subject matter of the legal act is of significant value (See Section 2); and the prolongation of the upbringing of a child in an institution after attaining maturity). Child protection cases are subject to non-contentious proceedings. As explained under Section 2, non-contentious proceedings may be initiated either by the court ex officio, or upon request of any person. Children cannot file a lawsuit in their own right, unless they are mature enough or possess full procedural capacity to act (e.g. by marriage they obtained full procedural capacity).
* Proceedings concerning the adoptability of children (i.e. proceeding determining the legal status of the child before adoption).
* Adoption related proceedings.
* Guardianship proceedings (proceeding determining whether it is necessary to place a child under guardianship).

Children participants are typically represented by their legal representatives during the proceedings, as they lack full procedural capacity to act. With respect to procedural capacity to act, the same provisions apply as in cases of contentious proceedings (see above).

The child participant in the role of a ‘proposer’ and ‘opponent’

In some instances, rules applicable to non-contentious proceedings state who can be the person filing the claim (‘proposer’) and against whom it could be filed (‘opponent’). In terms of rights and obligations, the same rules apply to proposers and opponents as to any other participant, with the condition that children cannot be proposers and opponents in their own right, as a result of the fact that they lack full legal capacity to act/procedural capacity to act. Claims for the lawsuit would be filed by the child’s legal representative on behalf of the child.

As referred to above (see the rules applicable to plaintiffs and defendants), exceptionally, when the court finds that the child is mature enough and possesses the necessary intellectual capacity, the child could file a lawsuit in his/her own right and could participate in the proceedings in his/her own right.

In most cases, there is no proposer in non-contentious proceedings, as the court starts the proceeding *ex officio*.

In case of non-contentious proceedings the child protection authorities, including the local offices of socio-legal protection of children and social guardianship, schools, civil society associations, the prosecutor etc., may also initiate a procedure[[63]](#footnote-63).

The child as a participant (but not a ‘proposer’ or ‘opponent’)

Children as ‘simple’ participants (i.e. not proposer or opponent) have the same rights and obligations as any other participants. The only rule specific to children lies with the fact that they need to be represented in non-contentious proceedings. All their rights and duties are practiced through their legal representatives. Considering that in non-contentious proceedings, the other participants are typically the parents of the child, he/she cannot be represented by his/her parents. Instead the child is represented by a guardian ad litem (collision guardian) who is typically a social worker.

As referred to above, a child participant can participate in non-contentious proceedings in his/her own right, if he/she is found mature enough by the court to do so. In practice, children are typically represented.

The child as a witness

The same rules apply as described above (see contentious proceedings).

The child in any other role

Children cannot act in non-contentious proceedings in roles other than those of the participant and witness.

### Precautionary and interim measures

The court may either *ex officio* (only in non-contentious proceedings) or upon request of a party (in contentious and non-contentious proceedings), order the putting in place of precautionary/interim measures. These measures can be ordered both in contentious and non-contentious proceedings. The type of precautionary and interim measures that the courts may order are described under [Section 3.4](#_Protection_from_harm). A child, as a general rule, cannot request the court to put in place precautionary/interim measures.

## Provision of information

The child as a plaintiff, defendant, or participant

### Common rules applicable regardless the type of procedure

Provisions of information

As described under [Section 3.1](#_The_child_as), in accordance with well-established practice, the child is almost always represented by his/her legal representative in civil proceedings (both in contentious or non-contentious proceedings). It is noted that Slovak legislation does not explicitly state the obligation of legal representatives to provide the child with information on the civil proceedings (e.g. consequences of the procedure, time and place of court procedures, general progress and outcome of the procedure, review of decisions affecting the child). Such obligation is not set for the officials of the local offices of social protection of children and social guardianship either.

The child’s legal representatives may provide the child with information about the proceedings either upon request of the child or voluntarily.

When the child who is mature enough and is personally present before the court as a party or a witness, the court reads and explains all information to him/her that relates to civil proceedings. In order to ensure that the child understands the instructions, the provision of information should happen in a child-friendly manner. This obligation is not set out in legislation, but is mentioned in literature[[64]](#footnote-64); and judges who undertake psychology training organised by the Judicial Academy are advised to follow this practice. Considering the above, it can be concluded that in cases, where the child is personally present before the court, the information provided to his/her legal representative does not serve as an alternative to providing information to him/her directly.

The courts’ obligation to provide information to the parties and participants covers only the provision of information on procedural rights and duties[[65]](#footnote-65). This obligation does not cover the provision of information on substantive law rights and obligations. The courts are not under this obligation, when the parties to civil proceedings are represented by an attorney.

With respect to the type of information to be provided, neither the [CPC](http://www.zakonypreludi.sk/zz/1963-99), nor other acts, differentiate between the parents and children. This implies that the same type of information is provided to parents and children both in contentious and non-contentious proceedings. Instead of the child, his/her representative is informed about details that the child would not be able to understand or that would be against his/her best interests. These rules determine the provision of all types of information, including information about the child’s right to legal remedy against e.g. decisions/ legal actions, etc. that violate his/her rights, and about his/her right to intervene or refer his/her case to judicial or non-judicial proceeding.

The obligation of providing information to the child is closely linked to the child’s right to be heard[[66]](#footnote-66). In accordance with this right the court must give due consideration to the child's view. The court, before taking into consideration the child’s view, needs to make sure that the opinions expressed by the child are his/her own. In order to make sure that the child understands the importance of providing his/her opinion, the court provides the child with all relevant information including information on the possible consequences of him/her expressing his/her opinion.

Requesting information

In practice it is often the child’s legal representative who requests information from the court on behalf of the child. Only those children can request information from the court directly who are mature enough. Children who possess full procedural capacity to act (e.g. married children) can also request information in their own right.

Rules applicable to conflict of interests

In both contentious and non-contentious proceedings, if there is a doubt about the ability of the child’s legal representative to represent him/her, as well as in cases where there is a risk of conflicting interests between the legal representative and the child, the court appoints someone else to represent the child. The court is under the obligation of choosing a suitable representative for the child. It is a common practice that courts appoint officials from the local offices of socio-legal protection of children and social guardianship. This role of the offices of social protection of children and social guardianship is explicitly stated in law[[67]](#footnote-67).

Presence of the child

Although the child is represented by his/her legal representative, he/she may be present at the proceeding. This right results from his/her position as the party to the proceeding. It constitutes an exception that courts may refuse the access of certain persons to the hearing, e.g. the presence of minor citizens whose dignity would be breached if present[[68]](#footnote-68). A judge is under the legal obligation to consider the appropriateness of the child's presence in, for example, divorce proceedings that are always decided together with childcare proceedings if there are children in the marriage concerned by the proceeding. Courts usually exclude children from the part of the procedure when the court identifies the causes behind the separation.

Provision of information to children residing in a different Member State

If the child resides in a Member State different from where the civil judicial proceedings take place, the Centre for International Legal Protection of Children and Youth will represent him/her. The Centre has the duties to inform the child (typically through his/her representative) about the proceedings as well as its outcome. The Centre provides services mainly in non-contentious proceedings, e.g. alimony, international abduction, etc. In contentious matters, the general rules apply, in accordance with which the child is supported and represented by his/her legal representative, who is obliged to provide the child with information.

Informing the child about the availability of support services

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) does not state the obligation of informing the child about the availability of support services (health, psychological, social, interpretation and translation and other) or the existence of organisations which can provide support to him/her and the means of accessing such services.

Child protection measures

In order to reduce the negative impacts of the proceedings that threaten the mental, physical and social development of children and young adults, the local offices of socio-legal protection of children and social guardianship are required by law[[69]](#footnote-69) to put in place certain child protection and social care measures.

These are mainly used in connection with non-contentious proceedings, as these are the procedures the social workers are informed about. These measures are in particular:

a) offer assistance to the child, parent or other adult individual or offer mediation assistance in solving educational problems or family problems and in implementing child rights,

b) identify and assess the negative impacts of the procedure on the child and family, identify their causes and implement measures to reduce the adverse effects of the exposure,

c) organise or participate in mediation programmes with the purpose of resolving the problems of children in the families, at school and to assist families in solving educational problems, social problems and other problems in the family and in other interpersonal relationships,

d) organise or participate in mediation programmes aimed at helping children and adults with risk behaviour of a family member or others,

e) organise or participate in mediation programmes aimed at young adults whose behaviour may threaten their family members,

f) organise or mediate programmes with the aims of reducing and eliminating negative environmental effects and preventing social exclusion of children and adults in the environment,

g) if the child's parents are divorcing, to give or convey social counselling to the child and his parents and also provide the necessary psychological support after divorce.

The above listed protection measures shall be provided in the child’s natural environment (e.g. in family), or in an open environment (e.g. in public places, public buildings, which are regarded as natural social environments for individuals and groups), or in an environment created and arranged by the local offices of socio-legal protection of children and social guardianship for these purposes.

In practice, the local offices of socio-legal protection of children and social guardianship often provide the child with the phone number of a social worker, who the child may call if he/she faces any problems. Also, the schools tend to have their own psychologists who help the children in difficult situations and inform local offices of socio-legal protection of children and social guardianship if needed, i.e. if in the light of the child’s family situation, or with the purpose of preventing the child from harm, it is deemed necessary.

Child-friendly materials

There are no materials in Slovakia that explain the rights of children in a child-friendly manner. Children however may learn about their rights at schools. Also the position of Child ombudsman (see Section 2) may help them to learn how to protect their rights.

The child as a witness

Common rules applicable regardless the type of procedure

Rules applicable to the provision of information to witnesses are established by law[[70]](#footnote-70). As a general rule, most of the applicable legal provisions do not differentiate between adults and children.

As an exception under the general rule, when the witness is a child, the court reads the information to him/her and explains its meaning in a child-friendly manner. The purpose of this practice is to ensure that children understand their rights and obligations.

Another exception is in the way courts should seek the opinion of the child. In this respect, the court has three possibilities and can seek for the child witness’s opinion through:

* his/her representative, or
* appropriate body of socio-legal protection of children and social curatorship, or
* by hearing the child even without the presence of parents or other persons responsible for the upbringing of the child.

The court informs the witness that he/she must tell the truth and not withhold any information. He/she may refuse to testify if by giving a testimony he/she would accuse him/herself or a person close to him/her with the commission of a crime. The ground for the refusal of giving a testimony should be assessed by the proceeding court.

Witness examination must start with the identification of the witness and of the circumstances that could affect his credibility. Moreover, witnesses must be instructed of the significance of giving a testimony, their rights and duties, and the fact that giving false testimony constitutes a crime.

During the hearing of the child witness, he/she receives information in his/her own right. Prior to the hearing, the child is informed about his/her obligation to testify via a subpoena. Subpoenas are served to the child’s legal representative. The legal representative is obliged to provide the child with the information contained in the subpoena.

Slovak law does not allow child witnesses to request information from the court.

Witnesses cannot benefit from the assistance of support services during the civil judicial proceedings.

Witnesses residing in a different Member State do not benefit from special arrangements.

With respect to the provision of child-friendly materials, see the description provided above.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Protection of the child’s private and family life

The child as a plaintiff, defendant, or participant

Rules applicable to contentious and non-contentious proceedings

Access to data

As a general rule, the parties/participants and their representatives have the right to inspect their case files and make excerpts, depreciation and photocopies thereof or ask the court for photocopies at their own cost[[71]](#footnote-71). This does not apply to the record of the vote of judges or documents containing classified or protected information. Persons other than the parties/participants of the proceedings may be allowed by the judge to look into files and make excerpts and depreciation thereof, if they have well-established reasons and the legitimate interests of the parties/participants cannot be affected thereby[[72]](#footnote-72). Neither the child, nor his/her legal representative can forbid other parties/participants to see the files of the procedure.

The court is responsible for ensuring that these rules are respected and for the protection of personal data of a child against people who are not entitled to see the court file.

Children, as a general rule, are represented by their legal representatives. This implies that on behalf of the child, his/her legal representative may request from the court access to documents. Although it is not spelled out in legislation, in practice children may access court documents in their own right, if the court finds that the child is capable to understand the content of the document.

Publication of data

Since 1 January 2012, courts are required to publish, within 15 working days from the date of taking them, their final decisions on the merits (i.e. decisions on merits against which no appeal shall be admissible), decisions terminating the procedure, decisions on preliminary injunctions and decisions on the postponement of the enforcement of an administrative decision.

Court decisions reached in *in camera* trials (i.e. trials from which the public is excluded fully or partially), are not published. Proceedings that concern family matters are often subject to *in camera* trials.

Prior to the publication of the decisions, certain data must be anonymised/ classified in order to ensure the protection of personal rights and the participants’ legitimate interests.

Data that should not be disclosed are:

a) personal identification number,

b) date of birth,

c) ID card, passport or other documentary proof of identity of the person,

d) reference to residence,

e) the telephone number, fax number, e-mail address of the party, Internet Protocol (IP) address of the party’s electronic device,

f) the name and code of the bank or branch of a foreign bank, bank account number, account name, IBAN number, information relating to the identity of clients,

g) cadastral identification code,

h) real estate deed,

i) classified information and trade secrets,

j) the name and surname of a natural person, except in cases where the natural person’s data cannot be disclosed[[73]](#footnote-73),

k) the names and surnames of the legal representatives of the parties and the parties to the proceedings and guardians of the parties, the parties in the proceedings, other persons involved in the proceedings.

The court may order the non-disclosure of other data, if such data are of private nature. Non-disclosure could be ordered by a judge or judicial officer *ex officio* in writing. Data that are necessary for understanding the content of the court decision cannot be subject to non-disclosure.

The authorities that have access to the personal data (e.g. courts, social workers, psychologists, attorneys) of the child are responsible for its protection. For this purpose, they are obliged to maintain confidentiality due to special acts.

Court decisions can be referred to in the media, with the condition that the personal data (see above) of the parties/participants cannot be published. This rule is not set out in legislation or other regulation, but results from the principle of the protection of the best interests of the child.

Confidentiality

Further, judges are obliged to maintain confidentiality[[74]](#footnote-74), even after the termination of their positions about matters that they learned while being judges. Judges can be released from the duty of confidentiality by persons whose interests/duties were concerned by the decision. For serious reasons, a judge can be released from this obligation by the President of the Court, the President of the Court shall be released by the President of the immediately higher court, the President of Supreme Court shall be released by the President of the National Council. Judges cannot be forced to testify as witnesses about things that they have learned in the exercise of their judicial office.

Attorneys as persons who provide the legal representation of the parties, are also subject to confidentiality rules[[75]](#footnote-75). An attorney cannot reveal any information learnt in connection with his/her practice and shall treat such information as strictly confidential. An attorney may be released from the duty of confidentiality by the client and after his client´s death or dissolution, only by the client´s legal successor. If the client has several legal successors, all legal successors must agree to release the attorney from the duty of confidentiality. Even in cases where the attorney is released from the confidentiality obligation, he/she cannot disclose confidential information, if he/she thinks that the disclosure of such information would be to the detriment of the client or might cause harm to the client.

The duty of confidentiality binds the attorneys even during the period while their practice is temporarily suspended and also after lawyer’s exclusion/deletion from the bar.

The duty of confidentiality shall apply *mutatis mutandis* to:

a) employees of the lawyer,

b) other persons, who in connection therewith are engaged in the provision of legal services,

c) members of the Bar´s governing bodies and its employees.

The duty of confidentiality is not applicable if disclosure would prevent the commission of a crime.

The duty of confidentiality also binds employees of the office of socio-legal protection of children and social guardianship, officials of municipalities or higher territorial units, and employees of other accredited body performing services in connection with the socio-legal protection of children and their social guardianship[[76]](#footnote-76). They are required to keep confidential facts which they learn while fulfilling their duties. Confidential information could be disclosed, if disclosure is necessary for the protection of the life or health of children and adults.

Legal remedies

In case of violation of the right to privacy, the child represented by his/her legal representative may submit a motion for the compensation of his/her damage, including both pecuniary and non-pecuniary damages.

Children who possess full procedural capacity (e.g. married children) as well as children who are mature enough, can file a motion in their own right.

Avoiding unnecessary conflicts between the child and his/her legal representative

In order to avoid unnecessary conflicts between the child and his/her legal representative, Slovak law allows for the appointment of a guardian ad litem for the representation of a child. A guardian ad litem is appointed in cases where there is a conflict between a child and his/her parents, as well as in cases where the child’s legal representatives are unable to fulfil their obligations in connection with the legal representation of the child.

The child as a witness

Rules applicable to contentious and non-contentious proceedings

A child as a witness has the duty to testify. As during the procedure his/her rights and duties are not being solved, he/she does not have access to court files. But those who can access the file are bound by confidentiality also regarding the personal data and information about witnesses.

Similarly to the case of parties/participants, certain personal data of witnesses are not disclosed. The court is responsible for safeguarding the rights of children in this respect. If the right of witnesses to the protection of their personal data is breached, they can make use of the same legal remedies and under the same conditions as parties/participants.

As in the case of child participants/parties, the child witness can be provided with a guardian ad litem if this is deemed to be necessary to avoid unnecessary conflicts between the child and his/her legal representative.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Protection from harm and ensuring a child friendly process

The child as a plaintiff, defendant, or participant

Rules applicable to contentious and non-contentious proceedings

Deciding the case without undue delay and adopting measures during the procedure for the protection of children

The [Constitution of the Slovak Republic](http://www.zakonypreludi.sk/zz/1992-460)[[77]](#footnote-77) guarantees everyone’s right to have his/her case tried publicly without undue delay[[78]](#footnote-78). Deciding on a case without undue delay is the basic principle of Slovak civil procedural law and is applicable to both types of procedures.

This principle is enshrined in various legal provisions of the [CPC](http://www.zakonypreludi.sk/zz/1963-99), including in § 6 of the [CPC](http://www.zakonypreludi.sk/zz/1963-99), which states that courts should proceed in cooperation with all parties so that the protection of the parties’ rights is ensured in a quick and efficient manner.

Following the commencement of the procedure, the court should ensure that the matter is tried and decided upon as quickly as possible. In doing so, the court must aim to resolve the dispute amicably and in a way from which the parties can learn something (i.e. educational character of the proceeding). During the proceedings, the court may inform the parties about the legal evaluation of the matter on the basis of existing claims and demonstrated facts[[79]](#footnote-79).

The court shall continue the proceedings even if the parties do not cooperate[[80]](#footnote-80). The court should aim to decide after one hearing[[81]](#footnote-81). In practice, this requirement is rarely fulfilled. Hearings may only be suspended for serious reasons[[82]](#footnote-82).

The draft of the new CPC will introduce the new mechanism of pre-trial hearing that should contribute to quick and efficient trial of court cases. Pre-trial hearing is aimed for selection of facts. During this part of the procedure, the judge meets the parties and states that will be subject to the hearing, what evidence will be performed, what facts are not contested, etc.

With respect to contentious procedures involving children, the legislation does not set specific time-limits, which implies that the general procedural rules (see above) apply.

In non-contentious procedures, especially in those where children are involved, the law sets special time limits.

Special time limits for non-contentious procedures in which children are involved

In childcare proceedings[[83]](#footnote-83) the court is obliged to adjudicate within six months from the day the proceeding was initiated. Child-care disputes with foreign elements (e.g. one of the parties is not a Slovak citizen) should be adjudicated within three months from the day the proceeding was initiated.

In matters that concern the determination of the child’s name and surname, or the appointment of a guardian for the child, the court is obliged to decide within 30 days from the day the proceeding was initiated. This timeframe can only be extended if the evidence cannot be gathered due to serious reasons and objective causes within the timeframe set by legislation. The court is obliged to take actions for the gathering of evidence immediately after the proceedings were initiated.

The court is obliged to decide about the ability[[84]](#footnote-84) for adoption in form of a judgement within three months from the initiation of the proceeding. This term may be extended by three months if the court decision is obstructed by serious reasons and objective causes.

Adoption cases[[85]](#footnote-85) must be decided by the court without undue delay, but no later than within one year from the filing of the request for adoption. The proceeding may only be extended if evidence cannot be gathered in time for objective causes.

In adoption cases, the courts should decide on the placing of the child into his/her new adopting family without undue delay or within 3 months at the latest from the initiation of the proceeding.

Quick and efficient procedure is required also while imposing interim measures. Interim measures may be granted before or during the procedure. Interim measures regarding childcare procedures may be granted *ex officio.* Anyone may notify the court by filing the motion that interim measures should be granted (including the child in his/her own right). While imposing the interim measure, the court should take into consideration the best interests of the child.

The court may order the imposition of the following interim measures:

a) to pay alimony to the extent necessary; such decision must be taken within 30 days from the filing of the motion;

b) to place the child under the care of the other parent or into the care of the person specified (decided) by the court (e.g. grandparent or other relative) or into rotating custody (i.e. the child will be e.g. one week with mother and another week with father); such decision must be taken within 7 days from the initiation of the motion;

c) temporary restraining order, i.e. forbidding a person from entering into a house or a flat where a person in relation to whom the participant is reasonably suspected of violence lives (special time limit within 48 hours from the initiation day).

It is noted that not all interim measures are spelled out in legislation. Therefore other interim measures can also be granted depending on the situation. The time-limit for imposing these other measures is 30 days from the initiation of the motion. Rules applicable to filing motions are set out in [Section 3.1](#_The_child_as).

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) also sets[[86]](#footnote-86) special interim measures that can be applied to a child who has found him/herself without any care, or when the health or favourable personal development of the child is put at serious risk or is affected by certain happenings. In these cases, the court imposes the interim measure either *ex officio* or upon receipt of a request from the office of socio-legal protection of children and social curatorship, as a result of the interim measure the child can be put temporarily into the care of a natural person or legal entity. During this procedure the child does not have to be represented. The court has 24 hours to take an interim measure. This time limit runs also during the holidays and weekends. Following the order of the interim measure, the court should assign, as soon as possible, a representative (if the child does not have any) for the child.

With respect to appeals against the imposition of interim measures, specific time-frames are applicable. As opposed to the general rule of 30 days for an appeal (from the submission of the matter from the district court to appeal court), in case of appeals against the imposition of interim measures, the court has seven days to adjudicate. In case of special interim measures[[87]](#footnote-87), the time limit for deciding upon the appeal is 24 hours.

Procedure in child–friendly and non–intimidating environment

Rules applicable to contentious and non-contentious proceedings

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) provides that courts conduct the proceedings so that it fulfils an educational purpose and is conducted with dignity and without any disturbance[[88]](#footnote-88). The [CPC](http://www.zakonypreludi.sk/zz/1963-99) does not explicitly require the holding of the proceedings in a child–friendly and non–intimidating environment. It is noted however, that it falls under the discretion of courts to decide on the way they hold trials. In non-contentious proceedings, the principle of the best interests of the child must be followed.

A judge may, if effective and practicable, decide to gather evidence outside the court premises[[89]](#footnote-89). In the case of children, the court may decide to hold the hearing in a suitable place. Parties/Participants of the proceedings are entitled to be present during this evidentiary action.

If the court decides to hear the child (i.e. if the child is mature enough and is capable of expressing his/her opinion), the hearing can take place in the following ways:

1. through his/her legal representative,
2. through the office of socio-legal protection of children and social curatorship,
3. by hearing the child, if necessary also without the presence of his/her parents or other persons responsible for the upbringing of the child. While hearing the child the judge may order a psychologist to be present.

Communication techniques used with children

Rules applicable to contentious and non-contentious proceedings

There are no special procedural rules for ensuring that court sessions and other actions during the civil procedure are adapted to the child’s pace and attention span (e.g. regular breaks, provisions on avoiding lengthy hearings, etc.) and to any communication difficulties the child may have. Nevertheless, the court is bound by the obligation of acting in the best interests of the child which is stated in UN Convention on the Rights of the Child. Therefore the hearing must be held in a way that is not harmful for the child. Thus, it can be assumed that the presence of the child at the hearing is required only if it is deemed to be necessary.

Deciding on the most suitable way of hearing the child falls under the discretionary power of the judge[[90]](#footnote-90).

Assistance provided to children

Rules applicable to contentious and non-contentious proceedings

When hearing the child, local offices of socio-legal protection of children and social guardianship provide the child with the necessary assistance. This assistance comprises the following: facilitating the hearing on the matter, and in an environment suitable or created for this purpose. The offices of socio-legal protection of children and social guardianship may ask the psychologist for support if necessary. Children who are mature enough can access these services in their own right.

Protection of children from harmful images and information

Rules applicable to contentious and non-contentious proceedings

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) contains measures for the protection of children from images or information that can be harmful to their welfare. The court may exclude some persons, such as children, from the hearing of the case, in cases where for example, their morals would be breached if present[[91]](#footnote-91). Also, the court may refuse access of the following persons to the hearing: children and citizens whose presence may interfere with the aim of ensuring the dignity of the hearing[[92]](#footnote-92). The court may take such decisions either *ex officio* or upon request of a person, including a child if he/she is mature enough or possess procedural capacity to act (e.g. married children).

After judgements taken in highly conflictual proceedings, it is the role of local offices of socio-legal protection of children and social guardianship to maintain the protection of the child and provide him/her with support. Also, some civil society organisations may provide some support. The court may refer the child to such help. Rules specific to access to these services do not contain reference to the age of the child.

Rules applicable to in camera trials

See [Section 3.3](#_Protection_of_the).

The child as a witness

Rules applicable to contentious and non-contentious proceedings

When a child testifies in a civil procedure the same rules mentioned above regarding child–friendly and non–intimidating environment apply.

Thus, the child is treated in a child-friendly way and due consideration shall be given to his/her needs.

If the court decides to hear the child as a witness, the hearing can take place in the following ways:

1. through his/her legal representative,
2. through the office of socio-legal protection of children and social curatorship,
3. by hearing the child, if necessary also without the presence of his/her parents or other persons responsible for the upbringing of the child. While hearing the child the judge may order a psychologist to be present.

Based on the ways how the court may conduct the hearing (see above), the child does not have to be present at the procedure before the court. If the judge decides to hear the child at the court hearing, the public may be excluded. The judge, while deciding, shall take into account the interests of the child.

The testimony can also be given via camera or other technological means.

There are no age specific provisions with respect to the hearing of child witnesses.

If the hearing causes stress to the child, it is the role of the local offices of socio-legal protection of children and social guardianship to maintain the protection of the child and provide him/her with support. Also some civil society organisations may provide support to the child. The court may refer the child for such help. Rules applicable to access to these services do not contain reference to the age of the child.

With respect to the in camera hearing of child witnesses, Slovak legislation does not contain any requirements.

Although it is not spelled out in applicable legislation, in practice it is the obligation of courts to make sure that child witnesses are not exposed to harmful images and/or information. As far as the communication techniques to be used to the hearing of child witnesses is concerned, the same rules apply as to participants.

Slovak legislation does not contain reference to interim measures that could be put in place for the protection of child witnesses.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Protecting the child during interviews and when giving testimony

The child as a plaintiff, defendant and participant

Rules applicable to contentious and non-contentious proceedings

As far as the right of children to be heard is concerned, it is noted that **the same rules apply to both types of procedures and for a child as a participant/party and also as a witness.**

The right of a child to be heard is expressed in international agreements, treaties, etc. In Slovak law this right is expressed in the [CPC](http://www.zakonypreludi.sk/zz/1963-99)[[93]](#footnote-93) and the [Family Act](http://www.zakonypreludi.sk/zz/2005-36)[[94]](#footnote-94).

Children who are mature enough, can participate in civil proceedings as parties, participants and witnesses, and therefore can express their opinions in their own right ([see Section 3.1](#_The_child_as).). The court must learn the opinion of the child:

* through his/her legal representative if he/she does not have full procedural capacity to act, or
* through the appropriate body of socio-legal protection of children and social curatorship, or
* by hearing the child, even without the presence of parents or other persons responsible for the upbringing of the minor child.

This right is also expressly stated in the [Family Act](http://www.zakonypreludi.sk/zz/2005-36)[[95]](#footnote-95), which states that children, who in the light of their age and mental development are able to express independently their own opinions, have the right to express it freely in all matters relating to them.

In proceedings that concern the child (i.e. the child is in a role of party/participant or witness), he/she is **entitled to be heard**. The opinion of the child shall be given due consideration in accordance with his/her age and mental development. Slovak legislation does not specify the age limit above which children are capable of forming their opinion. It is up to the court to decide whether in the light of the child’s maturity and intellectual capacity he/she is capable of forming an opinion. In other words, it is up to the court to decide whether the child is mature enough to be heard.

The Supreme Court of the Slovak Republic stated[[96]](#footnote-96) that the **way** (one of three possible ways, see above) **of seeking the opinion** of a child in proceedings is the choice of the court. Choosing the appropriate way of hearing a child plays an important role in protecting the child from harm that can be caused by the bad conduct of the hearing or by hearing the child at all. Judges, after considering all circumstances (may ask the psychologist for his/her opinion), may decide not to hear a child.

Judges are advised to conduct the hearing in a special way. They may hear the child in the absence of any person; or in a suitable place[[97]](#footnote-97) other than where the trial takes place. They may ask for help from local office of socio-legal protection of children and social guardianship who have psychologists who may give the court advice.

Slovak legislation does not spell out the ways in which a judge should question children. On the basis of the literature consulted and the well-established practice of judges, the main elements of the questioning of children can be summarised as follows:

* questioning the child must be preceded by a preparatory phase, during which the judge prepares the questions. The purpose of this phase is to ensure that judges use terms that are appropriate considering the child’s cognitive skills and emotional state,
* before the questioning of the child, it is necessary to establish a good relationship with the child, so that the child trusts the person who will conduct the hearing,
* while questioning the child, it is important that the judge asks questions that the child is likely to be able to address quickly and correctly in a spontaneous manner,
* it is important to encourage the child at the early stage of the procedure to speak freely and spontaneously about intimidating issues. Moreover, it is necessary to show that the judge (or another person leading the hearing) knows about his/her concerns and uncertainties, and that he/she appreciates the courage with which the child talks about events that are the subject of the hearing,
* before and while posing the questions, it is important that the judge uses (or another person leading the hearing) non-verbal communication techniques such as eye contact and nodding, which assures the child that the judge (or other person leading the hearing) is listening to what he/she is saying,
* during the whole hearing the judge (or another person leading the hearing) should proceed with understanding, empathy and patience,
* the judge (or another person leading the hearing) if he/she succeeds to make the child speak spontaneously, should not interrupt the child during his/her narrative,
* the judge (or another person leading the hearing) should ask additional questions when the child stops speaking spontaneously ,
* during the interrogation, the judge (or another person leading the hearing) should refrain from expressing his/her own opinion or emotions,
* the judge should use a tone of voice and formulate his/her questions in a way that makes the meaning of his/her question clear and easy for the child to answer. However, the question should be formulated in a way that does not make the answer of the child obvious,
* the judge (or another person leading the hearing) should not express his/her opinion about the answer of the child openly,
* the judge (or another person leading the hearing) should be aware of the risk of so called “closed questions “(the question of "yes - no"). Children tend to say ‘yes’ rather than say ‘no’ to questions they do not understand,
* sometimes judges are advised to use so-called “contrary questions“ (the question of what has not happened) with the hope that the child will refute the claim and at the same time spontaneously tell of important circumstances, which he/she would not have provided otherwise.

The rules described above on questioning of children are not set out in legislation.

Another peculiarity of the interrogation of children is to choose an **appropriate environment** (e.g. place outside the court) for the interrogation. Conducting the interrogation in a suitable place may significantly affect the final statement of the child. A judge (or another person leading the hearing) is responsible for choosing an atmosphere/environment that is appropriate for the interrogation of the child. Based on the above it can be concluded that judges (or another person leading the hearing) play a key role in influencing the willingness of the child to cooperate and the mental/emotional state of the child while being heard (e.g. how relaxed the child is while being heard).

Finally, according to the relevant literature regarding the psychological aspects of the hearing of children[[98]](#footnote-98), courts should aim for the **child being heard only once**, thus should aim to conduct the first interrogation in a way that covers all necessary details[[99]](#footnote-99). This measure is in place not only for the protection of the child from harm, but also for ensuring the success of the proceedings, as children after being interrogated tend to fantasise about the questions that were asked from them, which increases the risk that during the second hearing they would provide imaginary details or details that are wholly or partially false. The requirement of hearing a child only once is not set out in legislation. The principles suggested in literature are likely to be applied in practice as such principles are also aimed at the protection of the best interests of the child.

There are no special provisions or policies to guarantee that **children are prepared for or supported** when attending proceedings such as interviews, court sessions etc. However, in general children are represented by their legal representatives or guardians, collision guardians or others, who should accompany the child during the judicial proceedings. As mentioned above, the court may conduct the hearing of the child even without the presence of parents or other persons responsible for the upbringing of the child. In any case, the court is responsible for the appropriate conduct of the interrogation, the protection of the child and in particular for the protection of his/her best interests, and for creating an atmosphere in which the child feels free to talk. In practice, children typically attend court sessions only when their presence is necessary, e.g. when they are heard.

The judge has to **consider** whether **the child’s opinion** is really of his/her own and in particular should assess whether the child follows the opinion of any another person (parent, grandparents etc.). To this end, the child is provided with the information necessary for understanding the potential consequences of his/her decision.

While considering the child’s opinion, the judge should always keep in mind the best interests of the child. If needed, the judge may order the involvement of an expert (child psychologist) who should obtain the real opinion of the child or may order the hearing of the child without the presence of other people.

Under Slovak law, the principle of **free evaluation of evidence**[[100]](#footnote-100) applies. In accordance with this principle, it is up to the court to evaluate the extent to which it takes into account the testimony of the child. The court will consider the age, maturity, the way the child speaks and also other aspects that may be relevant when evaluating the testimony of the child.

The child as a witness

Rules applicable to contentious and non-contentious proceedings

When a child has the position of a witness in the procedure, the same rules as for party/participant apply. Therefore he/she is heard in a child-friendly manner and child-friendly environment.

It is noted that under Slovak law, witnesses do not possess the right to be heard, instead it is an obligation to testify.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Right to be heard and to participate in civil judicial proceedings

The child as a plaintiff, defendant and participant

Rules applicable to contentious and non-contentious proceedings

Right to be a party/participant

Rules determining the children’s right to participate in the civil judicial proceedings in their own right are described under [Section 3.1](#_The_child_as). This Section also refers to the legal provisions determining the legal representation of children.

Besides the description provided under [Section 3.1](#_The_child_as), it is noted that **in non-contentious proceedings**, the legal representative of a child also holds the overall responsibility for ensuring the protection of the child during the proceedings, but in addition to the representative, it is also the court that guarantees the best interests of the child. The court, in order to safeguard the best interests of the child, conducts its own investigation, thus the child is less involved in the evidence gathering (e.g. does not need to suggest evidence). Therefore in non-contentious proceedings, legal representatives often decide that the participation of an attorney is not necessary.

The participation of an attorney would be more frequent in **contentious proceedings.** As described under Section 2, in case of contentious proceedings the parties are under the obligation of proving facts and to bear the burden of proof, which implies that they need to be more active than in cases of non-contentious proceedings, which are led by the principle of court investigation (see above). Considering these characteristics of contentious proceedings, the legal representative of the child may not be capable of defending the interests of the child due to the lack of legal knowledge regarding the dispute. Therefore the child’s legal representatives often decide that the involvement of an attorney is necessary.

Considering the lack of full procedural capacity to act, children often access the court through their legal representatives. The legal representative of the child should give the child all the necessary information and explanations about the consequences of participating in civil judicial proceedings. This duty is not explicitly expressed in law (see [Section 3.2.](#_Provision_of_information)). Court rulings should be communicated to children in a language that they understand if they are communicated directly to the child and not to their legal representatives (see [Section 3.4.](#_Protection_from_harm) and Section [3.5.](#_Protecting_the_child)).

But if the child files the motion him/herself without being represented, the court will need to assess the maturity of the child. The court may then decide to provide protection to the child by appointing a person for his/her representation. If the court finds the child mature enough, the representative does not have to be appointed. In practice, courts typically appoint such persons for the representation of the child.

There are no special rules on limitation periods for children who do not pursue their claims before they reach the age of majority. There are no special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children. The general rules apply. This means that, in principle, a young adult can bring a case before a civil court within three years from the presumed violation of his/her right. The general rules also provide that a young adult may bring a case before a criminal court within 10 years of the crime. The victim, who is entitled to damage compensation which had been caused by a criminal act, may ask the court to impose the duty on the defendant to compensate him/her for the damage suffered. The proposal must be applied at the latest by the termination of the investigation or summary investigation. The proposal must be clear on what grounds and to what extent a claim for damages is applied.

If the party does not speak Slovak, the court is obliged to provide him/her with an interpreter. Every party (including a child) has the right to act before a court in his/her mother tongue or in a language that he/she understands.

Right to be heard

The fact that the child is represented, does not exclude the possibility for the child to be heard. The court shall consider the child’s opinions, if he/she is able to express it. This ability is decided upon by the court on the basis of the child’s age and intellectual maturity (see also [Section 3.5.](#_Protecting_the_child)). If the court does not ask for the opinion of the child, it might mean that due to his/her maturity the child is not able either to express his/her opinion or give considerable explanation to facts that the court wants to prove. This decision could be subject to an appeal[[101]](#footnote-101) or extraordinary appeal[[102]](#footnote-102) (see [Section 3.9.](#_Remedies_or_compensation)). Appeals are submitted by the representative of the child.

Rules determining the way courts hear children are provided under [Section 3.5.](#_Protecting_the_child)

The judge is the person who decides whether it is necessary for a child to be heard. The judge also decides on the extent to which the child’s opinion should be taken into account.

According to judicial practice, children from the age of 6 may be heard, whereas children under the age of 6 are not heard. Children at the age of 9 are usually heard. By not hearing a child who is not mature enough, the court provides protection to the child from harm that can be caused by bad conduct of the hearing or by hearing the child at all. The judge, after considering all circumstances of the case (the judge may ask the psychologist for his/her opinion), may decide not to hear the child.

When interviewing the child, the court should, depending on the child’s age and maturity, use special communication techniques (see [Section 3.5.](#_Protecting_the_child)).

**In non-contentious proceedings,** including those regarding children, the aim is to pursue available judicial protection to the greatest possible extent. Therefore, most of the non-contentious proceedings are free from court fees[[103]](#footnote-103).

If the party is exempted from the payment of court fees and a representative was appointed for him/her, the exemption shall also apply to the representative's expenses and fee[[104]](#footnote-104). In such cases, the state pays the costs of the procedure[[105]](#footnote-105). This provision applies also to **contentious proceedings**.

In proceedings that may start *ex officio* (i.e. mostly in case of non-contentious proceedings, as contentious proceedings never start *ex officio*), the parties are not entitled to receive reimbursement for their costs on the basis of the outcome of the proceedings. This is due to the fact that in non-contentious proceedings, there is no winning and losing party as such, as the court often regulates the relations between more participants.

**In contentious proceedings**, the court would decide on the reimbursement of the costs depending on the outcome of the procedure. These are also subject to court fees. But a child as a participant may ask for an allowance ([see Section 3.10](#_Toc346714798).)

The child as a witness

Under Slovak law, everyone has the duty (not the right) to testify if:

* he/she has heard or seen or otherwise perceived some facts,
* he/she is able to reproduce these facts to the court.

Therefore a child could also be a witness, although he/she does not have full legal capacity to act. Witnesses should be heard personally, thus there is no legal possibility for the representation of the child while being heard. The child witness is only represented by his/her representative, e.g. when delivering the court documents, etc.

With respect to the communication techniques used, the same rules apply to child witnesses as to child parties and participants (See [Section 3.5.](#_Protecting_the_child)).

As explained under [Section 3.2.](#_Provision_of_information), child witnesses receive information about their procedural rights and obligations from the court. So as adults, child witnesses are not informed about the court decision, unless they attend the trial when the court decision is announced.

Witnesses are not typically under obligation to pay legal costs. The exception to the general rule concerns cases where a cost arose as a result of the witness’s act or omission. For example, the witness should pay the legal costs that arose in connection with his/her non-appearance before the court. There are no child-specific rules in this respect, which implies that children witnesses can also be subject to the obligation of paying legal costs.

As a general rule, witnesses are not represented by an attorney. Slovak legislation, however does not exclude the possibility of mandating an attorney. Due to their limited capacity to act, children cannot mandate a lawyer in their own right, therefore their legal representative should act on their behalf.

Witnesses have a different role in the proceedings to plaintiffs or defendants, as they do not pursue claims. Therefore the fact that witnesses reach full legal age has no effect on the lapse of the limitation period.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Right to legal counsel, legal assistance and representation

The child as a plaintiff, defendant or participant

Representation of the child

Children do not have full capacity to act, thus they do not have full procedural capacity to act either. Consequently, children should be represented in the civil judicial proceedings. Before obtaining full capacity to act, the child’s maturity determines the extent to which he/she has procedural capacity to act. Therefore the court should consider the acts of the child in the light of his/her maturity. In practice, children are typically represented by their legal representatives (either by parents or appointed guardian).

The child can access the court through his/her legal representative. The legal representative of the child also decides whether the child should be represented by an attorney or not and who shall be the attorney of the child. An attorney is mandated by the legal representative on behalf of the child. The child cannot act as a fully-fledged client of his/her attorney, in a sense that it is the child’s legal representative who instructs the attorney. The mandate of the attorney is withdrawn by the child’s legal representative on behalf of the child. A child cannot waive his/her right to legal counsel.

Motions filed by children without their legal representative will need to be considered by the court in the light of the child’s maturity. The court may then, to provide protection to the child, appoint the child a representative. If the court finds the child mature enough, the representative does not have to be appointed. In practice, courts rarely allow children who do not possess procedural capacity to act, to participate in civil judicial proceedings in their own right.

Unless they are mature enough, children cannot waive their right to legal assistance.

**In non-contentious proceedings,** children are typically represented by their legal representatives. The child can also be represented by the local offices of socio-legal protection of children and social guardianship (in case of collision of interests). As social workers do not always have legal education, the court shall, in some cases (usually those that require legal education), order the representation of the child by an attorney[[106]](#footnote-106).

The protection of a child is ensured even by the court, which guarantees that the child is heard and conducts the investigation *ex officio*. Therefore the representation of the child by an attorney is not usual.

**In contentious proceedings**, children are typically represented by their legal representatives in the court proceedings. The legal representative may then decide whether the involvement of an attorney is necessary. This depends mainly on the type of dispute, i.e. whether it is difficult or not. If the subject matter of the dispute is the property of the child, the financial value of which is not insignificant, the approval of the court is necessary for filing the claim. The court in such cases may also decide that the involvement of an attorney is necessary.

If there is a conflict of interests between the child and his/her parent, a collision guardian (guardian ad litem) must be appointed and he/she shall ask for the approval of the act.

The child may, through his/her representative, ask for exemption from the payment of court fees[[107]](#footnote-107) in contentious matters. Most of the non-contentious matters are free from court fees[[108]](#footnote-108) (see [Section 3.10.](#_Legal_Costs_(who,)).

A participant (including a child) may also obtain free legal assistance[[109]](#footnote-109) (see [Section 3.10.](#_Toc346714798)). Children who do not have full procedural capacity to act cannot ask for free legal assistance in their own right. Such a request is filed by their legal representatives.

The child as a witness

A child in the position of a witness is ‘irreplaceable’, which implies that witnesses are heard in person by the courts. Besides the personal involvement of children while being heard, child witnesses, as persons lacking full procedural capacity to act, are represented by their legal representatives, who play a key role e.g. when delivering or receiving court documents, applying for witness allowance, etc.

Legal representatives are also entitled to notify the courts that, in their views, the child is not mature enough to testify. Moreover, the legal representative may decide to ask the attorney to represent the child. In practice, the legal representatives rarely mandate an attorney for the representation of their child. As regards the right of children to mandate and instruct an attorney in their own right, the same rules are applicable as to parties and participants.

Child witnesses cannot benefit from free legal aid under Slovak law.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Alternatives to judicial proceedings

The child as a plaintiff, defendant or participant

The rights and obligations of participants (or parties) depend on the nature of the proceeding (i.e. depends on whether it is a contentious or non-contentious proceeding) and not on their role in the proceeding (i.e. not on whether they are the plaintiffs, defendants, or in non-contentious proceedings just participants).

Arbitration, mediation, court settlement

The Slovak legal system offers two alternatives to civil judicial proceedings, i.e. arbitration[[110]](#footnote-110) and mediation[[111]](#footnote-111). There is a difference between the two types of alternative dispute resolution methods. While the decision of the arbitration court replaces court decisions and has the same effects, agreements concluded before a mediator do not have a binding force similar to that of court decisions. Therefore the court has to approve the agreement reached via mediation by a court settlement[[112]](#footnote-112).

In addition to the above, there is an in-court mechanism under Slovak law, which allows for the reaching of agreements without a court trial. With respect to settlement, it is noted that Slovak law obliges the courts to try to settle the parties[[113]](#footnote-113). The court tries to seek the settlement before the first hearing. The parties themselves may also ask the court to conduct a settlement procedure[[114]](#footnote-114). Court settlements then replace a court decision.

As stated above, there is a difference between “mediation” that is conducted by a mediator (not the judge) according to the [Mediation Act](http://www.zakonypreludi.sk/zz/2004-420)[[115]](#footnote-115) and court settlement conducted by the court according to [CPC](http://www.zakonypreludi.sk/zz/1963-99).

Arbitration is not mandatory in Slovakia.

Court settlement

The court settlement is excluded in matters:

* when the procedure starts *ex officio* (most of non-contentious matters including childcare proceedings),
* in procedures regarding the status of a person (e.g. divorce, declaration of death etc.)
* other procedures where parties may not dispose of their rights and duties.

In court settlements the parties have the same rights and obligations as during civil judicial proceedings (See [Section 3.1.](#_The_child_as))

Arbitration

Under Slovak law, only a limited number of matters can be referred to arbitration. The type of disputes that can be subject to arbitration is determined in the [Arbitration Act](http://www.zakonypreludi.sk/zz/2002-244)[[116]](#footnote-116).

The arbitration court may proceed in property disputes arising from domestic and international commercial and civil relations, if the place of arbitration is in the Slovak Republic. Among these disputes, only those can be subject to arbitration, in respect of which, the parties can reach a settlement under the Slovak rules of civil procedure. A dispute can be subject to arbitration only where substantive law does not require a particular way of settlement.

Similarly to civil judicial procedures, the child will be represented by his/her legal representative. The representative is then responsible for representing the child and is the one who decides whether the arbitration procedure would be used instead of a procedure before court. The capacity to act and the procedural capacity to act will be evaluated in the same way as in civil judicial proceedings (see [Section 3.1](#_The_child_as)). With respect to the capacity of children to be parties to arbitration, the [Arbitration Act](http://www.zakonypreludi.sk/zz/2002-244)  does not contain any legal provisions, thus the legal measures set out in [CPC](http://www.zakonypreludi.sk/zz/1963-99) apply.

If the subject of the dispute can be decided before the arbitration court, the representative of the child may conclude the arbitration agreement. Such a step must be approved by the court if it concerns the property of the child which is of significant value (see [Section 3.1](#_The_child_as)).

**Non-contentious matters** regarding children cannot be subject to arbitration. It is due to the fact that the court shall always investigate if the rights and duties are in the best interests of the child.

In accordance with this, disputes that concern the following rights cannot be resolved in arbitration proceedings:

* ownership and other proprietary rights concerning immovable property;
* the personal status of an individual (includes divorces);
* the enforcement of judgements and other enforceable instruments; and
* bankruptcy and restructuring proceedings.

Arbitrators cannot deviate from these provisions, which implies that duly concluded arbitration agreements that concern disputes that cannot be referred to arbitration, should be considered as invalid[[117]](#footnote-117).

N**on-contentious matters involving children cannot be subject to arbitration and court settlement.** But in some matters the agreement of participants has its relevance also in non-contentious proceedings. E.g. when deciding on divorce, the court should decide on the rights and duties of parents towards their minor children after the divorce. This court decision may be replaced by the agreement of parents. This agreement must be **approved by the court**[[118]](#footnote-118).

In some non-contentious matters the agreement of parties is possible if the substantive law allows that. But it must always be approved by the court, which proves the supervision of the court in these matters.

Mediation

As far as mediation according to the [Mediation Act](http://www.zakonypreludi.sk/zz/2004-420) is concerned, **in non-contentious proceedings**, mediation may help to improve the communication between the parties and help to find some compromise. Mediation can never replace the court decision in non-contentious proceedings. In these proceedings, the substantive law strictly states that these issues can be, and must be, decided by court, not by other bodies.

**In contentious proceedings**, the child shall be represented by his/her legal representative during the mediation procedure. The representative will also be the one who initiates the mediation procedure. If agreement is achieved, it should always be approved by the court, otherwise it will not have a binding effect.

Mediation is not mandatory in Slovakia.

The child as a witness

Slovak legislation on mediation and arbitration does not specify the rights and obligations of child witnesses in mediation and arbitration proceedings. This implies that child witnesses in these proceedings can be heard under the same rules as in civil judicial proceedings. So, as in the case of child parties/participants, the rules set out in the [CPC](http://www.zakonypreludi.sk/zz/1963-99) also determine the rights and obligations of child witnesses in mediation and arbitration proceedings.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Remedies or compensation for violation of rights and failure to act

The child as a plaintiff, defendant or participant

The rights and obligations of participants (or parties) depend on the nature of the proceeding (i.e. depends on whether it is a contentious or non-contentious proceeding) and not on their role in the proceeding (i.e. not on whether they are the plaintiffs, defendants, or in non-contentious proceedings participants).

As far as access to complaint, legal appeal or judicial review mechanisms is concerned, the same rules apply **to both contentious and non-contentious procedures**, with the condition that in non-contentious procedures the court itself is obliged to protect the best interests of the child.

The right of the child to be informed about legal remedies (including information on complaint, legal appeal or judicial review mechanisms) is not expressly stated in law. Usually children are informed about their rights prior to and during their hearing from the court or from their legal representatives. Nevertheless, the child may have problems to obtain certain information (e.g. on possibilities during procedure, on appeal mechanism, etc.) from his/her legal representatives (parents or appointed guardian, e.g. collision guardian). No special support is provided to the child in accessing information about legal remedies. However, a child is not prevented from seeking information from other sources (teacher at school, websites, relatives, friends, etc.).

The child as a plaintiff or defendant in contentious procedures and participant in non-contentious proceedings is typically represented by his/her legal representative or an appointed guardian (e.g. guardian ad litem in case of conflicting interests between the child and his/her parents). Instead of the child, either his/her legal representative or the guardian ad litem files an appeal.

Children with procedural capacity to act (e.g. married children), as well as children who possess the necessary maturity, are considered as having procedural capacity to act and thus are entitled to file an appeal in their own right. It is up to the court to assess the maturity of the child. Even in cases where the child is found mature enough, the court may appoint a guardian for the protection of his/her best interests.

The appeal can only be filed if it is in the best interests of the child. If, despite the appeal being in the best interests of the child, the legal representative or appointed guardian fails to submit an appeal, the child may submit a damage claim, non-pecuniary damage claim or constitutional complaint for violation of children's rights against the legal representative. The legislation does not specify if these claims can be submitted by the child in his/her own right. In practice, it is likely that the court would accept claims from children who possess the necessary maturity.

Any procedural act (claim, appeal, withdrawal of the claim, complaint, etc.) may also be submitted without the consent of the child.

If there is a conflict of interest between parents (or another representative of the child) and the child, a guardian ad litem shall be appointed[[119]](#footnote-119). The [Family Act](http://www.zakonypreludi.sk/zz/2005-36) is stricter than the [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) in this respect, as in family matters the court is obliged to appoint a guardian ad litem already when there is the risk of collision of interests between parents and their children or between children represented by the same parent[[120]](#footnote-120).

A social worker from the local office of socio-legal protection of children and social guardianship is usually appointed as a guardian ad litem. This role of offices of social protection of children and social guardianship is explicitly stated in the law[[121]](#footnote-121). Then, the guardian ad litem files the appeal against the court decisions.

As social workers do not have legal education, the court may decide to appoint an attorney to be the guardian ad litem of a child[[122]](#footnote-122).

A child care authority can appeal against certain court decisions involving children, only when it is in the position of a child's representative (e.g. social worker from the local office of socio-legal protection of children and social guardianship represents the child).

There are no special rules on limitation periods for children who do not pursue their claims before they reach the age of majority. There are no special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children. The general rules apply. This means that, in principle, a young adult can bring a case before a civil court within three years from the presumed violation of his/her right. The general rules also provide that a young adult may bring a case before a criminal court within 10 years of the crime.

The child as a witness

**If the child is in the role of witness,** he/she may appeal only in connection with his/her rights as the witness (e.g. with respect to witness allowance). The witness cannot submit any motions on the merits. He/she will act through his/her legal representative, if not mature enough.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Legal costs

The child as a plaintiff, defendant, or participant

Court fees

**In contentious proceedings** the principle of equality of the parties determines the rules applicable to the payment of legal costs. This implies that paying the legal costs is the obligation of both parties. In this respect Slovak legislation does not give due consideration to the fact that one or both of the parties can be children.

With respect to the payment of court fees[[123]](#footnote-123), the [CPC](http://www.zakonypreludi.sk/zz/1963-99) contains exceptions[[124]](#footnote-124). In accordance with these exceptions the court may grant an exemption from the payment of court fees in full or to a limited extent if:

a.) the situation of the parties justifies it; and

b.) if the claim is not evidently unfounded.

Children who do not possess full procedural capacity to act cannot file a claim in their own right. The child’s legal representative is entitled to file a claim on the child’s behalf.

**In non-contentious proceedings,** including those involving children, the aim is to make the best use of the procedure. Therefore these proceedings are not subject to court fees[[125]](#footnote-125).

If the party is exempted from the payment of court fees and an attorney was appointed for him/her, the exemption shall also apply to the attorney's expenses and the representation fee[[126]](#footnote-126). In such cases the state pays the costs of the procedure[[127]](#footnote-127). This applies to both, contentious and non-contentious proceedings.

In non-contentious proceedings which may start *ex officio* (contentious proceedings starts upon request of the parties), the parties will need to pay some costs in advance. The reimbursement of the parties does not depend on the outcome of the procedure. In other words, the parties are not entitled to the reimbursement of advanced payments[[128]](#footnote-128), as in these proceedings there is no winning or losing party; the court regulates the relations of the parties and does not decide the dispute itself.

**In contentious proceedings**, the court would decide on the reimbursement of the costs depending on the outcome of the procedure. But under specific circumstances, the court may decide that no one should bear the legal costs or part thereof[[129]](#footnote-129).

It is noted that under Slovak law, stamp duty is part of court fees.

Free legal assistance

**In both, contentious and non-contentious proceedings**, a party or participant may also obtain free legal assistance[[130]](#footnote-130). A person must meet the following conditions in order to be eligible to obtain free legal assistance:

1) is in a state of material emergency which means that his/her income is less than 1,4 times the monthly minimum wage[[131]](#footnote-131) and has no other assets for covering the costs of legal assistance (if the amount is more than 1,4 times but less than 1,6 times the monthly minimum wage, the legal assistance is almost free, as the party should cover only 20% of the costs of legal assistance),

2) the claim is not evidently unfounded (e.g. due to missed deadlines, lapse of limitation period, lack of evidence),

3) the amount of the dispute must exceed the value of the minimum wage set by law[[132]](#footnote-132) - such a condition is applied in cases where the financial value of the dispute can be quantified.

The fulfilment of these conditions is considered by the Centre of legal aid established by the Ministry of Justice of the Slovak Republic[[133]](#footnote-133), which started its operation on 1 January 2006.

As the child cannot act by him/herself before the court, the representative will be in charge of asking for free legal assistance or negotiate the conditions of legal assistance with an attorney (in case of paid legal assistance). In cases where the sum that should be paid for the legal services of the attorney is of a higher amount, it may be necessary to approve such a contract between the child´s representative and the attorney by the court (see [Section 3.1.).](#_The_child_as)

The child as a witness

Witnesses are entitled to the reimbursement of cash expenses (e.g. travel expenses, including those of legal representative of the child) and lost earnings (“witness allowance”). This right will expire if it is not exercised within three days from the date of the hearing or the date on which the witness received information that there would be no hearing. The court shall instruct the witnesses about this.

Witnesses are not obliged to pay legal costs. An exception to this rule concerns costs that arise in connection with certain acts and omissions of the witness. As an example, the witness would pay the costs of the parties/participants that arise in connection with him/her not attending a procedural action. In this respect, Slovak legislation does not contain child-specific rules, thus similarly to adults, children could also be requested to cover the costs of parties/participants.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

## Enforcement of civil court judgements

The child as a plaintiff, defendant, or participant

Right to be informed about the court judgement

The right of the child to be informed about the court decision is not set out in legislation. In practice, the child’s legal representative informs the child about the final court judgement. In this regard the same rules apply **to contentious and non-contentious proceedings**. Providing the child with information in a child-friendly manner, is not a requirement under Slovak law.

Enforcement procedure

Rules applicable to enforcement are set out in the [Execution Code](http://www.zakonypreludi.sk/zz/1995-233)[[134]](#footnote-134). Rules contained in this Code cover the enforcement of most of the decisions issued in civil proceedings. The Execution Code applies also to the enforcement of child alimony.

Rules applicable to the so-called ‘personal enforcement’ procedures, i.e. enforcement judicial decisions regarding the raising of children (e.g. under whose custody the child is placed, alternating custody, visitation rights, etc.), are contained in the CPC.

Enforcement according to [Execution Code](http://www.zakonypreludi.sk/zz/1995-233) is carried out by an executor, who can enforce any decisions except for the following:

1) enforcement of judicial claims, i.e. claims of certain courts for the payment of court costs (as it is executed “*ex officio*” , i.e. without the motion of the entitled court)[[135]](#footnote-135),

2) personal execution i.e. enforcement judicial decisions regarding the raising of children (e.g. under whose custody the child is placed, alternating custody, visitation rights, etc.) n“)[[136]](#footnote-136).

The enforcement of judicial claims and decisions on the upbringing of the child (personal execution) falls under the exclusive competence of the court. The enforcement of judgements is carried out by district courts. Rules applicable to court enforcement are set out in the CPC[[137]](#footnote-137).

The enforceability of a judgement means that the person, to whom the judgement grants a right, can apply to the court or another competent authority (executor) to enforce his/her right. If the decision stipulates a duty which has to be fulfilled, enforcement takes place after the lapse of the time-frame set for the voluntary performance (fulfilment)[[138]](#footnote-138). If the decision does not stipulate such a duty, it is enforceable as soon as it becomes ‘final’. A judgement is considered as final, once it is duly served and when it can no longer be appealed against[[139]](#footnote-139).

The preliminary enforceability of the judgement on the merits (i.e. judgement on the substance of the case, not procedural decision)

A judgement can exceptionally be made preliminarily enforceable. Preliminary enforcement means that a duty imposed by the judgement (e.g. to surrender the child to the care of the other parent) must be fulfilled immediately after the delivery of the judgement to the party[[140]](#footnote-140) concerned. In case of these judgements, the filing of an appeal does not suspend the enforcement. Preliminary enforceability is possible only in cases of certain disputes, specifically stated in legislation, e.g. in connection with decisions on the alimony for a child (not for example upbringing or visitation of the child)[[141]](#footnote-141). However, the court may decide to authorise preliminary enforceability upon request of the child’s legal representative, if without preliminary enforcement the respective party would be at risk of harm (e.g. suffering a damage) which could be reparable only with difficulty or considerable effort. The statement: “This judgement is preliminarily enforceable”, is then included in the decision.

The preliminary enforceability of interim measures

Courts may take decisions in the form of interim measures (for the time until it decides on the merits of the proceeding). These measures are typically used in cases that involve children in childcare proceedings that are non-contentious in nature. Interim measures become automatically enforceable upon serving/delivering the decision to the party concerned or as soon as the time-frame for fulfilling the obligation set out in the decision, lapses[[142]](#footnote-142). Appeals against interim measures do not suspend enforceability.

Courts may issue interim measures even before the commencement of proceedings, if this is necessary to regulate the parties’ relationships, or if without the taking of the interim measures, the execution of the future court decision would be jeopardised[[143]](#footnote-143).

Enforcement of decisions that concern children

Decisions issued in contentious proceedings are enforced according to rules of Execution order. No special rules regarding children apply.

Decisions issued in non-contentious proceedings are those that concern alimony and other issues which mainly concern the upbringing of children. Decisions that concern alimony are enforced according to the Execution Code, which consists of special provisions that protect children (e.g. higher amounts are deducted from the income of the obliged person if alimony is concerned). Other decisions (mainly on the upbringing of children) are enforced according to CPC.

The enforcement of decisions on the upbringing of the child (e.g. to whom the child is placed into custody, alternating custody, visiting the child, etc.) may also begin *ex officio.* It is noted that this rule does not arise explicitly from the CPC. This possibility can be derived if the law is interpreted in the best interests of the child.

Parties of the non-contentious proceedings are the proposer, the opponent and those whose rights and duties are concerned[[144]](#footnote-144). In terms of rights and obligations, the same rules apply during the enforcement phase of the procedure, as those determining the rest of the civil judicial proceeding.

Children can also be participants to procedures that concern the upbringing of the child, in which case they are typically represented by a guardian ad litem (as in these cases the child’s interests might not be the same as his/her parents’). Guardians ad litem are typically social workers from the local offices of socio-legal protection of children and social guardianship.

It is not in the competence of the court responsible for the enforcement to review the decision of the court which decided about the upbringing of a child. As a general rule, the court exercising the enforcement of decisions is not allowed to take into account changes that have occurred since the court decision was taken (*clausula rebus sic stantibus*). As a way of exception under the general rule, when some danger occurs that might change the situation of the child, the enforcement court may initiate the changing of the original court decision on custody[[145]](#footnote-145). The court may *ex officio* issue an interim measure and order the party for example, to surrender a child into the care of the other parent, or into the care of a person determined by the court, [[146]](#footnote-146) or to pay alimony to the extent necessary[[147]](#footnote-147).

The enforcement of the judicial decision **of non-contentious origin** regarding the care of children is regulated so that the child is not harmed. As mentioned above, there are two types of decisions in this respect:

1. those regarding alimony enforced by the executor,
2. those regarding the upbringing of the child enforced by the court.

Ad. a.) The plaintiff who submits the motion is the parent to whom the alimony for the child should be paid.

It is noted that not paying alimony is a crime under the Slovak Criminal Code[[148]](#footnote-148).

Slovak law also regulates substitute alimony[[149]](#footnote-149) which is paid to the entitled person by the state instead of the obliged person. The conditions for obtaining it are:

* failure to fulfil maintenance obligations of responsible persons in full within the time and manner designated by court decision or court approved agreement for at least three consecutive months and the enforcement procedure takes at least three months from the submission of the motion to conduct an enforcement procedure, or
* the entitled person was not entitled to an orphan's pension or retirement pension, or the amount of orphan's pension or orphan's retirement pension is less than the minimum amount of alimony stated in the Family Act.

If one of these conditions is met, the entitled person should also:

* ensure that the child fulfils compulsory school attendance if the child is required, due to his/her age, to undertake compulsory education,
* have permanent residence in the Slovak Republic and reside in the territory of the Slovak Republic. This does not apply if the entitled person resides abroad for studying,
* average monthly income for the last six calendar months preceding the calendar month in which the application for substitute alimony was submitted, does not exceed 2,2 times the monthly minimum wage[[150]](#footnote-150).

The amount of substitute alimony should be determined by court in form of a decision, in a way that it should not be more than 1,2 times the subsistence minimum for a dependent child[[151]](#footnote-151).

Ad. b.) Decisions regarding the upbringing of the child include the custody of the child, contact of parents and close persons with children, rotating custody, etc.[[152]](#footnote-152). Usually these decisions do not set a pecuniary obligation.

Before ordering the enforcement, the judge shall use other less invasive measures to enforce the decision. The removal of the child from his/her family should be used as a last resort.

The court has, in fact, three possibilities:

* 1. The court shall, in writing, issue a call (challenge) to a person who refuses to fulfil the judicial decision on the upbringing of the child, in which the court calls on the person to fulfil his/her obligations set by the judicial decision. In such a call, the judge shall also advise the party about the consequences of failing to perform the duties stipulated in the decision (criminal consequences and other, e.g. that the child may be entrusted to the personal care of the other parent[[153]](#footnote-153)). The court issues such a call when there is some probability that the obliged person would comply with it.
  2. If it appears that the purpose of such invitation may be better achieved by hearing, the judge is entitled to order the hearing of the person and summon the obliged participant, the entitled participant, the child, the local office of socio-legal protection of children and social guardianship or representative of competent municipality.
  3. The court is entitled to make the call immediately before ordering the enforcement. This way will be used when there is the probability that the call will not be satisfied and immediate enforcement shall be realised.

The court is entitled to request the local office of socio-legal protection of children and social guardianship and the competent municipality, for assistance in obtaining information on the reasons for not fulfilling the decision and for verifying such reasons, in particular in the place where the child resides or where the child stays, at school or at the healthcare provider.

If the call does not bring positive results, the judge imposes, also in repetition, fines to the amount of EUR 200 on the party who does not voluntarily implement the court’s decisions on the upbringing of the child.

Another measure of the court before ordering the enforcement is to issue a call to a competent state authority for

1. stopping the payment of the parental contribution to the obliged participant under a special regulation
2. stopping the payment of the child allowance and the child allowance bonus (which are special payments paid by state to person who takes care of the child during maternity leave) to the obliged participant under a special regulation.

If the obliged participant has begun to voluntarily fulfil the decision of the court, the court shall call the competent state authority to renew the stopped payments.

If none of these measures help to fulfil the decision, the removal of the child from his/her family follows in cooperation with the local office of socio-legal protection of children and social guardianship and the competent municipality. These authorities are obliged to help the court and fulfil its instructions[[154]](#footnote-154).

The court is entitled to issue instructions to the authorities and persons participating in the enforcement of the decision. A judge is entitled to demand a needed explanation from a person who may contribute to the clarification of the facts important for the enforcement of a decision.

If it is necessary, the judge is entitled to order everyone:

a.) not to enter the indicated place and not to stay in such a place for a given period of time,

b.) to stay in the indicated place for a given period of time.

A person, who does not respect the binding instructions of a judge, does not provide needed explanation or does not obey with the order of the judge, may have imposed a disciplinary fine of up to the amount of EUR 820.

A judge is entitled to open (which would be realised with the assistance of a locksmith) the flat or other place where the child stays, enter the flat and take the measures for the removal of the child from his/her family.

Details on enforcement of decisions on the upbringing of children are determined in a Notice issued by the Ministry of Justice of the Slovak Republic[[155]](#footnote-155).

Hindering the enforcement of a decision constitutes a crime under Slovak law[[156]](#footnote-156).

The court may order the hearing of the child during the enforcement proceedings. During the hearing the child’s opinion should be respected. Only the opinion of mature children is taken into account (usually from 8-9 years old). In this case it is very important to detect whether the child’s opinion is really his/her own. The judge may appoint an expert (child psychologist) to obtain the real opinion of the child or he/she may hear the child alone.

It is a well-established practice that a parent is not obliged to contact his/her child and the court is not competent to impose such an obligation to him/her by any decision. If the parent does not want to meet his/her child, than the court’s original judgement regulating the contact with the child cannot be enforced.

It is the obligation of the parent who gains custody over the child (in a judgement) to prepare a child for a contact with the other parent and to hand over a child to a second parent. The preparation of a child for the contact does not involve only packing, or providing suitable clothes, but also the mental preparation of a child for the contact so that a child does not object to the visit of the other parent. The continuous, unjustifiable and intentional restraining of the other parent from contacting a child can result in the change of decision about the custody, even without a motion[[157]](#footnote-157).

**In contentious proceedings**, if a court decision is against the property of a child, it shall be enforced against this property; otherwise the equality of parties would not be fulfilled. Thus with respect to the enforcement of such decisions, the fact that the obliged party is a child does not have any importance.

The protection of a child in contentious proceedings is provided by his/her legal representatives and by the court approval of certain acts of a child, during the procedure before the court ([see Section 3.1.](#_The_child_as)).

Under Slovak law, detention cannot be imposed as a coercive measure against the child.

The child as a witness

Child witnesses play no role in the enforcement phase of the proceeding.

The child in any other role

As explained under [Section 3.1.](#_The_child_as), children cannot be the ‘subject’ matter of contentious proceedings, thus can only be involved in the proceedings in the roles of plaintiffs, defendants and witnesses.

Children can be involved as participants or witnesses in non-contentious proceedings.

Children can also be involved as interveners. The same rules apply to interveners as to parties/participants.

Conclusions

Institutional and legal framework

Rules applicable to civil judicial proceedings are mainly set out in the Civil Procedure Code ([CPC](http://www.zakonypreludi.sk/zz/1963-99)). The [CPC](http://www.zakonypreludi.sk/zz/1963-99) contains general rules that apply to all types of civil judicial proceedings (civil, comercial, labour, family). The [Family Act](http://www.zakonypreludi.sk/zz/2005-36) also sets out rules which are relevant in the context of civil judicial proceedings (e.g. the obligation that the decision on divorce shall regulate the exercise of parental rights).

As a general rule, general courts adjudicate in cases that involve children. Although there are no special family courts, specialisation within general courts exists and family matters are decided by judges specialised in such matters. Disputes arising from employment relations fall under the competence of general courts as there are no special labour courts.

In Slovakia, the child can be involved in civil judicial proceedings. The rights and obligations of the child depend mainly on the type of the proceeding (i.e. contentious or non-contentious proceeding) and less on his/her role. Considering the differences between contentious and non-contentious proceedings, the Slovakian legislator intends to divide the new [CPC](http://www.zakonypreludi.sk/zz/1963-99) (still a draft) into three separate codes: Civil Contentious Code; Civil Non-contentious Code; and Administrative Judicial Procedure Code.

General approach towards children under civil law

Any person who is younger than 18 years old is considered as a child under Slovak law, unless he/she is married. Before the age of 18 (16 in case maturity is gained by marriage) a child has limited legal/procedural capacity. The extent to which these capacities are limited depends on the intellectual and mental maturity of the child.

The general principle of safeguarding the best interests of the child is not explicitly defined in substantive civil law. This however, does not mean that the child’s best interests are not given due consideration. It is a primary concern in making decisions that may affect children. Moreover, despite the lack of explicit reference, the protection of the best interests of the child is enshrined in a number of substantive law provisions, and in particular in the [Family Act](http://www.zakonypreludi.sk/zz/2005-36).

A child as an actor in civil judicial proceedings

Before the age of 18 (16 in case maturity is gained by marriage), a child has limited legal/procedural capacity. The extent to which these capacities are limited depends on the intellectual and mental maturity of the child.

Children cannot, as a general rule, participate in the procedure in their own right, unless they have full capacity to act under substantive civil law.

Children, as a general rule, can be sued under Slovak law. The position of defendant is typical for contentious proceedings, while in non-contentious proceedings the law only refers to participants and rarely to opponents.

Children, regardless of their age, can participate in the civil judicial proceedings as witnesses. In contentious proceedings, children can also act as interveners, if they prove legal interest in the case. The same procedural rules apply to interveners as to the parties.

Provision of information to children

Slovak legislation does not explicitly require the legal representatives to provide the child with information on the civil proceedings (e.g. consequences of the procedure, time and place of court procedures, general progress and outcome of the procedure, review of decisions affecting the child). No such obligation is set for the officials of the local offices of social protection of children and social guardianship either.

Protection of the child’s personal data and family life

Concerning the protection of childrens’ personal data, Slovak legislation does not contain child-specific rules.

As a general rule, the parties/participants and their representatives have the right to inspect their case files and make excerpts, depreciation and photocopies thereof, or ask the court for photocopies at their own cost. This does not apply to the record of the vote of judges or documents containing classified or protected information under special regulations. Persons other than the parties/participants of the proceedings may be allowed by the judge to look into files and make excerpts and depreciation thereof, if they have well-established reasons for that and the legitimate interests of the parties/participants cannot be affected thereby. Neither the child, nor his/her representative can forbid other parties/participants to see the files of the procedure. The court is responsible for ensuring that this rule is respected and for the protection of personal data of a child against people who are not entitled to see the court file.

Protection from harm and ensuring a child friendly process

The [Constitution of the Slovak Republic](http://www.zakonypreludi.sk/zz/1992-460) guarantees everyone’s right to have his/her case tried publicly without undue delay. Deciding on a case without undue delay is the basic principle of Slovak civil procedural law and is applicable to both types of procedures. This principle is enshrined in various legal provisions of the [CPC](http://www.zakonypreludi.sk/zz/1963-99) regarding children in non-contentious procedures. In childcare proceedings, the court is obliged to adjudicate within 6 months from the day the proceeding was initiated. Childcare disputes with foreign elements (e.g. one of the parties is not a Slovak citizen) should be adjudicated within 3 months from the day the proceeding was initiated. The [CPC](http://www.zakonypreludi.sk/zz/1963-99) also states time limits for other procedures (e.g. adoption) and for interim measures.

The [CPC](http://www.zakonypreludi.sk/zz/1963-99) provides that courts conduct the proceedings so that it fulfils an educational purpose and is conducted with dignity and without disturbing the parties/participants. The [CPC](http://www.zakonypreludi.sk/zz/1963-99) does not explicitly require the holding of the proceedings in a child–friendly and non–intimidating environment. The conduct of the procedure, however, depends on the decision of each judge.

Protecting the child during interviews

As far as the right of children to be heard is concerned, it shall be noted that the same rules apply to both types of procedures and to a child as a participant and also as a witness.

Children, who are mature enough, can participate in civil proceedings as parties, participants and witnesses and therefore can express their opinions in their own right. The court shall learn the opinion of the child through:

* his/her legal representative if he/she does not have full procedural capacity to act, or
* appropriate body of socio-legal protection of children and social curatorship, or
* by hearing the child even without the presence of parents or other persons responsible for the upbringing of the minor child.

The opinion of the child shall be given due consideration in accordance with his/her age and mental development. Slovak legislation does not specify the age limit above which children are capable of forming their opinions

Right to be heard and participate in civil judicial proceedings

In non-contentious proceedings, in addition to the court, the representative of a child also holds responsibility for ensuring the protection of the child during the proceedings. The participation of an attorney is not mandatory in non-contentious proceedings. However, the child’s legal representative may decide to mandate an attorney. In practice, the participation of attorneys is more frequent in contentious proceedings where the parties are under the obligation of proving facts and to bear the burden of proof. As opposed to contentious proceedings, in case of non-contentious proceedings, the court conducts the investigation. Considering the above characteristic of contentious proceedings, the legal representative of the child may not be capable to defend the interests of the child due to the lack of legal knowledge regarding the dispute, thus legal representatives often decide that the involvement of an attorney is necessary.

In case the child files the motion him/herself without being represented, the court will need to assess the maturity of the child. The court may then decide to provide protection to the child by appointing a person for his/her representation. If the court finds the child mature enough, the representative does not need to be appointed. In practice, courts typically appoint representatives for the child.

Right to legal counsel, legal assistance and representation

As a general rule, the participation of lawyers in civil judicial proceedings is not mandatory.

The child can access the court through his/her representative. The representative of the child also decides whether the child should be represented by an attorney or not and who shall be the attorney of the child. An attorney is mandated by the legal representative on behalf of the child. The child cannot act as fully-fledged client of his/her attorney, in a sense that it is the child’s legal representative who instructs the attorney. The mandate of the attorney is withdrawn by the child’s legal representative on behalf of the child. A child cannot waive his/her right to legal counsel.

Motions filed by children without their legal representative will need to be considered by the court in the light of the child’s maturity. The court may then decide to appoint a representative for the child. If the court finds the child mature enough, the representative does not have to be appointed. In practice, courts rarely allow children who do not possess procedural capacity to act, to participate in the civil judicial proceedings in their own right.

If there is a conflict of interests between the child and his/her parent, a collision guardian (guardian ad litem) must be appointed.

Alternatives to judicial proceedings

Slovak legal system offers two alternatives to civil judicial proceedings, i.e. arbitration and mediation. There is a difference between the two types of alternative dispute resolution methods. While the decision of the arbitration court replaces court decisions and has the same effects, the agreements concluded before the mediator do not have the binding force similar to that of court decisions. Therefore the court has to approve the agreement reached via mediation in form of a court settlement.

In addition to the above, there is an in-court mechanism under Slovak law, which allows for the reaching of agreements without a court trial. With respect to settlement, it is noted that Slovak law obliges the courts to try to settle the parties. The court tries to seek the settlement before the first hearing. The parties themselves may also ask the court to conduct settlement procedure. Court settlements then replace court decisions.

Children may be involved in mediation but they act through their representatives. It is the same also with the court settlement.

Children can also be involved in arbitration if the subject matter can be decided by the arbitration court. The child acts through his/her representative. In non-contentious matters involving children, the arbitration court does not have jurisdiction to decide.

Remedies and compensation for violation of rights and failure to act

The right of the child to be informed about legal remedies (including information on complaint, legal appeal or judicial review mechanisms), is not expressly stated in law. Usually children are informed about their rights prior to and during their hearing from the court, or from their legal representatives. Nevertheless, the child may have problems to obtain certain information (e.g. on possibilities during procedure, on appeal mechanism, etc.) from his/her legal representatives (parents or appointed guardian, e.g. collision guardian). No special support is provided to the child in order to access information about legal remedies. However, a child is not prevented from seeking information from other sources (teacher at school, websites, relatives, friends, etc.).

The child as a plaintiff or defendant in contentious procedures and participant in non-contentious proceedings is typically represented by his/her legal representative or an appointed guardian (e.g. guardian ad litem in case of conflicting interests between the child and his/her parents). Instead of the child, either his/her legal representative or the guardian ad litem files an appeal.

Legal costs

Non-contentious procedures are not subject to court fees. In contentious procedures, a child as a party may ask for exemption from the court fee.

If the party is exempted from the payment of court fees and an attorney was appointed for him/her, the exemption shall also apply to the attorney's expenses and the representation fee. In such cases the state pays the costs of the procedure. This applies to both contentious and non-contentious proceedings.

In both contentious and non-contentious proceedings, a party or participant may obtain free legal assistance. A person must meet conditions stated by law in order to be eligible to obtain free legal assistance.

Enforcement of civil court judgements

Rules applicable to enforcement are mainly set out in the [Execution Code](http://www.zakonypreludi.sk/zz/1995-233). The enforcement of child alimony is also regulated by the [Execution Code](http://www.zakonypreludi.sk/zz/1995-233).

The enforcement of judicial claims and decisions on the upbringing of the child falls under the exclusive competence of the court. The enforcement of these judgements is carried out by district courts. Rules applicable to court enforcement are set out in the CPC[[158]](#footnote-158). The CPC contains child- specific provisions.

As far as contentious procedures are concerned, the child’s property can be subject to enforcement.

Witnesses are not involved in the enforcement phase of the procedure.

Strenghts and gaps

The existing institutional and legal framework guarantees the protection of children. Despite the legal and institutional framework in place, the protection of children is not always guaranteed due to financial shortages and the lack of human resources. These shortcomings affect mainly the functioning of the offices of socio-legal protection of children and social guardianship. As a result of these problems, social workers are not able to cope with the number of cases and lack motivation. This results in a decreased level of protection provided to children.

Another shortcoming lies with the fact that legal principles regulating non-contentious proceedings (e.g. best interest of the child, principle of evolving capacities), can be applied and interpreted in different ways. Therefore the protection of a child’s best interests in proceedings before the court, depends on the individual approach of the judge.

Although applicable legislation enables the courts to consider the evolving capacity of the child, the judicial practice is relatively rigid. Courts, in practice, rarely allow children who are under 18 years old to participate in the proceedings in their own right, despite them having the necessary maturity. The fact that children are represented, results in the situation that courts rarely communicate with the children directly, instead they communicate with their legal representatives. There is no legal duty for the legal representative to inform children about the on-going proceeding.

Furthermore, there are many issues that are not stated expressly in legislation, e.g. provision of information to children themselves, which implies that it depends on the willingness of the legal representative to inform the child. This might harm the child, as he/she is not given the possibility to protect his/her interests.

Another problematic point lies with the lack of child-friendly rooms, where children could be heard or placed while waiting for their hearing.

Furthermore, judges and social workers are not obliged to undertake special training regarding the practice and approach of children.

Finally, decisions taken by general civil courts are rarely subject to extraordinary appeal (*dovolanie*), which is a procedure conducted by the Supreme Court. This implies that the Supreme Court has not developed a unified jurisprudence in this respect.

1. List of legislation

Act no. 482/2011Coll. on the publication of judicial decisions

Act no. 291/2009 Coll. on specialised criminal court

Act. No. 448/2008 Coll. on social services in municipalities and higher territorial units

Act No. 201/2008 Coll. on substitute maintenance payment

Act no. 663/2007 Coll. on minimal wage

Act No. 327/2005 Coll. on the provision of legal assistance to persons in material need

Act No. 305/2005 Coll. on socio-legal protection of children and social guardianship

Act no. 301/2005 Coll. Criminal Procedure Code

Act No. 36/2005 Coll. on family and amendment and supplementation of certain acts (Family Act)

Act No. 757/2004 Coll. on courts

Act no. 420/2004 Coll. (Mediation Act)

Act no. 365/2004 Coll. on equal treatment

Act no. 601/2003 Coll. on subsistence minimum

Act no. 586/2003 Coll. on advocacy

Act No. 548/2003 Coll. on judicial academy

Act no. 244/2002 Coll. (Arbitration Act)

Act no. 311/2001(Labour Code)

**Act no. 154/2001, Coll.**on prosecutors and trainee prosecutors

**Act no. 153/2001 Coll.**on the public prosecution service

Act no. 65/2001 Coll. on the enforcement of judicial claims

Act no. 385/2000 Coll. on judges and lay judges

Act no. 211/2000 Coll. on free access to information

Act No. 233/1995 Coll. (Execution Code)

Act no. 308/1993 Coll. on establishment of the Slovak National Centre for Human Rights as amended

Act no. 38/1993 Coll. on the Organisation of the Constitutional Court of the Slovak Republic, Proceedings before the Court and the status of its judges

Act no. 460/1992 Coll. (Constitution of the Slovak Republic)

Act no. 71/1992 Coll. on court fees

Act no. 40/1964 Coll. (Civil Code)

Act No. 99/1963 Coll. (Code of Civil Procedure)

1. This table provides an indicative summary of competent courts and relevant proceedings. However, please check [Section 2](#Section2) for a complete overview of the competent courts or sections/divisions within the competent courts. [↑](#footnote-ref-1)
2. This study on Children’s involvement in judicial proceedings is composed of three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of asylum, migration, education, health, placement into care, administrative sanction and offences committed by children below MACR are described in the contextual overview for administrative justice. [↑](#footnote-ref-2)
3. (MACR) Minimum Age of Criminal Responsibility – see [Table 3.1 of the EU Summary of contextual overviews on children's involvement in criminal judicial proceedings](http://bookshop.europa.eu/en/summary-of-contextual-overviews-on-children-s-involvement-in-criminal-judicial-proceedings-in-the-28-member-states-of-the-european-union-pbDS0313659/related/?PublicationKey=DS0313659&CatalogCategoryID=WTQKABsteF0AAAEjKpEY4e5L) on MACR in EU28 as at 1 June 2012. [↑](#footnote-ref-3)
4. § 176 et seq. of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-4)
5. § 180a and 180b of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-5)
6. § 181 et seq. of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-6)
7. § 192 et 193 of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-7)
8. § 194 et seq. of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-8)
9. Legislative Intention is the official framework of proposed amendments or changes. It was approved by the Government of the Slovak Republic 5 June, 2013. [↑](#footnote-ref-9)
10. The organisation of the court system is regulated by [Act No. 757/2004 Coll. on Courts](http://www.zakonypreludi.sk/zz/2004-757). [↑](#footnote-ref-10)
11. Article 124 of the Constitution of the Slovak Republic, constitutional [Act no. 460/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-460) [↑](#footnote-ref-11)
12. [Act no. 38/1993 Coll.](http://www.zakonypreludi.sk/zz/1993-38) on the Organisation of the Constitutional Court of the Slovak Republic, Proceedings before the Court and the Status of its Judges. [↑](#footnote-ref-12)
13. [Act no. 291/2009 Coll.](http://www.zakonypreludi.sk/zz/2009-291) on Specialised Criminal Court. [↑](#footnote-ref-13)
14. Article 7 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-14)
15. There are still some exceptions, e.g. Article 9 [CPC](http://www.zakonypreludi.sk/zz/1963-99):

    Regional courts shall act as first-instance courts:

    a) in the disputes involving mutual settlement of benefits between employers and recipients when the recipient is not entitled to the benefit or has been paid the benefit in excess of the amount allowed under social security legislation, b) in the disputes between the competent sickness insurance body and the employer concerning liability for damage incurred as a result of improper sickness insurance procedures, c) in the disputes involving a foreign country or persons enjoying diplomatic immunities and privileges, /1aa/ provided that such disputes fall under the jurisdiction of courts of the Slovak Republic. [↑](#footnote-ref-15)
16. Article 149 of the [Constitution](http://www.slovakia.org/sk-constitution.htm). [↑](#footnote-ref-16)
17. Article 35 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-17)
18. ibid. [↑](#footnote-ref-18)
19. [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-19)
20. Article 20 [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-20)
21. According to Article 12 sec. 1 of [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship:

    a) notifies in an appropriate manner the child, the parent or person who has custody of the child if their behaviour may jeopardize or impair the positive psychological development, physical development and social development of the child,

    b) imposes the duty to the child to undergo specialized diagnosis in specialized outpatient care, if it is necessary and the diagnosis cannot be ensured by other means,

    c) imposes an obligation to the child to receive treatment in a specialized outpatient care,

    d) imposes an obligation to the child to participate in an educational or social program. [↑](#footnote-ref-21)
22. Slovakia is divided into 8 territorial units. [↑](#footnote-ref-22)
23. [Act No. 83/1990, Coll.](http://www.zakonypreludi.sk/zz/1990-83)on **Citizens Civil Law Associations.** [↑](#footnote-ref-23)
24. [Act. No 564/2001](http://www.zakonypreludi.sk/zz/2001-546) on Public Defender of Rights. [↑](#footnote-ref-24)
25. According to Article 1 of the Convention on the recovery abroad of maintenance from 1956 “the purpose of this Convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the office of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.”

    Center as the receiving agency:

    - accepts requests from abroad for the recovery of maintenance from persons residents in the territory of the Slovak Republic,

    - takes steps to support voluntary payment of maintenance,

    - represents the entitled person in the enforcement procedure,

    - provides transfer and control of payments recovered by entitled person abroad.

    Center as the transmitting agency:

    - provides legal assistance in preparing the documents required for applying for recognition and enforcement abroad,

    - prepares the proposal for recognition and enforcement of the judgement,

    - provides coordination in recognition and subsequent enforcement proceedings,

    - provides control and transfer of maintenance payments to entitled persons in Slovakia. [↑](#footnote-ref-25)
26. According to Article 1 of the Convention on the recovery abroad of maintenance from 1956 “the purpose of this Convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the office of agencies which will hereinafter be referred to as Transmitting and Receiving Agencies.” [↑](#footnote-ref-26)
27. § 135 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-27)
28. § 46 sec. 3 Criminal Procedure Code, [Act no. 301/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-301) [↑](#footnote-ref-28)
29. § 46 sec. 4 Criminal Procedure Code, [Act no. 301/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-301) [↑](#footnote-ref-29)
30. § 46 sec. 4 Criminal Procedure Code, [Act no. 301/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-301) [↑](#footnote-ref-30)
31. § 288 sec. 1 Criminal Procedure Code, [Act no. 301/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-301) [↑](#footnote-ref-31)
32. See Article 5 sec. 1 letter e.) of [Act no. 211/2000 Coll](http://www.zakonypreludi.sk/zz/2000-211). on free Access to information due to which the compulsory subjects (specified in § 2) have to publicize the list of regulations, guidelines, instructions, interpretative opinions, according to which the compulsory subject (state organ) acts and decides or that govern the rights and obligations of natural and legal persons in relation to the compulsory subject. [↑](#footnote-ref-32)
33. The conditions are stipulated in Article 84 [Act. No. 448/2008 Coll.](http://www.zakonypreludi.sk/zz/2008-448) on social services in municipalities and higher territorial units.  [↑](#footnote-ref-33)
34. [Act no. 40/1964 Coll.](http://www.zakonypreludi.sk/zz/1964-40) (Article 8 sec. 2, Article 23 sec. 2, Article 24 sec. 4, Article 44 sec. 4, Article 45 sec. 1, Article 54 sec. 5, Article 59 sec. 4, etc.). [↑](#footnote-ref-34)
35. Article 23 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-35)
36. [Act no. 36/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-36) [↑](#footnote-ref-36)
37. Article 176 et seq. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-37)
38. Article 180a and 180b [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-38)
39. Article 181 et seq. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-39)
40. Article 192 et 193 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-40)
41. Article 194 et seq. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-41)
42. Article 74 et seq. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-42)
43. Article 272 et seq. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-43)
44. [Act no. 308/1993 Coll.](http://www.zakonypreludi.sk/zz/1993-308) on Establishment of the Slovak National Centre for Human Rights as amended. [↑](#footnote-ref-44)
45. [Act no. 365/2004 Coll.](http://www.zakonypreludi.sk/zz/2004-365) on Equal treatment. [↑](#footnote-ref-45)
46. See Article 5 [Act no. 305/2005 Coll](http://www.zakonypreludi.sk/zz/2005-305). [↑](#footnote-ref-46)
47. Article 179 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-47)
48. See the judicial decision no. V 22/1984. [↑](#footnote-ref-48)
49. In Slovak „*spôsobilosť na práva a povinnosti*“ or „*právna subjektivita*“. [↑](#footnote-ref-49)
50. In Slovak “*spôsobilosť byť účastníkom konania*“ or „*procesná subjektivita*“. [↑](#footnote-ref-50)
51. Article 7 of [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) (Act No. 40/1964 Coll.), Article 19 of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-51)
52. In Slovak „*spôsobilosť samostatne konať pred súdom*“ or „*procesná spôsobilosť*“. [↑](#footnote-ref-52)
53. In Slovak „*spôsobilosť na právne úkony*“. [↑](#footnote-ref-53)
54. Article 9 of [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) (Act No. 40/1964 Coll.), Article 20 of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-54)
55. By the adoption of the new [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) of r. 1964 (Act no. 40/1964 Coll.) the age limits were removed (this was a determining age classes 6 and 15 years), which were decisive for the acquisition of legal capacity. The original legislation was indeed mechanical, but the process of determination of legal and procedural capability was unambiguous. [↑](#footnote-ref-55)
56. Švestka, J. – Spáčil, J. – Škárová, M. – Hulmák, M. a kol.: [Civil Code](http://www.zakonypreludi.sk/zz/1964-40) Commentary (*Občanský zákonník I. Komentář).* Praha : C. H. Beck, 2008, p. 103. [↑](#footnote-ref-56)
57. Article 23 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-57)
58. Article 23 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-58)
59. See Article 24 sec. 1 of [Family Act](http://www.zakonypreludi.sk/zz/2005-36) (Act no. 36/2005 Coll.). [↑](#footnote-ref-59)
60. Article 126 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-60)
61. Article 126 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-61)
62. Article 94 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-62)
63. Article 35 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-63)
64. Gešková, K. ‘Hearing of a minor’, In: Ficová, S. a kol. *Protection of minor in civil procedure* (*Ochrana práv maloletých v civilnom procese*), Eurounion, Bratislava, 2008, s. 213. [↑](#footnote-ref-64)
65. Article 5 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-65)
66. Pavelková, [Family Act](http://www.zakonypreludi.sk/zz/2005-36) (*B. Zákon o rodine*). Commentary (*Komentár*). C.H.Beck, Praha. 2011,p. 242. [↑](#footnote-ref-66)
67. Article 20 [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-67)
68. Article 116 section 6 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-68)
69. Article 11 [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-69)
70. Article 126 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-70)
71. Article 44 sec. 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-71)
72. Article 44 sec. 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-72)
73. Article 5 sec. 2 letter e.) and f.) of Decree of Ministry of Justice of the Slovak republic [no. 482/2011Coll.](http://www.zakonypreludi.sk/zz/2011-482) on the publication of judicial decisions. [↑](#footnote-ref-73)
74. Article 30 of [Act no. 385/2000 Coll.](http://www.zakonypreludi.sk/zz/2000-385) on judges and lay judges. [↑](#footnote-ref-74)
75. Article 23 of [Act no. 586/2003 Coll.](http://www.zakonypreludi.sk/zz/2003-586) on advocacy. [↑](#footnote-ref-75)
76. Article 89 [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-76)
77. Constitutional [Act no. 460/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-460). [↑](#footnote-ref-77)
78. article 48 section 2 of [Constitution of the Slovak Republic](http://www.slovakia.org/sk-constitution.htm). [↑](#footnote-ref-78)
79. Article 100 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-79)
80. Article 101 section 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-80)
81. Article 114 section 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-81)
82. Article 119 section 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-82)
83. Article 176 and subs. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-83)
84. Article 180a and 180b [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-84)
85. Article 181 and subs. [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-85)
86. Article 75a [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-86)
87. Article 75a [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-87)
88. Article 117 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-88)
89. Article 122 section 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-89)
90. Decision of Supreme Court of Slovak Republic, no. 2 Cdo 193/2007, published in journal: „*Zo súdnej praxe*“ (From judicial practice) no. 3/2008 under no. 35. [↑](#footnote-ref-90)
91. Article 116 section 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-91)
92. Article 116 section 6 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-92)
93. Article 100 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-93)
94. e.g. Article 43 sec. 1, Article 101 sec. 4 [Family Act](http://www.zakonypreludi.sk/zz/2005-36). [↑](#footnote-ref-94)
95. Article 43 section 1 [Family Act](http://www.zakonypreludi.sk/zz/2005-36), see also Article 100 sec. 4 [Family Act](http://www.zakonypreludi.sk/zz/2005-36). [↑](#footnote-ref-95)
96. Decision of Supreme Court of Slovak Republic, no. 2 Cdo 193/2007, published in journal: „*Zo súdnej praxe*“ (From judicial practice) no. 3/2008 under no. 35. [↑](#footnote-ref-96)
97. Article 122 sec. 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-97)
98. Gešková, K. ‘Hearing of a minor’, In: Ficová, S. a kol. *Protection of minor in civil procedure* (*Ochrana práv maloletých v civilnom procese*), Eurounion, Bratislava, 2008, s. 213. [↑](#footnote-ref-98)
99. ibid. [↑](#footnote-ref-99)
100. Article 132 of [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-100)
101. Article 221 sec. 1 letter f.) [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-101)
102. Article 237 letter f.) [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-102)
103. Article 4 of [Act no. 71/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-71) on court fees. [↑](#footnote-ref-103)
104. Article 138 section 6 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-104)
105. Article 148 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-105)
106. Jurčová, M., Pavelková, B., Nevolná, Z., Olšovská, A., Smyčková, R. *Representation in private law* *(Zastúpenie v súkromnom práve*). Praha: C.h.Beck, 2012, s. 123. [↑](#footnote-ref-106)
107. Article 138 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-107)
108. Article 4 of [Act no. 71/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-71) on court fees. [↑](#footnote-ref-108)
109. According to [Act No. 327/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-327) on the provision of legal assistance to persons in material need. [↑](#footnote-ref-109)
110. Regulated by [Act no. 244/2002 Coll.](http://www.zakonypreludi.sk/zz/2002-244) on arbitration, see also Article 106 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-110)
111. Regulated by [Act No. 420/2004 Coll.](http://www.zakonypreludi.sk/zz/2004-420) on mediation, see also Article 99 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-111)
112. Article 99 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-112)
113. Article 99 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-113)
114. Article 67 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-114)
115. [Act no. 420/2004 Coll.](http://www.zakonypreludi.sk/zz/2004-420) on mediation. [↑](#footnote-ref-115)
116. [Act no. 244/2002 Coll.](http://www.zakonypreludi.sk/zz/2002-244) on arbitration. [↑](#footnote-ref-116)
117. Article 40 sub. 1(a) of [Act no. 244/2002 Coll.](http://www.zakonypreludi.sk/zz/2002-244) on arbitration. [↑](#footnote-ref-117)
118. Article 24 of [Family Act](http://www.zakonypreludi.sk/zz/2005-36). [↑](#footnote-ref-118)
119. Article 30 [Civil Code](http://www.zakonypreludi.sk/zz/1964-40). [↑](#footnote-ref-119)
120. Article 31 sec. 2 [Family Act](http://www.zakonypreludi.sk/zz/2005-36) (Act no. 36/2005 Coll.). [↑](#footnote-ref-120)
121. Article 20 [Act No. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-121)
122. Jurčová, M., Pavelková, B., Nevolná, Z., Olšovská, A., Smyčková, R. Representation in private law (*Zastúpenie v súkromnom práve*). Praha: C.h.Beck, 2012, s. 123. [↑](#footnote-ref-122)
123. Article 4 Act no. [Act no. 71/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-71) on court fees. [↑](#footnote-ref-123)
124. Article 138 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-124)
125. Article 4 of [Act no. 71/1992 Coll.](http://www.zakonypreludi.sk/zz/1992-71) on court fees. [↑](#footnote-ref-125)
126. Article 138 section 6 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-126)
127. Article 148 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-127)
128. According to 146 section 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99) “no party shall be entitled to have the costs reimbursed on the basis of the outcome of the proceedings if the proceedings can be initiated on the court's own motion. [↑](#footnote-ref-128)
129. Article 150 section 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-129)
130. according to Article [Act no. 327/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-327) on the provision of legal assistance to persons in material need. [↑](#footnote-ref-130)
131. [Act no. 601/2003 Coll.](http://www.zakonypreludi.sk/zz/2003-601) on subsistence minimum, currently it is the amount of EUR 194,58. [↑](#footnote-ref-131)
132. [Act no. 663/2007 Coll](http://www.zakonypreludi.sk/zz/2007-663). on minimal wage, currently it is the amount of EUR 337,70 euro. [↑](#footnote-ref-132)
133. By the [Act No. 327/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-327) on the provision of legal assistance to persons in material need. [↑](#footnote-ref-133)
134. [Act no. 233/1995 Coll.](http://www.zakonypreludi.sk/zz/1995-233)  on executors and execution procedure. [↑](#footnote-ref-134)
135. Regulated also by [Act no. 65/2001 Coll.](http://www.zakonypreludi.sk/zz/2001-65) on the enforcement of judicial claims. [↑](#footnote-ref-135)
136. Article 272 - Article 273c [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-136)
137. Article 251 - Article 320a [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-137)
138. Article 161 sec. 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-138)
139. Article 159 sec. 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-139)
140. Article 162 sec. 1 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-140)
141. Article 162 sec. 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-141)
142. Article 171 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-142)
143. Article 74 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-143)
144. Article 94 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-144)
145. Article 163 section 2 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-145)
146. Article 76 section 1 letter b.) [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-146)
147. Article 76 section 1 letter a.) [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-147)
148. Article 207 of [Criminal Code](http://www.zakonypreludi.sk/zz/2005-300) (Act no. 300/2005 Coll.). [↑](#footnote-ref-148)
149. [Act no. 201/2008 Coll.](http://www.zakonypreludi.sk/zz/2008-201)  on substitute maintenance payment (on substitute alimony). [↑](#footnote-ref-149)
150. [Act no. 601/2003 Coll.](http://www.zakonypreludi.sk/zz/2003-601)  on subsistence minimum, currently it is the amount of 194,58 euro. [↑](#footnote-ref-150)
151. [Act no. 601/2003 Coll.](http://www.zakonypreludi.sk/zz/2003-601)  on subsistence minimum. [↑](#footnote-ref-151)
152. Article 176 [CPC](http://www.zakonypreludi.sk/zz/1963-99). [↑](#footnote-ref-152)
153. Due to Article 25 sec. 4 of [Family Act](http://www.zakonypreludi.sk/zz/2005-36). [↑](#footnote-ref-153)
154. Article 27 sec. 3 [Act no. 305/2005 Coll.](http://www.zakonypreludi.sk/zz/2005-305) on socio-legal protection of children and social guardianship. [↑](#footnote-ref-154)
155. [Notice of the Ministry of Justice no. 474/2011 Coll.](http://www.zakonypreludi.sk/zz/2011-474)  [↑](#footnote-ref-155)
156. Article 349 of [Criminal Code](http://www.zakonypreludi.sk/zz/2005-300): “The person, against whom the measures were used in civil proceedings that lead to the execution of the judgement or an approved agreement on upbringing of minor children, who hinders the execution of the judgement or agreement or the person who hinders the execution of tentative measure imposed in the civil proceedings concerning the care of minor children, shall be given a sentence of imprisonment for the period between 1 and 5 years.” [↑](#footnote-ref-156)
157. Article 25 sec. 4 of [Family Act](http://www.zakonypreludi.sk/zz/2005-36). [↑](#footnote-ref-157)
158. Article 251 - Article 320a CPC. [↑](#footnote-ref-158)