

Doc. JUDr. Ondřej Frinta, Ph.D., JUDr. Dita Frintová,  
Ph.D., Doc. JUDr. et PhDr. David Elischer, Ph.D.<sup>1</sup>

## Children and Their Debts: Current Situation in the Czech Republic.

### Part Three: Practical, Ethical, Procedural, and Comparative Perspectives and Current Proposals of Legislative Solutions<sup>\*2</sup>

#### 1. THE RIGHT OF A CHILD CLAIM COMPENSATION FOR LOSS FROM PARENTS FROM A PRACTICAL AND ETHICAL PERSPECTIVE

It was stated in the previous parts of this paper that if the parents know about the child's debt and fail to act with due managerial care, the duty to compensate the child for the loss incurred is incident upon them (see above for interpretation of Article 896 et seq. of the Civil Code<sup>3</sup>). We must add that if the parents have and discharge parental responsibility, they are the legal representatives of the child. Under Article 646 CC, if a relationship exists between a minor and his/her legal representative (as well as between a tutor and the person under tutorship and between a curator and the person under curatorship), the limitation period does not commence or, if it has commenced, it is suspended (i.e. it cannot expire) while the given relationship continues. To put it simply, the majority of minors acquire full legal capacity upon reaching majority, i.e. when they turn 18. Upon the minor's acquiring full legal capacity, the parental responsibility (Article 858 CC), tutorship (Article 935 CC) or curatorship (Article 935 CC in conjunction with Article 944 CC), as the case may be, ceases. When the child acquires full legal capacity, the parents (tutor or curator) transfer to him/her the assets and liabilities they have

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<sup>1</sup> The authors are members of the Department of Civil Law, Law Faculty, Charles University in Prague, Czech Republic.

<sup>2</sup> See parts I and II of the series: O. Frinta, D. Frintová, D. Elischer, *Children and Their Debts: Current Situation in the Czech Republic. Part One: General Findings and Particular Types of Debts*, "Prawo w Działaniu" 2020, No. 42, pp. 111–135; O. Frinta, D. Frintová, *Children and Their Debts: Current Situation in the Czech Republic. Part Two: Specific Aspects of Debts of Children Arising from Contracts for Transportation of Persons*, "Prawo w Działaniu" 2020, No. 44, pp. 137–160.

<sup>3</sup> Act No. 89/2012 Sb., hereinafter: "CC".

administered and provide the child with an itemized account of their administration of the child's assets and liabilities without undue delay, and no later than within six months from the day when the child acquired full legal capacity. The itemized account is not necessary if the child does not request it (Article 902(1) CC). Assuming that the child finds out from his/her parents about the debt resulting from past fare-dodging when taking over his/her assets and liabilities from the parents' administration, at this point the limitation period commences for the potential compensation for loss by the parents if the child is of the opinion that the parents failed to act with due managerial care. The limitation period for the right to compensation for loss or injury is ten years, and for damage caused intentionally it is 15 years (Article 636 CC). Therefore, the child should have sufficient time to seeking compensation for loss caused by the parents as a result of a breach of their duty of managerial care.

The above consideration is truly theoretical and must be substantially adjusted to reflect real life or the reality of family relationships. The theoretical construction is based on the assumption that the parents knew about the debt owed by the child and that they would inform the child of the debt when transferring the assets and liabilities to him/her. However, the previous parts of the paper demonstrated that in a family functioning in a standard manner the situation involving the child's debt for riding without a valid ticket does not remain unresolved for several years until the child reaches majority. The cases that attract the attention of the media (and, therefore, are also the principal subject of this paper) involve families or family relationships that are dysfunctional for a variety of reasons. Such families tend to change the place of residence often, and the children often live for extended periods of time with their grandparents or other relatives (without an official change of the child's permanent residence), or in children's care homes, etc. It is quite likely that the parents will not be aware of the fact that the child was caught riding without a ticket (the formal requests for payment from the carrier are delivered to old addresses). Clearly, if the parents do not know about the debt of the child, they cannot be deemed in breach of their duty of managerial care.

In families susceptible to various dysfunctions (as indicated above), the parents often show a lack of interest in managing the affairs of their child properly. Such parents may take over the formal request for payment from the carrier, but when they find out about the debt incurred by the child, they do not respond to the request as the child, from their perspective, is indigent, and should not be expected to pay anything. The parents either do not foresee that the debt will not disappear or that it will even start increasing or are not interested in it. For example, A. Vlachová speaks about this quite openly based on her practical experience: "The main reason for children's debts are always the parents<sup>4</sup>. Children become debtors when they are misfortunate in being born to parents who do not take proper care of them. This is a common feature of all child debtors. In a family that functions normally, children do not incur debts, and if so, for example due to fare dodging, the parents pay the debt of the child and the child does not become a debtor subject to enforcement proceedings. On the other hand, if the child comes from a family where the parents

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<sup>4</sup> Authors' note: *nota bene* (!).

do not act the way they should and they fail to duly discharge their duty to maintain and support the child, then such children become debtors.”<sup>5</sup> If the parents do not exercise their parental responsibility or discharge the duty to maintain and support duly, they cannot be expected to inform the child of the debt following the procedure set out in Article 902 CC described above even if they knew about the debt. Therefore, the child does not usually find out about the debt from his/her parents upon attaining majority (or earlier), the child usually finds out later, typically when he/she is served a document from an enforcement agent or when he/she starts earning money and a portion of the wages is garnished by the employer due to the enforcement proceedings which were commenced a long time ago.

Above all, when the child (now an adult) finds out that he/she is supposed to repay a debt which has arisen and increased considerably, partly due to dysfunctional parents and partly because of the disregard for his/her right to a fair trial (for a general discussion, see below), where as a child he/she was unable to influence any of these negative factors, we consider it rather problematic to advise such a person to seek compensation from his/her parents. The parents are clearly unlikely to provide such compensation voluntarily. From a purely financial point of view the way the now adult child thinks about the course of action (whether to seek compensation from parents in court or not) will necessarily be influenced by the image of the parents' financial situation. We can guess the situation is below average, if not downright poverty. Again, from a purely financial perspective, the question necessarily arises as to whether it makes sense to make a claim against one's parents. From this perspective we find it purely *passing the buck* to advise the child to file a claim against his/her parents with an uncertain result, or rather a result which is easily foreseeable if the root cause of the issue is the inability of the state to guarantee a fair trial to the child, including protection of the child's procedural rights in a manner adequate to his/her age (see below).

It was necessary to mention the financial perspective, however we do not consider financial situation to be the principal reason that makes the solution of claiming compensation for loss from parents rather contentious. Family relationships (any relationships indeed) must always be considered also from the *ethical* point of view. And we must ask: is it possible to consider it ethical to advise a child to sue his/her parents?<sup>6</sup> Whatever the relationships within the family, it is fair to assume that there was an elementary bond between the child and the parents. The fact that one of the root causes of this issue is the state's inability to guarantee a fair trial for the child makes this question even more acute. If this procedure (suing the parents) was the only assistance offered by the state to “child debtors” we consider it not only *purely buck-passing* but also *completely unethical*, offending common human feelings (Article 2 CC). This is not to say that the right of the child to claim compensation

<sup>5</sup> A. Skoupá, *Stát by měl dětem pomáhat, ne z nich dělat dlužníky, říká advokátka Vlachová* [The State Should Help Children Rather Than Make Them Debtors, Says Attorney Vlachová], Aktuálně.cz [online], 23 September 2018, available at: <https://zpravy.aktualne.cz/domaci/stat-by-mel-detem-pomahat-ne-z-nich-delat-dluzniky-rika-advo/r~8b8a9bf8bd9e11e8b5b20cc47ab5f122/> [accessed on: 27 June 2019].

<sup>6</sup> Even though this principle cannot be interpreted word for word, we should remember: “*Parentes naturales in ius vocare nemo potest: una est enim omnibus parentibus servanda reverentia*”, which translates as “Nobody may sue natural ancestors; all ancestors deserve the same respect.” D 2, 4, 6, Paulus 1 sent. Quoted from M. Skřejpek (ed.) *Digesta seu Pandectae/Digesta neboli Pandekty* [Digesta or Pandectae] Tomus I. Liber I–XV. *Fragmetna selecta*, 1<sup>st</sup> ed. Prague 2015, pp. 238–239.

for loss from his/her parents under Article 896 CC should not be regulated at all. Of course, there may be situations when in the relationship between the parents and the child the only solution left will be for the child to claim compensation from parents who did not administer his/her assets and liabilities properly<sup>7</sup>, however, we must remember that: “The reach of the law is always limited and in this field<sup>8</sup> the impact of the law may be fatal. [...] If it is necessary that the law decides a litigation between a husband and wife, between parents and children, it is unfortunate if not a complete failure. If something can prove how much we lack in moral perfection, it is certainly the fact that law has to deal with the issues of family life.”<sup>9</sup>

For all the reasons mentioned above we cannot consider the procedure defined in Article 896 et seq. CC as an acceptable solution to the situation of “child debtors”, all the less so if it were to be the only possible solution. Therefore, we conclude that the issue must be resolved using other means.

## 2. PROTECTION OF THE RIGHTS OF THE CHILD IN CIVIL PROCEEDINGS

It was indicated above that in case of “*child debtors*” with debts arising under transportation contracts, the root cause of the issue – i.e. why the child finds out about the debt too late when it has already increased considerably – is in the insufficient protection of the minor in civil proceedings. The procedural aspects of this issue cannot be overlooked. With the exception of fees for communal waste and debts owed to mobile operators (which are claimed and enforced in a different way) in all the remaining cases (rides without a valid ticket, library fees, regulatory fees in healthcare, rent owed) these aspects constitute a common denominator: if the debtor in all these cases does not pay voluntarily, the creditor must file a claim in a lawsuit. This simultaneously increases the severity of the issue: because if this issue currently emerged in relation to claims for rides without a valid ticket, it cannot be excluded that it might emerge with the same intensity for another type of debt.

And it is necessary to state that owing to the interest sparked by the impact of old debts for rides without a valid ticket, we can see how serious consequences there may be if recurring cases are decided automatically, irrespective of the specific circumstances, in this case in particular irrespective of the fact that the minor child is a party to the litigation.

There is no need to reiterate that a child has a specific position in society. With respect to their physical and mainly mental immaturity it is necessary to provide special protection to children. This is in general expressed on the constitutional level in Article 32(1) of the Charter of Fundamental Rights and Freedoms<sup>10</sup>: “Special protection of children and adolescents is guaranteed.”

<sup>7</sup> See e.g.: P. Biskup, *Matka rozfofrovala osmiletému synovi statisíce* [Mother Wasted Hundreds of Thousands of her Eight-Year-Old Son's Money], *Novinky.cz* [online], 25 September 2018, available at: <https://www.novinky.cz/krimi/508672-matka-rozfofrovala-osmiletemu-synovi-statisice.html> [accessed on: 28 June 2019].

<sup>8</sup> Authors' note: i.e. in the field of family law.

<sup>9</sup> E. Svoboda, *Rodinné právo československé* [Czechoslovak Family Law], 1<sup>st</sup> ed. Prague, 1935, p. 7.

<sup>10</sup> Resolution No. 2/1993 Sb. of the Presidium of the Czech National Council of 16 December 1992 on Promulgation of the Charter of Fundamental Rights and Freedoms as an integral part of the Constitutional Order of the Czech Republic.

On the international level, we must mention the United Nations Convention on the Rights of the Child<sup>11</sup>, which in Article 3(1) requires that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Under Article 3(2) of the Convention it is necessary to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, all appropriate legislative and administrative measures must be taken. And finally, under Article 27(2) of the Convention the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. The best interests and well-being<sup>12</sup> of the child are also mentioned in Article 24 of the Charter of Fundamental Rights of the European Union<sup>13</sup>. In relation to civil proceedings it is also necessary to point out Article 12 of the Convention, which provides that States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law<sup>14</sup>.

If we go through the provisions of the Civil Procedure Code<sup>15</sup>, we can see that few have the primary purpose of special protection of minor children. In general, anybody (including a child) may make independent juridical acts before the court (the capacity to be a party to legal proceedings) within the limits of the person's legal capacity (Article 20(1) CPC), where an individual (a natural person) who cannot act before the court independently (i.e. any natural person, including a child) must be represented by a representative or curator (Article 22 CPC). And finally, in the case of persons who do not have full legal capacity (i.e. minors), the presiding judge may decide (whenever the circumstances of the case warrant it) that the natural person who does not have full legal capacity must be represented in the proceedings by a legal representative or curator even if it is a case in which such a person could otherwise act independently (Article 23 CPC). This provision enables the capacity to act before the court to be assessed on an individual basis, irrespective of the degree of legal capacity. The purpose is clear: proceedings before the court are often more demanding and complex than just acting within

<sup>11</sup> The Communication of the Federal Ministry of Foreign Affairs No. 104/1991 Sb., on becoming a State Party to the Convention on the Rights of the Child; hereinafter: the "Convention".

<sup>12</sup> On distinguishing these two concepts, see e.g.: D. Melicharová (Frintová), *Postavení nezletilého v civilním právu procesním* [The Status of a Minor in Civil Procedural Law], [in:] M. Malacka (ed.), *Sborník příspěvků z konference Monseho olomoucké právnické dny* [Proceedings of Monse's Days of Law in Olomouc], 1<sup>st</sup> ed. Olomouc 2006, p. 274 et seq.

<sup>13</sup> OJ C 326, 26.10.2012, pp. 391–407.

<sup>14</sup> On this topic see e.g.: D. Melicharová (Frintová), *Specifika výslechu nezletilého v civilním řízení* [Particularities of Examination of a Minor in Civil Proceedings], "Soudce" 2008, No. 7–8, p. 62 et seq.

<sup>15</sup> Act No. 99/1963 Sb., the Civil Procedure Code, hereinafter: "Civil Procedure Code" or "CPC". For the sake of completeness, we must point out that this paper only focuses on the status of the child in trial.

substantive law, so a minor may be capable of acting within substantive law, but he/she may not be able to assert his/her right before the court due to the greater complexity. With respect to the right of the child to be heard in the proceedings, we must mention Article 100(3) CPC, which provides that where a minor child who is capable of forming his/her views is a party to the proceedings the court proceeds so that the opinion of such party on the case is sought. The court obtains the opinion of the minor child by examining him/her. In exceptional cases, the opinion of the child may also be obtained by the court via his/her representative, expert opinion, or a competent body in charge of the social protection of children. The examination of the child may also be carried out by the court without the presence of other persons if it may be expected that their presence could influence the child such that he/she would not express his/her true opinion; the presence of a confidant who is not the legal representative of the child and whose presence during the examination is requested by the child may be excluded by the court only if the presence of the confidant obstructs the purpose of the examination. The court takes the opinion of the child into consideration having regard to the child's age and intellectual maturity.

In the context of the last provision mentioned above it is necessary to mention Article 867 CC. This provision states that before making a decision concerning the interests of the child, the court provides the child with the necessary information so that the child may form his/her opinion and express it. The court pays appropriate attention to the opinion of the child. This provision relates to decisions concerning parental responsibility, but it gives certain guidance as to the age from which it is necessary to involve the child directly (and seek his/her opinion). The threshold of twelve years of age is construed as rebuttable presumption ("a child older than twelve years is presumed to be ..."), and thus in specific cases it is possible to obtain the opinion of the child even below this age limit. If the court establishes that the child is unable to properly understand the information and that he/she is unable to form or communicate his/her opinion, the court informs and examines a person which is capable of protecting the interests of the child, who must be a person whose interests are not in conflict with the interests of the child (Article 867(2) CC).

An analysis of cases of debts arising from rides without a valid ticket and the decision-making practice of courts<sup>16</sup> showed that the rights of minors were not sufficiently (if at all) protected in the proceedings. If the child was represented in the proceedings by his/her legal representative (parent), the latter was precisely either the person whose interests were in conflict with the interests of the child (this was the very person whose fault it was that the child was travelling without a valid ticket) or the person who had remained inactive. It shows that proper representation of the child in the proceedings is of key importance, or rather the choice of the representative is of key importance. Only a representative who discharges his/her role duly is able to at least take over the official documents from the court and react to them appropriately. And only such a representative is also able to make sure that the right of the child to be heard in the proceedings (if the age of the child permits) is actually exercised. Due representation of the child (rather than

<sup>16</sup> See: O. Frinta, D. Frintová: *Children and Their Debts: Current Situation in the Czech Republic. Part Two...*

just formal representation) becomes all the more important because the Civil Procedure Code does not contain any other “checks” apart from the aforementioned Article 100(3) CPC, which, however, did not result in the right of the child to be heard being applied by the courts in the analysed cases.

In this context it is necessary to quote the judgment of the Constitutional Court of the Czech Republic in case No. I. ÚS 1041/14: “The right of the child to be heard is broader than the mere possibility to express an opinion on the issue under consideration. This right must be interpreted also in the context of the more general right to be present when the case is tried, which constitutes an important guarantee preventing the decisions on the rights of children being made without their presence. Participation of children in the proceedings should grow with the increasing age. Children must be allowed to participate in the proceedings that concern them depending on their age and their intellectual and emotional maturity. It is a continuum where, with the increasing age and intellectual and emotional maturity, the degree of involvement of the child in the proceedings must necessarily grow. The age of 18 cannot represent the limit before which the child is not involved in the proceedings at all and after which he/she is involved fully.”<sup>17</sup>

Further, it is also necessary to mention the judgment of the Constitutional Court of the Czech Republic in case No. I. ÚS 3304/13: “also when the court appoints a curator for the child as a party to civil litigation, the court should usually appoint an attorney-at-law to protect the best interests of the child. At the same time, the appointment of a curator does not release the court from the duty to involve the child in the litigation providing this is not contrary to the child’s best interests. The court must enable him/her to participate in the trial and to express his/her opinion on the subject-matter of the case. A restriction on these rights of the child, if any, must always be duly justified with respect to the best interests of the child.”<sup>18</sup>

Let us add that in the analysed cases concerning rides without a valid ticket as well as debts incurred due to contracts with mobile operators, it was the legal representatives themselves who caused the debt of the minor child, so the conflict of interest between them and their children is evident: these persons should not represent the child in the proceedings and instead a curator *ad litem* should have been appointed for the child. If the parents, as representatives of the child, failed to act during the proceedings, a curator should have been appointed due to their failure to act. The appointment of a curator in both situations is explicitly required by the Civil Code: “The court appoints a curator for a child if there is a risk of a conflict of interests of the child, on the one hand, and another person, on the other hand, if the legal representative does not protect the interests of the child sufficiently, if it is necessary for other reasons in the best interests of the child, or if it is stipulated by law.”<sup>19</sup>

Based on the above and the findings of the analysis of individual types of debts of minors from the perspective of substantive law, we can confirm the conclusion

<sup>17</sup> Available at: [https://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/Publikovane\\_nalezky/I\\_US\\_1041\\_2014\\_an.pdf](https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/I_US_1041_2014_an.pdf) [accessed on: 28 June 2019].

<sup>18</sup> Available at: [https://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/I\\_US\\_3304\\_2013.pdf](https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/I_US_3304_2013.pdf) [accessed on: 29 June 2019].

<sup>19</sup> Article 943 CC.

that the root cause of the issue is insufficient protection of the rights of minors in the course of civil litigation, rather than the regulation of legal capacity, or its current conception. Therefore, any possible *lex ferenda* considerations should go in this direction.

### 3. CURRENTLY PROPOSED LEGISLATIVE SOLUTIONS

As stated in the introduction to this paper, a **private members' bill** was presented to the public first with the stated purpose of resolving the issue of "child debtors" in a uniform manner. However, this bill aroused negative reaction from the experts<sup>20</sup>. They did not deny that the issue of child debtors should be addressed, but in their opinion the proposed solution seemed completely inappropriate<sup>21</sup>. Due to the negative reaction from experts, this bill is no more considered for adoption.

The second legislative proposal, prepared by the Ministry of Justice of the Czech Republic, took inspiration from foreign (German and Dutch) legal regulations. Two variants of the bill were sent out for comments. The first variant does not propose to modify the current conception of legal capacity and, following the example of the German Civil Code, takes the route of limiting the liability for debts that a minor may incur (see below). The second variant changes the conception of legal capacity of minors to prevent such debts from arising in the first place. To put it briefly, this variant is based on the principle that the basic rule for juridical acts of minors is the requirement of consent of the legal representative, where it is only in explicitly listed cases that such consent is not required. Both variants strive to limit the tortious liability of a minor below the age of 15, while at the same time increasing the liability of the person who neglected proper supervision over the child or parental responsibility. Finally, both variants modify also the Civil Procedure Code so that it is not possible to issue a compulsory payment order, judgment in default, or judgment of recognition (in the case of so-called fiction of claim recognition) against a minor. At the same time, a duty is added to also send the legal documents to older minors when they are represented in the proceedings by legal representatives.

More detailed presentation of this draft bill and consideration of the preference for the first or second variant would require a separate paper. Given that this bill was published in the final phase of writing this paper, the authors did not have enough time and space to cover it in sufficient detail<sup>22</sup>. This is why we include only a general evaluation: in our opinion further discussion should be held on this proposal, which follows standard foreign regulations, does not contain such issues and imperfections as those described in detail found in the first private members' bill presented, and above all, focuses on strengthening the status of minors in civil proceedings, as this is where the root causes of the "child debtors" issue lie (see above).

<sup>20</sup> E.g. we can mention the meeting of the Expert Board for Civil Law of the Institute of State and Law of the Czech Academy of Sciences on 15 April 2019.

<sup>21</sup> K. Eliáš, *Vychováváme generaci negramotů? [Are We Bringing up a Generation of Illiterates?]*, "Lidové noviny", 20 May 2019, p. 15.

<sup>22</sup> At the time of revision of this article before publication, it seems that this bill will be adopted.

And finally, for the sake of completeness, it is also necessary to point out the **Insolvency Act amendment**, which was passed shortly before the completion of the manuscript. It consists in the insertion of a new paragraph 6 in Article 412a of the Insolvency Act<sup>23</sup>. Pursuant to this provision, the discharge from debts through compliance with the debt management plan and realization of assets forming part of the debtor's estate is satisfied if it has not been cancelled for a period of three years of the approval of discharge from debts. It must concern claims of unsecured creditors which arose at least in two-thirds of their amount before the debtor reached the age of 18 (for details see the quoted provision). However, we must add that this legal regulation applies only to debtors who are insolvent, so its reach is limited by this factor.

#### 4. SELECTED FOREIGN LEGAL REGULATIONS

The Czech Republic is not the only country struggling to find an adequate way of solving the issue of child debts. It may therefore be useful to become acquainted with selected solutions from abroad, in particular from France, Sweden, and Germany.

**In France** – like in the Czech Republic – the basic substance of parental rights and duties is legally defined under parental responsibility (*l'autorité parentale*). According to this definition, parental responsibility represents an aggregate of all rights and duties aiming to fulfil the interests of the child. The parents discharge their parental responsibility up to the point when the child reaches the age of majority (or up to the award of (full) legal capacity (*l'émancipation*), if it occurs earlier) to an extent enabling them to sufficiently protect the child's safety, health and moral development, to ensure the child's upbringing and enable his/her development with due respect to his/her personality. The parents involve the child in decisions concerning him/her with respect to his/her age and degree of maturity<sup>24</sup>.

Parental responsibility includes the legal representation and administration of assets and liabilities of the minor. Both parents, or only one of them, are in charge of the administration. In relation to the liability for debts of the minors a more general principle applied in French civil law is worth mentioning. This is the principle of unity, or indivisibility of assets and liabilities (*l'unicité du patrimoine*), i.e. every natural person has assets and liabilities, which are perceived as a whole. To put it simply, according to this principle, a natural person cannot divide his/her assets and liabilities and set aside part of his/her property (that would then exist separately and independently of the owner), unless this would create a juridical person. This principle is expressed in Article 2284 of the French Civil Code<sup>25</sup>. It applies also to parents discharging parental responsibility and includes also full liability for debts contracted within the framework of expenses for the household,

<sup>23</sup> The amendment was introduced by Act No. 230/2019 Sb., to amend Act No. 182/2006 Sb., to provide for insolvency and the modes of its resolution (the Insolvency Act).

<sup>24</sup> See: Art. 371-1 of the Civil Code: "L'autorité parentale est un ensemble de droits et de devoirs ayant pour finalité l'intérêt de l'enfant. Elle appartient aux parents jusqu'à la majorité ou l'émancipation de l'enfant pour le protéger dans sa sécurité, sa santé et sa moralité, pour assurer son éducation et permettre son développement, dans le respect dû à sa personne. Les parents associent l'enfant aux décisions qui le concernent, selon son âge et son degré de maturité."

<sup>25</sup> "Quiconque s'est obligé personnellement, est tenu de remplir son engagement sur tous ses biens mobiliers et immobiliers, présents et à venir."

including the debts of minor children under the control of their parents. A minor who does not have full legal capacity, cannot make any juridical acts concerning his debts contracted assets and liabilities (he/she only holds the title to property), he/she is fully under parental control. France does not apply the principle of the gradual acquisition of legal capacity. Up to the age of maturity (or emancipation) all assets and liabilities of the minor are subject to the legal regime of administration (*l'administration légale*), which is discharged by legal representatives, or tutors under the supervision of a court. The legal representative acts on account of the minor, i.e. disposes of his/her assets and liabilities. If any kind of fine (monetary sanction) is imposed on the child for a breach of statutory or contractual obligation, it must always *ipso facto* be paid by the legal representatives of the child in connection with the legal administration of the assets and liabilities of the minor. It is a consequence arising directly from the substance of parental control and administration of the assets and liabilities of the minor.

We can use the example of a contractual obligation arising from a transportation contract between a minor and a carrier. In France, a report stating that a tort was committed (a ride without a valid transport document) is addressed directly to the legal representative of the minor, who is given a two-month period to pay the fine. If the person fails to do so, the report is handed over to the relevant prosecuting attorney's office. If the legal representatives cannot pay the fine, the debt does not pass to anybody during their lifetime. Only in exceptional cases is it possible to request the minor, after reaching the age of majority, to pay the debt, but only on the grounds of discharging the children's duty to maintain and support the parents who are unable to earn their living.

Sweden chose a different approach, and since the 1970s it has had a special legal regulation, an act to regulate surcharges (sanctions) in public passenger transport (No. 67/1977)<sup>26</sup>. In relation to minors it is worthwhile to mention Article 2 of this act, which stipulates that "surcharges (sanctions) must not be imposed if the absence of a valid ticket may be excused due to the passenger's age, illness, lack of knowledge of local conditions or other circumstances". This is an exceptionally generous regulation for passengers. In practice, the provision is applied in Sweden so that the surcharge is never imposed on children up to the age of 15 as a child of this age is considered to have "no legal capacity whatsoever". This has a clear moral context where to the Swedish public it is unethical to collect any sanctions from a child of this age. It is based on a general presumption that a child does not have to be aware of the duty to have a valid transport document. It is necessary to point out that the wording of the act does not explicitly prohibit imposing a sanction, the decisive factor being discretion and ability to excuse the absence of a valid ticket.

As for children between 15 and 18 years, the approach is stricter. A child of this age will be imposed a sanction in case he cannot show a valid transport document during ticket control, but similarly to France, the request for payment of the fine is addressed to the legal representative of the child (rather than to the child). This conclusion applies also when the discretionary sanction would be imposed in rare

<sup>26</sup> Available at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-197767-om-tillagsavgift-i-kollektiv\\_sfs-1977-67](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-197767-om-tillagsavgift-i-kollektiv_sfs-1977-67) [accessed on: 29 June 2019].

cases (see above) on a child up to 15 years of age. The payment of such a sanction again would be the responsibility of the legal representative of the minor, whose name will be mentioned on the report of ticket inspection. In other words, the surcharge – the payment of which is the responsibility of the parents – is perceived as a sanction for undue administration of the assets and liabilities of the child by his/her legal representatives<sup>27</sup>.

The approach described above must be viewed within the context of the Swedish regulation of parental responsibility, which is implemented by a special law (No. 381/1949)<sup>28</sup>, which, among others, defines in more detail the relation of the parent to the assets and liabilities of the child of which the parent is the administrator.

In this respect there are three basic rules applicable to the property aspect of parental responsibility (more precisely, the assets and liabilities of the child): (1) A child below the age of 16 has no legal capacity, from the property perspective such child lacks autonomy, i.e. the parent may successfully challenge even a simple purchase of groceries by the child. (2) From 16 to 18 years (when the child acquires full legal capacity) the child may independently (i.e. without the need for consent of the legal representative) manage funds up to €300; on condition that if such disposal of property is challenged by the parent the child must prove his/her own income (e.g. from a holiday job). (3) At the same time the legal representative may not cause a child below the age of 18 to incur debt, or the legal representative may do so (i.e. buy immovable property or make an agreement for a service in the name of the child) only with the consent of the local administrative authority (not the court)<sup>29</sup>. However, if a service is contracted in the name of the child (e.g. a flat rate mobile tariff), such an obligation is deemed to be a third-party beneficiary contract, where the obligor is the legal representative of the child, who will also have the duty to pay the debts incurred under the contract.

The **Federal Republic of Germany** applies a different approach to the legal capacity of minors. Their legal capacity is limited by the rules contained in Articles 107 to 113 of the German Civil Code<sup>30</sup>. The key rule is contained in Article 107 BGB, under which a minor must have the consent of his/her representative for every declaration of will by which he/she does not acquire only a legal advantage (benefit). If a minor, despite this rule, enters into a contract which, apart from benefits, imposes also obligations on him/her without the consent of the representative, the effect of such contract depends on whether the representative expresses additional consent (Article 108(1) BGB). A contract entered into by a minor without the

<sup>27</sup> Let us add for the sake of completeness that the majority of transportation companies in Sweden stipulate in their internal regulations that sanctions will not be imposed in any of the mentioned categories (neither on children below the age of 15 nor on children between 15 and 18 years); and if any sanctions are imposed, they will not be enforced against the children. The majority of transportation companies in Sweden are public, or state-owned, and the Swedish state apparently has no intention of commencing enforcement proceedings against persons who have crossed “the threshold of adulthood”.

<sup>28</sup> Available at: <https://lagen.nu/1949:381#K13R7> [accessed on: 29 June 2019].

<sup>29</sup> See: Article 12 of the cited act.

<sup>30</sup> *Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I, S. 42, 2909; 2003 I, S. 738), das zuletzt durch Artikel 7 des Gesetzes vom 31. Januar 2019 (BGBl. I, S. 54) geändert worden ist*. Hereinafter: the “BGB”, available at: <http://www.gesetze-im-internet.de/bgb/BjNR001950896.html#BjNR001950896BJNG001102377> [accessed on: 29 June 2019].

consent of the legal representative is deemed to be effective from the beginning if the minor discharges the contract using funds the minor received from his/her representative for this purpose or for free disposal, or which the minor received from a third party with such consent (Article 110 BGB). This protects the minor against incurring potential debts.

If we project the above regulation on the field of passenger transport, this regulation prevents the fare surcharge (*erhöhtes Beförderungsentgelt* or *erhöhter Fahrpreis*) from being imposed on minors if they ride without a valid ticket. The fare surcharge currently amounts to €60<sup>31</sup>. The justification is that if a parent provides a ticket or money to buy the ticket, he/she gives consent to the child to use the means of transport duly, not to dodge the fare. If consent to fare dodging was not granted (in practice it is hard to imagine that something like this could be proven by the carrier), an effective contract could not be formed and therefore it is not possible to request a surcharge on top of the fare<sup>32</sup>. In the Czech Republic the surcharge on top of fare has the character of a penalty imposed by law, which is governed by the regulation of contractual penalty (see Article 2052 CC). In this respect the German surcharge on top of the fare is comparable with the Czech one (see *Strafversprechen für Nichterfüllung* in Article 340 BGB). However, we need to add that if the justification consists in the fact that a minor who dodges the fare is riding without a valid contract, i.e. without a legal title, then the carrier acquires a right to claim unjust enrichment under Article 812 et seq. BGB amounting to the standard fare. We must add that the private law aspects must be viewed in a broader context, mainly of criminal law. In Germany fare dodging actually amounts to a criminal offence of fraudulently obtained performance (*Erschleichen von Leistungen*), punishable by imprisonment of up to one year or by a monetary fine<sup>33</sup>, and criminal liability applies to persons who were aged 14 or more at the time of committing the offence<sup>34</sup>.

Finally, it is necessary to also mention the limited property liability of children, which is provided for in Article 1629a BGB<sup>35</sup>. The substance of this liability is a rule that the liability of a minor (for debts) is limited to the property available to the minor upon reaching the age of majority. This limitation applies to the

<sup>31</sup> This amount is reduced to €7 if within one week of the ticket inspection the passenger proves to the carrier that at the time of inspection he/she had a valid transport document (e.g. left it at home). See: Article 9 of *Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen vom 27. Februar 1970* (BGBl. I, S. 230), die zuletzt durch Artikel 1 der *Verordnung vom 21. Mai 2015* (BGBl. I, S. 782) geändert worden ist [Decree on general transportation conditions for tram and trolleybus transportation and for regular transportation by motor vehicles], available at: <http://www.gesetze-im-internet.de/befbedv/BjNR002300970.html> [accessed on: 30 June 2019] and also Article 12 of *Eisenbahn-Verkehrsordnung in der Fassung der Bekanntmachung vom 20. April 1999* (BGBl. I, S. 782), die zuletzt durch Artikel 1 der *Verordnung vom 5. April 2019* (BGBl. I, S. 479) geändert worden ist [Rules of Railway Transportation], available at: <https://www.gesetze-im-internet.de/evo/BjNR206630938.html> [accessed on: 29 June 2019].

<sup>32</sup> For details on German case law see e.g.: <http://www.jurarat.de/muessen-eltern-beim-schwarzfahren-ihres-minderjaehrigen-kindes-die-4000-eur-zahlen> [accessed on: 30 June 2019] or: <https://www.bussgeldkatalog.org/schwarzfahren/> [accessed on: 29 June 2019].

<sup>33</sup> See: Article 265a of *Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998* (BGBl. I, S. 3322), das zuletzt durch Artikel 2 des *Gesetzes vom 19. Juni 2019* (BGBl. I, S. 844) geändert worden ist [Criminal Code], available at: <https://www.gesetze-im-internet.de/stgb/BjNR001270871.html> [accessed on: 29 June 2019].

<sup>34</sup> Article 19 of the cited law.

<sup>35</sup> This provision was inserted in BGB by the Act on Limiting the Property Liability of Minors of 1998 (*Gesetz zur Bechränkung der Haftung Minderjähriger*, BGBl. I, S. 2487).

obligations incurred by the child based on the legal representation by his/her parents (i.e. parents acting on behalf of the child), based on juridical acts of other persons authorized to represent the child, as well as other persons' juridical acts which result in consequences for the child and finally, also on obligations that did not arise from juridical acts but from the acquisition of inheritance before reaching the age of majority. This limitation also applies to obligations arising from juridical acts of the minor under Articles 107, 108 (see above), under Article 111 (unilateral juridical acts of the minor with consent of the legal representatives) and obligations for which the parents obtained consent of the court in charge of care for minors (*Familiengericht*). If a person who reached the age of majority relies on this limitation, the rules on the liability of an heir contained in Articles 1990 and 1991 BGB<sup>36</sup> must be applied *mutatis mutandis*.

Even though the limited scope this paper does not allow us to go into all the details of these issues in the foreign regulations examined, it is clear that the solution proposed in the private members' bill in the form of a drastic intervention in the conception of the capacity of minors to make juridical acts cannot be deemed a standard solution compared to the above approaches. If a decision was made to intervene in the conception of legal capacity in the Czech Civil Code, then such intervention should be well-considered and consistent, with possible inspiration to be found in one of the above foreign regulations. The first foreign regulation to be considered is the German regulation, which inspired in many respects the current Civil Code when it was drafted and also forms the basis of the solution proposed by the Ministry of Justice of the Czech Republic (see above).

## 5. A SUMMARY OF FINDINGS

An analysis of the development of the legal regulation of minors' capacity to make juridical acts, administration of their assets and liabilities, and maintenance and support duty owed to minors has demonstrated that the current legal regulation of these issues includes strong elements of continuity with the former legal regulation. The basic conception of the current legal regulation of these issues was stipulated as early as in the 1964 Civil Code and the 1963 Family Act. However, the issue of "child debtors" emerged only approximately ten years ago. If the primary cause of this issue consisted in a deficiency or inappropriateness of this substantive law regulation, issues of this kind would certainly have emerged earlier.

We have carefully analysed the individual types of debts that are mentioned in this context. This analysis showed that there are in total six types of debts, resulting from: (1) fees for communal waste disposal, (2) rides without a valid ticket, (3) regulatory fees in healthcare, (4) services of mobile operators, (5) services of public libraries, and (6) residential rent.

The issue of fees for communal waste disposal, which was the first one to emerge, is an issue falling purely within the public law (not private law) ambit and therefore

<sup>36</sup> Put briefly and simply, an heir is liable to the creditors only up to amount of the value of the inheritance (under the conditions stated in these provisions), the so-called objection of insufficient inheritance (*Dürftigkeitseinrede des Erben*).

it was necessary to resolve the issue within public law. A solution was found after some amendments and currently this issue may be considered to have been successfully resolved.

Another issue where the public law element is strongly present is regulatory fees in healthcare. Even though healthcare services are provided based on a contract<sup>37</sup>, a sick person practically does not have any other option but to use healthcare services, to which this duty to pay a fee is connected. In this case it is also appropriate to solve the issue within public law. It was shown that this happened, but in this case it was not necessary to amend the relevant law, it was sufficient to choose an interpretation that was more advantageous for the minor (even though the specific circumstances of the case may show that in exceptional cases this interpretation may be inappropriate).

Debts arising from contracts with mobile operators (debts for performance rendered) have a purely private-law basis. The specific feature of these debts consists in the fact that their enforcement is administered through the Czech Telecommunications Office rather than through the system of general courts. When this issue was identified (with the contribution of the Ombudsman), it a change in the decision-making practice of this particular authority was enough to resolve the issue (as opposed to several years required to unify the decision-making practice of general courts). This change of decision-making practice was duly justified and supported by reference to the decision-making practice of general courts, specifically to the interpretation of the concept of parental responsibility: as a result of having parental responsibility the parents are responsible for discharging the obligations of the minor. Currently this issue cannot occur, because in order to enter into such contract on behalf of the child a person has to have the consent of court (Article 898 CC), in addition the major mobile operators now always insist on making the contract with the legal representative (even if for the benefit of the child). This particular issue may therefore also be deemed to have been successfully resolved.

Debts for the use of the services of public libraries are also purely private-law-based. Even if a public library permitted a contract to be made with a minor, in this case it also is possible to resolve it in the same way as in the case of debts for the use of mobile services. It is again the obligation of the child the discharge of which must be ensured by the parents within their parental responsibility. Additionally, it was demonstrated on the example of good practice (the Municipal Library in Prague) that even if a library enters into a contract directly with a minor, its rights may be sufficiently protected using a surety. The library rules may provide sufficient room for resolving exceptional cases. Therefore, it is clear that these cases do not require any legislative amendments, either, let alone amendments to the regulation of minors' legal capacity.

As for debts arising from the lease of a flat, it was shown that they are not cases when the lease was made directly by the minor, because in such a case the consent of the court would be required (Article 898 CC, discussed above). They are exceptional cases when the lease passes *ex lege* to the child as a person sharing

<sup>37</sup> See: healthcare under Article 2636 CC.

the household with the deceased tenant under Article 2279 CC. In this case, too, we could consider the duty of the legal representative to ensure performance of the child's obligations (see above), especially if the other parent survived. Nevertheless, if a tutor would be concerned (after the death of both parents of the child), he/she does not have the duty to maintain and support the child and has no obligation to pay the child's debts from his/her assets. Although these cases are rare (at least for the time being), we were unable to find a satisfactory solution for the situation of an indigent child and thus we have opened a discussion about the possible solutions involving legal amendments. Due to the fact that it concerns the passage of a right *ex lege* (i.e. not based on a juridical act made by the minor), it cannot be resolved by an intervention in the conception of legal capacity. The issue must be resolved otherwise within either public or private law (a consideration of possible solutions would require a separate paper, which is why we have not covered the issue here in more detail).

Finally, we have reached the issues of rides without a valid ticket. We have analysed these issues in detail, because they are currently the subject of a heated public discussion. This is also the reason why these issues were covered in a separate paper<sup>38</sup>. In this respect we may recapitulate briefly that during ticket inspection the ticket inspector has some discretion as to solving the specific situation of a passenger without a valid ticket. In the course of ticket inspection the carrier is not entitled to ascertain the identity of the person who may be accompanying the minor child riding without a valid ticket and the same applies to ascertaining the relationship between the accompanying person and the child (in particular whether the person is the child's legal representative or not). The reason why debt escalates is the further developments, especially if the debt reaches the phase of litigation and subsequent enforcement. This is where the root cause of the issue was identified: insufficient representation of the child in court proceedings or failure to allow the participation of the child in the proceedings. The cause is simple: the child is not duly represented, being represented by a person whose interests are in conflict with the best interests of the child, as it is precisely the person who usually caused the issue by neglecting parental responsibility, or the duty to maintain and support the child, or the parent fails to act in the proceedings at all. If the rights of the minor in the proceedings were duly defended, it would allow the courts to decide in the same way as indicated above in the case of debts arising from contracts with mobile operators – the parents are responsible for the discharge of obligations of the minor under the existing legal regulation, which was explicitly stated by the Constitutional Court of the Czech Republic also in the case of debts arising between carriers and passengers. Additionally, the Constitutional Court outlined another course of thought. It is necessary to consider whether in the specific case the child is really bound by all the provisions of the transportation contract (within the contractual transportation conditions), whether the child can really be aware of all consequences that may arise from riding without a valid ticket. All this is possible under the current substantive law. This clearly shows that also in this case the conception of legal capacity in the Civil Code is not the cause of the issue. It

<sup>38</sup> See: O. Frinta, D. Frintová, *Children and Their Debts: Current Situation in the Czech Republic. Part Two...*

is also necessary to note that individual transportation companies are currently changing their attitudes to enforcement of claims they already have against minors (i.e. claims that originated when the debtor was a minor) and that thanks to the recent changes in the fare tariff such situations should not occur in the future (for details see the above paper).

To sum up: four of the six groups of issues may be currently considered resolved, or capable of resolution even without any amendments to the current legal regulations. In our opinion, only two groups of issues require legislative amendments. One of them is the issue of lease passing to a child *ex lege* under Article 2279 CC, which, surprisingly, has received scant attention in the current debates. Nevertheless it is an area where we have identified the possibility of serious issues that would be difficult to resolve under the existing laws. However, in this case it is not an issue of the minor's legal capacity. As far as riding without a valid ticket is concerned, it was demonstrated that the issue does not consist in the legal regulation of the child's legal capacity, but rather in the carrier being unable to ascertain in a reliable way the personal details of the child's legal representative and, even more importantly, in insufficient protection of interests of the minor in litigation (if, in specific cases, courts permitted the minor to be represented by a person whose interests were clearly in conflict with the child's interests, or failed to act in the proceedings, there is no other option than to call it a failure). We have also demonstrated why we consider insufficient the existing possibility for the child, after reaching the age of majority, to seek compensation from the parents on the grounds of their neglect of due managerial care in administering the assets and liabilities of the minor. All this gives some directions for *lex ferenda* ideas.

## 6. LEX FERENDA PROPOSALS. CONCLUSION

Since we have identified only two areas out of the six as worthy of potential legislative amendment, we have to ask whether a proposed solution should aspire to be a universal solution that would resolve the issue in all its complexity for all potential debts.

As for the issue of debts arising from unpaid rent due to the *ex lege* passage of the lease of a flat, this is a very specific issue. Within the given space we do not want to and cannot provide a detailed, well-founded solution, even though we have outlined the direction of thought above. In any case, when searching for a solution of this particular issue, it will be necessary to balance the interests of the minor child and those of the landlord, who cannot incur an unreasonable property loss up to the time of final resolution of the issue of the child's residence.

When we think about the issue of debts for rides without a valid ticket, it is necessary to note that from the substantive civil law perspective the issue is resolved by reference to parental responsibility, and the duty to maintain and support the child, and that the root cause of the issue consists in insufficient protection of the rights of the child in the proceedings. It can be inferred that to resolve the criticized *status quo* it would be sufficient for the minor to be properly represented by a curator *ad litem* or a curator appointed due to the legal representative's failure to act (as required by Article 943 CC, see above), from among attorneys-at-law,

or if the courts, for example, did not issue in cases of minors, due to their special protection, compulsory payment orders (Article 172 et seq. CPC), judgments confirming recognition of the claim by the defendant (Article 114b et seq. CPC) or judgments in default (Article 153b CPC). This would mean that in this case also no major legislative amendment should be required (see below).

Having regard to the fact that one of the issues requires a specific solution and the other one has been resolved through interpretation of substantive law, while its real basis is in procedural law, we conclude that it is not necessary to amend the Civil Code in a way that would aspire to a comprehensive solution of the issues. It is impossible under any universal solution to distinguish the case when a child rides without a valid ticket due to dysfunctional parents from the case when the parents did everything to ensure that the child travelled duly, but the child, for example rebelling against them, dodges the fare. We must point out, as mentioned above, that every case must be considered individually and that it is impossible to define a fixed limit, which is a characteristic feature of the current conception of the gradual acquisition of legal capacity.

Nevertheless, we have demonstrated above that the protection of the rights of minors in proceedings, in particular in litigation, seems insufficient. Therefore, we believe that a possible amendment should concern *primarily* the Civil Procedure Code and the purpose of the amendment should be to strengthen the protection of the rights of minor litigants. Primarily, it is necessary to prevent such situations when the representation of the child will be up to the person whose interests are in conflict with those of the child, which entails the need to ensure that the minor will really have a curator *ad litem* in the cases when it is appropriate (also under Article 943 CC), for example by an appropriate amendment to Article 23 CPC. Furthermore, it is necessary to ensure that due to the stronger protection of minors, decisions cannot be made without hearing the minor (or without hearing the curator *ad litem* in their place), which can easily be achieved by excluding the possibility to issue a judgment in the case of minors using compulsory payment orders, judgments confirming recognition of the claim by the defendant or judgments in default. It is necessary to consider that strengthening the protection of the rights of a minor in the course of trial litigation does have a *universal* impact. It will apply in the future to any kind of debt of a minor that will be collected in this way (including any groups of debts that do not yet seem problematic).

Secondly, it is necessary to mention the issue of riding without a valid ticket because it constitutes the biggest group of problematic debts of minors. We believe that it would be appropriate to enable the carrier, once the personal details of the minor are ascertained (because the minor was caught riding without a valid ticket and is unable to pay the surcharge), to also obtain the personal details of the legal representatives. This could be achieved by a minor amendment to Article 18a (2) (c) of Act No. 111/1994 Sb., to Regulate Road Transport and Article 37 (4) (d) of the Railways Act. Thus the carrier could, from the very beginning, claim the unpaid fare from the legal representative (a solution mentioned in the overview of foreign legal regulations), at the same time it would prevent cases when the legal representative, who might otherwise want to resolve the situation, does not find out about the debt of the child. As the surcharge on top of the fare has the character

of a penalty imposed by law (Article 2052 CC), which is governed by the regime of contractual penalty, if there really were to be any changes to the Civil Code, it would be possible to amend the provision on contractual penalty (e.g. to limit the possibility of a minor entering into a contract providing for such a penalty without the consent of a legal representative or to set an age limit below which the minor would not have the capacity to contract such penalty). However, we must note that this alone does not resolve the issue of the fare owed.

Let us add for the sake of completeness: if there were a societal demand for a comprehensive solution to the issues of debts of minors we consider the above-mentioned foreign regulations a good source of inspiration, in particular the provisions from the Federal Republic of Germany where a law was passed limiting the property liability of minors, which also amended in an adequate and well-considered way the German Civil Code. However, this regulation must be perceived in the context of the German conception of the administration of assets and liabilities of a minor and also in the context of the German regulation of legal capacity. The intervention in the Czech Civil Code would have to be more extensive. In such a case it would be necessary to insist unconditionally on the intervention being consistent and well-considered. This was the route taken in the case of the bill prepared by the Ministry of Justice of the Czech Republic, which we consider worthy of further discussion.

The whole treatise clearly shows that potential legislative amendments must always be made after due consideration of all possible circumstances, which is particularly true when it is an intervention in the fundamental concepts of the given branch of law. This requires not only knowledge, but also time. Otherwise all the effort, despite good intentions, may cause more issues than we have faced to date, exactly in the spirit of the old saying: "Haste makes waste."

### Summary

Ondřej Frinta, Dita Frintová, David Elischer, *Children and Their Debts: Current Situation in the Czech Republic. Part Three: Practical, Ethical, Procedural, and Comparative Perspectives and Current Proposals of Legislative Solutions*

*The article deals with the issue of debts of minor children. It builds on the first part of the study, which analysed the current legal regulation of the legal capacity of minors, the administration of their assets and liabilities by legal representatives within the framework of parental responsibility and the maintenance and support duty of parents to children, and identified six problematic types of debts incurred by minors. Requesting that a child seek compensation for damage from parents who breached the duty of due managerial care in administration of the child's assets and liabilities appears to be problematic from the practical and above all ethical point of view. This is all the more so because the root cause of the problem (the child becomes aware of the debt as an adult) is not in the Civil Code, but in the lack of effective protection of the rights of minors in the civil proceedings. This is the principal direction in which the considerations of possible changes to current legislation should be driven/focused.*

**Keywords:** child, minor, debt, capacity to make juridical acts, litigation, bill, solution

## Streszczenie

### Ondřej Frinta, Dita Frintová, David Elischer, *Dzieci i ich długi – obecna sytuacja w Republice Czeskiej. Część III: Perspektywa praktyczna, etyczna, proceduralna i prawnoporównawcza oraz obecne propozycje rozwiązań legislacyjnych*

Artykuł dotyczy kwestii długów osób małoletnich. Jest on kontynuacją pierwszej części, w której poddano analizie obowiązujące regulacje prawne dotyczące zdolności osób małoletnich do dokonywania czynności prawnych, zarządu ich aktywami i zobowiązaniami sprawowanego przez przedstawicieli prawnych w ramach wykonywania władzy rodzicielskiej, a także obowiązku alimentacyjnego rodziców wobec dzieci. Wskazuje się na sześć problematycznych typów długów powstających u osób małoletnich. Wymaganie, aby dziecko dochodziło odszkodowania za szkody od rodziców, którzy nie wywiązali się z obowiązku należytej staranności w zarządzaniu aktywami i zobowiązaniami dzieci, wydaje się problematyczne z praktycznego, ale przede wszystkim etycznego punktu widzenia. Jest tak tym bardziej dlatego, że pierwotna przyczyna powstawania tych problemów (dziecko dowiaduje się o długi już jako osoba dorosła) tkwi nie w czeskim Kodeksie cywilnym, ale w braku skutecznej ochrony praw małoletnich w postępowaniach sądowych. Właśnie to powinno być głównym kierunkiem i przedmiotem uwagi w rozważaniach dotyczących ewentualnych zmian obowiązujących przepisów.

**Słowa kluczowe:** dziecko, osoba małoletnia, dług, zdolność do podejmowania czynności prawnych, spór sądowy, projekt, rozwiązanie

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