

THE BEST INTERESTS OF THE CHILD IN INTERNATIONAL AND SLOVAK LAW¹

O INTERESSE SUPERIOR DA CRIANÇA NA LEGISLAÇÃO INTERNACIONAL E ESLOVACA

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Abstract

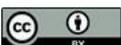
This study examines the principle of the best interests of the child as a key element in the protection of children's rights. It explores the theoretical framework of this principle and traces its historical development: from the first declarations (the Geneva Declaration of the Rights of the Child (1924) and the UN Declaration of the Rights of the Child (1959)) up to its enshrinement in contemporary international and Slovak law. It analyzes key international instruments (in particular the 1989 UN Convention on the Rights of the Child) and Slovak legal sources (e.g. Act No. 36/2005 Coll. on the Family) which establish that the best interests of the child must be a primary consideration. At the same time, it highlights the main challenges in applying this principle, including the interpretive difference between understanding the principle as a “primary” versus “paramount” consideration, terminological ambiguities in the Slovak translation, as well as the lack of impact studies in this area. The study also offers de lege ferenda suggestions – from clarifying legal terminology to introducing systematic child impact assessments in lawmaking and strengthening institutional mechanisms - with the aim of ensuring more consistent application of the principle of the best interests of the child in everyday practice.

Keywords: Best Interests of the Child. Children's Rights. Family Law. International Law. Legislation.

Resumo

Este estudo examina o princípio do interesse superior da criança como elemento fundamental na proteção dos direitos das crianças. Explora o quadro teórico deste princípio e traça o seu desenvolvimento histórico: desde as declarações do período entre guerras (Genebra, 1924; Nações Unidas, 1959) até à sua consagração no direito internacional e eslovaco contemporâneo. Analisa os principais instrumentos internacionais (em particular a Convenção das Nações Unidas sobre os Direitos da Criança de 1989) e fontes nacionais (por exemplo, a Lei n.º 36/2005 Coll. sobre a Família) que estabelecem que o interesse superior da criança deve ser uma consideração primordial. Ao mesmo tempo, destaca os principais desafios na aplicação deste princípio, incluindo a diferença interpretativa entre entender o princípio como uma consideração “primária” versus “suprema”, ambiguidades terminológicas na tradução eslovaca, bem como a falta de estudos de impacto nesta área. O estudo apresenta propostas de lege ferenda, que vão desde o esclarecimento da terminologia jurídica até à introdução de avaliações sistemáticas do impacto sobre as crianças na elaboração legislativa, bem como ao fortalecimento de mecanismos institucionais, com o objetivo de garantir uma aplicação mais consistente do princípio do interesse superior da criança na prática cotidiana.

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Palavras-chave: Direito da Família. Direito Internacional. Direitos da Criança. Interesse Superior da Criança. Legislação.

1 INTRODUCTION

The principle of the best interests of the child is currently one of the main pillars of child rights protection. It is a key principle according to which the interests of the child must be given priority in every decision concerning the child. This principle is enshrined in international documents, notably the 1989 UN Convention on the Rights of the Child (hereinafter referred to as "the Convention"), which states in Article 3(1) that *"in all actions concerning children... the best interests of the child shall be a primary consideration."*² Without the actual application of this principle, there is a risk that many of the rights declared in favor of children will remain only on paper – if the best interests of the child are not at the forefront of every relevant decision, other children's rights may lose their full meaning.³

In the first part of this paper, we will outline the historical roots of the principle of the best interests of the child and its theoretical foundations in an international context (including references to Janusz Korczak and the development of international documents). This is followed by an analysis of the implementation of the principle in international and Slovak law, which will highlight the formal anchoring of the principle in legal norms as well as specific examples of its application (or violation) in practice. As part of a critical reflection on the current state of affairs, we will point out the persistent shortcomings in the implementation of this principle – from terminological ambiguities (the difference between *"primary"* and *"paramount"*) to the narrow or inconsistent application of the principle in decision-making processes (especially outside of proceedings concerning child care). In the concluding sections, we will outline proposals de lege ferenda – including the revision of the official translation of the Convention, the

² UNITED NATIONS GENERAL ASSEMBLY. Convention on the Rights of the Child. In United Nations Treaty Series, 20 November 1989, vol. 1577, s. 3.

³ Compare J. Korczak's speech at the conference *"Can Children's Rights Be a Reality?"* (Warsaw, 1928), cited in: Korczak, J. *The Child's Right to Respect* (Slovak Pedagogical Publishing House, 2014), pp. 37–38. Korczak emphasizes that if society does not place children at the center of attention, the declared rights will remain empty words.

introduction of systematic Child Impact Assessments in the legislative process, and other measures – and summarize the importance of the principle of the best interests of the child as the foundation for the protection of children's rights.

1.1 Theoretical foundations – historical and international legal context

The idea of giving priority to the interests of the child is not new – it developed in various forms throughout the 20th century. One of the first international documents to herald this principle was the Geneva Declaration of the Rights of the Child, adopted by the League of Nations in 1924. The introductory principles of this declaration stated that *"mankind owes to the Child the best that it has to give"*⁴ – which presupposes that adults have a duty to put the welfare of the child first. Several decades later, this was followed by the UN Declaration of the Rights of the Child of November 20, 1959, which explicitly formulated the principle of the primacy of children's interests.⁵ Principle 2 of this declaration states that when adopting laws relating to children, *"the best interests of the child shall be the paramount consideration."* Furthermore, Principle 7 of the declaration stipulates that the best interests of the child shall be *"the guiding principle for those responsible for his education and guidance."* As early as 1959, the international community clearly recognized that the welfare of the child should take precedence, whether in the creation of laws or in everyday care in the family and at school.

A significant intellectual contribution to the formation of this principle was made by the Polish doctor, educator, and writer Janusz Korczak (1878–1942). As early as the beginning of the 20th century, Korczak promoted the revolutionary idea that children are equal human beings – *"not the people of tomorrow but people today"* – and deserve the same respect and consideration as adults. This understanding corresponds to the modern concept of human dignity as a fundamental personal right, which is the basis for the protection of human personality in the legal system.⁶ In his works, such as the essay *The*

⁴ LEAGUE OF NATIONS. Geneva Declaration of the Rights of the Child. Geneva: League of Nations, 1924.

⁵ UNITED NATIONS GENERAL ASSEMBLY. Declaration of the Rights of the Child. Resolution 1386 (XIV), 20 November 1959.

⁶ KOPČOVÁ, R. Personal Honour and Human Dignity as Fundamental Personal Rights. In *Central European Academy Law Review*. ISSN 3057-8396, ISSN (online) 3057-8442, 2024, vol. 2, no. 2, pp. 23–46. <https://doi.org/10.62733/2024.2.23-46>

Child's Right to Respect, he sharply criticized the social attitude of the time, which devalued the lives of children and considered them only as future human beings without full present value.⁷ In his Warsaw orphanage, Korczak not only theorized about children's rights, but also put into practice the principle that a child should be the subject, not the object, of education - he introduced self-government for children, consistently defended their dignity, and ultimately voluntarily made extreme sacrifices with them (when in 1942 he refused to leave the children deported to the Treblinka extermination camp and perished with them). Korczak's life and work thus provided a strong moral foundation for the principle of the best interests of the child. This shows that it is not an abstract legal formula, but a value manifested in the specific attitudes and responsibilities of adults towards children. Korczak's humanistic legacy has significantly influenced the next generation of experts, who have translated his vision into international law.

It was Poland – Korczak's homeland – that played a key role in the creation of the text of the UN Convention on the Rights of the Child. In 1978, on the occasion of the 100th anniversary of Korczak's birth, the Polish delegation presented the first draft of the future Convention to the UN, emphasizing from the outset the principle of the best interests of the child as a central concept. After a decade of preparations, expert discussions, and diplomatic negotiations, the principle was established as one of the cornerstones of the Convention.⁸ When the UN General Assembly unanimously adopted the Convention on the Rights of the Child on November 20, 1989, the principle of the best interests of the child was included among the four general principles on which the interpretation and implementation of all other rights are based (alongside the principles of non-discrimination, the right to life and development, and the right of the child to express their views).⁹ Article 3(1) of the Convention explicitly states that *„In all actions concerning children, whether undertaken by public or private social welfare institutions,*

⁷ KORCZAK, J. *The Child's Right to Respect*. Strasbourg: Council of Europe Publishing, 2007. ISBN 978-92-871-6261-8. See SMYCZYŃSKI, T. (ed.). *Konwencja o prawach dziecka. Analiza i wykładnia*. Poznań: Przedsiębiorstwo Wydawnicze Ars Boni et Aequi, 1999.

⁸ ANDRZEJEWSKI, M. *The Role of Prof. Tadeusz Smyczyński as a Drafter of the UN Convention on the Rights of the Child*. In *Acta Universitatis Sapientiae, Legal Studies*. ISSN 2062-9940, 2024, roč. 13, č. 1, s. 5–22. <https://doi.org/10.47745/AUSLEG.2024.13.1.01>

⁹ UN Committee on the Rights of the Child: *General Comment No. 5 – General measures of implementation of the Convention (2003)*, para. 12; and *General Comment No. 14 – The right of the child to have his or her best interests taken as a primary consideration (2013)*, paras. 1–6. Both documents confirm that Article 3(1) is one of four general principles and guides the interpretation of other rights.

*courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*¹⁰ This single sentence represented a breakthrough in international law – for the first time, the obligation to give priority to the best interests of the child applies to all decisions affecting children, not just family law or educational situations. The principle is thus to be applied to a whole range of areas, from social policy and health care to education and the decisions of courts and administrative authorities.

It should be emphasized that the wording of Article 3(1) of the Convention was the result of a compromise. Even during the preparation of the text of the Convention, there was extensive debate about the extent to which the interests of the child should take absolute precedence over other interests. The original proposals (inspired by the wording of the 1959 Declaration) used the wording that the best interests of the child would be a "*primary and decisive*" factor – which would de facto correspond to the concept of paramount consideration, i.e., an interest superior to all others. Ultimately, however, states opted for the milder expression "*a primary consideration*," which emphasizes the priority of the child's interests but does not preclude the consideration of other legitimate interests. The aim was to ensure the applicability of the principle in all proceedings (individual and collective), including situations where other relevant factors must also be taken into account (such as public safety, the rights and obligations of parents or other persons, etc.). The UN Committee on the Rights of the Child emphasizes that the principle of the best interests of the child is threefold: it is a substantive right of the child, an interpretative principle, and a procedural rule.¹¹ The resulting wording of Article 3(1) therefore means that the interests of the child must be among the first and most important considerations in every decision – not necessarily the only ones, but those that take precedence over other considerations, unless they are of equal or greater importance.¹²

¹⁰ UNITED NATIONS GENERAL ASSEMBLY. Convention on the Rights of the Child. In United Nations Treaty Series, 20 November 1989, vol. 1577, s. 3.

¹¹ UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD. General Comment No. 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1). Geneva: United Nations, 2013.

¹² Ibid., General Comment No. 14 (2013), paras. 32–40. The Committee explains the difference between "a primary consideration" and "the paramount consideration" – the first formulation leaves room to take other interests into account, but requires that the interests of the child be given priority over them, unless they are equally important in a particular case.

This is a firm legal obligation: in the words of the UN Committee on the Rights of the Child, the term "*primary consideration*" imposes an obligation on states to give priority to children – this is not an option, but a legal obligation.¹³

At the same time, the Convention does not weaken situations where legal systems have traditionally recognized the interests of the child as paramount. In family law proceedings - for example, in cases of child custody, foster care, adoption, or the regulation of contact with parents - laws often continue to stipulate that the welfare (best interests) of the child is the decisive factor in the decision. This standard existed before the adoption of the Convention in many national regulations and even in other international treaties. For example, the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires in Article 5(b) that in the upbringing of children, "*the interest of the children is the primordial consideration,*" and in Article 16(1)(d) (concerning guardianship and custody of children) states that "*the interests of the children shall be paramount*".¹⁴ Similarly, the Convention on the Rights of the Child, in its later Article 21 (regarding adoption), stipulates that the best interests of the child shall be the paramount consideration in all actions concerning children. The Convention thus fully adopted and retained these existing standards; its innovation consisted in extending the scope of the principle to all other areas concerning children.

From an international legal perspective, the principle of the best interests of the child has gradually emerged as a general interpretative principle of the Convention and of children's rights in general. The UN Committee on the Rights of the Child has repeatedly emphasized in its practice that Article 3(1) is one of the so-called general principles of the Convention, which serve as guidelines for the interpretation and application of all other provisions of the Convention. In other words, the best interests of the child represent a kind of tuning note to which all measures taken by states implementing children's rights must be aligned. This principle also fills gaps in situations

¹³ HAMMARBERG, T. *The Principle of the Best Interests of the Child – What it Means and What it Demands from Adults*. Janusz Korczak Lecture, Warsaw, 30 May 2008. Council of Europe, 2008. Hammarberg cites the conclusions of the UN Committee that the principle of the best interests of the child serves as a guide for the interpretation and implementation of all rights under the Convention and requires active measures by all components of the state.

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women (UN, 1979), Art. 5(b) and Art. 16(1)(d). E.g. Article 16(1)(d) CEDAW: "in the conclusion of marriage and in all matters relating to parenthood... the interests of the children shall be paramount".

not expressly covered by the Convention – if legislation or decision-making processes face several alternatives, it is necessary to choose the solution that best serves the interests of the children concerned. One of the implications of this principle is the requirement that every public authority (legislature, government, courts, administrative authorities) systematically consider the impact of its decisions on children. In this regard, the Committee on the Rights of the Child requires states to introduce mechanisms for assessing the impact on children – known as child impact assessment – in all fundamental legislative and administrative measures.¹⁵ This will ensure that the interests of children are not overlooked even in areas that at first glance do not exclusively concern children (such as transport policy, urban planning, or climate measures), but which significantly affect children through their consequences.

2 ANALYSIS OF THE IMPLEMENTATION OF THE PRINCIPLE IN INTERNATIONAL AND SLOVAK LAW

Since the adoption of the Convention on the Rights of the Child in 1989, the principle of the best interests of the child has been incorporated into the legal systems of many states and regional systems. Many countries have explicitly incorporated this principle into their constitutions or laws. A paradigmatic example is South Africa, which, after the fall of apartheid, adopted a new constitution in 1996 containing Article 28(2): *„A child's best interests are of paramount importance in every matter concerning the child.“*¹⁶ This constitutional provision guarantees children absolute priority – state authorities in South Africa are therefore obliged to consider the interests of the child as paramount and superior to all other circumstances in any proceedings concerning a child. Similarly, the European Union has strengthened the protection of children by enshrining in the EU Charter of Fundamental Rights (2000) in Article 24(2) that *„in all actions relating to children, whether taken by public authorities or private institutions, the child's*

¹⁵ UN Committee on the Rights of the Child: General Comment No. 5 (2003), paras. 45–47. The Committee calls on States to introduce a systematic process of child impact assessment (preliminary assessment of the impact of legislation and policies on children) and child impact evaluation (retrospective assessment of impacts) at all levels of government.

¹⁶ Constitution of the Republic of South Africa (1996), Section 28(2)

*best interests must be a primary consideration.*¹⁷ In many countries around the world, including Slovakia, family and civil law contain explicit clauses on the primacy or superiority of the interests of the child in decision-making (usually in proceedings concerning the care of minors). Formally, therefore, the principle of the best interests of the child has been enshrined in legislation and has become a generally accepted standard.

The Slovak Republic committed itself to the principle of the best interests of the child shortly after its establishment – the Convention on the Rights of the Child was ratified by Czechoslovakia in 1991 (effective for the Slovak Republic since 1993) and was published in the Collection of Laws under No. 104/1991 Coll.¹⁸ The Slovak Republic thereby committed itself to ensuring that the best interests of the child would be a primary consideration in all proceedings concerning children (whether before public authorities or in private law relationships). This commitment was reflected in several national regulations. In particular, Act No. 36/2005 Coll. on the family, in Article 5, establishes a general clause that *"the interests of a minor child are the primary consideration in all matters concerning him or her"*.¹⁹ Similarly, Act No. 305/2005 Coll. on the social and legal protection of children and social guardianship states in § 3(3) that when choosing and applying measures to protect children, *the best interests of the child are the primary consideration.*²⁰ These provisions ensure that child welfare authorities, courts, and other institutions primarily consider the benefits of a decision for the child.

Despite these formal guarantees, certain specific features and shortcomings can be identified in the Slovak implementation. One of these is the terminology used in the official translation of the Convention. The Slovak version of Article 3(1) of the Convention (published in 104/1991 Coll.) states: *"The interests of the child shall be a*

¹⁷ Charter of Fundamental Rights of the European Union. (2000). Official Journal of the European Communities, C 364, 1–22.

¹⁸ Notice of the Federal Ministry of Foreign Affairs of the Czech and Slovak Federal Republic No. 104/1991 Coll., on the conclusion of the Convention on the Rights of the Child. – Note: The official Slovak translation of the Convention (104/1991 Coll.) uses the term “interest of the child” instead of “best interests of the child”.

¹⁹ NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. Act No. 36/2005 Coll. on the family and on amendments and supplements to certain acts. Bratislava: National Council of the Slovak Republic, 2005.

²⁰ NATIONAL COUNCIL OF THE SLOVAK REPUBLIC. Act No. 305/2005 Coll. on social and legal protection of children and social guardianship and on amendments to certain acts. Bratislava: National Council of the Slovak Republic, 2005.

primary consideration...".²¹ Unlike the original, the adjective "best" is missing. The Slovak text thus requires that the interests of the child be given priority, while the English, French, Spanish, Japanese, and other language translations of the Convention refer to the best interests (English **best** interests of the child, French intérêt **supérieur** de l'enfant, Spanish el interés **superior** del niño, Japanese. 子供の**最善の利益** (kodomo no **saizen no** rieki), etc.). This is a nuance of meaning that is not insignificant: the requirement of the best interests implies seeking the optimal solution for a particular child – i.e., one that contributes most to their well-being. The phrase "interest of the child" without any qualifier could lead to a subjective or simplified understanding (e.g., from the perspective of a parent or authority, what they consider to be in the interest of the child). It would be more appropriate to explicitly add the word "best" to the text so that the Slovak version accurately reflects the spirit of the Convention. After all, several newer Slovak regulations (e.g., the aforementioned Act on Social and Legal Protection of Children) already use the terminology "best interests of the child," signaling an effort to define this principle more precisely.

3 CRITICAL REFLECTION ON THE CURRENT STATE OF IMPLEMENTATION OF THE PRINCIPLE

Despite the widespread acceptance of the principle of the best interests of the child in legal documents, significant challenges remain in its implementation in practice. First, the application of the principle is uneven across different areas of decision-making. Traditionally, the best interests of the child have been consistently assessed, particularly in proceedings concerning child care (divorce, custody, adoption, etc.). However, in other areas of public policy, the principle is often overlooked. Thomas Hammarberg, former Council of Europe Commissioner for Human Rights, pointed out as early as 2008 that few governments take the principle of the best interests of the child seriously outside the family law agenda.²² Reports by the UN Committee on the Rights of the Child repeatedly

²¹ Compare the original wording of Article 3(1) of the Convention in English: "the best interests of the child shall be a primary consideration" with the official Slovak translation (104/1991 Coll.): "the interests of the child must be a primary consideration."

²² HAMMARBERG, T. The Principle of the Best Interests of the Child: What It Means and What It Demands from Adults. Janusz Korczak Lecture, Warsaw, 30 May 2008. Strasbourg: Council of Europe,

state that although states formally recognize Article 3 of the Convention, they often forget about children when developing specific policies - in healthcare, social support, public budget planning, migration policy, etc.²³ The principle of the best interests of the child is thus often narrowed down to court disputes involving children, while in urban planning (e.g., the need for playgrounds in municipalities), environmental policy, or public health measures, the impact on children is not systematically assessed. This departmental approach weakens the effectiveness of the principle and leads to a situation where, in many decisions affecting children, their interests are not really considered a priority.

The persistence of views that downplay the principle of the best interests of the child or question its practical binding nature can also be considered problematic. In Slovakia, we encounter this phenomenon, for example, in legislative initiatives. The recent attempt to recodify the Slovak Civil Code, which was to incorporate the Family Act into the new Civil Code, illustrates the continuing misunderstanding of the significance of the principle. Although the working draft contained a reference to the best interests of the child, the text was ultimately formulated in very general terms and the principle was not included among the fundamental principles, but only as an ordinary provision without emphasis or explanation. Such an approach signals that some legislators still consider the principle to be a vague slogan that does not need to be taken seriously. Such trivialization may lead to the formal enshrinement of the principle without any real impact on decision-making practice.

Another challenge is determining the specific content of the best interests in individual cases. The principle itself does not provide clear guidance on what is best for a given child - it requires a factual analysis of the circumstances of the case and consideration of multiple factors (the child's safety, health, emotional and developmental needs, the child's views, family ties, stability of the environment, etc.). Protecting the best interests of the child involves not only ensuring their legal protection, but also supporting their mental well-being, personal development, and positive self-perception, which are

2008. Hammarberg notes that most governments apply the principle of best interests only in the traditional family agenda, while it remains neglected in broader policies.

²³ BARZÓ, T. A gyermek érdekének védelmét erősítő családjogi alapelv érvényesülésében felmerülő ellentmondások [Contradictions in the application of the family law principle strengthening the protection of the interests of the child]. In *Opuscula Civilia*, 2017, No. 2, pp. 2–15.

important prerequisites for healthy personality development.²⁴ The UN Committee, in its General Comment No. 14 (2013), detailed the methodology for assessing the best interests of the child, but in practice, there may be different interpretations. This can cause legal uncertainty or the risk of a subjective approach by the assessor. The professional literature therefore points out that the principle must be applied with due transparency of reasoning – decision-making bodies should clearly explain how they reached their conclusion on the best interests and which considerations they considered decisive.²⁵ This is the only way to prevent abuse or opportunistic interpretation of the principle.

Despite these methodological issues, however, courts and child protection authorities are gradually developing case law that gives concrete content to the principle.²⁶ For example, in the context of immigration and asylum cases, the European Court of Human Rights has emphasized that children must not bear the consequences of the actions of adults and that when deciding on the expulsion of families with children, the primary consideration must be the impact of the decision on the children (see *Neulinger a Shuruk c. Suisse*, 2010;²⁷ *Popov c. France*, 2012²⁸). Similarly, in the well-known case of *ZH (Tanzania) v. Secretary of State for the Home Department (2011)*, the UK Supreme Court authoritatively stated,²⁹ that when balancing public interest (e.g., immigration control) with the rights of the child, the interests of the child must be given significant weight as a primary consideration.³⁰ This case law extends the principle into new areas – even in traditionally adult agendas such as migration or criminal policy, the

²⁴ CHLEBCOVÁ, Veronika; TOPOR, Sophie. Som vd'achný za to, aký som: prežívanie vd'ačnosti mladými dospelými [I am grateful for who I am: experiencing gratitude in young adults]. In: GAJDOŠOVÁ, Eva (ed.). *Pozitívna psychológia pre pozitívny život*. 1st ed. Bratislava: Paneurópska vysoká škola, 2022. p. 337–347.

²⁵ TOBIN, J. Justifying Children's Rights. In *International Journal of Children's Rights*. ISSN 0927-5568, 2013, vol. 21, pp. 395–441. <https://doi.org/10.1163/15718182-02103004>

²⁶ See, for example, *Neulinger and Shuruk v. Switzerland* (ECHR – Grand Chamber, July 6, 2010, No. 41615/07), § 135

²⁷ ECtHR. *Neulinger and Shuruk v. Switzerland*, Grand Chamber judgment of July 6, 2010, application no. 41615/07.

²⁸ EŠLP. *Popov proti Francúzsku*, rozsudok z 19. januára 2012, s'ťažnosti č. 39472/07 a 39474/07.

²⁹ *ZH (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166 (UK Supreme Court), per Lady Hale, para. 33. The Court states that the best interests of the child must be a primary consideration in decisions on the deportation of parents – meaning that they must take precedence over other factors, although not necessarily absolutely (in the specific case, consideration of the children's interests led to the revocation of the decision to deport the mother – the children would suffer disproportionate harm from being separated from their environment in the UK)

³⁰ UNITED KINGDOM – SUPREME COURT. *ZH (Tanzania) v. Secretary of State for the Home Department*, judgment of 1 February 2011, [2011] UKSC 4.

requirement is beginning to be enforced: beware, there are children here too, and their best interests must be taken into account.

Unfortunately, international events also offer frightening examples of gross disregard for the best interests of the child. For example, the policy of separating migrant children from their parents at the US border in 2018 resonated particularly strongly. Thousands of children were forcibly taken from their parents and placed in detention centers as part of the fight against illegal migration, regardless of the profoundly negative impact on their mental health and further development. This practice, widely condemned by rights organizations and the UN, flagrantly violated the principle of the best interests of the child. Ultimately, it led to pressure from the international community and a change in US policy. The experience of 2018 reinforced the awareness that no country (even in the name of security or political goals) can legitimately ignore the basic needs and rights of children.

As far as the Slovak Republic is concerned, it formally belongs to the countries that adhere to the highest standards of child protection. As mentioned above, the principle of the best interests of the child is enshrined in the main legislation concerning children and families. However, even in our country, gaps can be identified between the letter of the law and everyday reality. One of these is the aforementioned inconsistency in the understanding and application of this principle among different actors. In practice, we sometimes encounter a formalistic reference to the best interests of the child without a deeper analysis of what is actually best for the child. There is a lack of detailed guidelines or methodologies (e.g., for courts, labor and social affairs offices, or guardians) that would help to unify the application of the best interests of the child principle in different situations.

Another problem is the absence of a systematic assessment of the impact of new laws and policies on children. Although the UN Committee explicitly recommends the introduction of mandatory child impact studies, such a tool is not yet used in Slovakia.³¹ Although there is an obligation to assess the impact of proposed laws in the legislative process, the impact on children as a specific category of the population is not usually analyzed thoroughly. As a result, some laws (e.g., in the areas of housing, health care,

³¹ UN Committee on the Rights of the Child: General Comment No. 5 (2003), paras. 45–47.

digitization, etc.) are adopted without consideration of how they will affect children, either directly or indirectly through their impact on families. This situation contrasts, for example, with the practice in some Nordic countries or Canada, where children's rights are integrated into the *ex ante* assessment of legislation. Slovakia has room for improvement in this regard.

Finally, the position of children's rights in the decision-making culture also deserves critical mention. While the principle of best interests is based on the premise that children are full holders of rights and interests here and now, in everyday social discourse a paternalistic view sometimes prevails (e.g., that adults know better what is good for children, without the need to ask them for their opinion). This can weaken efforts to genuinely identify and respect the best interests of a particular child – for example, hearing the child in proceedings, involving children in consultation processes in the community, and taking into account the voices of young people when developing policies that affect them. The principle of the best interests of the child is also closely related to the right of the child to be heard (Article 12 of the Convention) – only by knowing the views and situation of the child can we responsibly assess what is best for them.

4 PROPOSALS DE LEGE FERENDA

Based on the above analysis, several recommendations de lege ferenda and systemic measures can be formulated that would strengthen the effective application of the principle of the best interests of the child in Slovak practice.

At the national level, the Slovak Republic should revise the official Slovak translation of Article 3(1) so that it reflects the wording of the authentic language versions of the Convention, i.e., add the word "best" before "interest of the child." This step would have not only symbolic but also practical significance – it would send a signal that the Slovak legal system fully recognizes the requirement to seek the best possible solution for the child and would remove terminological ambiguity. At the same time, it would unify the language of the laws (since several national regulations already contain the phrase “best interests of the child”).

In the event of a recodification of private law (the Civil Code) or other relevant codifications, the principle of the best interests of the child should be explicitly included

among the fundamental principles. A marginal mention is not enough – the law should declare in its introductory provisions that the protection of the best interests of the child is a priority and a cross-cutting principle in the interpretation of the entire regulation. Similarly, a higher normative status for this principle should be considered – for example, enshrining it in the Constitution of the Slovak Republic (as is the case in South Africa and several Latin American constitutions). Constitutional enshrinement would ensure that the principle is binding on all public authorities and would enable the Constitutional Court of the Slovak Republic to assess the compliance of laws with this principle.

It is recommended that the Ministry of Justice or the Ministry of Labor, Social Affairs and Family issue guidelines or methodology for applying the principle of the best interests of the child. This would be based on General Comment No. 14 of the UN Committee and would set out framework criteria for assessing the best interests (a checklist: child safety, developmental needs, the child's opinion, preservation of the family environment, non-discrimination, etc.).³² Such a document would help to harmonize the practices of courts and other actors. At the same time, it is appropriate to introduce regular training for judges, social workers, guardians, and other professionals, focusing on the content of the principle and sharing examples of good practice in its application. The aim is to ensure that the principle does not remain merely a declaration, but that professionals feel competent and obliged to apply it consistently.

As part of the amendment to the Government's Legislative Rules or the Local Government Act, an obligation to assess the impact of proposed legislation on children should be established. Ideally, this would be a separate chapter of the explanatory memorandum, in which the submitter would assess qualitatively (or quantitatively) how the proposal would affect children and whether it is in their best interests. Such an *ex ante* analysis would highlight any negative impacts on children (e.g., in socially disadvantaged groups) before the law is passed and would allow for the adoption of mitigating measures. We also recommend introducing an *ex post* evaluation mechanism – for example, each ministry could report in its regular annual report on how the measures it has adopted have

³² UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD. General Comment No. 14 (2013): On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1). Geneva: United Nations, 2013.

taken into account the best interests of the child and what results they have brought for children.

Strengthening the powers of the Children's Commissioner could also be considered. Although there is a Children's Commissioner in Slovakia, his or her recommendations could carry more weight if there were a legal obligation for public authorities to respond to them within a specified period. It would also help to include representatives of children and young people in government and local government advisory bodies when developing policies (e.g., establishing a children's council as an advisory body to the government or municipal councils on issues affecting children). This would ensure that children's voices are heard and their views are taken into account when assessing what is in their best interests in a given community or at the national level.

5 CONCLUSION

The principle of the best interests of the child has become a fundamental basis of modern international law – not only as a legal norm, but also as a value that tests the humanity and responsibility of our society towards the most vulnerable. From the initial ideas of Janusz Korczak, through international declarations and the UN Convention, to today's laws and court decisions, this principle has come a long way. Today, we almost universally recognize it as the guiding criterion in all activities affecting children. Nevertheless, its practical implementation often encounters obstacles – whether in the form of a formal approach, competing interests, or a lack of will to apply the child's perspective consistently and systematically.

It is our duty to ensure that the commitment to give priority to children becomes a reality in every area. This means constantly asking the following questions when formulating policies and decisions: How will this affect children? Is it in their best interests? and adjusting these decisions accordingly. It also means promoting institutions that put children's interests at the center of attention, whether legislatively (child impact studies, procedural rights of children) or institutionally (strong representation of children in decision-making processes). As Janusz Korczak, one of the pioneers of children's rights, aptly noted *“the world will one day appreciate children and respect their rights*

and uniqueness.”³³ Fulfilling the principle of the best interests of the child is a fundamental prerequisite for this vision to become a reality. It depends on the efforts of today's generation of lawmakers, judges, officials, educators, and parents whether we can step out of our own shadows and truly see the world through the eyes of a child - and act accordingly.

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³³ Janusz Korczak – quote taken from the Polish original “Kiedys będzie uznane dziecko, będą szanowane jego prawa i odrębność” (Korczak, J.: *Prawo dziecka do szacunku*, Warsaw, 1929).

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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