

TO
THE 51st NATIONAL ASSEMBLY
OF THE REPUBLIC OF BULGARIA

CC:
COMMITTEE ON CONSTITUTIONAL AND LEGAL AFFAIRS
COMMITTEE ON INTERNAL SECURITY AND PUBLIC ORDER
COMMITTEE ON DEMOGRAPHIC POLICY, CHILDREN, AND FAMILY AFFAIRS

STATEMENT

from the Foundation "Positive Personal Skills in Society"

Subject: Bills for Amendment and Supplementation of the Family Code with Reference Numbers № 51-454-01-50, № 51-454-01-52, and № 51-454-01-54

RESPECTED LADIES AND GENTLEMEN MEMBERS OF PARLIAMENT,

As an organization registered in the public interest and operating for more than 25 years in programs for prevention and direct services for individuals and children affected by violence, trafficking, and other at-risk groups, **the Foundation "Positive Personal Skills in Society" presents its expert opinion** on the Bills for Amendment and Supplementation of the Family Code with reference numbers № 51-454-01-50, № 51-454-01-52, and № 51-454-01-54.

The subject of the current discussion is **three bills** for the amendment and supplementation of the Family Code with reference numbers № 51-454-01-50, № 51-454-01-52, and № 51-454-01-54.

Our opinion on the specific proposals of the bills is as follows:

We strongly oppose the proposals introduced in the bills for the amendment and supplementation of the Family Code with reference numbers № 51-454-01-50 (submitted by Kostadin Kostadinov and others) and № 51-454-01-52 (submitted by Alexander Rashev and others). We believe that the proposed amendments are in contradiction with the Constitution of the Republic of Bulgaria, the Domestic Violence Protection Act, the Child Protection Act, as well as the Convention on the Rights of the Child and other international instruments concerning the protection of human rights, non-discrimination, and gender equality.

The bill for the amendment and supplementation of the Family Code with reference number № 51-454-01-50-54 (proposer Denitsa Sacheva et al.) contains proposals that align with established judicial practice. However, we do not agree with the text proposed in Article 50, paragraph 2, second and third sentences, and we suggest that these be removed.

With the proposed amendments to the Family Code, the proposers emphasize the rights of parents without in any way protecting or providing guarantees for the "best interest of the child." Moreover, in the draft bills for amendments to the Family Code with signatures № 51-454-01-50 (proposer Kostadin Kostadinov et al.) and № 51-454-01-52 (proposer Alexander Rashev et al.), the provisions are outlined in which the child is treated as a "passive object" rather than a "subject" of rights, which contradicts the entire philosophy of legislation concerning the participation of children in judicial procedures.

We assert that **the legal introduction of shared custody** is not in line with the public mindset and emotional maturity of our society as a whole, and is in contradiction to the principle of the best interest of the child¹. Furthermore, the introduction of the "**presumption of shared custody**", without defining what is meant by "shared custody", will lead to legal chaos and, ultimately, will not achieve the intended effect of protecting the child's rights.

Article 3 of the Convention on the Rights of the Child, to which the Republic of Bulgaria is a party, proclaims the principle that the best interests of the child are a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies. It is the obligation of the States parties to the Convention, and accordingly of the state institutions, to provide the child with such protection and care as are necessary for its well-being, considering the rights and duties of its parents. One of the principles for the protection of the child, according to Article 3, Paragraph 3 of the Child Protection Act, is ensuring the child's best interest. In § 1, item 5 of the Additional Provisions of the same law, it is specified that the assessment of the best interest of the child includes **his/her wishes and feelings, the physical, psychological, and emotional needs of the child; the child's age, gender, past, and other characteristics; the danger or harm caused to the child or likely to be caused; the parents' ability to care for the child; the consequences for the child resulting from a change in circumstances, as well as other circumstances relevant to the child.**

Bulgarian legislation creates rights and responsibilities for children and parents, which are clearly outlined in the Child Protection Act, the Family Code, and the Civil Procedure Code. The Domestic Violence Protection Act refers to the protection of children's rights in cases of domestic violence, as well as the consequences for a child who, even as a witness to violence, is a victim. The

¹ The best interest of the child is the sum of its rights and legitimate interests, including its individual potential for development and its subjective experience of dignity, along with the most appropriate conditions for their full respect.

proceedings in these legal acts are built on the foundation of caring for children, protecting their interests, and helping the court form its internal conviction based on the law, but also in the best interest of every child. The legislator has made efforts to be comprehensive, trying to delve into human philosophy and incorporate it into legal provisions. A deviation from established rights and responsibilities is a step back from the principles introduced so far in our rule of law. In every proceeding where the interests of children are involved, children must be given the opportunity to express their views on matters affecting them. According to the children themselves, they want adults to have more trust in them, to respect their perspective, to be more involved in the decision-making process regarding them, and to know that their opinions are valued.

The current regulation of the Family Code is based on the principles that: "Parents have equal rights and duties, regardless of whether they are married (Article 122, Paragraph 2 of the Family Code)," and that: "Parental rights and duties are exercised in the best interest of the child by both parents together and separately. When one parent acts alone, they are obliged to inform the other parent" (Article 123, Paragraph 1 of the Family Code). Furthermore, "The exercise of parental rights and duties is carried out with the mutual agreement of the parents" (Article 123, Paragraph 2 of the Family Code). **In case of disagreement**, "they can turn to a mediator or file a claim before the district court of the child's current residence, which resolves the dispute after hearing the parents, and, if necessary, the child...". Thus, the Family Code provides sufficient rights and responsibilities for parents to resolve their relations regarding parental rights over children born from their relationship in the event of separation through an uncontested process.

The question "**Does the provision of Article 59, Paragraph 2 of the Family Code exclude the possibility of parental rights being granted for joint exercise by both parents?**" is resolved by Interpretative Decision No. 1 of 3.07.2017 of the Supreme Court of Cassation (SCC) in case No. 1/2016, Civil and Commercial Panel, with Judge Mimi Furnadzhieva as the rapporteur. In point 2, it is accepted that "***The provision of Article 59, Paragraph 2 of the Family Code excludes the possibility of parental rights being granted for joint exercise by both parents if an agreement on their exercise is not reached.***" In the reasoning, the deciding panel accepts: *The intervention of the court in this process is a legally established mechanism for protecting the vulnerable party in the child-parent relationship. The provision of Article 59, Paragraph 2 of the Family Code is applicable only in cases of divorce through a lawsuit, and when the parents fail to reach an agreement regarding the residence of minor children and the exercise of parental rights over them, the law indicates that one of the parents should be preferred, with whom the child will live, and who will be the holder of the parental rights. The same approach, based on the applicable legal framework, was used in the Resolution of the Supreme Court of Cassation No. 1 in case No. 3/1974 - the court should grant the exercise of parental rights to one of the spouses, with the exercise of parental rights being understood by the court as "their daily implementation, as well as actions related to the protection, defense, and representation of the children."* Through its decision under Article 59, Paragraph 2 of the Family Code, the court performs its social function of providing adequate protection to minor children with a view to preserving their best interests and guarantees legal certainty, obliging and, above all, imposing responsibility on the

"better" (in terms of the child's interests) parent to care for their immediate upbringing and education until an agreement on the exercise of parental rights is reached.

We share the above conclusions and support the Family Code continuing to allow the possibility of reaching a mutual agreement for the joint ***exercise of parental rights by both parents***, but not as a mandatory requirement. Otherwise, in an attempt to refute the presumption of "shared custody", the parties will not only fail to resolve their conflicts but will deepen them. Instead of determining who is the "better parent" in this process, the focus will shift to identifying who is the "worse parent", as each parent will have to prove the other's parental shortcomings. This negative approach will impact the parents' social status and public image. Moreover, in such disputes, the child's rights will be further neglected, and the child's best interest will be disregarded. More than ever, the child will be treated as an "object", which is unacceptable. Equal-time parenting is not always in the child's best interest. Even when both parents wish to exercise parental rights, it must be acknowledged that each individual has a unique social, financial, and moral status. Instead of parents prioritizing the child's best interests, the child becomes a "hostage" to the parents' interests. For example, some parents have different social statuses, forcing children to wear designer clothes for one week and worn-out, shabby clothes the next, which causes them embarrassment. Others lose their sense of family, adopting different values in different households. It is also possible for each parent to apply a different parenting style or for a parent to have a tendency toward violence. This confuses children, causing them to lose their sense of identity. In one such case, within the context of a forensic psychological examination, it was established that in order to survive in an environment of "shared custody", the child had to ***"repeatedly adjust the frequency at which they function and their behavior between one family and the other... From an early age, the child had to play roles."*** When interpreting the results of a thematic apperception test, the expert stated that ***"the child lives in three different emotional and behavioral worlds..."*** This example of imposing equal living arrangements on a child through a court ruling remains relevant today and serves as a textbook case illustrating why "shared custody" should not be mandated by judicial decision.

We believe that the best interests of the child are called into question by the proposed amendment to the Family Code – No. 51-454-01-52 (submitted by Alexander Rashev and others), which introduces **the presumption of shared parenting**. We oppose the proposed new Article 58a of the Family Code, namely the provision that important decisions regarding the child should be made *"jointly by both parents"*, as well as the provision that *"the child's time shall be shared between both parents, regardless of whether they live together or are separated..."*, specifying that *"the time the child spends with either parent cannot be less than 127 days per year, provided that the parent does not endanger the child's life and health."* In continuation of the principle of equal time-sharing of the child with each parent, amendments to Article 59 of the Family Code have been proposed, which are degrading and treat the child as an "object" or "property" that can be divided. It even goes so far as to propose that the upbringing and education of minors be regulated ***"through an agreement with notarized certification of the content and signatures of both parents"***, without court approval. This effectively turns the child into an "object of a transaction", without any judicial oversight, which constitutes a regression from fundamental principles of

children's rights. Additionally, provisions stating that “*early childhood age, significant geographical distance between the parents' residences, and parental disagreement are not sufficient grounds to rebut the presumption of shared parenting*” disregard fundamental legal principles and fail to consider case-specific circumstances in the best interest of the child.

Similar provisions to those mentioned above are also included in the draft law amending and supplementing the Family Code, registered under No. 51-454-01-50 (submitted by Kostadin Kostadinov and others), specifically the proposed amendments to Article 59, paragraphs 2, 3, and 4 of the Family Code.

In its practice, the Supreme Court of Cassation has consistently emphasized that when determining measures for the exercise of parental rights and personal relationships between children and parents, **the best interests of the child take priority**, and the court monitors this ex officio. Decision No. 147 of June 4, 2014, on civil case No. 1557/2014 of the Third Civil Division, Decision No. 217 of May 27, 2015, on civil case No. 6851/2014 of the Fourth Civil Division, Decision No. 36 of March 20, 2015, on civil case No. 4794/2014 of the Third Civil Division of the Supreme Court of Cassation, Decision on civil case No. 59/2018, civil case No. 2396/2017, and others. The best interests of the child determine the court's decision regarding the assignment of parental rights and the measures for personal relations, including, while the appellate functions are exercised also in the protection of public interest, in accordance with the guidelines provided in item 1 and item 3 of Interpretative Decision No. 1/2013 on commercial case No. 1/2013 of the General Assembly of the Civil and Commercial Divisions of the Supreme Court of Cassation, in relation to the principle of ex officio intervention, which takes precedence over the dispositive and adversarial principles in the proceedings when the interests of a child are concerned.

In support of the aforementioned case law is **Decision No. 218 of December 3, 2019, on case No. 763/2019 of the Supreme Court of Cassation, Civil Division, Third Civil Division**, in which the ruling court states: *„In every dispute concerning the judicial administration of parent-child relationships, the court is obliged to consider both the general criteria and the specific circumstances of the case that are relevant to creating a normal environment for communication and maintaining relationships between the child and the parent who does not exercise parental rights. The supreme criterion for the court's decision is the best interests of the child, rather than the punishment of the guilty party. Following this supreme criterion, even though the court is not bound by the child's willingness or unwillingness to live with one parent or have contact with the other, it must, in all cases, take into account and respect the child's feelings, assess the impact of coercion in enforcing the respective regime, considering the child's age, individual development and maturity, as well as their specific psycho-emotional state, as stated in Decision No. 207 of July 24, 2013, on civil case No. 911/2012 of the Fourth Civil Division of the Supreme Court of Cassation, Decision No. 331 of November 1, 2013, on civil case No. 2181/2013 of the Fourth Civil Division of the Supreme Court of*

Cassation, and Decision No. 234 of 2014 on civil case No. 7289/2013 of the Fourth Civil Division of the Supreme Court of Cassation.”.

Last but not least, we cannot agree that the gender and age of the child are irrelevant when determining parental rights and responsibilities. At the very least, we cannot agree that an infant can be separated from the mother in order to adhere to the principle of equal parenting. However, it is not only the physiological traits of the parent that matter, but there is also a very profound psychological aspect to child-rearing, which is supported by numerous scientific studies and articles. In this regard, the mother-child bond must be approached with great responsibility. For example, the main conclusion of one of the first researchers of the "mother-child" bond, Bowlby², who acknowledges the importance of early bonds for the social and emotional development of children, concludes that *"the baby and young child should experience a warm, intimate, and enduring relationship with the mother or a constant substitute, in which both find satisfaction and joy"*. The type of bond the baby/child forms with its mother will also affect its future development and ability to build trusting relationships. Attachment is considered to play an important role in future relationships and psychopathology because the initial parent-child bond provides the working model for all subsequent important and significant relationships in a person's life³. As a result of empirical research regarding the mother-child bond, presented through attachment theory, the following conclusions have been drawn: *"When a child cannot trust its primary caregiver, it later does not form attachments to anyone. Instead of learning to trust, it learns to experience fear, anger, and disappointment because it cannot rely on anyone to meet its needs. It begins to view others to fulfill their own needs, becomes hyper-vigilant about its own safety, and does not allow others to care for or love it. These children become demanding and controlling in response to their fear. Emotionally, they believe that if they do not control their world, they will perish."*⁴

Next, it is **essential to take into account the connection between domestic violence and parental rights**. The connection between domestic violence and the decision regarding parental rights and personal contact with the child is supported by international instruments and the practice of human rights bodies and mechanisms, such as the United Nations Convention on the Rights of the Child, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the European Convention on Human Rights. Here, we will specifically refer to the Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, presented to the Human Rights Council in June 2017 (Document A/HRC/35/30), particularly the section on the need for an integrated approach to child safety (para. 104). The document explicitly and authoritatively emphasizes that *"... children who witness gender-based violence have the right to be heard, and their best interests should be considered as the paramount concern by all decision-makers,*

² Bowlby, 1951 p13

³ Cicchetti et al., 1998

⁴ Mother-child bond, presented through attachment theory, Valentina Milcheva.

*taking into account the context of domestic violence. ... The failure to respect the best interests of the child by state authorities is a violation of the state's obligations. ... Personal contact with the parent who is the perpetrator of violence should be carefully regulated to ensure that victims of violence and their children are safe". In this sense, General Comment No. 13 of the Committee on the Rights of the Child is also relevant. Similarly, the **views adopted on July 16, 2019, by the Committee on the Elimination of All Forms of Discrimination against Women** under Article 7, Paragraph 3 of the Optional Protocol, regarding communication No. 99/2016, are in the same vein, as the Committee commented: "*The failure of a Member State to take all appropriate measures to prevent acts of gender-based violence against women in cases where the authorities are aware or should be aware of the risk of such violence, or the lack of investigation, prosecution, and sanctioning of perpetrators, as well as the failure to provide compensation to victims and survivors of such acts, constitutes **tacit permission or encouragement for the commission of gender-based violence. Such failures or omissions constitute violations of human rights.***"⁵ *The failure to effectively address gender-based violence and domestic violence is **harmful to society and, in particular, to women and children***". Furthermore, "*Bulgarian legislation is insufficient, as it treats domestic violence primarily as a family matter that does not require significant public attention or criminal prosecution and does not ensure that victims will be able to initiate proceedings that would effectively protect them*", and it recommends "*taking into account the history of domestic violence.*"⁶.*

In the context of the above, there is also the **Resolution of the European Parliament of October 6, 2021**, on the impact of intimate partner violence and parental rights on women and children (2019/2166(INI)), in which it is proclaimed that in all actions affecting children, their best interests must be the primary consideration. Moreover, the European Parliament reminds that "***cases of domestic violence must be taken into account when determining parental rights and visitation rights concerning children, and that the exercise of any visitation or parental rights must not jeopardize the rights and safety of the victim or her children***". The Parliament emphasizes that "perpetrators often use legal proceedings to extend their power and control and to continue to intimidate and instill fear in their victims; in this regard, it highlights that the child and the request for joint exercise of parental rights are often manipulated by the abusive parent in order to maintain access to the mother after separation; it emphasizes that perpetrators often abuse the children or threaten to harm or take them in order to hurt their partners and ex-partners, which has a **serious impact on the harmonious development of the child**". The Parliament highlights that "the failure to address intimate partner violence when making decisions about parental rights and visitation **constitutes a violation through the neglect of the human rights to life, to live free from violence, and to healthy development for**

⁵ General Recommendation No. 35, Article 24, Paragraph 2, Letter (b).

⁶ See V.K. v. Bulgaria (CEDAW/C/49/D/20/2008), Jallow v. Bulgaria (CEDAW/C/52/D/32/2011), and the concluding observations of the Committee on the combined fourth to seventh periodic reports of Bulgaria (CEDAW/C/BGR/CO/4-7). See also the European Court of Human Rights case *Bevacqua and S. v. Bulgaria* (Application No. 71127/01), judgment of 12 June 2008, in which the Court found that the state had violated Article 8 of the European Convention on Human Rights in a case of domestic violence.

women and children; it strongly calls for any form of violence, including witnessing violence against a parent or close relative, to be considered by law and in practice as a violation of human rights and an action against the best interests of the child".

Contradiction with the best interests of the child occurs when the law automatically grants parental responsibilities to one or both parents. According to the United Nations Convention on the Rights of the Child, the assessment of the best interests of the child is a unique process that must be carried out in each individual case, considering the specific circumstances of every child. Therefore, a formal approach cannot be taken when determining parental rights and responsibilities. The fundamental principle in resolving parental disputes regarding the exercise of parental rights is the protection of the child's interests. "The best interests of the child," as defined in § 1, item 5 of the Supplementary Provisions of the Child Protection Act, include the assessment of the child's wishes and feelings; physical, psychological, and emotional needs; age and gender; the risk or harm that may be caused; the consequences for the child in case of changed circumstances, and other factors.

The purpose of the proceedings for the arrangement of parental rights after divorce or parental separation is not for the child to become a target of the adults' attempts to achieve their own goals, but rather to preserve the child's interests. Introducing a legal requirement for mandatory "shared parenting", without considering all the above-mentioned principles of law, judicial practice, and international regulations, would lead to the emergence of a new predictable chaos in the arrangement of parental rights and an escalation of parental conflicts. Because, on all matters related to the upbringing and education of the child, the parents would be required to make decisions "together". When there is no conflict, a decision may be reached, but in conflict-ridden relationships, which inevitably precede and follow the separation between the parents, this is impossible. And instead of minimizing contact to prevent conflicts, the exact opposite would happen. The child may be used as a tool for manipulation or control by one parent over the other, automatically turning the child into a "victim," a "child at risk." Thus, instead of preventing parental conflicts, they would deepen, and the result would be a direct danger to the child's life and mental health.

A large part of the practice shows that in proceedings concerning divorce claims, parental rights claims, and maintenance claims, the disputes are complex, filled with negative relationships and conflicts in which, unfortunately, children are involved. There is a lack of understanding, listening, and situations are created that traumatize the child. These relationships between parents often continue even after judicial decisions are made. Parents continue to engage in interpersonal wars, continue to pour out their negative emotions without realizing that they are hurting their children the most. They forget about their children's existence and stop paying attention to their needs and feelings. Parents do not make compromises and do not comply with the court's decisions. On the contrary, they file alternating claims without any real change in circumstances. In judicial practice, there are drastic cases of the presentation of handover protocols for children in court cases. A child is not an object. It must know where its home is, must feel calm and complete, must experience its childhood, and must feel protected.

And for a child to be protected, the legislator must provide guarantees for resolving the case in the best interest of the child.

The PULSE Foundation is a non-governmental organization registered as a legal entity of public interest. It is a licensed⁷ service provider for individuals and children (without age limitation) who have been victims of physical, psychological, emotional, or sexual violence, victims or potential victims of violence and/or trafficking, as well as other at-risk groups.

RESPECTFULLY,

EKATERINA VELEVA
CHAIRPERSON
PULSE FOUNDATION

ATTORNEY MARIYANA EVTIMOVA
EXECUTIVE CHAIRPERSON
PULSE FOUNDATION

⁷ As below:

- By Order No. RD-3129-1-932/19.11.2021, a license was issued for the provision of the social service "INFORMATION AND CONSULTATION"
- By Order No. RD-3129-1-926/19.11.2021, a license was issued for the provision of the social service "THERAPY AND REHABILITATION"
- By Order No. RD-3129-1-923/19.11.2021, a license was issued for the provision of the social service "ADVOCACY AND MEDIATION"
- By Order No. RD-3129-1-922/19.11.2021, a license was issued for the provision of the social service "TRAINING FOR SKILL ACQUISITION"
- By Order No. RD-3129-1-932/19.11.2021, a license was issued for the provision of the social service "COMMUNITY WORK"
- **Registration Certificate No. 00864-0002** – Order No. RD1-250/19.06.2019 for the provision of social services: **A hotline for adult victims of domestic violence**, issued by the Executive Director of the Social Assistance Agency
- **Registration Certificate No. 00416-0011** – Order No. RD-127/03.01.2019 for the provision of social services: **Center for Social Rehabilitation and Integration**, issued by the Executive Director of the Social Assistance Agency