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## Family and its protection in contemporary Polish legislation

This article deals with issues related to the family and its protection in contemporary Polish legislation. The Authors focused on the attempt to define the subject of protection and its scope. Basically, they analyzed the regulations of the Polish family law. They also took into account constitutional provisions and provisions from other spheres of law affecting the family. The content was supplemented with practical professional experience of a probation officer from the family division.

**Key words:** family law, family, family protection.

The family in contemporary Polish legislation seems to be obviously raised and dignified among the values protected by the legislator. In recent years we have observed that parents have been strongly supported by the state in the widely understood educating of their children. Nevertheless, in the face of the ongoing social transformations, the concept of the family with its capacity and boundaries is also undergoing transformations. The difference in understanding the concept of “the family” in many cases results from various systems of values of the participants of social life or from the ongoing social phenomena, as well as from the dynamics in the formation of the predominating model of the family. The law in a democratic country should reflect

the needs, values and the structure of the society, therefore, before the level of the family protection is evaluated, the concept of the family must first be put into proper frames.

## The concept of the family

First of all, there is no legal definition of the family. Nevertheless, this concept appears in the fundamental law. Article 18 of the Constitution of the Republic of Poland<sup>1</sup> constitutes that “Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.” (<https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>), while according to article 71 paragraph 1 of the Constitution: “The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances – particularly those with many children or a single parent – shall have the right to special assistance from public authorities”. Moreover, in other parts of the Constitution we can find such concepts as: the “family life “, “parental care “ or “parental rights”<sup>2</sup>.

According to the linguistics, the family means the spouses and their children, and generally: the persons connected by the kinship and affinity<sup>3</sup>. Furthermore, the complete family consists of a husband, a wife, and children<sup>4</sup>, while an incomplete family is the one without a parent<sup>5</sup>. Therefore, by its name, the family is the place where a human being is born. In the Christian tradition the family is the first natural human society which serves not only for procreation but also for educating the offspring and for preparing the offspring for further development<sup>6</sup>. St. Thomas Aquinas defined the family as a natural community that is a community postulated by the social nature of the man who must grow up and develop in the home community for his complete normal

<sup>1</sup> The Constitution of the Republic of Poland from April 2nd 1997, Journal of Laws – further JL. nr 78, item 483, with further changes

<sup>2</sup> W. Borysiak, in: M. Safjan, L. Bosek (ed.), *Konstytucja RP. Tom I. Komentarz do art. 1-86* (Warsaw: 2016), art. 18, side number 132.

<sup>3</sup> *Słownik Języka Polskiego PWN*, access July 11th 2022, <https://sjp.pwn.pl/sjp/rodzina;2515555.html>

<sup>4</sup> *Słownik Języka Polskiego PWN*, access July 11th 2022, <https://sjp.pwn.pl/slowniki/rodzina%20pe%C5%82na.html>

<sup>5</sup> *Słownik Języka Polskiego PWN*, access July 11th 2022, <https://sjp.pwn.pl/slowniki/rodzina%20niepe%C5%82na.html>

<sup>6</sup> M. Sopoćko, *Rodzina w prawodawstwie na ziemiach polskich (studium etyczno-prawne)* (Wilno: 1926), 6-8.

and full development<sup>7</sup>. The fundamental meaning of the family was emphasised also in the ancient times. Aristotle indicated that the family is created out of the connection of two persons who are unable to exist without each other and in this relation every man can satisfy his everyday needs. Moreover, the children, as the common good, are the aim of the family<sup>8</sup>.

According to the Constitutional Court, the lack of the definition of the family, even in the light of the ongoing social transformations, does not result in the lack of the possibility to reconstruct the concept. In the light of the constitutional regulations “the family” is every lasting relationship of two or more people, which consists of at least one adult and one child, which is based on the emotional or legal bond, and on the blood ties. The family can be complete, with many children, or single-parent. The complete family consists of two adults remaining in the common household and bound with an emotional bond, with a common child brought up by both of them. A single-parent family consists of one adult and one child or more children who are brought up by this adult.<sup>9</sup>

In the Polish legal system the only formalized relationship of a woman and a man is marriage, regulated but the rules of the law (Family and Guardianship Code – further FGC<sup>10</sup>) and it is under the special guidance of the state (art. 18 of the Constitution)<sup>11</sup>. Nevertheless, although marriage is clearly indissolubly connected with the concept of the family, which directly results from the rights and duties of the spouses (art. 23-30 of FGC), they are not the same<sup>12</sup>. The birth of a child is usually the determinant of creating the family, however, the legal bond of kinship can also be acquired through adoption<sup>13</sup>. Therefore, it

<sup>7</sup> More: W. Piwowarczyk, “Rodzina jako społeczność naturalna według św. Tomasza z Akwinu”, *Roczniki Filozoficzne*, vol. 8 (1960), No. 2: 89-111.

<sup>8</sup> A. Szczap, “Rodzina w poglądach wybranych filozofów”, *Wychowanie w Rodzinie*, vol. VII (2013): 21.

<sup>9</sup> The verdict of the Constitutional Tribunal from April 12th 2011, SK 62/08, Legalis nr 311533; M. Dobrowolski, “Status prawny rodziny w świetle nowej Konstytucji Rzeczypospolitej Polskiej”, *Przegląd Sejmowy* nr 4 (1999): 23-24.

<sup>10</sup> The Act from February 25th 1964. – the Family and Guardianship Code JL from 2020, item 1359.

<sup>11</sup> J. Gajda, in: T. Smoczyński (ed.), *Kodeks Rodzinny i Opiekuńczy, System Prawa Prywatnego, Tom 11* (Warszawa: 2014), 70-73.

<sup>12</sup> See W. Borysiak, in: M. Safjan, L. Bosek (ed.), *Konstytucja RP. Tom I. Komentarz: art. 18*, side number 138-139.

<sup>13</sup> E. Holewińska-Łapińska, in: T. Smoczyński (ed.), *Kodeks Rodzinny i Opiekuńczy, System Prawa Prywatnego, Tom 12* (Warszawa: 2011), 498-499.

can be assumed that a parent (or parents<sup>14</sup>) will be the subject of the constitutional guarantees. As a result, the care for the child's welfare, expressed as providing a proper family environment, will constitute the essence of the family protection because by nature the child is the weakest member of this relationship. Furthermore, the law also includes the right of every man to family life. After all, the family as a social group is supposed to serve its members and not to exclude the needs of the family members.

It is quite controversial to call a group which performs similar functions a family because the family used to consist of a man and a woman (ignoring the matter of formalization). Now the so called rainbow families are introduced into society. These communities often refer to the argument that homosexuality is a phenomenon known already in the ancient times, and taking into account the broad definition of freedom and equality before the law, typical for contemporary democratic countries – there should be no exceptions and exclude the rainbow families from the definition. It should be noticed that the Polish Family and Guardianship Code does not question e.g. care and educational abilities of a person who performs parental custody over children only because of his or her sexual identity<sup>15</sup>.

However, we can debate over the subject, following the ancient ancestors – because homosexuality undoubtedly existed in the ancient times, however, the ancient ancestors defined the family as a formalized relationship of a woman and a man, which, if properly contracted, allows to produce the legitimate offspring, and what is more, it was the father who ruled over the other family members<sup>16</sup>. Apart from the nature of a relationship of two adults, for the purpose of this publication, the family was defined in a functional and more confined way. Therefore, the family is a community of at least two persons, including at least one minor, based on the strong and long-lasting emotional and legal bond, often also on the blood ties, which aims at providing the

<sup>14</sup> Regardless of the bond between them (marriage, an informal relationship, parents who live in separation) or the lack of the bond.

<sup>15</sup> The threat for the child's welfare (art. 109 of FGC) is the basis for limitation of parental authority, while in case of deprivation of parental rights, it is applied when the parental authority cannot be performed due to the permanent obstacle or in case of the child abuse by the parents or when they grossly neglect the child (art. 111 of FGC). In such cases the parent's predisposition (including the sexual identity) are taken into account in situations when they objectively negatively influence the care and educational conditions of the child.

<sup>16</sup> Szerzej: A. Eckmann, *Starożytna Rodzina Grecka i Rzymska* (Lublin: 1985), 29-50.

minor with a proper care and educational environment for his or her proper development and preparation for the life in society.

## Autonomy of the family

The family as a separate community of the basic nature requires the respect for its autonomy. Every man in his or her nature should have the right to decide about him or herself which results from the dignity of a human being; so the basic community based on emotional bonds or often also on blood ties, should have the right to decide about themselves. While it is the duty of the state to respect the family's autonomy, the boundaries of which are set only by freedom and autonomy of others.

The principle of autonomy of the family is not directly expressed in the regulations of law, however, it can be reconstructed on the basis of the existing regulations, in particular the constitutional right to family life (art. 47 of the Constitution), the right to educate children according to the parents' convictions (art. 48 and 53 paragraph 3 of the Constitution), the state's care over families (art. 18 of the Constitution) and the order to include the family welfare in the social and economic policy (art. 71 paragraph 1 of the Constitution).

Following blessed Father Michał Sopoćko "The state can and should give regulations concerning family life, however, in Christian countries, these regulations must be in accordance with Christian morality. The state's regulations can describe the civil relations of family members in a detailed or more general way, however, they should not interfere with the conscience and legalising the laws of nature included in the regulation on Christian morality. Besides the civil law cannot cover all the details from family life because they are so diverse that only the conscience can resolve them"<sup>17</sup>. Referring to the Christian morality is not an obstacle in preserving the essence of the Author's statement. From his point of view it is obvious that the regulations of the family law can and should regulate the civil relations of the family members, but they cannot interfere into the sphere of conscience. Therefore, it seems that in the face of the ongoing secularization of the society, but also of the variety of denominations, the conscience will be compatible with the system of values held by a certain person. As a result, the quoted thought becomes universal and at the same time it is not in conflict with the Author's intentions.

<sup>17</sup> M. Sopoćko, *Rodzina w prawodawstwie na ziemiach polskich*, 10.

The state's interference should therefore be limited to the minimum, only to create the sphere for the unrestricted creating a bond and working on its functioning within the society. Institutional actions can take place only in exceptional cases when the child's welfare is threatened.

The condition mentioned above is reflected in the regulations of the family law. The newlyweds contract marriage expressing mutual declarations in this respect (art. 1 of FGC). As a rule, every person who came of age (18) can contract marriage, moreover, for valid reasons the guardianship court can give permission to a woman of 16 years old to contract marriage, when the circumstances indicate that contracting marriage will be beneficial for the welfare of the started family (art. 10 § 1 of FGC). Although marriage is an institution which functions side by side with the family (art. 18 of the Constitution mentions marriage and then the family), nevertheless marriage is a seed to start a family in a natural way when a child is born to a married couple. Moreover, the legal regulations do not interfere with creating the family. From the etymology of the word *rodzić* – *to bear* we can deduce that the moment of the childbirth is the moment of creating the family<sup>18</sup>. Determining of the origin of a minor child (art. 61<sup>9</sup> – 86 of FGC) results only in legitimization of the family bonds which combine the newly born family which originates in the moment of childbirth. Contemporarily it is obvious to determine the origin of the man from his father and mother, which is a natural entitlement. It aims at getting to know the natural origin of a person, which undoubtedly affects building of an identity and satisfies the need of belonging to a community. Determining paternity and maternity in a legal way specifies the civil status (the family status) of an individual and constitutes one of the most important personal goods for the child and for his or her parents<sup>19</sup>.

The autonomy of the family is also revealed in the constitutional warranty to educate the offspring in accordance to one's convictions (art. 48 and 53 paragraph 3 of the Constitution). According to art. 96 § 1 of FGC the parents educate the child, who is under their parental authority, and guide the child. They are obliged to take care of the child's physical and spiritual development and properly prepare him or her for the work for the good of society accordingly to his or her talents<sup>20</sup>.

<sup>18</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Warszawa: 2012), art. 18, side number 3.

<sup>19</sup> T. Smoczyński, in: T. Smoczyński (ed.), *Kodeks Rodzinny i Opiekuńczy, System Prawa Prywatnego, Tom 12* (Warszawa: 2011), 2-3.

<sup>20</sup> More: J. Gajda, in: K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: 2021), art. 96, side number 1-9.

Therefore, the parents have priority in formation and education of their child. Thus the families are empowered both in the inter-family relations and through creating a coherent community outside.

An exception to the rule of the protection of the family autonomy is application of the regulations to prevent the violence in the family<sup>21</sup>. It is understandable that the victims of the violence should be taken care of especially when the aggressor is the person closest to the victim. It is a rule to separate the child from the aggressor, which must be the decision of the family court after a comprehensive judicial procedure. However, in the face of a real and direct threat to the child's life or health which results from the violence in the family, a social worker is authorized to step in with the intervention and to take the child from the family. Then the family court becomes the child's custody (art. 12a and 12b of the act on preventing the domestic violence).

## The protection of the family stability

The protection of the family stability is an essential sphere of the family life. It is implemented in two dimensions. On the one hand, through making sure that nobody will interfere into the internal relations of the family, which also involves keeping the children close to parents and on the other hand, protecting the security of the wedlock. Maintaining the emotional and the legal bond between the parents positively influences maintaining the family spirit. Obviously the state cannot protect the sustainability of the informal relationships which give birth to the offspring and thus also create a family. In the light of the law, the parents who are not married are only connected by the common child (only in case when both parents are registered as the child's biological parents). Without the exposure of such a relationship, the state cannot protect it. Therefore, protecting the sustainability of the family, in which the parents are in an informal relationship, will only be expressed as the protection of the sustainability of the bond between the parent and the child.

Recently marriage can be dissolved when there is a complete and permanent breakdown of marital life (art. 56 § 1 of FGC). The concept "breakdown of marital life" was the object of the deliberations of the doctrine and judicial decisions. In common practice it is clearly established that the breakdown of marital life is reflected in the cease of the emotional, physical (intimate) and economic bond. The jurisprudence

<sup>21</sup> Act from July 29th 2005 on combating domestic violence, JL from 2021 item 1249.

consequently advocates in favour of the so called objective concept of the marital life breakdown<sup>22</sup>. It is obvious that there is no bond between the spouses, which often determines the lack of communication and which is reflected in conflicts between them, and the wedlock is a fiction, which is not in favour of the family welfare.

Nevertheless, the legislator introduces new conditions which exclude the possibility to get divorced, even if there is a complete and permanent breakdown of marital life between the spouses. Thus the legislator protects the sustainability of the family meant as a married couple with a child or children because according to art. 56 § 2 of FGC divorce is not acceptable if it negatively influences the welfare of the minor children or of the spouses. Therefore, the divorce court should protect the child's welfare which could be threatened in case of dissolution of marriage of the child's parents.

By definition the family should be a safe place for its members. It also remains the first and most important educational environment for the children born in it or those who are adopted. This leads to the conclusion that the family issues cannot be analysed regardless of children who as can't handle life on their own, require special support. Therefore, the welfare of the child is the most important rule of the family law<sup>23</sup>.

The welfare of the child is the object of particular protection in the Polish legal system as well as the object of detailed analysis in the literature regarding the issue<sup>24</sup>. There is no doubt that it is a concept which means a positive appraisal – in the social hierarchy of values – of the child's situation from the point of view of satisfying his or her needs with the benefits of property and non-property nature. Furthermore, on the basis of the aim and the function of the concept of the child's welfare in the family law, we can assume that the child's welfare means the protection of his or her interests for the child's better physical, emotional, spiritual and social development<sup>25</sup>. Such a broad definition

<sup>22</sup> J. Pawliczak, in: K. Osajda (ed. of the series ), M. Domański, J. Słyk (ed. of the volume), *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: 2022), art. 56, side number 21.

<sup>23</sup> See P. Kędzior, "Dobro dziecka jako podstawowa wartość prawa rodzinnego – rozważania na tle praktyki orzeczniczej sądów powszechnych", *Problemy małżeństwa i rodziny w prawodawstwie polskim, międzynarodowym i kanonicznym*, KKP Monografie (Olsztyn: 2017), 73.

<sup>24</sup> M. Bieszczad, "Dobro dziecka jako klauzula generalna – ustalenie znaczenia pojęcia dobra dziecka w XXI w.", *Monitor Prawniczy* nr 17 (2019): 946-947.

<sup>25</sup> K. Gromek, *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: 2020), art. 109, side number 2.



of the child's welfare allows to protect the minor in the broadest sense, in every specific actual condition.

Interference into the parental authority is only allowed in case when the child's welfare is threatened (art. 109 of FGC), therefore, it does not require the total violation. The legislator assumes that the guardianship court should act in a preventive way, through preventing the negative results of the improper or inept exercise of parental authority<sup>26</sup>. Nevertheless, limiting the parental authority on the basis of art. 109 of FGC mainly aims at the protection of the child and at the same time at providing help to the parents so that they could exercise it better<sup>27</sup>. Therefore, the family court's interference is not a repressive action but it aims at supporting parents in their parental authority. These actions mainly aim at maintaining the spirit of the family, with respect for maternity and parenthood in the care for the child's welfare.

The majority of the family courts' orders can be a discomfort for the family functioning e.g. the obligation to participate in workshops for parents, the obligation to cooperate with a family assistant or establishing a probation officer. Nevertheless, they do not cause separating the children from the parents and they are to help in adjusting the parental attitudes. The most drastic means which are described in art. 109 § 2 point 5 of FGC<sup>28</sup>, leading to separating children from the parents are applied as a last resort, when the other means did not improve the situation or when the family breakdown is so advanced that they are definitely not enough to improve it<sup>29</sup>. Therefore, placing the child in a substitute related family or in the institutional foster care should only take place in the threatening situations, when the minor's welfare would be threatened or violated.

At last, the most drastic interference into the family integrity is to deprive the parents of parental authority. The deprivation of parental

<sup>26</sup> The verdict of the Supreme Court – the Civil chamber from September 13th 2000 II CKN 1141/00, Legalis nr 188114.

<sup>27</sup> See J. Słyk, in: K. Osajda (ed. of the series), M. Domański, J. Słyk (ed. of the volume), *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: 2022), art. 109, side number 4.

<sup>28</sup> Placing the minor in a foster home, in a children's home or in an institutional foster care, temporary entrustment of the child to a married couple or a person who do not fulfil the conditions which concern foster families with regard to necessary trainings defined in teh regulations concerning supporting the family and the system foster care or placing the minor in a medical institution, in an institute of nursing and care or in an institution medical rehabilitation.

<sup>29</sup> J. Gajda, in: K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, art. 109, side number. 11.

authority indicated in art. 111 of FGC essentially results from the qualified forms of violating the child's welfare<sup>30</sup>. It should be noticed that this legal action is applied when the family is so dysfunctional that the child must no longer remain in the family because this would lead to the essential violating of the minor's welfare.

It should be indicated that any initiated interference into the care and educational situation of the child means notifying the family court about the alarming signals about the situation in the family. Therefore, the family court's interference will never be a rule but only a reaction to the threat to the child's welfare. In a properly functioning family the measures of interference into the sustainability of the family bonds are not applied in advance.

It should be emphasised that the decisions of the family court in the sphere of the parental custody are always preceded by the evidence proceedings as a result of which the decision to separate the child from the family will always be well-thought and balanced. Moreover, the court's orders are not irreversible. The guardianship court can change the decision even the legitimate one if the welfare of the person whom it concerns requires it (art. 577 of Code of the Civil Procedure<sup>31</sup>). However, in case of determining the reason which was the basis for deprivation of the parental custody, the guardianship court can restore the parental custody in case when the reason which was the basis for deprivation of the custody ceased (art. 111 § 2 of FGC).

## Maintenance of the family

Every family whose basic task is to educate full-fledged members of society, apart from ensuring the autonomy and protection of sustainability of marital bonds, requires financial basis to maintain the minor children.

Financial responsibility for the family members is, in the first place, assumed by those who started the family (art. 129 § 2 of FGC). While according to art. 128 of FGC the maintenance obligation is debited on the direct relatives and the siblings. This regulation financially integrates family members creating an economic bond between them. Thus the legislator strengthens the position of those who are a part of the family but who are economically weaker or unable to earn their

<sup>30</sup> J. Słyk, in: K. Osajda (ed. of the series), M. Domański, J. Słyk (ed. of the volume), *Kodeks rodzinny i opiekuńczy. Komentarz*, art. 111, side number 1.

<sup>31</sup> Act from November 17th 1964 – Code of the Civil Procedure JL. from 2021 item 1805 with further changes.

living by themselves. Frequently the maintenance obligation towards one another is assumed voluntarily, even without the awareness of the legal regulation of such an act. The maintenance claims in court usually appear in the situation when the parents of the child live separately and the parent who is taking care of the child files the lawsuit on behalf of the minor child against the other parent.

According to art. 135 of FGC the amount of the alimony is established on the basis of the justified needs of the child and of the financial resources of the parents. The concept of justified needs is not clearly defined. Generally, the amount of the justified needs of the child, who is not yet able to earn his living on his own, is based on the principle of maintaining equal living standards of parents and children. These needs are individualized and should be determined for every single case. However, the top limit of the alimony is defined by the earnings and the financial condition of the paying parent (art. 135 § 1 of FGC), even if the established amount does not cover the justified needs of the child entitled to alimony<sup>32</sup>. Whereas according to the fixed position of the Supreme Court, the earning potential of the parent paying alimony is determined by the earnings and incomes which he or she would obtain with his or her physical and mental abilities and not the earnings which he or she actually obtains<sup>33</sup>. Moreover, these abilities are determined by the age of the person paying alimony, by his or her health condition, professional training, education and the possibility of finding a job and by many other factors which take into account the actual conditions.

What is essential, the amount of the established alimony is not absolute and it can be modified in case of the change in the actual conditions on the basis of art. 138 of FGC<sup>34</sup>. It is an important exception to the rule of the seriousness of the *res judicata*. The judicial practice shows that if a few years passed after the previous court's decision of granting alimony, the courts assume the passing of time as the basis for the increase of the amount of alimony. It should also be noticed that the duty to pay the alimony to the child, which usually lasts for a longer period, is accompanied by the inherent change of conditions which shape its range. In case of a minor child the range of his or her

<sup>32</sup> The verdict of the Supreme Court – the Civil Chamber from January 20th 1972, III CRN 470/71, Legalis nr 15970.

<sup>33</sup> The verdict of the Supreme Court – the Civil Chamber from May 16th 1975., III CRN 48/75, Legalis nr 18769.

<sup>34</sup> See the verdict of the Supreme Court – the Civil Chamber from January 7th 1998., III CKN 576/97, Legalis nr 32089.

justified needs will certainly increase with time. According to the preserved jurisprudence view, the difference in the age of the child caused by the passing time since the courts' decision which established the amount of the alimony justifies the increase of the needs connected with going to school, taking additional lessons etc. which results in the necessity to increased expenditure<sup>35</sup>.

The maintenance obligation is a vicious institution which has unavoidable legal side effects – it can be predicated *in absentia* or even in the presence of the welfare officer when the defendant is absent and nobody can find him or her; in some cases it is necessary to accept some legal fiction in order to protect the most important rule of the minor child's welfare so important for the Polish family law. The failure to comply with the duty is subjected to the bailiff's execution and to *ex officio* prosecution (art. 209 of Penal Code), and in case of exhaustion of all possibilities this duty – because of its importance – is passed on the state<sup>36</sup>, which will later pursue claims against the debtor by administrative execution.

A question arises: will the court-ordered maintenance obligation be determined at the fair level? The answer will not be easy. First of all, in the matters relating to maintenance, the parties often file the lawsuits without the professional representatives, which negatively influences the quality of the evidence. The judicial practice indicates the clear disparities in the amount of maintenance adjudged depending on the city. Family courts who adjudicate in these cases should have a proper life experience. Aside from those who do not have any experience as the people obliged to the maintenance obligation (in my opinion, having one's own experience is not obligatory), professional group of judges, due to the level of their incomes (which is guaranteed by the Constitution at such a level which allows to limit the possibility of the illegal donations for the judicial actions) is inevitably detached from the rest of society whose financial situation is much worse. Finally, it all depends on the awareness and sensitivity of those engaged into the process of regulating the maintenance obligation. Therefore, the effectiveness of the solution of the maintenance obligation problem and non-maintenance mainly depends on people. "It is the man and his morality and not the legislation which decides about the maintenance obligation and the law can only force a man to fulfil this

<sup>35</sup> See the decision of the Supreme Court – the Civil Chamber from June 1st 1965, I CZ 135/64, Legalis nr 12331.

<sup>36</sup> Act from September 7th 2007 on assistance to the persons entitled to alimony JL from 2022 item 1205.

obligation in certain situations, although – as we can notice – it is not only effective”<sup>37</sup>.

## The state’s support for the family

According to art. 71 paragraph 1 of the Constitution “The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances – particularly those with many children or a single parent – shall have the right to special assistance from public authorities.” The last decade brought serious transformations, particularly in the sphere of the financial support in maintaining children. Apart from the group of limited provisions for the families who have low incomes – that is the provisions granted by social welfare authorities on the basis of the act from March 12th 2004 on social assistance<sup>38</sup> – the legislator introduced a group of direct provisions and the forms of indirect assistance which go beyond the sphere of the social welfare, which is not always limited by the social criterium.

The provisions from the social welfare are granted mainly on the basis of the criterium of incomes. It is not absolute because currently there is an applied rule “złotówka za złotówkę”[zloty for zloty]. This means that e.g. the child benefit is granted also after exceeding the limit of income and the amount of the provision is reduced by the amount of surplus<sup>39</sup>.

The range of social welfare provisions is very wide. As far as the financial aid is concerned – the state satisfies the needs in this sphere. My professional practice as a probation officer of the family division clearly indicates that the beneficiaries often overuse the provision and the methods of verification and the situation when the provisions are really granted to those who need them the most are very limited. Nevertheless, the families who are financially weak are able to obtain real provision for maintenance.

And as far as the non-financial aid is concerned – it all depends on the own resources of the municipality. The bigger social welfare centres such as the one in Białystok (Miejski Ośrodek Pomocy Rodzinie) offer a broad range of services. Smaller social assistance centres – e.g.

<sup>37</sup> M. Boczek, “Obowiązek alimentacyjny – przymus państwowy czy powinność moralna?”, *Problemy małżeństwa i rodziny w prawodawstwie polskim, międzynarodowym i kanonicznym*, (Olsztyn: 2017), 126.

<sup>38</sup> JL from 2021 item 2268.

<sup>39</sup> Act from November 28th 2003 on family benefits JL from 2022, item 615.

the municipal social assistance centres in municipality of Jaświły and Jasionówka in the Podlaske Voievodship – are limited in the resources, even when it concerns the places of accommodation which they could offer to the impoverished families so they are unable to provide certain services (e.g. care services, protected apartments). However, it is possible to apply for additional funds either from the UE funds or from earmarked funds e.g. Fundusz Sprawiedliwości. In the work of a probation officer of the family division it is clear that the amount of the non-governmental organizations especially in big cities positively influences the condition of families in the material and financial dimensions. However, these organizations are usually territorially limited. Therefore, in practice, in the countryside the aid provided to the family will be much more limited in comparison to the aid provided in big cities. As a result, the statutory guarantees, in the lack of the proper material and financial base, are not covered.

This alarming phenomenon will definitely increase the approaching communication exclusion with the coming ill-considered electrification in the automotive industry based on the incomplete technology. A car, which will soon be financially unavailable for the average person, is often the only means of transport to the cities where people can obtain professional aid, and it will become a luxury again.

The social benefits for the families threatened with poverty offer emergency assistance however, they are not deprived of defects. In cities and in the country the phenomenon of generational poverty is still present, as families, for generations, are dependent on the social welfare benefits. However, it cannot be unequivocally stated that the direct financial and material provisions are the best form of state's help for the impoverished families. Undoubtedly, if the state tries to prepare the impoverished family members to satisfy their needs on their own, as the saying goes: teach a man to fish<sup>40</sup>, it will let them help the next generation to avoid the terrible circle of poverty. Nevertheless, offering such help by the state is definitely less measurable and it assumes the ability of the protégés to change. What is more, the system of support would require large financial outlays which are connected with securing the material base and with employing social workers who would cooperate with the impoverished families. The professional experience in the sphere of family law shows that in many cases these families

<sup>40</sup> See D. Ossowska-Salamonowicz, M. Giżyńska, "Konstytucyjne obowiązki państwa względem rodziny – analiza wybranych przykładów regulacji ochronnych", *Problemy małżeństwa i rodziny w prawodawstwie polskim, międzynarodowym i kanonicznym*, KKP Monografie (Olsztyn: 2017), 48.

in the poor living and social conditions are not properly motivated to change the style of functioning.

The group of provisions which is independent from the income criterion results from the political campaign from recent years. Regardless of the political origins of these solutions, the economic results and the influence on the fertility rate in Polish families, unquestionably influenced the condition of Polish families. The range of provisions begins with the so called child benefit called Rodzina 500 plus [Family 500 plus]<sup>41</sup>, or the provision Dobry Start [the Good Start]<sup>42</sup>. The previously introduced provision is the Big Family status (three children or more)<sup>43</sup>. On the basis of these provisions certain groups of services and goods offered by the state, by companies or local governments (which can introduce their own systems of the Big Family cards) are provided to beneficiaries on special conditions. The further examples of the financial support for families which we can mention are: the Family Guardianship Capital, the nursery voucher<sup>44</sup>, or the pension for the parents of families with many children<sup>45</sup>.

The essential support is expressed in applying the tax credits for the child. However, according to the Constitutional Tribunal, qualifying one parent and a child as a family should not, even indirectly, lead to weakening the sustainability of the family bonds through creating such solutions which would be favourable only for bringing up a child by a single parent or even by both parents who are not married<sup>46</sup>. It is postulated in the doctrine that the regulations of law should be precisely formulated so that they would support people who bring up the child alone but at the same time, the regulations should also favour contracting marriage<sup>47</sup>.

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<sup>41</sup> Act from February 11th 2016 on state aid in bringing up children JL from 2019 item 2407 with further changes.

<sup>42</sup> Regulation of the Council of Ministers in on detailed conditions of implementation of the governmental program “Dobry Start” from June 15th 2021, JL from 2021 item 1092 with further changes.

<sup>43</sup> Act from December 5th 2014 on the Big Family Card JL from 2021 item 1744.

<sup>44</sup> Act from November 17th 2021 family welfare capital JL from 2021 item 2270.

<sup>45</sup> Act from January 31st 2019 on parental supplementary benefit JL from 2021 item 419.

<sup>46</sup> The verdict of the Constitutional Tribunal from April 12 2011, SK 62/08, *Legalis* nr 311533.

<sup>47</sup> A. Siostrzonek-Sergiel, “Kilka uwag na temat zakresu konstytucyjnej ochrony rodziny”, *Monitor Prawniczy*, nr 23 (2015): 1258.

The broadly regulated leaves in the labour code which are connected with maternity and parenthood constitute the favourable treatment of parents who maintain their families themselves through the legal employment<sup>48</sup>. Due to the paid break at work, a parent can stay with the child in the particular time of perinatal period and in the early childhood. It is definitely beneficial for creating the bond between the child and the parent. The parent feels secure that he or she will obtain a salary in this period and after the maternity leave the mother will be able to come back to the previous post.

The state protects the sustainability, safety and proper development of the family also through penalisation of prohibited acts which are against the family welfare and care (art. 206-211a of Criminal Code<sup>49</sup>)<sup>50</sup>. Thus it protects the family against the external threats but also takes care of the welfare of the weakest family members.

## Summary

The family as the basic social unit is under particular care of the state. The constitutional guarantees of protection and care of the family are determined by the directions of the social and economic policy of the state. Nevertheless, this protection is mainly expressed in the lack of the state's interference into the autonomy and sustainability of the family. These actions of the legislator should be evaluated in a positive way as the attempt to regulate the family life in a detailed way could lead to distortion of the spirit of family. As a result, this interference into the internal relations of the family is limited to reacting in the situations when the child's welfare is threatened. In a well-functioning society it should be the rule that the best environment for the minor's development is his or her family.

Moreover, the support of the state for the families, the members of which are not capable of satisfying their basic needs themselves, is clearly noticeable. In most cases this concerns the minors but also the families who are in difficult material or social conditions. Provided

<sup>48</sup> Art. 179<sup>1</sup>-184 Acts from June 26th 1974 – Labour Code JL from 2020, item 1320 with further changes, more on the subject: K. Ziółkowska, “Nowe uprawnienia rodzicielskie wyzwaniem dla polityki społecznej”, *Problemy małżeństwa i rodziny w prawodawstwie polskim, międzynarodowym i kanonicznym*, KKP Monografie (Olsztyn: 2017), 84-92.

<sup>49</sup> Act from June 6th 1997 Criminal Code JL from 2022, item 1138.

<sup>50</sup> K. Majchrzak, “Ochrona rodziny w świetle przepisów rozdziału XXVI polskiego kodeksu karnego”, *Problemy małżeństwa i rodziny w prawodawstwie polskim, międzynarodowym i kanonicznym*, KKP Monografie (Olsztyn: 2017), 93.



that the direct financial provisions are not a perfect solution, as they can lead to the phenomenon of “generational poverty”, still they are the most measurable form of assistance. Such support is measurable and allows to apply the most objective criteria.

Whereas in the care for the dysfunctional families or single-parent families, it is necessary to consider legislative instruments which allow for the actual help to such families. Financial and material provisions are often not enough as in case of dysfunctional families the problem often concerns the lack of proper parental skills, social skills or even the proper management of the household. While in case of the single-parent families, when one of the parents is not interested in the child's fate, the problem usually concerns in the lack of responsibility for the family. Therefore, stability and sustainability of the family depends on the maturity of the people who start the family and on the cooperation of the parents in their life together for the sake of the child's welfare. Therefore, the state actions can lead to raising the parental and social qualifications of the parents or alternatively, through the favourable treatment of the families the parents of which regulated their marital status in a formal and legal way.

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