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THE FAMILY AS AN OBJECT OF PROTECTION AND A SUBJECT OF LAW IN THE POLISH CONSTITUTION AND REGULATIONS OF INTERNATIONAL LAW

ABSTRACT

The family is the basic social cell, the foundation of any social structure. The reason for the special treatment of the family is the functions it has to perform. However, despite the recognition of the uniqueness of the family, the wishful attitude to it is not always confirmed by normative solutions. The purpose of the study is to attempt to identify provisions that speak in favor of recognizing the subjectivity of the family. To achieve this goal, the methods of critical analysis, dogmatic-legal and axiological. The analysis of legal provisions relating to the family does not confirm the recognition of it as a subject of the law, despite the existence of provisions aimed at ensuring optimal conditions for the realization of its natural functions.

KEYWORDS: *protection of the family, constitutional model of the family, legal subjectivity of the family, tasks of the state towards the family*

INTRODUCTION

The family is widely regarded as a fundamental element of any social structure, providing care for its members and guaranteeing generational replacement. For this reason, this institution is made an object of protection under both international and national law. Nevertheless, such treatment of the family is not sufficient enough. There is a growing emphasis to recognise the subjectivity of the family, capable of acting in legal matters as a collective entity in defence of the rights of its members and executing the collective interest of that community. The purpose of the present paper is to identify the provisions supporting the recognition of the subjectivity of the family. The problem of the subjectivity of the family is a very broad and complex issue, therefore, only the most important legal regulations pointing to the uniqueness of the family will be outlined. It is crucial to emphasize that they require further interdisciplinary studies concerning various spheres of family functioning and the significance regarding its members and society in general. The considerations are further complicated by the fact that the family is considered as a sociological phenomenon, thus, it has no legal personality and particular legal norms are addressed directly to its members – spouses, parents and children. The subject of the considerations covered in the present paper has been limited exclusively to the norms concerning the rights due to the family considered as a whole.

THE ESSENCE OF THE FAMILY

The family is the foundation of society and the state, without which neither one nor the other can arise and survive; it is the source of being and dynamism of every community. It is difficult to imagine actions for the sake of society and the state, which is the political form of its organisation, which would not be the actions relating to the family at the same time. This close interdependence directs the activity of the state bodies towards the family, as a community based on a particular kind of ties forming a complex network of links and dependencies that bind its members together. Despite these obvious facts, the family does not have a legal definition, although references to the family are found in the provisions of the Constitution of the Republic of Poland (The Constitution of the Republic of Poland on 2 April, 1997 r., Dz. U. 1997.78.483 as amended).

Direct reference to the concept of family is made in the Article 18 of the Constitution of the Republic of Poland, according to which *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* and the Article 71(1), which specifies that *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.* In addition, the legislator refers to the family in several other places, chronologically speaking – in the context of the indication of the family farm as the basis of the state's agricultural system (Article 23), equal rights for women and men in family life (Article 33 (1)), the notification of the family of the fact of deprivation of liberty (art. 41 (1)), the right to the legal protection of family life (Article 47(1)), the right to rising children as well as moral and religious teaching in accordance with their parents' beliefs (Article 48 in accordance with the Article 53(3)), the prohibition on restrictions on human and civil liberties and rights during martial law and state of emergency (Article 233(1)). All these provisions set out the objectives to be pursued by the state authorities in order to implement the principle of the good of the family.

The lack of a legal definition of the concept of the family forces to refer to the findings of sociological sciences, which define the family as a social group based on kinship and social ties (Zielonacki, 1991: 297; Grzejdzia, 2002: 463). In the light of the constitutional provisions, a family should be considered as any permanent union of two or more persons, consisting of at least one adult and a child, based on emotional, legal and also blood ties (Judgement of the Constitutional Tribunal of April 12, 2011, SK 62/08, LEX no. 824141). The characteristics of the family include the existence of close and enduring relations linking its members (Dobrowolski, 1999: 24), which include above all emotional but also spiritual, economic and property ties. The lack of definition of this concept resulted from the fact that it did not raise any doubts; its scope was obvious to the legislator and was based on the general meaning of the concept of the family. The concept of the family in everyday language and the etymology of the term 'parent' provide an indication of its understanding as a community of parents and their children, and in certain circumstances also grandchildren living in a single household. It should be added that this is the context in which the family is the subject of legal regulation in the vast majority of cases. It should be also added that not everything needs to be covered by legal definitions, subjected to legal regulation, crammed into a normative pack of rules. After all, there are some concepts that are established, resulting from the essence of things, rooted in natural law, confirmed in the axiological system on which the legal order is built, and universally accepted. Actions aimed at giving them content they do not contain or even redefining them due to various ideologically motivated needs does not mean that they lose their original meaning. The family, which is the first and fundamental social community, is such a concept; prior to the state and the system of legal regulations it created to define interpersonal relations. This nature of the family means that it is entitled to a kind of natural rights, defining its essence, constituting it as an institution, which the state does not create but which it should protect. Such an obligation is already provided for in the Preamble to the Constitution of the Republic of Poland which obliges all who will apply it to strengthen the rights of citizens and their communities, confirmed in the Article 5 of the Constitution of the Republic of Poland in the context of ensuring the freedom and rights of a man and a citizen and the security of

citizens, completed in the already mentioned Article 18 of the Constitution of the Republic of Poland. In addition to its guarantee function, it also expresses the state's desired arrangement of social relations based on the family, and family relations based on marriage. The guarantee of protection and care addressed to the family is treated as one of the constitutionally defined objectives of the activities of public authorities (Judgment of the Constitutional Tribunal of July 22, 2008, K 24/07, LEX no. 402809). Although it is not possible to comprehensively indicate the ways in which this objective can be realised, it certainly concerns such activities of the legislator that enable individuals to achieve self-fulfilment within the family community. It involves strengthening the bonds between family members and creating conditions allowing them to execute their mutual rights and duties, in particular their obligation to support and assist each other (Judgment of the Constitutional Tribunal of July 25, 2013, P 56/11, LEX no. 1354561).

The protection of family relations provided by the state must take into account the vision of the family adopted in the Constitution of the Republic of Poland as a permanent union of a man and a woman directed towards motherhood and responsible parenthood. Consequently, with regard to factual unions, i.e. non-formalised relationships between men and women in which children are brought up, the Constitutional Tribunal stated that although they are not covered by the notion of marriage, state protection is not excluded with regard to them resulting from the fact that the parents together with the child form a family and are protected as a family (Judgment of the Constitutional Tribunal of April 12, 2011, SK 62/08, LEX no. 824141). The constitutional understanding of family is not determined by the fact that the child's parents are married. Such a family will be based on the motherhood of the cohabiting couple and the established paternity of the cohabiting couple (Grzejdziak, 2002: 464). Although cohabitation as such is not legally protected, the persons in such a relationship may benefit from the protection and care of the state if their relationship meet the definition of a family which can be formed either by the cohabitants and their common child or by the cohabitants and the child (children) of one of them or the children of each of them. Such protection will therefore apply to the family, not to an informal union between a man and a woman (Kowalski, 2009: 55). This means that

the legislator also extends legal protection to the factual unions in which children are raised, although these unions are not established on the basis of marriage. The existence of a family is not conditional on the formalisation of a relationship between a man and a woman but on the condition of having a child, which is a constitutive feature of a family. This interpretation is also supported by the systematics of the provisions of the Polish Constitution. The placement of the concept of family in the provisions on maternity and parenthood (Article 18) and immediately before the provisions regulating the protection of the mother and child (Articles 71(2) and 72) clearly suggests that the family is supposed to be based on marriage and its existence assumes having the offspring. Therefore, it is the moment of procreation associated with conjugal life and leading to the conception and subsequent birth of a child that brings about the transformation of marriage into a family. This is also the way how it is interpreted by the Constitutional Tribunal according to which, on constitutional grounds, the family is a community of parents and children, which means that the basic and indispensable determinant of the concept of family is having and raising children (Judgment of the Constitutional Tribunal of October 21, 2014, K 38/13, LEX no. 1523271). Such an understanding of the notion of a family based on a relationship between a man and a woman – consistent with the natural law – eliminates homosexual unions from this notion, as by their nature they are incapable of realising the basic function of a family – the procreative function.

The family is the oldest social group and is found in all developmental stages of society and in all formations. It is a natural and irreplaceable element of social structure, often called as the basic social cell; it is the only social group that develops not only by receiving new members from outside, but most of all by internal development – childbearing (Smyczyński, 2005: 1). The family – as a value – positively interacts in two ways: inwards – towards its members, especially the children, and outwards – towards society and the state. It is their indispensable and – in principle – reliable building block. Family and society are mutually necessary, indeed, they are indispensable (Jasudowicz, 2018: 20). This is confirmed by the Charter of the Rights of the Family of 22 October 1983 presented by the Holy See to all persons, institutions and authorities concerned with the mission of the family in today's world (<https://rodzina.archidiecezjakatowicka>).

pl/images/pdf/ karta_praw_rodziny.pdf, accessed on: December 20, 2024), which emphasises in the preamble that the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable; (point D), it constitutes much more than a mere juridical, social and economic unit, a community of love and solidarity, which is uniquely suited to teach and transmit cultural, ethical, social, spiritual and religious values, essential for the development and well-being of its own members and of society (point E). The family and society, which are mutually linked by vital and organic bonds, have a complementary function in the defence and advancement of the good of every person and of humanity; (point G). The importance of the family for society results from the fact that it forms the basic and necessary community in which the conditions for building the bonds and strengthening of all other human relationships are only realized. *Society is basically the sum of families, which makes it necessary for social and economic policy to have regard to the family as a unit of consumption and sometimes also of production* (Smyczyński, 2005: 4). Consequently, since society is the sum of families it is obvious that the good of society is a condition for the good of the families forming the society, and vice versa, the good of the family is a condition for the good of society. Therefore, society is not an autonomous entity; furthermore, it is dependent on the existence of smaller communities at the core of which is the family.

The constitutional definition of the family does not exclude other solutions, especially those that implement a broader definition of the family. However, it should always remain a point of reference for the norms introduced at the statutory level, which is a consequence of the hierarchical structure of the system of sources of law with the principle of supremacy of the Constitution of the Republic of Poland and the directive that the legislator should apply solutions that will recognize the constitutional assumptions. However, the implementation of the resulting assumptions can raise certain problems which can easily be pointed out when referring to the practice of application of certain norms defining the family at the statutory level (Stębelski, 2021: 132), as shortly discussed below. However, there are far-reaching inconsistencies between various understandings of the concept of the family, which, although justified by the necessity of the practice of validity and application of a specific act, generate

the question: whether they should occur in the case of a notion so important for the entire legal system and for social life. Expanding the concept of the family separately from its essence determined by the functions of the family, blurs the concept itself making it even more imprecise than it was before the attempt to define it. This is a paradox because it is obvious fact that the primary purpose of a definition is to make the defined object more precise and, in most cases, even narrower. The constitutional standardisation of the family is intended to ensure its protection in view of its socially important functions. These include, most importantly, the irreplaceable procreative function of a family guaranteeing regeneration of the social structure and replacement of generations, as well as related functions concerning assuring the existence of dependent family members, especially the youngest and the oldest ones (caring function), or shaping attitudes and behaviours necessary for independent life in the social community (socio-educational function). In such a view, the lack of a legal definition of the family in the Polish Constitution does not mean either that the concept can be interpreted in an arbitrary manner or that its scope can be shaped depending on the needs of the legislator.

On the other hand, surrogate families do not constitute a family because of the lack of close and permanent relations between its members. The purpose of the existence of this type of family is different. The purpose of foster care is to provide temporary care and upbringing for a child when his or her biological parents are unable to do so until his or her biological parents regain everything that could be described as 'parental capacity'. It is the task of the state authorities to take measures to help dysfunctional parents to overcome their difficulties and fulfil their parental obligations properly. There is no doubt that the best environment for a child to live and function in is the family environment, characterised by the existence of special biological and emotional ties linking its members.

A detailed analysis of all cases when the legislator employed various definitions of the family suitable for a particular sphere of legal regulation goes far beyond the scope of the present deliberations and exceeds the framework appropriate for this type of elaboration. As an example, we can point to the definition of a family included in the Article 3(16) of the Act of 28 November 2003 on Family Benefits (The Act of 28 November 2003 on Family Benefits,

Dz. U. 2024.323 as amended) according to which a family is considered as spouses, parents of children, actual guardian of a child and dependent children up to the age of 25, as well as a child who has reached the age of 25 and who has a considerable degree of disability, if due to this disability a nursing benefit or a special care allowance or an allowance for a guardian is due; family members do not include a child under the care of a legal guardian, a married child, as well as an adult child with their own child. Another example is the Article 6(14) of the Act of 12 March 2004 on Social Assistance (The Act of 12 March 2004 on Social Assistance, Dz. U. 2024.1283 as amended), according to which a family consists of related or unrelated persons in an actual relationship, living and hosting together. Such definition of a family structure in both these regulations determines, for instance, the way in which family income is calculated, which is one of the basic criteria for granting family support.

INTERNATIONAL GUARANTEES FOR THE PROTECTION OF THE FAMILY

The unique role of the family has been recognised by the international community, as reflected in the recognition of the family as a fundamental value and as a subject entitled to human rights. Guarantees concerning protection of the family have been included in the most important acts of international law of universal and regional scope, referring to the perception of the family in accordance with natural law.

The fundamental importance is included in the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (https://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna_Deklaracja_Praw_Czlowieka.pdf, accessed on: June 10, 2023), which is a kind of constitution of international law and a benchmark of universally accepted standards – which in the Article 16(3) emphasised that *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*. The basis for the foundation of the family is marriage, which men and women of full age, without any limitation due to race, nationality or religion, have the right to (Article 16(1)). It also recognised the need

to provide special care and assistance to the mother and a child (Article 25(2), sentence 1). Similar regulations extending protection to marriage and the family are contained in the International Covenant on Civil and Political Rights (The International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966, Dz. U. 1977.38.167), which confirmed in the Article 23(1) that *the family is the natural and fundamental group unit of society and is entitled to protection by society and the State*. The family should be based on a stable union between a man and a woman with procreative potential, as reflected in the Article 23(2), according to which *The right of men and women of marriageable age to marry and to found a family is recognized*. This is perfectly expressed by the International Covenant on Economic, Social and Cultural Rights (The International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966, Dz. U. 1977.38.169), which emphasised in the Article 10(1) that *the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses*. Also noteworthy is the Article 11(1), sentence 1, which recognised the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The emphasis on the inherently offspring-oriented role of the family is reflected in the Preamble to the Convention on the Rights of the Child (The Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989, Dz. U. 1991.120.526), which states that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, and that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

At the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (The Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in

Rome on 4 November 1950, as amended by Protocols No. 3, 5 and 8, and comprised the Protocol No 2, Dz. U. 1993.61.284) plays a fundamental role since it was affirmed in the Article 12 that *men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right*. The reinforcement of the spouses and confirmation of the protection of private and family life is included in the Article 8 of the ECHR, which expresses the principle of family autonomy. On the basis of the Article 8 of the ECHR, a rich jurisprudence of the guardian of the provisions of the Convention – the European Court of Human Rights – has taken shape. Although it does not define the concept of the family, it refers to this concept indirectly as it expresses a broad understanding of the concept of ‘family life’, including both marriage and other stable unions of persons of different or one sex, it also applies to relations between parents and children.

The measures protecting the family are known to the European Social Charter (The European Social Charter drafted in Turin on 18 October 1961, Dz. U. 1999.8.67), as expressed in the Article 16, according to which *with a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means*.

In European Union law, the provisions of the Charter of Fundamental Rights (The Charter of Fundamental Rights adopted in Nice on 7 December 2000, OJ EU C202/389 from 7 June 2016) are essential. The EU legislator declared in the Article 33(1) that *The family shall enjoy legal, economic and social protection*. At the same time, however, in the Article 9 it was recognised that *The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights*. This is the only provision that does not explicitly mention men and women as subjects of the right to marry, and it separately mentions the right to found a family (Mączyński, 2012: 760). More specific is the Article 33(2), which attempts to combine social guarantees with the aim of harmonising them with working life, emphasising that *to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity*

and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

From the above mentioned facts, it results that the provisions of the international acts interpret the right to marry together along with the right to found a family. This clearly suggests a close link between the two human relationships, which corresponds to the natural order of things – from the fundamental relationship (marriage), to the conception of a child, which leads to the creation of a family. The nature of the interaction that has existed between the spouses then changes; with the birth of the child, the needs of the parents are of the second priority, the parents have to re-evaluate their lives and redefine their priorities. For parents, who have been expecting a child, there is basically only one priority – the desired child, who becomes the centre of the parents' lives and interests. *The extensive body of international standards, especially European standards, in the sphere of guaranteeing the rights of the family, in fact, leads to the conclusion that the family – independently on the rights serving its individual constituent parts – has quite solid guarantees, only that they are included in a number of international documents, heterogeneous in their subject matter and degree of validity, largely unrecognised by practice and in any case not comprehensively covered* (Jasudowicz, 2008: 214).

THE PRINCIPLE OF THE PROTECTION OF THE GOOD OF THE FAMILY

The legislator protects the family for pragmatic reasons, which is reflected in the content of the Article 71(1) of the Constitution of the Republic of Poland, according to which *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.* This inclusion is exemplary; it means that family protection can apply not only to families with many children and single-parent families, but to all families in a difficult material and social situation (Judgment of the Constitutional Tribunal of May 18, 2005, K 16/04, LEX no. 155506). At the same time, not every large or single-parent

family is automatically a family in need of assistance. The *ratio legis* for providing assistance to such families is that only an economically strong and morally sound family can fulfil its educational, caring, socialising, culture-forming and economic functions adequately (also in the interests of society and the state). In contrast, poverty, cultural degradation and moral regression (often interconnected) weaken, distort or even exclude the proper functioning of the family environment (Nazar, 1997: 106). Protecting the good of the family involves both the material and moral aspects of its existence and functioning (Grzejdziak, 2002: 467-468). The notion of *the good of the family* includes, first and foremost, its sustainability, which lays the foundations of a sense of security for all its members, especially the most vulnerable – children, sick or disabled people. The good of the family is formed by strong and enduring ties based on positive emotional relations linking its members, allowing them to stay together, fostering personal development and a feeling of happiness due to closeness with other family members (Judgment of the Constitutional Tribunal of November 18, 2014, SK 7/11, LEX no. 1544151). The premise of a family good applies to all family members, obliging them to behave in a certain way towards the family in order to realise the common good.

The Constitution of the Republic of Poland does not specify the instruments by means of which the public authorities are supposed to implement assistance to the family. The doctrine only notes that from the literal understanding of the concept of ‘taking into account’, it can be deduced that ‘taking into account the good of the family’ should consist of examining the effects of proposed legal regulations on the family, as well as interpreting the law in favour of the good of the family (Bartoszewicz, 2014: comment on the art. 71, par. 3). The consequence of such creating and understanding the law should be a pro-family social and economic policy, reflected in specific undertakings in favour of the family. It seems that taking into account the good of the family in the social and economic policy of the state is, first of all, to take measures strengthening the natural bonds between family members (Mączyński, 2012: 768) because a strong family is familiarized with a stable society and a strong state.

The provision obliging the state to take into account the good of the family in its social and economic policy is programmatic in nature (Program standards force public authorities to take actions aimed at achieving the goal indicated

in the relevant provision of the Constitution of the Republic of Poland, while the method of achieving the goal is left to the ordinary legislator). Thus, it defines the task of the state which it should fulfil, but it does not constitute a source of subjective right, which means that it cannot be the basis of a claim by individuals nor can a constitutional complaint be based on the allegation of its violation (Judgment of the Constitutional Tribunal of July 10, 2000, SK 21/99, LEX no. 41216; Judgment of the Constitutional Tribunal of September 4, 2007, P 19/07, LEX no. 316025; Judgment of the Constitutional Tribunal of March 10, 2015, P 38/12, LEX no. 1652949). Such a character of the provision of the Article 71, paragraph 1, clause 1 of the Constitution of the Republic of Poland does not, however, deprive it of legal significance, as *a violation of the constitutional provision defining the objectives of the activity of public authorities occurs, inter alia, when the legislator has misinterpreted the constitutional provision defining a specific objective or task of public authority, and in particular, when passing a law, has applied such measures that could not lead to the realisation of this objective* (Judgment of the Constitutional Tribunal of April 4, 2001, K 11/00, LEX no. 46869; Judgment of the Constitutional Tribunal of May 4, 2004, K 8/03, LEX no. 112985; Judgment of the Constitutional Tribunal of July 22, 2008, P 41/07, LEX no. 402811). In view of this, it follows from the norm expressed in the first sentence of the Article 71(1) of the Constitution of the Republic of Poland that – on the basis of this provision – the family is not a subject of the law, and thus is not entitled to rights of a subjective nature. From the content of the Article 71(1) sentence 1, no subjective right can be derived. It only defines the state's goals. However, this does not mean full decision-making freedom of its bodies in determining and conducting social and economic policy in the area in which it relates to the family. They must take into account the orders arising from the Article 18 and in the activities they conduct (Both passing and applying law) protect the permanence of the family and ensure its care (Banaszak, 2012: 423-424). A subjective right is, however, expressed in the Article 71, paragraph 1, sentence 2, of the Constitution of the Republic of Poland, as it specifies the required level of benefits for families in a difficult material and social situation, especially those with many children and incomplete. These types of families – according to the legislator – are particularly predisposed to finding themselves in a difficult situation, requiring necessary

support from public authorities. Consequently, by using the phrase 'the right to' in the text of the provision, a subjective right to special assistance from public authorities is included, and therefore it may constitute a basis for claims against the state and may be the basis for a constitutional complaint (Judgment of the Constitutional Tribunal of May 18, 2005, K 16/04, LEX no. 155506). Nevertheless, the legal significance of the second sentence of Article 71(1) of the Polish Constitution is weakened because it is among the provisions that can only be asserted within the limits set by the act. Therefore, what is in accordance with the good of the family is decided by the legislator within the limits of political discretion (Judgment of the Constitutional Tribunal of July 8, 2014, P 33/13, LEX no. 1483539). Any member of the family who is a beneficiary of the right may bring a court claim or a constitutional complaint (Judgment of the Constitutional Tribunal of April 12, 2011, SK 62/08, LEX no. 824141).

It should be emphasised that the objectives for the legislator's activity in this area are set by all the provisions defining the constitutional status of the family. The provisions of the Constitution of the Republic of Poland cannot be interpreted in an isolated manner but always in a specific axiological context, reflecting the way of understanding the system of accepted values and, consequently, the perception of the tasks of the state. The Constitution of the Republic of Poland does not constitute a set of random norms, but it is a conscious, logical, internally coherent and complete whole, and this is how its provisions should be comprehended, which are also not autonomous with respect to one another but they complement and interpenetrate each other. Accordingly, the principle of protection of the good of the family must be interpreted in connection with the principle of the protection and care of the State over marriage and the family (Article 18), the principle of respect for and protection of inherent human dignity (Article 30), the principle of equality before the law (Article 32(1)), the principle of equality between men and women in family, political, social and economic life (Article 33(1)), the principle of the protection of the best interests of the child (Article 72), the principle of subsidiarity, which strengthens the powers of citizens and their communities, which undoubtedly includes the family community (preamble), the principle of the common good (Article 1) or the principle of social justice (Article 2).

Ultimately, what is in accordance with the good of the family is decided by the legislator within the limits of political discretion. As a result, the choice of specific solutions in which the implementation of state protection and care for families takes place directly depends on political decisions, shaping specific pro-family policies. At the same time, solutions promoting the protection of the family may be adopted even at the expense of restricting the freedoms and rights of third parties (Judgment of the Constitutional Tribunal of May 4, 2004, K 8/03, LEX no. 112985). On the basis of ordinary legislation, the obligation to take into account the good of the family in the social and economic policy of the state is realised primarily through the system of social benefits and tax law solutions in the form of preferential income tax settlement and a transparent system of tax allowances. However, tax laws must not lead, even indirectly, to a weakening of the permanence of family ties by such solutions that would favour the raising of children by only one parent or even by both parents, but without marriage (Judgment of the Constitutional Tribunal of April 12, 2011, SK 62/08, LEX no. 824141). Families are supported by an extensive system of family benefits. These include the family allowance, supplements to the family allowance (for childbirth, childcare during parental leave, single parenthood, raising a child in a family with many children, education and rehabilitation of a disabled child, starting the school year, taking up education by a child in a school out of the place of residence), special child birth grant, care benefits (care allowance, care benefits and special care benefit), guardian's benefit, 'active parent' benefits, supporting parents in their professional activity and in raising their child ('active parents at work' benefit, 'actively in the nursery' benefit, 'actively at home' benefit), parental benefit, child birth grant paid from the municipality's own funds. Furthermore, there should also be mentioned upbringing benefits included in the programme 'Family 800+' [Rodzina 800+] which, besides partially covering the costs of raising a child, was also intended to contribute to increasing the fertility rate. The programme the Large Family Card is closely related to the previously mentioned benefit and it encourages having large families (at least three children) that can benefit from a system of special discounts and additional entitlements, dedicated to them by both public institutions and private sector. The above presented supporting issues reinforce pro-natalist policies aimed at increasing the fertility rate of families,

which is important in the context of a rapidly ageing population. It is crucial to point out that currently there is no replacement of generations which means that more citizens are retiring than children are being born. Consequently, fewer people are working for their current pensions, since the amount of these pensions depends on the amount of money paid in to the Social Insurance Institution [Zakład Ubezpieczeń Społecznych]. As a result, this influences the economic development and consequently, the quality of life of the social community.

Other forms of family support include support and development of housing construction, favourable conditions for obtaining housing loans, a suitably flexible employment policy allowing to reconcile work and childcare by introducing the possibility of intermittent working time, mobile working time, individual working time or the possibility to work remotely, an extensive system of childcare facilities ensuring admission of a child to kindergarten or school, parental leaves linked to a system of support in the form of various allowances and benefits. The diversity of the forms of family support makes it clear that the obligation to protect and help the family cannot be implemented only through the social security system, but must have the character of multi-faceted harmonised and comprehensive system solutions (Judgment of the Constitutional Tribunal of November 15, 2005, P 3/05, LEX no. 174105). The catalogue of measures shaping a specific pro-family policy is relatively extensive; therefore, a detailed discussion of them exceeds the scope of this study.

The assistance provided to families in a difficult material and social situation is supposed to be specific. This implies preferential treatment for persons belonging to a particular category of subjects, ahead of protection of ordinary intensity, which is intended to protect families in a difficult material and social situation from marginalisation and to ensure a relatively normal functioning (Judgment of the Constitutional Tribunal of November 18, 2014, SK 7/11, LEX no. 1544151). The special assistance provided by the State does not, however, relieve families of their responsibility for their maintenance and family members of their maintenance obligations, which derive from the nature of relations based on kinship ties.

It should be added that the legislator does not make the granting of special assistance to families in a difficult material and social situation conditional on their members having Polish citizenship. Thus, the principle of granting special

assistance also applies to families of foreigners and stateless persons (Judgment of the Supreme Administrative Court of February 1, 2001, V SA 1541/00, LEX no. 657814). However, the adopted solution raises objections on the basis of the principles of solidarity and social justice, the foundations of which lie in the obligation of all those residing on the territory under the jurisdiction of the state to contribute to the maintenance of its organs. It is difficult to accept a situation of general support for all those in a difficult material and social situation without verifying the underlying causes first. The aid provided should be combined with obligations to the common good in proportion to one's strengths and capacities. Otherwise, the provision of aid could lead to living at someone else's expense and consequently generate new divisions and inequalities.

In this context, the danger of giving undue preference to single-parent families, which may lead to the pathologisation of social relations, should also be emphasised. Solutions favouring single-parent families must not lead, even indirectly, to a weakening of the durability of family ties through such norms which would prefer children to be raised by only one of the parents or by both of them, but without marriage (Judgment of the Constitutional Tribunal of May 18, 2005, K 16/04, LEX no. 155506), because of the existing possibility of obtaining certain benefits. In addition, receiving of assistance must not contribute to a significant and permanent dependence of families on state's aid (Dobrowolski, 1999: 27), which would lead to an increase in helplessness and unwillingness to make an effort to escape from the situation justifying state's aid. The relevant legal regulations should prevent this kind of manipulation in accordance with the principle of proportionality provided for in the Article 31(3) of the Polish Constitution. After all, pursuing appropriate family-friendly policies does not mean that the state should bail out or even replace the family in fulfilling its functions.

LEGAL SUBJECTIVITY OF THE FAMILY

Despite the fact of appreciation of the family as the natural environment for human life and development and as the basic social group, this fact has not been unequivocally determined either under national or international law. Who is a subject of law and who is not is determined by the legislator. The lack of legal subjectivity of the family means that it cannot act as a subject of freedoms and rights, with the consequent impossibility of asserting the subjective rights of the family as a collective entity, although the construction of many provisions indicates that this is the way how the family can be treated. Moreover, the fact that many provisions are not addressed to the individual members of the family, who form its personal substrate, but precisely to the family as a certain integrated whole, makes it possible to consider it as a *sui generis* subject of law. In the context of the family's legal subjectivity, the issue is therefore not about the individual rights of the family members, who necessarily enjoy them, but about the rights of the family as such. This issue, although fundamental, is still almost unrecognised.

The subjectivity of the family is emphasised by the provisions relating to the relationship between parents and their child, in which the legislator has highlighted the natural right of parents to bring up their child in accordance with their beliefs. Upbringing is part of the social function of the family and implies involvement in the child's life. *Parents, with a sense of responsibility, guided by the welfare of the child, not only take care of the child's physical development, satisfying his livelihood needs, but also in the best of faith take other measures, in accordance with their views on various spheres of life, aimed at shaping the child mentally, religiously, morally, worldview and aesthetically. Such activities are aimed at preparing the child to live independently and to function as well as possible in society and to fulfill their future social roles* (Lis, 2000: 12). The guarantees granting parents the right to bring up their child in accordance with their beliefs contained in the Article 48(1) of the Constitution of the Republic of Poland are perceived as a specification of the protection of the family, particularly of parenthood (Judgment of the Constitutional Tribunal of April 29, 2003, SK 24/02, LEX no. 78053). The similar nature is included in the provision of the Article 53(3), sentence 1, of the Polish Constitution,

which guarantees parents the right to provide their children with moral and religious upbringing and teaching in accordance with their beliefs. Both of these provisions also protect the relationships that exist between family members and contribute to strengthening the permanence of the family. They have a role in integrating family members around shared values, matters considered important, similarly perceived and judged, and provide parents with comfort in the formation of their child's personality, which includes teaching respect for each other and for the environment. This correlates with the Article 47 of the Polish Constitution covering family relationships with legal protection to ensure freedom from interference by external entities, including the state. Failure to ensure the parents' right to raise their child in accordance with their own beliefs within a certain system of values may lead to indoctrination of children by third parties or public entities, which could have the effect of undermining the authority of the parents, weakening the family as a whole and the functions it performs. In this context, an element of the parents' right to raise their children is also the recognition of the parents' right to choose schools other than public schools for their children (Article 70(3) of the Polish Constitution).

The family is also referred to in the provisions that oblige the public authorities to provide pregnant women with special health care (Article 68(3) of the Constitution of the Republic of Poland) and special assistance before and after the birth of the child (Article 71(2) of the Constitution of the Republic of Poland), which constitutes a clarification of the declaration arising from the Article 18 of the Constitution of the Republic of Poland that maternity is supposed to be protected and cared for. In this way, the legislator emphasises the irreplaceable role of women in the realisation of the procreative function of the family, which guarantees the replacement of generations, stabilises social relations, and the possibility for the state to efficiently fulfil its tasks, mainly in the economic and social sphere. It is evident that children ensure the proper functioning of a state that embodies the principles of social justice, which is intended to serve the common good.

CONCLUSIONS

Taking all the facts into consideration, it is not surprising that the legislator has made the issues concerning the family the subject of regulation at the level of the Constitution of the Republic of Poland, which is the normative act with the highest legal force in the system of state law. The basic principles of family law are set out there in order to attempt to provide the family with optimal conditions for the realisation of its natural functions. Nevertheless, it seems that the family is protected primarily in an indirect way, in other words, by protecting its constituent elements. Meanwhile, the functions that the family has to perform are not a simple sum of the functions performed by its members. Guaranteeing optimal conditions for the family to function and recognising it as a subject of law requires a change of approach, which comes down to valuing the family, showing it as a tool to achieve the good of society, a foundation for its stability, prosperity and development. It should be added that this is not particularly complicated, especially when there are provisions in the legal system that point to the subjective treatment of the family; only/also changes in the sphere of social and economic policy appear to be necessary along with the shaping of this policy with the regard to the process of creating as well as applying the law.

The good of society depends on the good of families. However, this requires a properly prepared, possibly comprehensive, consistently implemented and forward-looking pro-family policy, which the state has not developed because of focusing its actions on ad hoc solutions, which are not always consistent. In addition to the undoubtedly needed material support, social programs should be implemented, the implementation of which will create a family-friendly environment. Besides material support and social programmes, it seems necessary to change also the philosophy of approach to marriage and family, which are currently in crisis. We can just point to the negative fertility rate, which affects the organisation of the pension system, the functioning of the labour market, the education system, the level of innovation and, consequently – GDP – which is one of the basic determinants of wealth. Undermining the importance of marriage and depreciating the role of the family are destructive actions that may ultimately threaten the stability of society, proper development and even the existence of the state.

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