

Piotr Kroczeck

Does the Catholic Vision of the Principle of Subsidiarity Pertain to Polish Family Law?

Ecumeny and Law 3, 327-341

2015

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](#), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

PIOTR KROCZEK

The Pontifical University of John Paul II, Cracow, Poland

Does the Catholic Vision of the Principle of Subsidiarity Pertain to Polish Family Law?

Keywords: principle of subsidiarity, family, Polish law, family law, canon law, sovereignty of family

1. The family in view of the State and the Church

Family, as a legal institution, occupies a prominent place in the legal systems of the State and the Church. The Church appreciates the family as the “one of the most precious of human values.”¹ In turn the State, by recognizing the Universal Declaration of Human Rights,² and accepting, as a part of Polish legal system the International Covenant on Economic, Social and Cultural Rights,³ treats the family as “the natural and funda-

¹ JOHN PAUL II: *Apostolic Exhortation “Familiaris consortio”* (22.11.1981). *Acta Apostolicae Sedis* (hereinafter: AAS) 74 (1982), pp. 81—191, (hereinafter FC), no. 1: *Ecclesia sibi conscientia matrimonium et familiam unum e bonis pretiosissimis generis hominum esse.*

² The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, <http://www.un.org/en/documents/udhr/index.shtml> (accessed 24.2.2004).

³ In Polish legal system the law is titled: Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 r. z dnia 19 grudnia 1966 r. (Dz.U. = *Dziennik Ustaw Rzeczypospolitej Polskiej* [The Journal of Laws of the Republic of Poland] of 1977 No. 38, item. 169); English version: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (accessed 24.2.2004).

mental group unit of society" (Art. 10, no. 1).⁴ Even more, the Polish law regards the family as the "irreplaceable institution that brings to life new generations and creates proper milieu for their upbringing and for the development of every member of the family."⁵ Both Parties in the Concordat of 1988 declared in Art. 11 their will to "co-operate for the purposes of protecting and respecting the institution of marriage and the family, which are the foundation of society."⁶

Because of its importance, the family is entitled to a wide protection and assistance. The family needs help in many forms from both societies, the Church and the State, to achieve the goals of the family and fulfill its mission.

Unfortunately, there is a problem that has mounted up in recent years in Poland. There are a lot of reported cases of transgression or limiting of rights of the family, for instance deprivation of custody of the child, by the public administration authorities, that is, the State or local government officials.⁷ The situation cannot be accepted from the Church point of view.

No one can *a priori* deny a good will on the side of the State, but one can ponder over the reason of such situations, and ask the following questions: Do the two parties in question — the Church and the State — unfortunately differ in understanding what is good for the family, and how to provide necessary help for the family? Is the State's policy on the family the core of the problem or is it the state law, its interpretation and application?

The aim of the paper is to examine whether, in context of relation between the State and family, the principle of subsidiarity, as it appears in the Catholic teaching, is applied to the Polish law. The problem can be formulated in a different way: Do the Church and the State have divergent attitudes to the autonomy of the family?

⁴ See Art. 16 of the Universal Declaration of Human Rights.

⁵ Original text: "[Rodzina jest] niezastąpioną instytucją powoływania do życia kolejnych pokoleń i tworzenia właściwego środowiska do ich wychowywania oraz do rozwoju każdego z członków rodziny," Uchwała Sejmu Rzeczypospolitej Polskiej z dn. 30 sierpnia 1996 r. w sprawie polityki państwa na rzecz rodzin (*Monitor Polski* No. 55, item. 502). The law was repealed October 20, 1997.

⁶ Konkordat między Stolicą Apostolską i Rzecząpospolitą Polską, podpisany w Warszawie dn. 28 lipca 1993 r. (Dz.U. of 1998 No. 51, item 318); here: art. 11 in Polish: "Układające się Strony deklarują wolę współdziałania na rzecz obrony i poszanowania instytucji małżeństwa i rodzin będących fundamentem społeczeństwa."

⁷ See K. MARKIEWICZ B. PRZYMUSIŃSKI interview with A BODNAR: "Politycy wierzą w magiczne zaklęcia." *Iustitia* 12 (2013), no. 2, pp. 92–97; see the statement of the prosecutor's office in Kraków, <http://www.krakow.po.gov.pl/decyzja-prokuratury-dotyczaca-rodziny-b.html> (accessed 25.2.2014).

The presentation has not only an academic dimension. Due to many profound and rapid changes that have affected the society and culture, the family has had to face numerous problems, challenges and difficulties. To overcome them, both the Church and the State, must cooperate, not be the rival parties.

2. Sovereignty of the family

The term “sovereignty of the family” means that the family enjoys *ex natura* the true autonomy. The autonomy in question manifests in independence of the family in many dimensions of its life and functions in any society, for example, the State or the Church. There is an opinion that sovereignty of the family cannot be restricted or repealed by any authority whatsoever.⁸ The council teaches that “it has always been the duty of Christian married partners but today it is the greatest part of their apostolate to manifest and prove by their own way of life the indissolubility and sacredness of the marriage bond, strenuously to affirm the right and duty of parents and guardians to educate children in a Christian manner, and to defend the dignity and lawful autonomy of the family” (AA 11).

The sovereignty of the family relies on the marriage, which can be validly contracted only by a man and a woman who give their matrimonial consent as a free act of will. They give and accept one another for the purpose of establishing a marriage (can. 1057 § 1 and § 2).⁹ The human power of freedom is expressed, in case of marriage, by everyone’s right to marry (*ius connubii*). The right is transferred to the family as freely established community.

Another foundation of the sovereignty of the family is the fact that the family is a self-organized social structure. The family, without any external regulations from church law or state law, without possessing legal personality, simply functions.¹⁰

Article 6 of the Charter of the Rights of the Family states that “the family has the right to exist and to progress as a family. Public authorities

⁸ W. GÓRLASKI: “Family as a sovereign institution,” *Ecumeny and Law* 2 (2014).

⁹ Cf. P.J. VILADRICH: “Rodzinna suwerenna.” *L’Osservatore Romano* (Polish edition) 28 (1997), p. 53; cf. *Letter*, no. 16.

¹⁰ See A. GRZEJDZIAK: “Prawo do wychowania w rodzinie.” In: *Prawa i wolności obywatelskie w Konstytucji RP*. Eds. B. BANASZAK, A. PREISNER. Warszawa 2002, p. 464.

must respect and foster the dignity, lawful independence, privacy, integrity and stability of every family.”¹¹ It means that the family is to be protected from any form of intrusion from the outside. The above-mentioned “lawful independence, privacy, integrity” constitute the sovereignty of the family.

This affirmation of the family’s sovereignty as an institution and the recognition of the various ways in which it is conditioned naturally leads to the subject of family rights.¹² The rights in question do not pose a threat to the state, because “the sovereignty of the family is essential for the good of society.”¹³ “The family and society have complementary functions in defending and fostering the good of each and every human being. But society — more specifically the State — must recognize that ‘the family is a society in its own original right’ and so society is under a grave obligation in its relations with the family to adhere to the principle of subsidiarity.”¹⁴ This statement urges us to answer the following question: What is the Catholic vision of the principle of subsidiarity?

3. The principle of subsidiarity

The principle of subsidiarity is quite well presented in the church teaching and in canon law.¹⁵ Roughly speaking, the principle orders that

¹¹ Art. 6 of the Charter of Rights of the Family of 1983 (original version: *Carta dei diritti della famiglia, Enchiridion Vaticanum*, vol. 9. Eds. B. TESTACCI G. MOCELLINT. Bologna 1988, pp. 538—552.

¹² *The Letter to Families “Gratissimam sane”* from John Paul II written in the Year of the Family in 1994 (original version: AAS 86 (1994), pp. 868—925), (hereinafter *Letter*), no. 17.

¹³ *Letter*, no. 17.

¹⁴ FC, no. 45.

¹⁵ See, e.g., W. BERTRAMS: “De principio subsidiaritatis in iure canonico.” *Periodica de re morali* 46 (1957), pp. 13—65; M. KAISER: “Das Prinzip der Subsidiarität in der Verfassung der Kirche.” *Archiv für Katholisches Kirchenrecht* 133 (1964), pp. 3—13; *De principio subsidiaritatis in iure canonico, Acta conventus internationalis Canonistarum Romae diebus 20-25 maii 1968 celebrati*. Vatican 1970, pp. 297—306; J. KRUKOWSKI: “Zasada pomocniczości w prawie kanoniczny.” *Zeszyty Naukowe KUL* 14 (1971), no. 4, pp. 51—57; J. A. KOMONCHAK: “Subsidiarity in the Church: the State of the Question.” *The Jurist* 48 (1988), pp. 298—349; J. P. JOHNSON: *The Principle of Subsidiarity in Catholic Social Thought*. Atlanta 1994; A. LEYS: *Ecclesiological Impacts of the Principle of Subsidiarity*. Kampen 1995; R. M. HARRINGTON: *The Applicability of the Principle of Subsidiarity According to the Code of Canon Law*. Ottawa 1997; J. W. MONTGOMERY: *Christ our Advocate. Studies in Polemical Theology, Jurisprudence and Canon*

the bigger society or the society of a bigger potential is obliged to bring help (*subsidiū*) to the smaller society or the society of lesser potential, or even to the individual. The bigger society can act on its own initiative or when asked. On the other hand, the principle also instructs that the first one cannot reserve for itself the activity that can be successfully completed by the latter one.¹⁶

The Papal enunciation really worth mentioning in the context of the principle is the *Encyclical Letter “Quadragesimo anno”* (1931) of the Pope Pius XI.¹⁷ The Pope pronounced that “the supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly,” and “in observance of the principle of subsidiary function, the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State.”¹⁸

Touching the same kind of topics, that is, economic and social justice, Pope John Paul II in the *Encyclical Letter “Centesimus annus”* (1991)¹⁹ reminded that “here again the principle of subsidiarity must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.”²⁰

Canon law, as the manifestation and practical application of the Church’s theological teaching, many times expresses the principle of subsidiarity.²¹ In context of the family, the principle in question is presented

Law. Bonn 2002, pp. 71–80; P. BLICKLE, T. O. HUEGLIN, D. WYDUCHEL: *Subsidiarität als rechtliches und politisches Ordnungsprinzip in Kirche, Staat und Gesellschaft: Genese, Geltungsgrundlagen und Perspektiven an der Schwelle des dritten Jahrtausends.* Berlin 2002; J. KRZYWDA: “Hierarchiczny ustroj w Kościele a zasada pomocniczości.” In: *Ecclesia et Status.* Eds. A. DĘBIŃSKI, K. ORZESZYNA, M. SITARZ. Lublin 2004, pp. 467–483.

¹⁶ Entry “Pomocniczość.” In: H. VORGRIMELER: *Nowy leksykon teologiczny.* Trans. T. MIESZKOWSKI, P. PACHCIAREK. Warszawa 2005, p. 275; cf. J. KRUKOWSKI: *Administracja w Kościele. Zarys kościelnego prawa administracyjnego.* Lublin 1985, p. 53; G. GHIRLANDA: *Wprowadzenie do prawa kościelnego.* Trans. S. Kobiałka. Kraków 1996, pp. 76–79.

¹⁷ Pius XI: *Litterae encyclicae “Quadragesimo anno”* (15.5.1931). *AAS* 23 (1931), pp. 177–228; here p. 203; English translation and numbers taken from: http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html (accessed 24.2.2014).

¹⁸ *Quadragesimo anno*, no. 80.

¹⁹ John Paul II: *Litterae encyclicae “Centesimus annus.”* *AAS* 83 (1991), pp. 793–867.

²⁰ *Centesimus annus*, no. 48.

²¹ See, for instance, *Prefatio, Codex Iuris Canonici* auctoritate Ioannis Pauli PP. II promulgatus, *AAS* 75 (1983), part II, p. XXII, principle no. 5 of the revision of the Code;

in can. 793 § 1. The provision states that “Catholic parents have [...] the duty and the right to choose those means and institutes which, in their local circumstances, can best promote the Catholic education of their children,” and in § 2 of the same canon the legislator wrote that “parents have moreover the right to avail themselves of that assistance from civil society which they need to provide a Catholic education for their children.”

There are many subjects that can successfully assist the family. Among them one can count: the Church, the state, the school, the institutes of consecrated life or the societies of apostolic life, associations, associations of Christ’s faithful, the foundations, other institutions, but also means of social communication, and singular persons.²² They all can provide, to some extent, help, “for parents by themselves are not capable of satisfying every requirement of the whole process of raising children, especially in matters concerning their schooling and the entire gamut of socialization. Subsidiarity thus complements paternal and maternal love and confirms its fundamental nature, inasmuch as all other participants in the process of education are only able to carry out their responsibilities in the name of the parents, with their consent and, to a certain degree, with their authorization.”²³ The authorization means that the listed subjects are to be seen only as subsidiary ones. The parents must not make the other subjects perform all duties for them, and also the subjects must not appropriate parents’ rights.

In summation it can be said that, in the light of the church teaching included in doctrinal enunciations and canon law, the principle of subsidiarity in the context of the relations between the family and the state can be described as: *what family can do, let it do it.*

Looking at the principle of subsidiarity according to Polish law, it must be here noticed that the Preface to the Constitution of the Republic of Poland (1997)²⁴ proclaims that among many principles of the Polish legal and political system there is the principle of subsidiarity. According to the law, the principle must govern cooperation between the public authorities, and also must create social dialogue and work for “the

the principle is included in can. 301 § 2, can. 315, can. 374 § 1, can. 381 § 1, can. 1653; see *Communicationes 1* (1969), pp. 80—82.

²² See P. KROCZEK: *Wychowanie: optyka prawa polskiego i prawa kanonicznego*. Kraków 2013, pp. 93—103.

²³ *Letter*, no. 16.

²⁴ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. No. 78, item. 483 as amended). The translation of the Constitution is taken from the official website of Polish Sejm (the lower chamber of the parliament of Poland), <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (accessed 19.6.2013).

strengthening the powers of citizens and their communities.”²⁵ The Polish Constitutional Tribunal referring to the Preface of the Constitution said that the principle in question must be understood in all of its complexity. It means that it is the foundation of the strength of rights of the citizens and their communities for solving their problems, but also the principle is the urge for acting by the state or central authorities in the matters that cannot be solved by the local authorities or citizens.²⁶

The fact that Poland is a member of the European Union has a huge significance for the legal system in Poland.²⁷ Recently the Lisbon Treaty (2007) brought significant changes in Polish laws.²⁸ The Preface of the Treaty states that the principle of subsidiarity is the principle that should govern the state-citizens relations.²⁹ In the context of the family it means that the state cannot assume the assignments that can be successfully accomplished by the family itself. The state has the duty to help the family in these areas or in such situations where the family cannot help itself and needs the assistance.³⁰

The juxtaposition of the principle of subsidiarity from the State’s and the Church’s points of view leads to conclusion that both the State and the Church value the principle in question. They can cooperate together realizing the principle by the means they possess, for instance, legal ones. It is possible because, although “the Church and the political community in their own fields are autonomous and independent from each other. Yet

²⁵ Preface to the Constitution of the Republic of Poland (1997); it is worth underlining, that normative character of the preface of law is debatable, see P. KROCZEK, P. SKONIECZNY: *Preamble of Law: Perspective of Legislator and Interpreter*. Manuscript to be published in *Angelicum*.

²⁶ The Judgment of the Polish Constitutional Tribunal of 18 February 2003, K 24/02, Legalis — System of legal information, Wydawnictwo C.H. Beck, (hereinafter: Legalis), no. 56022; see more about the Judgments of the Polish Constitutional Tribunal in this matter — A. DOBEK: “Zasada pomocniczości orzecznictwie Trybunału Konstytucyjnego.” In: *Państwo — koncepcje i zadania*. Eds. M. SADOWSKI, P. SZYMANIEC. Series: Wrocławskie Studia Erazmiańskie. Wrocław 2008, pp. 155—168.

²⁷ The access of Poland to EU took place in 2004.

²⁸ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, December 13, 2007, Dz.U. of 2009 No. 203, item 1569. The Treaty has entered into force in Poland on December 1, 2009; English version: *Official Journal of the European Union* C 306, 17 December 2007, 2007/C 306/01. For more friendly referral, see Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C 326, 26th October 2012, 2012/C 326/01.

²⁹ The principle in question is present many times in the Treaty of Lisbon, for instance, Art. 5, Art. 12, Art. 69, Art. 352; see also the Protocols to the Treaty, for instance, Protocol no. 1: art. 3, Protocol no. 2 in general states on the application of the principles of subsidiarity and proportionality.

³⁰ Cf. J. KROSZEL: *Rodzina. Społeczeństwo. Gospodarka rynkowa*. Opole 1995, p. 38.

both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all” (GS 76). This well known statement of the latest council, in the context of family, means that, both the Church and the State, are to cooperate for the sake of the people who are at the same time, both the faithful and the citizens, and live in canonical marriages and in secular ones. The responsibility for the people and their families belongs both to the State and the Church. No Party can be discharged or discharge itself from the duty (cf. GS 14, GS 20, GS 43, GS 76).³¹

The partnership in question brings many benefits. For instance, when a mutual cooperation exists between the two systems of law, state law is supported by canon law, and vice versa. It is possible because some rules of the Polish law, for example, the rule of the good of a child, the rule of the stability of marriage, and the rule of equal rights of the spouses, have their analogical counterparts in the system of canon law.³² In this cooperation one can see the realization by the State and the Church of the principle of subsidiarity. The families need both the Church and the State.³³

It can be said that the principle of subsidiarity, in context of family, is presented in church teaching and in canon law, as well as, in the State’s system of governance and principles of Polish legal system. The understanding of the principle is quite similar. It is useful to see if the constitutional principle is implemented in the provisions of Polish law.

4. The analysis of some provisions of Polish law

As the hierarchy of the sources of universally binding law of the Republic of Poland orders, one has to start from the Constitution itself (see Art. 87 item 1 of the Constitution). Two provisions are of essence for the discussed subject.

³¹ P. KROCZEK: “Wzajemne odniesienie Kościoła i państwa w nauczaniu Jana Pawła II — aspekt prawnny.” *Bielsko-Żywieckie Studia Teologiczne* 11 (2010), pp. 124—125.

³² P. KROCZEK: “Prawo kanoniczne wsparciem dla polskiego prawa rodzinnego: teoretyczne podstawy i praktyczne przykłady.” *Bielsko-Żywieckie Studia Teologiczne* 14 (2013), pp. 131—145

³³ J. KRUKOWSKI: *Polskie prawo wyznaniowe*. Warszawa 2008, pp. 73—74.

The first is Art. 18 of the Constitution which states 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.” This general rule is transformed in Art. 47 of the Constitution into the right, which states that everyone shall have the right to legal protection of his family life. On the basis of these two provisions alone one can say that the autonomy of family is well safeguarded in the most important Polish law, that is, in the Constitution. According to the commentary of the Polish Constitutional Tribunal, the state, and especially its legislative bodies, has a serious obligation to take any possible action to “strengthen the bonds among the persons who make the family, and especially the bonds among the parents and the children and between the spouses.”³⁴ No action can be taken by the state, according to the Constitutional Tribunal, that would even indirectly blunt the bonds among the members of the family.³⁵

The principle of subsidiarity is expressly formulated in Art. 3, item 3 of the Act of June 9, 2011 on supporting family and the system of foster care.³⁶ The cited provision states that “all the tasks within the realm of offering support to family and the system of foster care are realized in accord with the principle of subsidiarity.”³⁷ Already cited the Act of February 25, 1964 — the Family and Guardianship Code in Art. 1123 orders that placing the child into foster care, family or institutional one,³⁸ can be done only after exhaustion of all provided by law forms of help for the parents of the child. The aim of the state and other institutions cannot be to replace the parents, but to assist them in fulfilling their essential parental duties, and in preventing possible threats to the family.³⁹

In result, the state administration bodies and other institutions must respect autonomy of the family and not interfere with its rights. For

³⁴ “[...] umacniają więzi między osobami tworzącymi rodzinę, a zwłaszcza więzi istniejące między rodzicami i dziećmi oraz między małżonkami”; the Judgment of the Polish Constitutional Tribunal of 18 May 2005, K 16/04, Legalis no. 68617.

³⁵ The Judgment of the Polish Constitutional Tribunal of April 12, 2011, Legalis no. 311533

³⁶ Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (Dz.U. No. 149, item 887 as amended), (hereinafter: the Act of 2011 on supporting family)

³⁷ Art. 3, item 3 — “Zadania z zakresu wspierania rodziny i systemu pieczy zastępczej są realizowane zgodnie z zasadą pomocniczości.”

³⁸ See art 34 of the Act of 2011 on supporting family.

³⁹ Cf. T. SMYCZYŃSKI: “Prawo dziecka do wychowania w rodzinie.” In: *Prawa dziecka po przystąpieniu do Unii Europejskiej. Materiały z konferencji Rzecznika Praw Dziecka*, Warszawa 16 czerwca 2004 r. Eds. M. POTAPOWICZ, M. KRAUZOWICZ, P. PRZYBYLSKI. Warszawa 2004, p. 49.

instance, the Commissioner for Children's Rights, who is the constitutional institution for protection of the rights of the child (see art. 72 of the Constitution), must in all his actions respect the responsibility, rights and duties of parents (Art. 1 item 2 of the Act of January 6, 2000 on the Commissioner for Children's Rights⁴⁰), and must take into consideration that the natural milieu of education and upbringing of the offspring is the family (Art. 1 item 3 of the Act of January 6, 2000 on the Commissioner for Children's Rights).

Of course, the autonomy of the family is not absolute. In situations or circumstances provided in laws by the legislator, the state has the rights for intervention in life of the family. The constitution states that "limitation or deprivation of parental rights — which are the core of the family bond — may be effected only in the instances specified by statute and only on the basis of a final court judgment" (Art. 48, item 2 of the Constitution). Elaboration of these situations or circumstances is in the other laws like: the Act of February 1964 — the Family and Guardianship Code⁴¹ or the Act of July 29, 2005 on preventing violence in the family.⁴²

In summation, it can be said that the legislative principles of Polish law system simply implement in family law the principle of subsidiarity in a way that happens to agree with the Church's vision. The above cited provisions confirm such statement. Presenting the provisions of some Polish laws, it is worth adding the resolution of Polish Sejm of August 30, 1996 about the state policy on the family. The document instructs public authorities to treat the family as "self-directed institution that takes the main responsibility for shaping the conditions of life and for lot of their members."⁴³ Although, the document is not a normative one, in the sense that it is not a source of legal norms, it clearly shows *mens legislatoris* of members of the Polish parliament. The sentences of the document are in accord with Catholic teaching. The other laws regulate the autonomy of family and limit the state's role to subsidiarity level.

⁴⁰ Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka (Dz.U. No. 6, item 69 as amended).

⁴¹ Ustawa z dnia 25 lutego 1964 r. — Kodeks rodzinny i opiekuńczy (Dz.U. No 9, item 59, as amended).

⁴² Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie (Dz.U. No. 180, item 1493 as amended).

⁴³ Uchwała Sejmu Rzeczypospolitej Polskiej z dn. 30 sierpnia 1996 r. w sprawie polityki państwa na rzecz rodzin (Dziennik Urzędowy Rzeczypospolitej Polskiej *Monitor Polski* (Official Gazette of the Republic of Poland *Monitor Polski*) No. 55, item 502). It was repealed October 20, 1997; original text: "[Rodzina jest] samodzielną instytucją ponoszącą główną odpowiedzialność za kształtowanie warunków życia i los swoich członków."

It can be added that the quite similar understanding of the principle of subsidiarity as presented above used to be voiced by the European Court of Human Rights. The judgments and decisions of the body underline the autonomy of the family.⁴⁴

5. Conclusion: Postulate *de lege lata*

Trying to answer to the question whether the principle of subsidiarity used in the Polish family law agrees with the Catholic vision of subsidiarity, one can say reply affirmatively. Looking at the letter and spirit of the provisions of the Polish family law it is justified to say that Polish legislator, rather unintentionally, respects the Catholic vision of sovereignty of the family.

On the other hand, as it was mentioned at the beginning, there have been in recent years many examples of the decisions concerning the family made by the state or local government officials that do not respect the sovereignty of the family. It can be stated that they simply infringe the rights of the family to be an autonomous community.

The conclusion is that in Poland there is no need to formulate any postulates *de lege ferenda* to protect the autonomy of the family life. It is enough to stick to the law, the letter and spirit, as it is. But it is expedient to formulate postulates *de lege lata* and demand from the state and local government authorities that in the process of interpretation and application of law they show more respect for the principle of subsidiarity already included in the current law. By doing this they will provide for welfare of their children, welfare of their families, but also the Church, and the Society.

⁴⁴ See, for example, The European Court of Human Rights, Judgment of 24 March 1988, case of Olsson v. Sweden (no. 1), application no. 10465/83; partly dissenting opinion of Judges Ryssdal, Thór Vilhjálmsson, and Gölcüklü: "The separation of children from their parents through a care decision taken by a State authority is certainly a serious interference with family life. In this respect it is important to protect parents and children against arbitrary intervention. The State concerned must be able to demonstrate that the views and interests of the parents have been duly taken into account and that the whole decision-making process is such as to ensure that the measures adopted are necessary to safeguard the children's interests," *Legalis* no. 135629.

Bibliography

- BERTRAMS W.: "De principio subsidiarietatis in iure canonico." *Periodica de rem morali*, 1957, vol. 46, pp. 13—65.
- BLICKLE P., HUEGLIN T. O., WYDUCHEL D.: *Subsidiarität als rechtliches und politisches Ordnungsprinzip in Kirche, Staat und Gesellschaft: Genese, Geltungsgrundlagen und Perspektiven an der Schwelle des dritten Jahrtausends*. Berlin 2002.
- Carta dei diritti della famiglia, Enchiridion Vaticanum*, vol. 9. Eds. B. TESTACCI, G. MOCCELLINT. Bologna 1988, pp. 538—552.
- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union* C 326, October 26, 2012, 2012/C 326/01.
- De principio subsidiarietatis in iure canonico, Acta conventus internationalis Canonistarum Romae diebus 20—25 maii 1968 celebrati*. Vatican 1970, pp. 297—306.
- DOBEK A.: "Zasada pomocniczości orzecznictwie Trybunału Konstytucyjnego." In: *Państwo — koncepcje i zadania*. Eds. M. SADOWSKI, P. SZYMANIEC. Series: *Wrocławskie Studia Erazmiańskie*. Wrocław 2008, pp. 155—168.
- GHIRLANDA G.: *Wprowadzenie do prawa kościleńskiego*. Trans. S. KOBIAŁKA. Kraków 1996.
- GÓRALSKI W.: "Family as a sovereign institution." *Ecumeny and Law*, 2013, vol. 2, pp. 91—104.
- GRZEJDZIAK A.: "Prawo do wychowania w rodzinie." In: *Prawa i wolności obywatelskie w Konstytucji RP*. Eds. B. BANASZAK, A. PREISNER. Warszawa 2002.
- JOHN PAUL II: *Apostolic exhortation "Familiaris Consortio."* November 22, 1981. *AAS* 74 (1982), pp. 81—191.
- JOHN PAUL II: *Litterae encyclicae "Centesimus annus."* *AAS* 83 (1991). pp. 793—867.
- JOHN PAUL II: *The Letter to Families "Gratissimam sane,"* written in the Year of the Family in 1994 (original version: *AAS* 86 (1994), pp. 868—925).
- JOHNSON J.P.: *The Principle of Subsidiarity in Catholic Social Thought*. Atlanta 1994.
- Leys A.: *Ecclesiological Impacts of the Principle of Subsidiarity*. Kampen 1995.
- HARRINGTON R. M.: *The Applicability of the Principle of Subsidiarity According to the Code of Canon Law*. Ottawa 1997.
- KAISER M.: "Das Prinzip der Subsidiarität in der Verfassung der Kirche." *Archiv für Katholisches Kirchenrecht*, 1964, vol. 133, pp. 3—13.
- KOMONCHAK J. A.: "Subsidiarity in the Church: the State of the Question." *The Jurist* 1988, vol. 48, pp. 298—349.
- Konkordat między Stolicą Apostolską i Rzecząpospolitą Polską, podpisany w Warszawie dn. 28 lipca 1993 r. (Dz.U. of 1998 No. 51, item 318).
- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. No. 78, item. 483 as amended).

- KROCZEK P.: "Prawo kanoniczne wsparciem dla polskiego prawa rodzinego: teoretyczne podstawy i praktyczne przykłady." *Bielsko-Żywieckie Studia Teologiczne*, 2013, vol. 14, pp. 131—145.
- KROCZEK P.: *Wychowanie: optyka prawa polskiego i prawa kanonicznego*. Kraków 2013.
- KROCZEK P.: "Wzajemne odniesienie Kościoła i państwa w nauczaniu Jana Pawła II — aspekt prawny." *Bielsko-Żywieckie Studia Teologiczne* 11 (2010), pp. 124—125.
- KROSZEL J.: *Rodzina. Społeczeństwo. Gospodarka rynkowa*. Opole 1995.
- KRUKOWSKI J.: *Administracja w Kościele. Zarys kościelnego prawa administracyjnego*. Lublin 1985.
- KRUKOWSKI J.: *Polskie prawo wyznaniowe*. Warszawa 2008.
- KRUKOWSKI J.: "Zasada pomocniczości w prawie kanonicznym." *Zeszyty Naukowe KUL*, 1971, vol. 14, no. 4, pp. 51—57.
- KRZYWDŁA J.: "Hierarchiczny ustrój w Kościele a zasada pomocniczości." In: *Ecclesia et Status*. Eds. A. DĘBIŃSKI, K. ORZESZYNIA, M. SITARZ. Lublin 2004, pp. 467—483.
- MARKIEWICZ K., PRZYMUSIŃSKI B.: "Politycy wierzą w magiczne zaklęcia." *Iustitia* 2013, vol. 12, no. 2, pp. 92—97.
- Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 r. z dnia 19 grudnia 1966 r. (Dz.U. of 1977 No. 38, item. 169).
- MONTGOMERY J.W.: *Christ our Advocate. Studies in Polemical Theology, Jurisprudence and Canon Law*. Bonn 2002, pp. 71—80.
- PIUS XI: *Litterae encyclicae "Quadragesimo anno."* May 15, 1931, AAS 23 (1931), pp. 177—228; English translation and numbers taken from: http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html. Accessed 24.2.2014.
- SMYCZYŃSKI T.: "Prawo dziecka do wychowania w rodzinie." In: *Prawa dziecka po przystąpieniu do Unii Europejskiej. Materiały z konferencji Rzecznika Praw Dziecka*, Warszawa 16 czerwca 2004 r. Eds. M. POTAPOWICZ, M. KRAUZOWICZ, P. PRZYBYLSKI. Warszawa 2004.
- The European Court of Human Rights, Judgment of 24 March 1988, case of Olsson v. Sweden (no. 1), application no. 10465/83; *Legalis* no. 135629.
- The Judgment of the Polish Constitutional Tribunal of 12th April 2011, *Legalis* no. 311533
- The Judgment of the Polish Constitutional Tribunal of 18th February 2003, K 24/02, *Legalis* no. 56022.
- The Judgment of the Polish Constitutional Tribunal of 18th May 2005, K 16/04, *Legalis* no. 68617.
- The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948; <http://www.un.org/en/documents/udhr/index.shtml>. Accessed 24.2.2104.
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, December 13, 2007, (Dz. U. of 2009 No. 203, item 1569).

Uchwała Sejmu Rzeczypospolitej Polskiej z dn. 30 sierpnia 1996 r. w sprawie polityki państwa na rzecz rodzin (Dziennik Urzędowy Rzeczypospolitej Polskiej *Monitor Polski* (Official Gazette of the Republic of Poland *Monitor Polski*) No. 55, item 502).

Ustawa z dnia 25 lutego 1964 r. — Kodeks rodzinny i opiekuńczy (Dz.U. No 9, item 59, as amended).

Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie (Dz.U. No. 180, item 1493 as amended).

Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka (Dz.U. No. 6, item. 69 as amended).

Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (Dz.U. No. 149, item. 887 as amended).

VILADRICH P. J.: *Rodzinna suwerenna. L’Osservatore Romano* (Polish edition), 1997, vol. 28, pp. 52—57.

VORGRIMELER H.: *Nowy lekyskon teologiczny*. Trans. T. MIESZKOWSKI, P. PACHCIAREK. Warszawa 2005.

PIOTR KROCZEK

Does the Catholic Vision of the Principle of Subsidiarity Pertain to Polish Family Law?

Summary

In Polish law, among many constitutional principles, there is the principle of subsidiarity. In the context of family, the understanding of the principle in Polish legal system and in the Catholic teaching is quite similar. The aim of the article is to examine if the principle in question is present in the provisions of family law. The conclusion is that sovereignty of families is well safeguarded in Polish law by the means of the principle in question. To protect autonomy of family, one must not demand that the laws be changed, but rather that the principle be respected in application of the family law.

PIOTR KROCZEK

La vision catholique du principe de subsidiarité est-elle présente dans le droit familial polonais ?

Résumé

Parmi bien des principes constitutionnels étant en vigueur dans le système juridique polonais se trouve le principe de subsidiarité. Dans le contexte familial, la compréhension de ce principe dans le droit polonais et dans le droit canonique est pareille. L'objectif de l'article est d'examiner si le principe, dont il est question, est présent dans les

réglementations de la vie familiale. Le résultat de nos recherches est le suivant : la souveraineté de la famille est bien prémunie dans le droit polonais par le principe de subsidiarité. Pour protéger la famille, il ne faut donc pas revendiquer des changements dans les réglementations, mais il faut plutôt exiger que le principe de subsidiarité soit appliqué dans le droit familial.

Mots clés : principe de subsidiarité, famille, droit polonais, droit familial, droit canonique, souveraineté de la famille

PIOTR KROCZEK

La visione cattolica del principio di sussidiarietà è presente nel diritto polacco sulla famiglia?

Sommario

Tra i molti principi costituzionali vigenti nel sistema giuridico polacco si trova il principio della sussidiarietà. Nel contesto della famiglia la comprensione di detto principio nel diritto polacco e nel diritto canonico è simile. Lo scopo dell'articolo è quello di analizzare se il principio menzionato è presente nelle norme del diritto sulla famiglia. La conclusione delle ricerche è la seguente: la sovranità della famiglia è ben protetta nel diritto polacco dal principio di sussidiarietà. Pertanto per tutelare la famiglia non occorre esigere modifiche alle norme, ma piuttosto occorre esigere che il principio di sussidiarietà sia applicato nel diritto sulla famiglia.

Parole chiave: principio di sussidiarietà, famiglia, diritto polacco, diritto familiare, diritto canonico, sovranità della famiglia