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Abstract: The concept of the family as a legal entity in the Polish legal order, discussed in this paper, concerns practical issues that are at the same time quite complex, due to the vague and inconsistent definition of the status of the family in particular branches of law, which enjoy their own autonomy within the framework of the current system of universally applicable law. Proper understanding of the issue in question requires an adequate analysis of legal provisions, judicial decisions, and the literature.

The article presents the subject matter in the context of traditional branches of law such as constitutional law (in addition to international and community law, which recognize a number of family rights and obligations), administrative law, civil law, and penal law. As a consequence of adopting such article structure, in individual parts thereof the issue of family as a legal entity is presented in both substantive and formal context, accompanied by the relevant conclusions. The final section of the paper contains the most important general conclusions resulting from the analysis.

Keywords: family, legal entity of the family, family members, family rights

Introduction

As already observed in ancient times, the family exists because man is by nature a social being. On this basis, Aristotle stressed that the family was an elementary component of the State.¹ Even today, the family still remains an integral part

¹ Cf. Maria Szyszkowska, *Zarys filozofii prawa. Fragmenty dzieł filozoficznoprawnych w przekładzie Czesława Tarnogórskiego* (Białystok: Temida 2, 2000), 112–13.

of the functioning of both society and the State.² The legislator in a democratic legal state should therefore, in accordance with the principle of subsidiarity, recognize the family in a legal aspect and create an appropriate legal framework for its protection. In the legal dimension, it is worth paying attention, *inter alia*, to the problem of family as a legal entity in the current Polish legal order as will be the subject of this article. Due to the framework of this paper, the above issue will be illustrated as a comparison of traditional branches of law, with particular regard to the constitutional law resulting from the rank of this type of law.³

Family in Constitutional, International, and Community Law

Due to the prevailing hierarchy of sources of common law, it is appropriate to refer first to the issue in question in the context of constitutional law. This law does not contain a definition of what constitutes a legal family. However, attempts to define a family in the context of constitutional law have been repeatedly made by the Constitutional Court. According to the ruling of the Constitutional Court of May 28, 1997,⁴ the family is a complex social reality which is the sum of relations, primarily between parents and children, and which is entitled to protection. At the same time, the Constitutional Court pointed out that, in a broader sense, the concept of the family should also include other relationships arising from blood relations or adoption.

It is also worth noting that, in its ruling of April 12, 2011,⁵ the Constitutional Court repeatedly introduced the concept of the family, stating the following:

The provisions of the Constitution do not define the concept of the family, albeit the status of this basic and natural group unit of society is determined by a number of provisions of the basic law.

In the light of the constitutional provisions, the “family” should be considered any permanent relationship of two or more persons, consisting of at least one adult and a child, based on emotional, legal, and usually also on blood relations.

² See also: Tadeusz Smyczyński, *Prawo rodzinne i opiekuńcze* (Warszawa: Wydawnictwo C.H. Beck, 2005), 1.

³ See also: Tomasz Stawecki and Piotr Winczorek, *Wstęp do prawoznawstwa* (Warszawa: Wydawnictwo C.H. Beck, 2003), 208–209.

⁴ Sygn. akt K 26/96, publ. OTK 1997/2/19.

⁵ Ref. No. SK 62/08, *Dziennik Ustaw* [Journal of Laws] of 2011 No. 87, item. 492. *Dziennik Ustaw*, hereinafter referred to as Journal of Laws.

In the strict sense of that wording, the family is “[...] a community of parents, usually married, and children [...]” The Constitutional Court also emphasized the constitution-based vision of the family as a lasting relationship between man and woman, directed towards motherhood and responsible parenthood. It is also worth noting the attempt by the Constitutional Tribunal to define the terms appearing in Art. 71 Sec. 1, such as: (1) a family in a difficult financial and social situation⁶; (2) a large family⁷; (3) an incomplete family.⁸ The concept of the family was also formulated by representatives of the science of constitutional law, where, for example, according to Witold Borysiak: “[...] the family is a social group whose membership is acquired by birth or by the establishment of a family relationship on a different legal basis.”⁹

At this point, it is worth referring to the legal definition of the family contained in other normative acts, including international law binding for the Republic of Poland, which, according to Art. 9 and 87 of the Constitution, is respected by it and constitutes the source of universally applicable law.

⁶ According to the ruling of the Constitutional Court of November 18, 2014 (Ref. No. SK 7/11, Journal of Laws of 2014, item 1652): “A difficult financial situation is to be understood as a situation in which the living conditions do not allow the family to fulfill the function attached to it by the state. On the contrary, a difficult social situation should be equated with the “unnatural, disturbing personal condition of the family and deviations in its functioning due to the failure to fulfill or inadequate fulfillment of social roles by family members” (Aneta Korcz-Maciejko and Wojciech Maciejko, *Świadczenia rodzinne. Komentarz* (Warszawa: Wydawnictwo C.H. Beck, 2008, 34)). These conditions, in the opinion of the Constitutional Court, should be considered in isolation, that is, it should be recognized that the obligation of specific state aid is updated already at the time of the occurrence of one of them, although they are often fulfilled simultaneously (Cf. Ruling of 23 June 2008, Ref. No. P 18/06, OTK ZU No. 5/A/2008, item 83).” Also in the doctrine one can find an explanation of this concept. According to Witold Borysiak: “A difficult financial situation of the family means that it does not have the financial means to meet basic needs. This may result either from limited material resources (e.g., lack of own housing, valuable assets) or lack of income to meet such needs. A difficult social situation of the family means the threat of internal or external factors that prevent its proper functioning in society (e.g., alcoholism, threat of eviction, loss of work by family members, etc.). Witold Borysiak, “Komentarz do art. 71,” in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 487

⁷ Cf. Constitutional Court Ruling of 18 November 2014 (Ref. No. SK 7/11).

⁸ In its ruling of April 12, 2011 (Ref. No. SK 62/08), the Constitutional Court stated that: “[...] Meanwhile, an ‘incomplete family’ is a family where one parent is absent (see *Słownik Języka Polskiego PWN*). On the basis of constitutional provisions, there are no grounds at all to depart from the universal meaning of the concepts that have arisen in the Polish language.”

⁹ Witold Borysiak, “Komentarz do art. 18,” in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 487. According to Borysiak, the family creates several types of communities: “(1) spouses and their children [...]; (2) single mothers who raise a child or children if they have been married or in a relationship for a long time [...]; (3) fathers who are single parents or children if they have been married or in a relationship for a long time [...].” *Ibid.*, 489.

Bearing in mind universal multilateral international agreements, the importance of the Universal Declaration of Human Rights adopted in New York on December 10, 1948, as part of the normative acts that form international standards, should be emphasized.¹⁰ According to its Art. 16 Sec. 3: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” In addition, according to Art. 23 Sec. 1 of the International Covenant on Civil and Political Rights, put forward to be signed in New York on December 19, 1966: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹¹ Meanwhile, based on Art. 10 Sec. 1 of the International Covenant on Economic, Social and Cultural Rights, put forward to be signed in New York on December 19, 1966, the States Parties to the present Covenant recognize 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 [...]”¹² It is worth adding that the preamble to the Convention on the Rights of the Child, adopted in New York on November 20, 1989, even referred to the notion of a human family, each member of which is a member because of the recognition by the States Parties of the Convention the inherent dignity and the equal and inalienable rights.¹³

Among the multilateral international agreements of territorial scope, it is worth pointing to Sec. 16 of the Preamble to the European Social Charter drawn up in Turin on October 18, 1961,¹⁴ which stated that “[...] the family as a fundamental group unit of society has the right to appropriate social, legal, and economic protection to ensure its full development.” Significantly extended economic protection should be noted as compared with multilateral universal agreements. At the same time, the nature of the family was omitted. Meanwhile, in other multilateral international agreements, the nature of the family was referred to as well. In Art. 17 Sec. 1 of the American Human Rights Convention, drafted in San José on November 22, 1969, it is stated that: “The family is the natural

¹⁰ Polish text: *Księga jubileuszowa Rzecznika Praw Obywatelskich*, Vol. II 2. *Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka*, ed. Marek Zubik (Warszawa: 2008).

¹¹ Publ. Journal of Laws 1977 No. 38, item 167.

¹² Publ. Journal of Laws 1977 No. 38, item 169. It is also worth noting the legal definition of the family contained in the Preamble to the Convention on the Rights of Persons with Disabilities of December 13, 2006, signed in New York (not signed by the Republic), which expressed the belief that: “[...] the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities.”

¹³ Publ. Journal of Laws 1991 No. 120, item 526 as amended.

¹⁴ Journal of Laws 1999 No. 8, item 67.

and fundamental group unit of society and should be protected by society and the State.” Then, based on Art. 18 Sec. 1 of the African Charter on Human and Peoples Rights, drafted in Nairobi on June 27, 1981: “The family shall be the natural group unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.”

It should be noted here that the legal definition of the family can also be found in legislative acts of statutory rank, including in the Social Welfare Act of March 12, 2004 (sometimes referred to in English as the Social Assistance Act).¹⁵ The case law of the administrative courts emphasizes, however, that the legal definition of the family contained in this act does not refer to the concept of the family within the meaning of the Constitution of the Republic of Poland and will therefore be discussed later in this article.¹⁶

In the context of the substance of the family as a legal entity, it is worth noting that according to the aforementioned ruling of the Constitutional Court of April 12, 2011:

The rights expressed in Art. 71 Sec. 1, the second sentence of the Constitution may, within the limits of the social policy established by the legislature, be entitled to the members of the family who are its beneficiaries. In the case of incomplete families, they are: a parent or guardian raising a child and a child brought up by such adult. In each case, however, this provision refers to the protection of the upbringing of children. It does not, however, constitute an independent basis for claims of adults who do not raise any children.

Thus, the Constitutional Court held that individual family members could claim rights that benefited the entire family. It is worth adding that since the family has specific rights, it has its own legal entity.

Apart from the above, the right to special assistance from the public authorities, the family as the subject is also beneficiary of other rights contained in the Constitution. According to Art. 18 of the Constitution, the family is under the protection and care of the Republic of Poland.¹⁷ However, as the Constitutional

¹⁵ Publ. consolidated text Journal of Laws 2016 item 930 as amended.

¹⁶ According to the ruling of the Provincial Administrative Court in Gliwice of 8 August 2013 (Ref. No. IV SA/GI 541/13, publ. *Centralna Baza Orzeczeń Sądów Administracyjnych*, hereinafter referred to as CBOSA): “Pursuant to Art. 6 Sec. 14 of this Act, the concept of the family is understood to contain relatives or unrelated persons in a common union, living and managing their resources together. Such wording of the provision makes it possible to recognize that the concept of the family on the grounds of social assistance is of a special nature and does not refer to the concept of the family within the meaning of the Constitution of the Republic of Poland. The statutory definition of the concept of the family refers to the actual relationship between two or more persons expressing common residence and maintenance.”

¹⁷ Publ. Journal of Laws 1997 No. 78, item 483 as amended. It is worth adding that according to the ruling of the Supreme Administrative Court of 1 February 2001 (Ref No. V SA 1541/00, publ. CBOSA): “The provisions of the Constitution must not be interpreted restrictively

Court pointed out in its ruling of November 18, 2014, Art. 18 of the Constitution is not a source of subjective rights, but it defines the direction of actions undertaken by the public authorities desired by the legislator.¹⁸ A different stance can be found in the ruling of the Provincial Administrative Court in Łódź of November 30, 2010¹⁹: “Art. 18 and Art. 72 Sec. 1 of the Constitution of the Republic of Poland imply the right of the family to be provided protection by the State against possible crimes against the family.” The definition of this protection and care is already contained in the provisions of the constitutional rank. For example, according to Art. 23 of the Constitution, the basis of the agricultural state is the family farm. On the other hand, based on Art. 41 Sec. 2 of the basic law, in case of deprivation of liberty of any person, his or her family—or the person indicated by the person deprived of liberty—should be immediately notified.

In addition, it should be noted that the rights embodied in constitutional status are enjoyed not only by the entire family, but also by individual members of the family in the context of its protection and care by the public authorities. In this regard, the following may be mentioned: (1) the mother’s right before and after the birth of the child to special assistance from public authorities²⁰; (2) the right of everyone to protect family life,²¹ or (3) the right of parents to raise children according to their own convictions.²²

It is worth adding that the family as a subject is also beneficiary of other rights as defined in international law. As already mentioned in many international agreements of universal scope, it is emphasized that the family as the natural and fundamental group unit of society is entitled to protection from society and the State.²³ In this sphere, one can also point to the emergence of the notion of the family good that can be threatened and that is to be looked after.²⁴

in so far as they apply only to families in which both spouses are Polish citizens, since there is no basis for that. The view that constitutional protection of the family, marriage and child is only involved when both spouses are Polish citizens would also violate international norms contained in the provisions of the International Covenant on Civil and Political Rights, ratified by the UN General Assembly on 16 December 1966 and ratified by Poland in 1977 [...], which is therefore part of the national legal order.”

¹⁸ Ref. No. SK 7/11.

¹⁹ Ref. No. III SA/Łd 253/10, publ. CBOSA.

²⁰ Ref. No. 71 Act 2 of the Constitution.

²¹ Cf. Art. 47 of the Constitution.

²² Cf. *Ibid.*, Art. 48 Sec. 1.

²³ Cf. Art. 16 Sec. 3 of the Universal Declaration of Human Rights; Art. 23 Sec. 1 of the International Covenant on Civil and Political Rights; Art. 10 Sec. 1 on the International Covenant on Economic, Social and Cultural Rights. This act also contains the right to marry, which is universal. Cf. Kazimierz Piasecki, “Wprowadzenie,” in *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. Kazimierz Piasecki (Warszawa: LexisNexis Polska Sp. z o.o., 2011), 25.

²⁴ Cf. Preamble to the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others of 21 March 1950, drafted in Lake Success, New York, publ. *Journal of Laws* 1952 No. 41, item 278.

In this type of international agreements, both all and individual family members also have rights. Some of the wide-range rights include: (1) the right of everyone to protect family life²⁵; (2) the right of every person to the standard of living that will provide health and well-being to that person and their family, including food, clothing, shelter, medical care, and necessary social welfare²⁶; (3) the right of everyone to an adequate standard of living for them and their family, including food, clothing and shelter, and to constant improvement living conditions.²⁷

Men and women have the right to found a family.²⁸ In addition, it is important to note the prohibition of discrimination against women in all matters arising from family relationships.²⁹ Parents or legal guardians are entitled to specific rights, including: (1) the right of priority for parents to choose the type of education for their children³⁰; (2) the right of parents or legal guardians to provide their children with religious and moral education in accordance with their own convictions³¹; (3) the right and obligation of parents or, where appropriate, family members or the environment, in accordance with local customs, legal guardians, or other persons legally responsible for the child, to provide him or her with the capacity to direct and advise him on her how to use the rights granted to him or her under the Convention on the Rights of the Child.³² Children have the right, *inter alia*, to: (1) the protection measures required by the status of a minor, family, society, and the State³³; (2) be raised in a family environment, surrounded by happiness, love, and understanding for the full and harmonious development of his or her personality³⁴; (3) legal protection against arbitrary

²⁵ Cf. Art. 17 Sec. 1 of the International Covenant on Civil and Political Rights.

²⁶ Cf. Art. 25 Sec. 1 of the Universal Declaration of Human Rights.

²⁷ Cf. Art. 11 Sec. 1 of the International Covenant on Economic, Social and Cultural Rights.

²⁸ Cf. Art. 16 of the Universal Declaration of Human Rights; Art. 23 Sec. 2 of the International Covenant on Civil and Political Rights. It is worth emphasizing here the prohibition of discrimination against women in all matters resulting from family relationships. Cf. Art. 16 Sec. 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, drafted in New York, publ. *Journal of Laws* 1982 No. 10, item 72.

²⁹ Cf. Art. 16 Sec. 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

³⁰ Cf. Art. 26 Sec. 3 of the Universal Declaration of Human Rights.

³¹ Cf. Art. 18 Sec. 3 of the International Covenant on Civil and Political Rights. See also Art. 5. Sec. 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, announced in New York on 25 November 1981. Polish text: *Księga jubileuszowa Rzecznika Praw Obywatelskich*, Vol. II 2. *Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka*, ed. Marek Zubik (Warszawa 2008).

³² Cf. Art. 5 Convention on the Rights of the Child.

³³ Cf. Art. 24 Sec. 1 of the International Covenant on Civil and Political Rights.

³⁴ Cf. Preamble to the Convention on the Rights of the Child.

or unlawful interference in the sphere of his or her family life.³⁵ The above family members and further relatives have the right to send and receive from family members, irrespective of their place of residence, messages strictly related to family matters.³⁶ In addition, internees have the right to be visited by their relatives³⁷ as well as—in emergencies, especially in case of death or serious illness of any family member—to go to their family if possible.³⁸ It is also worth mentioning in the context of the family the rights of workers, including: (1) the right of every worker to an adequate satisfactory remuneration ensuring that he and his family live in harmony with human dignity³⁹; (2) the right to enjoy fair and favorable working conditions, including, in particular, satisfactory living conditions for themselves and their families in accordance with the provisions of the International Covenant on Economic, Social, and Cultural Rights.⁴⁰

On the other hand, it is also important to bear in mind the obligations of the State toward family members, including: (1) the obligation of States to facilitate the searches undertaken by family members dispersed by the war for mutual retrieval and possible reconnections⁴¹; (2) the obligation, depending on the possibilities, to place members of the same family in the same premises and accommodation separately from other internees, as well as to grant them the necessary facilitation to conduct family life.⁴²

In multilateral international agreements limited to Europe, the family and all members of the family also have certain rights. First of all, it is important to emphasize the right of the family to benefit from legal, economic, and social protection.⁴³

³⁵ Cf. Art. 16 Sec. 2 of the Convention on the Rights of the Child.

³⁶ Cf. Art. 25 of the Geneva Convention for the Protection of Civilian Persons during the War, dated August 12, 1949, Geneva, publ. *Journal of Laws* 1956 No. 38, item 171.

³⁷ Cf. *ibid.*, Art. 116.

³⁸ Cf. *ibid.*

³⁹ Cf. Art. 23 Sec. 3 of the Universal Declaration of Human Rights.

⁴⁰ Cf. Art. 7 let. a and b of the International Covenant on Economic, Social and Cultural Rights.

⁴¹ Cf. Art. 26 of the Geneva Convention for the Protection of Civilian Persons in Times of War.

⁴² Cf. *ibid.*, Art. 82.

⁴³ Cf. Art. 33 Sec. 1 of the Charter of Fundamental Rights, signed in Nice on 7 December 2000, publ. *Dz. Urz. Urzęd. U.E.* of 2010. As Roman Wieruszewski points out, the Charter of Fundamental Rights was based on Art. 16 of the European Social Charter. Cf. Roman Wieruszewski, *Postanowienia Karty Praw Podstawowych w świetle wiążących Polskę umów międzynarodowych i postanowień Konstytucji RP z 1997 r.*, ed. Jan Barcz (Warszawa: Wydawnictwo C.H. Beck, 2016), 134.

In addition, individual members of the family have additional rights. Each of them is entitled to the right to: (1) respect for one's family life⁴⁴; (2) receive from the relevant public or private services such advice and personal assistance as may be necessary to relieve the family situation⁴⁵; (3) found a family⁴⁶; (4) protect family life, especially through measures such as social and family benefits, tax solutions, encouraging the construction of flats adapted to the needs of families, providing services to young couples, and any other appropriate measures.⁴⁷

Men and women of marriageable age have the right to found a family.⁴⁸ Parents have the right to educate and teach in accordance with their own religious and philosophical beliefs,⁴⁹ as well as those pedagogical.⁵⁰ It is worth mentioning that according to Aneta Maria Abramovich, in this context, religious freedom constitutes a special entity.⁵¹ Fathers and mothers of an extramarital child, who have or do not have parental authority in certain cases do not exercise the authority to contact the child.⁵² Children have the right to maintain a permanent personal relationship and direct contact with both parents, unless this is contrary to his or her interests.⁵³ Workers, meanwhile, have the right to: (1) remuneration that will provide them and their families with a decent standard of living⁵⁴; (2) protection against dismissal for reasons related to maternity and the right to paid maternity leave and to parental leave after the birth or adoption of a child for the purpose of reconciling family and professional life.⁵⁵ Migrant workers and their families also have the right to protection and assistance.

The Polish legal order also comprises bilateral international agreements containing family norms. For example, according to Art. 11 of the Concordat between the Apostolic See and the Republic of Poland of 28 July 1993:

⁴⁴ Cf. Art. 8 Sec. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, publ. Journal of Laws 1993 No. 61, item 284; Art. 7 of the Charter of Fundamental Rights.

⁴⁵ Cf. Art. 13 item 3 of the European Social Charter.

⁴⁶ Cf. Art. 9 of the Charter of Fundamental Rights.

⁴⁷ Cf. Art. 16 the European Social Charter.

⁴⁸ Cf. Art. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴⁹ Cf. Art. 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952, drawn up in Paris.

⁵⁰ Cf. Art. 14 Sec. 3 of the Charter of Fundamental Rights.

⁵¹ Cf. Aneta Maria Abramovich, "Podmioty prawa do wolności myśli, sumienia i religii w normach prawa międzynarodowego i wspólnotowego," *Studia z Prawa Wyznaniowego* 9 (2006): 241–43.

⁵² Cf. Art. 8 of the European Convention on the Legal Status of the Extra-marital Child of 15 October 1975, drawn up in Strasbourg, publ. Journal of Laws 1999 No. 79, item. 888.

⁵³ Cf. Art. 24 Sec. 3 of the Charter of Fundamental Rights.

⁵⁴ Cf. Art. 4 (1) of the European Social Charter.

⁵⁵ Cf. Art. 33 Sec. 2 of the Charter of Fundamental Rights.

The Contracting Parties declare their will to cooperate for the defense and respect of the institution of marriage and the family which is the foundation of society. They emphasize the value of the family, while the Holy See, for its part, confirms the Catholic doctrine of the dignity and indissolubility of marriage.⁵⁶

As regards procedural aspects, it seems that the ability of a family member to participate in proceedings before the Constitutional Court is problematic. According to Art. 79 of the Constitution:

Any person whose constitutional freedoms or rights have been violated shall have the right, on the basis of the law, to file a complaint with the Constitutional Court on the conformity of the Constitution or other normative act on the basis of which the court or body of public administration has finally ruled his freedoms or rights or his obligations under the Constitution.

Meanwhile, based on Art. 42 (2) of the Act of November 30, 2016, on organization and proceedings before the Constitutional Court,⁵⁷ the complainant or the entity who has filed the constitutional complaint is the participant of the proceedings. Therefore, if one were to consider that the family is directly entitled to the rights described in the previous section of the paper, the wording of Art. 79 of the Constitution does not theoretically prohibit the filing of a constitutional complaint by the family. Nevertheless, the Constitutional Court, in its abovementioned ruling of April 12, 2011, stated that although the family is a beneficiary of the right in question, this right may be claimed by family members. It is worth adding that, in doctrine, constitutional capacity is autonomous, independent of other areas of law.⁵⁸ There is no doubt, however, that such ability is granted to individuals as individual members of the family.⁵⁹

⁵⁶ Publ. Journal of Laws 1998 No. 51, item. 318.

⁵⁷ Publ. Journal of Laws 2016, item 2072.

⁵⁸ Cf. Leszek Bosek and Mikołaj Wild, "Komentarz do art. 79," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 1829.

⁵⁹ Cf. Leszek Bosek and Mikołaj Wild, "Komentarz do art. 79," in *Konstytucja RP. Tom I. Komentarz · Art. 1–86*, ed. Marek Safjan and Leszek Bosek (Warszawa: Wydawnictwo C.H. Beck, 2016), 1829.

Family in Administrative Law

Constitutional law as the overarching one should be consistent with other branches of law, where the constitutional norms should be precisely expressed. In the field of administrative law, it is worth emphasizing that the jurisprudence emphasizes this law should be exercised by the constitutional right of the family to provide protection by the State against possible family offenses, including by evicting a person accused of family abuse from a permanent place of residence where family members live as well.⁶⁰

As already mentioned, administrative law contains the legal definition of the family. For example, according to Art. 6 (14) of the Social Welfare Act of March 12, 2004, the family is: “[...] related or unrelated relatives in a factual relationship, living and managing together.”⁶¹ In the case law of the administrative courts, one can find explanations concerning the individual elements of the above definition of legal family. As per ruling of the Supreme Administrative Court of October 2, 2014⁶²:

The factual relationship, referred to in Art. 6(14) of the Social Welfare Act of 12 March 2004, means not only the provision of income as a source of subsistence, but also the daily interactions of persons seeking to better meet their living needs, including housing and food. The source of subsistence is therefore not the sole factor for the recognition of persons living in the same family.⁶³

Meanwhile, according to the ruling of the Provincial Court of Appeal in Lublin of December 29, 2011⁶⁴: “The factual relationship referred to in this provision means the daily interaction of people seeking to better meet their living needs, including housing, food and income security.” According to the Provincial Administrative Court in Gliwice, as expressed in the ruling of 25 February 2011, the factual relationship is manifested through joint residence and management.⁶⁵ Joint residence means to share the dwelling in such a way that it can be

⁶⁰ Cf. Ruling of the Provincial Administrative Court in Łódź of 30 November 2010 (Ref. No. III SA/Łd 253/10, publ. CBOSA).

⁶¹ Consolidated text Journal of Laws 2016 item 930 as amended. The Provincial Administrative Court in Warsaw, in its ruling of 5 May 2011 (Ref. No. VIII SA/Wa 28/11), concluded that couples not bound by wedlock also constitute a family.

⁶² Ref. No. I OSK 1138/13, publ. CBOSA.

⁶³ Cf. also Ruling of the Supreme Administrative Court of 25 June 2014, Ref. No. I OSK 618/13, publ. CBOSA; Ruling of the Supreme Administrative Court of 25 June 2014, Ref. No. I OSK 801/13, publ. CBOSA.

⁶⁴ Ref. No. II SA/Lu 794/11, publ. CBOSA.

⁶⁵ Ref. No. IV SA/Gl 559/10, publ. CBOSA.

said that the living activity of the resident is concentrated in the dwelling.⁶⁶ On the other hand, joint management means, in accordance with the ruling of the Supreme Administrative Court of February 7, 2017⁶⁷:

[...] joint management of the household. Characteristics of a joint household can be participation and close co-operation in dealing with the day-to-day house management, not making a living and thus depending completely or partially on the maintenance of the person who manages the household and everything else supplemented by the characteristics of constancy which are typical of this kind of situation.⁶⁸

It is also worth noting that the Supreme Administrative Court, in its ruling of June 11, 2013,⁶⁹ stated that:

Art. 6 (14) of the Social Welfare Act of 12 March 2004 [...] shows that persons related in accordance with the provisions of the Family and Guardianship Code constitute “family” within the meaning of the Act, if they live and manage together, and they remain in factual relationship. [...] Joint management is based on the division of tasks related to the proper conduct of the household and, if it is in the functional association with that household, the farm.⁷⁰

The essence of joint management was referred to by the Supreme Administrative Court in its ruling of April 5, 2011,⁷¹ where it states that it does not merely mean contributing to the functioning of the community by carrying out any activity on its behalf, co-deciding on the allocation of family income and performing activities related to daily activities, but also the maintenance of the person with whom that household is shared. This law also sets out the rights that are vested in the family or its members, for example, the right to cash benefits from social welfare is available to families whose income does not exceed the sum of the income criterion set out per family member.⁷² It is worth noting that according to Iwona Sierpowska:

⁶⁶ Cf. Ruling of the Provincial Administrative Court in Poznań of 28 August 2013 r., publ. IV SA/Po 596/13, publ. Legalis No. 780454.

⁶⁷ Ref. No. I OSK 1434/16, publ. CBOSA.

⁶⁸ A similar stance can be found, among others, in the ruling of the Provincial Administrative Court in Wrocław of February 24, 2015 (Ref. No. IV SA/Wr 626/14, publ. CBOSA) and the ruling of the Provincial Administrative Court in Krakow of October 5, 2016 (Ref. No. III SA/Kr 387/16, publ. CBOSA).

⁶⁹ Ref. No. I OSK 1947/12, publ. CBOSA.

⁷⁰ Cf. also Ruling of the Supreme Administrative Court of 26 March 2013, Ref. No. I OSK 1537/12, publ. CBOSA.

⁷¹ Ref. No. I OSK 2096/10, publ. CBOSA.

⁷² Cf. Art. 8 Sec. 1 (3) of the Social Welfare Act.

The legal nature of the family as a beneficiary raises doubts due to its lack of legal personality. Family is not a legal entity. However, the Social Welfare Act treats the family as an entity of rights and obligations. The problem also arises in administrative proceedings on benefits where the family cannot be party.⁷³

In her opinion, although the recognition of the family as the legal entity raises the objection to the doctrine of law, it is nevertheless justified: “[...] by the ideas of social welfare, the need to treat the family as a single entity requiring support and protection, but also the entity from which a particular activity and cooperation expected.”

Another legal definition of the family can also be found in Art. 3 (16) of the Family Benefits Act of November 28, 2003,⁷⁴ according to which the family:

[...] means [...] respectively the following family members: spouses, parents of children, guardian of an actual child and dependent children up to the age of 25 and a child who has reached the age of 25 years with a severe disability certificate if there is a nursing allowance or special care allowance or carer's allowance referred to in the Act of 4 April 2014 on the determination and payment of carer's allowances [...]; family members do not include children under the care of a legal guardian, married children or children with a child of their own.

As can be seen, this definition is narrower than that in the Social Welfare Act. The legislator also included in this act the definition of a large family that represents a family raising three and more children eligible for family allowance.⁷⁵ The act in question also lays down the conditions for acquiring entitlement to family benefits.⁷⁶ For example, in Art. 5 Sec. 3b (1)–(2), the legislator indicates that the family is entitled to child benefits or family allowances. It is worth noting that family assistance is not only a duty of public authorities. This aid is also the statutory purpose of many *sensu strictae* and *sensu largo* NGOs. Accordingly, the legislator included the activities for the family in the sphere of public tasks referred to in Art. 4 Sec. 1 of the Act of 24 April 2004 on Public Benefit and Volunteer Work.⁷⁷

⁷³ Iwona Sierpowska, *Pomoc społeczna. Komentarz* (Warszawa: Wolters Kluwer Polska Sp. z o.o., 2014), 75. Cf. Iwona Sierpowska, *Prawo pomocy społecznej* (Warszawa: Wolters Kluwer Polska Sp. z o.o., 2011), 163.

⁷⁴ Publ. consolidated text. Journal of Laws 2016, item 1518 as amended.

⁷⁵ Cf. Art. 3 (16) a of the Act of 28 November 2003 on Family Benefits.

⁷⁶ Cf. *ibid.*, Art. 1 Sec. 1.

⁷⁷ Publ. consolidated text. Journal of Laws 2003 No. 96, item 873 as amended. Cf. Art. 4 Sec. 1 (31) of the Act of 24 April 2004 on Public Benefit and Volunteer Work.

The administrative procedure does not explicitly exclude the status of the family as party to some administrative proceedings. For example, according to Art. 28 of the Act of 14 June 1960 of the Code of Administrative Procedure⁷⁸: “A party is any person whose legal interest or duty is concerned, or who requests a court action because of his or her legal interest or duty.” Then, according to Art. 29 of this Act: “Natural persons and legal persons can be parties, and when it comes to state and local government units and social organizations—also individuals without legal personality.” It is worth noting the broad conceptualization of the word “party” used by the legislator.⁷⁹

Family in Civil Law

In civil law, there are traditionally three categories of legal entity: (1) natural persons; (2) legal persons, and (3) defective legal persons.⁸⁰ There is no family in this directory. As stated by the Constitutional Court in its ruling of September 9, 2003, in the context of the right to property: “[...] the legal title to a dwelling is vested in certain persons and not the family as such. The family has no legal personality, it cannot be a separate entity of rights and obligations, especially with respect to property. Therefore, it cannot acquire the right to occupy the premises, the legal title may only concern individually identifiable persons.” Each family consists, however, of individuals who have individual rights and obligations.

With that being said, civil law refers indirectly to the family, *inter alia* by properly regulating inheritance rules to protect the interests of the family. As the Constitutional Court rightly stated in its judgment of September 4, 2007⁸¹:

⁷⁸ Publ. consolidated text. Journal of Laws 2016 item 23 as amended.

⁷⁹ Cf. Janusz Borkowski, “Komentarz do art. 28,” in *Kodeks postępowania administracyjnego. Komentarz*, Barbara Adamiak and Janusz Borkowski (Warszawa: Wydawnictwo C.H. Beck, 2011), 178–93. As the author aptly remarks, “The concept of party to the administrative procedure referred to in Art. 28 is very capacious because of the use as a structural element of a criterion of legal interest or an obligation under legal provisions falling within the scope of the competence of the public administration and its competence to substantiate the law by issuing an administrative decision. This gives the concept of the party a broad legal dimension. However, the provisions of Art. 29 enumerating the basic categories of entities which may be parties to [...] the content of Art. 28 are no longer fit for the structure of entities of administrative proceedings, this observation does not refer to that particular provision, and refers in reality to the legal formula of Art. 29, should it be considered without reference to the provisions of separate acts. Ibid., 193.

⁸⁰ Cf. Edward Gniewek, “Stosunek cywilnoprawny,” in *Podstawy prawa cywilnego*, ed. Edward Gniewek (Warszawa: Wydawnictwo C.H. Beck, 2011), 26–27.

⁸¹ Ref. No. P 19/07, pub. Journal of Laws 2007 No. 168, item 1188.

[...] the constitutional protection of the family designates a framework for the liberty of the ordinary legislature, which is to regulate various matters relating to family matters and interests, not only in the field of inheritance law—or, more broadly, civil law—but the whole legal system (penal law, labor law, social security law). This makes the constitutional framework within the scope considered to be sufficiently large to cover many different norms of specific legislation, dictated by various ratios and corresponding to the principle of proportionality of normalization. [...] the failure to include the heirs of the statutory siblings of the testator's parents does not violate the most important constitutional values in this area, such as the protection of property and the well-being of the family.⁸²

It is also worth pointing out to the civil law protection of personal rights, including the right to undisturbed family life and the right to maintain personal contact with particular family members, which expresses family ties.⁸³

It should also be emphasized that due to the importance of the family in the life of society and the State, with the passage of time civil law was further divided into the explicitly defined family law, in particular the Family and Guardianship Code set out in the Act of February 25, 1964.⁸⁴ The code repeatedly cites expressions such as: (1) the good of the family⁸⁵; (2) family matters⁸⁶; (3) family needs⁸⁷; (4) maintenance of the family⁸⁸; (5) supporting the family⁸⁹; (6) providing assistance to the family⁹⁰; (7) forms of working with the family⁹¹; (8) return to the family.⁹²

Civil proceedings do not exclude, *expressis verbis*, court capacity of the family.⁹³ According to Art. 64 § 1–11 of the Act of November 17, 1964, the Code of Civil Procedure,⁹⁴ court capacity is granted to legal and natural persons as well as organizational units which are not legal persons, but who are granted

⁸² Cf. also Elżbieta Skowrońska-Bocian, *Prawo spadkowe* (Warszawa: Wydawnictwo C.H. Beck, 2003), 152.

⁸³ Cf. Ruling of the Court of Appeal in Katowice of 29 January 2013 (Ref. No. I ACa 906/12, publ. Legalis No. 732676).

⁸⁴ Publ. consolidated text Journal of Laws 2017, item. 682 as amended. Hereinafter the Act also referred to as K.R.O.

⁸⁵ Cf. *ibid.*, Art. 10 § 1, 23, 39, 45 § 2.

⁸⁶ Cf. *ibid.*, Art. 23.

⁸⁷ Cf. *ibid.*, Art. 27, 28, 28¹, 30 § 1, 36¹ § 1, 45 § 1, 103.

⁸⁸ Cf. *ibid.*, Art. 91 § 1.

⁸⁹ Cf. *ibid.*, Art. 100 § 2.

⁹⁰ Cf. *ibid.*

⁹¹ Cf. *ibid.*, Art. 109 § 2 (1).

⁹² Cf. *ibid.*, Art. 112⁴.

⁹³ Cf. Andrzej Zieliński, “Komentarz do art. 64,” in *Kodeks postępowania cywilnego. Komentarz*, ed. Andrzej Zieliński (Warszawa: Wydawnictwo C.H. Beck, 2011), 132–35.

⁹⁴ Publ. consolidated text. Journal of Laws 2016, item 1822 as amended.

legal capacity under the Act. It seems that due to the Polish legal order it cannot be ruled out that the family is entitled to this capacity but only in a substantive and not a procedural sense. There is no doubt, however, that individual members of the family as individuals have court capacity.

Family in Penal Law

The family as goods is also protected under penal (criminal) law, which expresses the constitutional and international norms of this social group unit.⁹⁵ In the Act of June 6, 1997, the Penal Code,⁹⁶ the definition of the legal family was not included. However, what was included was the term “closest relative,” that is, spouse, descendant, sibling, affiliates on the same line or degree, person in adoption and their spouse, and person with whom one lives in a relationship out of wedlock.⁹⁷ It is worth adding that Art. 2 Sec. 1 of the Family Law Act of 29 July 2005, a family member is to be understood as the closest person within the meaning of Art. 115 § 11 of the Penal Code, as well as another person with whom the person concerned lives or manages together.

In the Penal Code, Chapter XXVI deals with crimes against family and caring, such as: (1) bigamy⁹⁸; (2) mistreatment of the closest person or another person who is in a permanent or transient relationship dependent on the perpetrator, or of a minor or a person impaired due to his or her mental or physical condition⁹⁹; (3) encouraging a minor into drinking¹⁰⁰; (4) persistent evasion from maintenance obligations¹⁰¹; (5) abandoning a minor under the age of 15 or a person with a mental or physical condition¹⁰²; (6) abduction or retention of a minor under the age of 15 or a person helpless because of his or her mental or physical condition¹⁰³; (7) organizing illegal adoption of children.¹⁰⁴ Constitu-

⁹⁵ Cf. also Marek Mazgawa, “Komentarz do art. 206,” in *Kodeks karny. Praktyczny komentarz*, ed. Marek Mazgawa (Kraków: Kantor wydawniczy ZAKAMYCZE, 2006), 398–99; Zygryd Siwik, “Uwagi wstępne do przestępstw przeciwko rodzinie i opiece,” in *Kodeks karny. Komentarz*, ed. Marian Filar (Warszawa: LexisNexis Polska Sp. z o.o., 2012), 1029–1030.

⁹⁶ Publ. consolidated text Journal of Journal 2016, item 1137 as amended. The Act referred to hereinafter also as K.K.

⁹⁷ Cf. *ibid.*, Art. 115 § 11.

⁹⁸ Cf. *ibid.*, Art. 206.

⁹⁹ Cf. *ibid.*, Art. 207.

¹⁰⁰ Cf. *ibid.*, Art. 208.

¹⁰¹ Cf. *ibid.*, Art. 209.

¹⁰² Cf. *ibid.*, Art. 210.

¹⁰³ Cf. *ibid.*, Art. 211.

¹⁰⁴ Cf. *ibid.*, Art. 211a.

tional protection of the family is also specified in the scope of imposing penal sanctions.¹⁰⁵

As per penal, or criminal, procedure it should be noted that, according to Art. 49 of the Act of June 6, 1997, the Code of Penal Procedure,¹⁰⁶ the victim may be the natural or legal person as well as a state or local-government institution or other organizational entity whose separate provisions confer legal capacity. It is worth noting that the legislator used the term “legal capacity” in penal procedure rather than “capacity to undertake legal actions.” It is necessary to share the view of Wincenty Grzeszczyk, who states the following: “In determining the victim, one should apply the rules of substantive law which determine who and what legal good has been compromised or threatened.”¹⁰⁷ As indicated earlier on the example of the Social Welfare Act, a family whose income does not exceed the sum of the income criterion set out per person in the family is entitled to cash benefits from social welfare.¹⁰⁸ At the level of administrative law, they have legal capacity since they are entitled to such benefits. In addition, the family cannot be accused or witnessed, even though such status can be granted to individual family members.

Conclusions

The above analysis indicates that the status of legal entity for the family in the Polish legal order is quite complex, varied, and dependent on the autonomy of particular branches of law. In particular, it should be noted that in the Polish legal order, the family, as a specific community of natural persons resulting from humans as social beings, is explicitly entitled, in the substantive dimension, to individual rights and obligations, particularly in the field of constitutional law, international law (defined in multilateral international agreements of universal and European scope and bilateral agreements), community law, and administrative law. Civil law and penal law recognize the protection of the institution of the family and its individual members have individual rights and obligations.

At the level of conduct of the branches of law concerning legal entities, the family, due to its individual rights and obligations, may be the legal entity and may at the same time be regarded as party to proceedings in substantive terms.

¹⁰⁵ Cf. *Ibid.*, Art. 33 § 3, Art. 47 § 4.

¹⁰⁶ Publ. consolidated text. Journal of Laws 2016, item 1749 as amended.

¹⁰⁷ Wincenty Grzeszczyk, *Kodeks postępowania administracyjnego*. Komentarz (Warszawa: LexisNexis Polska Sp. zo.o., 2011), 86.

¹⁰⁸ Cf. Art. 8 Sec. 1 (3) of the Social Welfare Act.

On the other hand, such status in the procedural sense seems rather doubtful. As rightly pointed out by the Constitutional Court, the family is the beneficiary of rights and it acts through its individual members.

It should be borne in mind that the status of the family recognized by constitutional, international, and community norms should be included in lower-level normative legislation, accounting for the autonomy of individual branches of law, which will enable the family to be properly supported as a fundamental and natural group unit of society and to implement the principle of subsidiarity, which is fundamental to the development of man, society, and the State.

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La famille en tant qu'entité juridique dans l'ordre juridique polonais

Résumé

La question de la famille en tant qu'entité juridique dans l'ordre juridique polonais, abordée dans le présent article, concerne la problématique pratique qui est en même temps assez complexe en raison de définitions imprécises et hétérogènes du statut de la famille dans les branches particulières du droit qui jouissent de leur propre autonomie dans le cadre du système juridique, étant universellement en vigueur. La compréhension correcte de cette question exige une analyse adéquate des réglementations juridiques, de la jurisprudence et de la littérature.

L'article présente le problème dans le contexte des branches traditionnelles du droit, telles que le droit constitutionnel (en outre avec le droit international et communautaire, où l'on a reconnu nombre de droits et de devoirs de la famille), le droit administratif, le droit civil et le droit pénal. Grâce à une telle structure de l'article, on a présenté dans ses parties particulières la problématique de la famille en tant qu'entité juridique aussi bien au niveau matériel que formel, y compris des conclusions concrètes.

Les conclusions générales les plus importantes, résultant de l'analyse effectuée, ont été incluses dans le chapitre final.

Mots clés : famille, famille en tant qu'entité juridique, membres de la famille, droits de la famille

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La famiglia come soggetto nell'ordine giuridico polacco

Sommario

La problematica, intrapresa nel presente articolo, della soggettività della famiglia nell'ordine giuridico polacco riguarda una questione pratica e allo stesso tempo abbastanza complessa, a causa delle definizioni imprecise ed eterogenee dello status della famiglia nei diversi rami del diritto che hanno un'autonomia adeguata nell'ambito del sistema giuridico comunemente in vigore. La comprensione corretta di tale problematica richiede un'analisi appropriata delle norme giuridiche, delle decisioni giudiziarie e della letteratura in materia.

Nell'articolo la problematica in oggetto è stata presentata nel contesto dei rami tradizionali del diritto quali il diritto costituzionale (oltre al diritto internazionale e comunitario in cui sono stati riconosciuti molti diritti e doveri della famiglia), il diritto amministrativo, il diritto civile e il diritto penale. In seguito all'assunzione di una simile struttura dell'articolo nelle sue singole parti è stata presentata la problematica della soggettività della famiglia sul piano sia materiale, sia formale con le relative conclusioni.

Le conclusioni generali più importanti risultanti dall'analisi condotta sono state racchiuse nella parte finale.

Parole chiave: famiglia, soggettività della famiglia, membri della famiglia, diritti della famiglia