

# Małgorzata Tomkiewicz

---

## Protection of the Family in the Family Policy of the State: Legal, Social and Economic Aspects

---

Ecumeny and Law 2, 227-246

---

2014

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](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach  
dozwolonego użytku.

MAŁGORZATA TOMKIEWICZ

University of Warmia and Mazury in Olsztyn, Poland

## Protection of the Family in the Family Policy of the State: Legal, Social and Economic Aspects

**Keywords:** family, family policy, family law, family benefits, legal protection of the family

Family is one of the oldest institutions constituting a natural social group. It is a universal institution, found in all epochs and cultures<sup>1</sup> and its significance and value have been acknowledged since the time immemorial, when it was treated as an entirety, “and only against the background of which the individual may act more strongly.”<sup>2</sup>

As a basic unit of social life, created for upbringing children and for mutual assistance of spouses, the family is subject to protection and care provided by the state. Recognising the importance of functions fulfilled in the society, the state supports the family using various means within the family policy followed.<sup>3</sup>

---

<sup>1</sup> For more on this issue, see F. ADAMSKI: *Rodzina. Wymiar społeczno-kulturowy*. Kraków 2002, pp. 67—137.

<sup>2</sup> J. BYSTRON: *Dzieje obyczajów w dawnej Polsce. Wiek XVI—XVIII*. Vol. 2. Warszawa 1960, p. 121.

<sup>3</sup> According to K. Głąbicka, the term “family policy” should not be identified with the term “pro-family policy.” The latter is a colloquial term which is not found in the literature of social policy. It is of an evaluative nature — the social policy of the state towards the family can be considered the pro-family policy if it fulfils clearly established aims that the state wants to achieve as regards creating conditions for the development of the family and for satisfying living and cultural needs of the family (K. GŁĄBICKA: *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej*. Radom 2004, p. 93).

According to the predominant theory,<sup>4</sup> “family policy is the entirety of legal norms, actions and means launched by the state in order to create appropriate living conditions for the family; its founding, proper functioning and fulfilling by it all socially important roles.”<sup>5</sup> It can be also defined as a “sphere of purposeful activity concerning the creation of conditions favouring the founding and functioning of families and exerting an influence on the functioning of the entire society.”<sup>6</sup>

The family policy in Poland has various measures at its disposal, through which it achieves the assumed objectives. The state pursues this policy first of all using such instruments as: legal measures, cash benefits, benefits in kind, benefits in the form of services, while the law plays here a fundamental role. Legal norms governing both family relations and relations of the family with the state and other institutions, but also — through normalization of various aspects of the family functioning — are aimed at its protection.

Regulations concerning broadly understood protection of the family in the Polish law are included in numerous legal acts. The essential one is the Constitution of the Republic of Poland of 2 April 1997.<sup>7</sup>

Analysing the provisions of the Constitution in the context of regulations aimed at protection of the family, it should be clearly emphasised that the Constitution explicitly specifies that marriage is a union of a woman and a man and declares that — as well as the family, motherhood and parenthood — marriage is placed under the protection and care of the state (Art. 18). It grants the parents the right to rear their children in accordance with their own convictions, considering that limitation or deprivation of parental rights are an exceptional situation, which can be affected only in cases specified by statute and only on the basis of a final court judgement. It recognises that parents have the right to bring up their children according to their own convictions. Such upbringing should respect the degree of maturity of a child as well as his/her freedom of conscience and belief and also his/her convictions (Art. 48). It refers the above-mentioned directive to the right to ensure to children a moral and religious education (Art. 53). It imposes on the state an obligation to take

---

<sup>4</sup> The literature of the subject has presented family policy in various ways (for more on this issue, see M. SZYSZKA: *Polityka rodzinna w Polsce 1990—2004*. Lublin 2008, pp. 39—46).

<sup>5</sup> S.B. KAMERMAN: “Rodzina: problemy teorii i polityki.” In: *O polityce rodzinnej: definicje, zasady, praktyka*. Materiały z Zagranicy, t. 2, Instytut Pracy i Spraw Socjalnych. Warsaw 1994. This definition corresponds to the definition provided by A. KURZYŃSKI: *Problemy rodziny w polityce społecznej*. Warszawa 1991, pp. 8—9.

<sup>6</sup> B. PARADOWSKA-BALCERZAK: *Rodzina i polityka rodzinna na przełomie wieków*. Instytut Pracy i Spraw Socjalnych. Warszawa 2004, p. 16.

<sup>7</sup> Dz.U. 1997 nr 78 poz. 483 z późn. zm.

into account the welfare of the family in its social and economic policy. Families finding themselves in difficult material and social circumstances, particularly those with many children or a single parent, are entitled to special assistance from public authorities (Art. 71). The state ensures protection of the rights of the child — everyone has the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and depravation. A child deprived of parental care shall have the right to care and assistance provided by public authorities (Art. 72).

Beside constitutional provisions, regulations intended for protection of the family are also directly included in the family law, indirectly in the material civil law, in the civil procedure, in the labour law, in the material and procedural criminal law and in the criminal punishment law. Implementation of the constitutional principles of family protection also depends on regulations incorporated in several other normative acts, primarily in the field of tax, security or tenancy law.

The Family and Guardianship Code<sup>8</sup> is the fundamental legal act governing family relationships in Poland. Without going into details concerning the legal dimensions of family protection due to the limitations of space, suffice to say that the provisions of the Family and Guardianship Code govern such sensitive areas of family life as the issues concerning the contracting and annulment of a marriage, material relations between spouses, maintenance obligations, child origin, relationships between the families and children, institutions of adoption, care and guardianship. Family protection measures set forth in the provisions of the Family and Guardianship Code are based on such principles as: principle of the child's good (this is the dictate to be guided by the criterion of the best protection of the child's interests in activities of public and private institutions: social welfare, courts, administrative authorities, legislative bodies — Art. 56, 109, 114 of the Family and Guardianship Code); the principle of autonomy of the family in relation to external influence, including the state (nobody without a justified reason should interfere in family matters; the principle of the primacy of the family in rearing children; the principle of monogamy (marriage is a union of one man with one woman); principle of the secular character of the family law (authority of state bodies to settle family cases); the principle of equality of spouses in their mutual relations and towards children; principle of durability of marital unions.

---

<sup>8</sup> The Family and Guardianship Code Act of 25 February 1964 (Dz.U. 1964 nr 9 poz. 59 z późn. zm.); hereinafter FGC.

As regards the civil law,<sup>9</sup> the following issues should be emphasised in the matter under discussion, among others, the provisions concerning minors in legal transactions and principles of inheritance law. The interest of the family is protected, among others, by statutory inheritance in cases when a last will is absent. By statute, the children and the spouse of the testators have priority entitlement to the inheritance (Art. 932—933 CC). In situations when the last will omits the family members, the law provides for a protective institution — legitim. Family members excluded from inheritance are then entitled to claim a sum of money specified in legal regulations from the inheritor (Art. 991 CC).

The civil procedure also includes regulations affecting the position of the family. The example here is statutory exemption from payment of court costs for persons applying for paternity proceedings,<sup>10</sup> as well as the possibility of appearing in these cases in the capacity of the plenipotentiary of the proper representative for the social welfare of the municipal authority, as well as the social organisation aimed at providing support to the family.

The Labour Code<sup>11</sup> upholds the interests of the family, in particular, through protection of motherhood and protection of women's health. The provision of Chapter VIII "Protection of women's work" (Art. 176—189 LC) specifies, among others, that pregnant women cannot be employed to do overtime work, night work, or be delegated to work outside of her usual workplace without her consent. The employer is obliged to transfer to another work position a woman employed to do the work prohibited to be performed by pregnant women, and in cases that the social health care institution establishes that, due to the condition of her pregnancy, she should not perform her previous work. The employer is obliged to release the pregnant employee from work to undergo medical checks recommended by the doctor and related to pregnancy. Additionally, the provisions of the Labour Code provide a guarantee to maternity leave by the employee and for granting a parental leave.

The family is also protected within the general terms of penal law. In this area, the state does not only aim at protection of significant attributes of the family, but also cares about a specific model of behaviours and an appropriate level of relations occurring within it. The Penal Code<sup>12</sup> contains such provisions that aim both at penal protection of

---

<sup>9</sup> The Civil Code Act of 23 April 1964 (Dz.U. 1964 nr 16 poz. 93 z późn. zm.); hereinafter CC.

<sup>10</sup> As set forth in Art. 96.1 and Art. 96.2 of the Court Costs in Civil Cases Act of 28 July 2005 (Dz.U. 2005 nr 167 poz. 1398).

<sup>11</sup> Act of 26 June 1974 (Dz.U. 1974 nr 24 poz. 141 z późn. zm.); hereinafter LC.

<sup>12</sup> Act of 2 June 1997 (Dz.U. 1997 nr 88 poz. 553); hereinafter PC.

the personal status of the family (prohibition of bigamy — Art. 206 PC, prohibition of organising adoption against the provisions of the act — Art. 211a PC), as well as protection of the procreation function of the family (penalization of termination of the pregnancy without the consent of the mother — Art. 153 PC, and with consent of the mother, but in violation of the Family Planning, Protection of the Human Foetus and Conditions for Permissibility of Abortion Act of 7 January 1993<sup>13</sup> — Art. 152 PC, defining the crime of infanticide during the delivery and under the influence of its course — Art. 149 PC), and the protection of the guardianship and upbringing function (the crime of abandoning a child under 15 years of age or a person who is helpless by reason of his mental or physical condition — Art. 210 PC, crime of abducting a child under 15 years of age — Art. 211 PC, crime of exposing a person under his care to an immediate danger of loss of life or a serious impairment of health — Art. 160 PC) as well as the protection of the functioning of the family (prohibition of abuse — Art. 207 PC, prohibition of incest — Art. 201 PC, prohibition of sexual abuse of children — Art. 197 § 3.2 PC, Art. 199 § 2 and 3 PC, Art. 200 PC, prohibition of using children in pornography — Art. 202 PC, prohibition of child prostitution — Art. 204 PC, prohibition of inducing a minor to drink alcoholic beverages — Art. 208 PC, penalisation of maintenance payment avoidance — Art. 209 PC).<sup>14</sup> Also (originally), the solutions adopted in the amended Act of 10 June 2010 are intended for increasing the efficiency of counteracting domestic violence.<sup>15</sup> By recognising that domestic violence breaches fundamental human rights, including the right to life and health and respect for personal dignity, while public authorities are obliged to ensure equal treatment to all citizens and respect for their rights and freedoms, the above-mentioned act is also aimed at initiating and supporting activities consisting in improving social awareness as regards causes and results of domestic violence.

The Code of Criminal Procedure<sup>16</sup> also contains provisions aimed at the protection of the family. This can be demonstrated by the existence of the right to refuse to testify, which the next of kin of the accused is entitled to (Art. 182 § 1 CCP), as well as the existence of the right to decline to answer a question if such an answer might expose the next of kin to liability for an offence or fiscal offence (Art. 183 § 1 CCP).

<sup>13</sup> Dz.U. 1993 nr 17 poz. 78 as amended.

<sup>14</sup> For more about the legal and penal protection of the family see S. HYPŚ: *Ochrona rodziny w polskim prawie karnym*. Lublin 2012.

<sup>15</sup> Dz.U. 2010 nr 125 poz. 842.

<sup>16</sup> The Code of Criminal Procedure Act of 6 June 1997 (Dz.U. nr 89 poz. 555); hereinafter CCP.

The concern of the legislator about maintaining family ties in case of separation caused by serving an imprisonment sentence can be found in regulations of the criminal punishment law. For the sake of illustration, the Executive Penal Code<sup>17</sup> in Art. 105 § 1 clearly provides that the convict should be allowed to maintain links first of all with the family and other close friends through visits, telephone calls, parcels and money orders, and in justified cases, upon a consent of the director of the penitentiary facility, also through other means of communication. Solutions adopted in the Act of 7 September 2007 on Serving a Custodial Sentence beyond the Penitentiary Facility in the System of Electronic Monitoring<sup>18</sup> are also aimed at maintaining the links with the family of the person sentenced for unconditional imprisonment. Pursuant to Art. 6.1 of this Act, the penitentiary court can allow the convict to serve a custodial sentence not longer than one year in a system of electronic monitoring.<sup>19</sup>

During the period of imprisonment of any of its members, the family can rely on the support of the state within the aid provided from the Post-penitentiary Assistance Fund.<sup>20</sup> Such an aid can be used by a family of an imprisoned person by no more than for three months as of the day of placing the convict in the penitentiary facility or in the remand centre. However, this period can be extended up to six months in case of particular circumstances, such as disease or temporary unfitness to work.

Apart from the *stricte* normative layer, the family is also the subject of care of the state in its economic and social dimensions.

The above-mentioned cash benefits in the form of allowances and relief can be granted to individual families obligatorily or discretionarily (through the social welfare system). Benefits in kind include material goods delivered to families (clothes, fuel, food, etc.), while benefits in the form of services are provided by various institutions. Those services are provided through social infrastructure, e.g. day nurseries, kindergartens, school common rooms, etc.<sup>21</sup>

---

<sup>17</sup> The Executive Penal Code Act of 6 June 1997 (Dz.U. 1997 nr 90 poz. 557); hereinafter EPC.

<sup>18</sup> Consolidated text Dz.U. 2010 nr 142 poz. 960.

<sup>19</sup> Serving the sentence in this system requires the convict to stay in the flat established by the court as the place of serving the sentence, and can leave it only at precisely specified hours and in a precisely specified purpose, e.g. to perform work. The behaviour of the convict is supervised by the probation officer.

<sup>20</sup> Pursuant to Art. 43 of the EPC, the Post-penitentiary Assistance Fund is a state special purpose fund. It is managed by the Minister of Justice. Revenues of the Fund mainly consists of the funds originating from a deduction of 20% of remuneration that convicts are entitled to. The aim of the Fund is to aid the imprisoned persons released from penitentiary facilities and remand centres and their families.

<sup>21</sup> B. BALCERZAK-PARADOWSKA: "Polityka państwa wobec rodziny." In: *Polityka społeczna w latach 1994—1996*. Ed. S. GOLINOWSKA. Report of the Institute of Labour and Social Affairs 1996, No. 11, Warszawa 1996.



The following family policy instruments have been prevalent over the last 30 years:

- cash benefits in the form of allowances: allowances for a disabled child, childcare during the parental leave, single parent supplement, new school-year allowance, taking up learning by a child outside the place of residence, new-born allowance;
- funds making it possible to reconcile one's professional career with family life in the form of maternity leave and allowance, parental leave and allowance, guardianship allowance;
- tax credits consisting in joint taxation of spouses and single parents, tax exemption of family benefits;
- social services — mainly educational services and health care: state day nurseries, kindergartens, primary schools, junior secondary schools, educational and cultural facilities, special schools, post-primary schools, special education centres, state health care.<sup>22</sup>

Thus, the social character of family policy has been prevalent, expressed by focusing principal solutions on families living in difficult situations and at the risk of dysfunction.

Currently, the state perceives the need to conduct family policy which first of all would increase the birth rate in the Polish society. The pronatalist trend is clearly exposed, for instance, by the Governmental Population Council in "Assumptions for Poland's population policy in 2013." Pursuant to this study, the population policy in Poland should currently accomplish four fundamental aims: (1) create conditions favouring establishment of families, first of all through contracting marriages and realization of procreation plans; (2) create conditions favouring integration in the aging society — reducing the risk of exclusion of elderly, dependent and disabled people; (3) undertake actions aiming at improvement of the health condition of population and reducing the mortality rate; (4) specify directions and principles of migration policy of Poland in times of European integration.<sup>23</sup> With reference to the first of the enumerated aims, it should be emphasised that the following priority specified in point I.1.2 has been adopted: "Promotion of gender equality and social equality and striving for ensuring conditions for free choice of allocation of roles of

---

<sup>22</sup> After: G. FIRLIT-FESNAK, M. SZYLKO-SKOCZNY (eds.): *Polityka społeczna: podręcznik akademicki*. Warszawa 2008, pp. 196—197. For more on the issue of family policy in Poland in 1990—2004 see M. SZYSZKA: *Polityka rodzinna w Polsce 1990—2004*. Lublin 2008.

<sup>23</sup> For more on this issue, see Government Population Council, Assumption of Poland's population policy 2013 (project) (*Założenia polityki ludnościowej Polski 2013 (projekt)*), [http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP\\_zalozenia\\_polityki\\_ludnosciowej\\_Polski\\_2013\\_projekt\\_luty\\_2013.pdf](http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP_zalozenia_polityki_ludnosciowej_Polski_2013_projekt_luty_2013.pdf) (accessed 20.5.2013).



women and men in the family,<sup>24</sup> including taking up activities aimed at reducing the stereotype concerning the allocation of roles in the family.<sup>25</sup>

However, family allowance remains one of the basic benefits for families with children,<sup>26</sup> the purpose of which is to aid the family with the costs of bringing up a child and to provide partial compensation in the form of the family tax credit,<sup>27</sup> as well as benefits from social welfare, which are directed at helping families in difficult situations. In this context, it should be noted that the doctrine has been emphasising for long that the care for the economic condition of Polish families should be a fundamental priority of the family policy. The poverty of families not only has an impact on the birth rate, but also directly and destructively affects the construction of the society, creating such negative phenomena as, among others, discrimination of children and youth resulting from unequal educational opportunities, preserving the inheritance of social impairment of parents, or the emergence of various family dysfunctions.<sup>28</sup>

Family policy, although it *expressis verbis* refers to the family, does not define this term. The definition of a family is one of the disputable issues in the literature, while the attempts to define the notion of a family depends on whether the subject of the analysis is the family in its legal-family model, the family in the social model, or the family in the pedagogical perspective. For example (taken from the extensive litera-

<sup>24</sup> Pursuant to the guidelines concerning accomplishment of tasks specified in the Commission Communication of 3 March 2010, entitled *Europe 2020: A strategy for smart, sustainable and inclusive growth* [COM(2010) 2020] a free choice of role allocation in the family is to be an element, among others, of actions aimed towards an increase in employment rate, reduction of poverty, focused on ensuring social cohesion and fight against social exclusion, but also a significant instrument in conditions of aging societies and implementation of the principle of solidarity between generations. Guidelines in this matter were provided, among others, in Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [Official Journal L. of 24.11.2010].

<sup>25</sup> GOVERNMENT POPULATION COUNCIL: *Assumptions of Poland's population policy...*

<sup>26</sup> The Family Benefits Act of 28 November 2003 (consolidated text: Dz.U. 2006 nr 139 poz. 992 z późn. zm.).

<sup>27</sup> It is a solution consisting in deducting a specific amount from the income tax for each child (after deducting health insurance premiums). The government introduced a very complex rule specifying the amount of this deduction. This is “an amount constituting 1/6 of the amount reducing the tax specified in the first rate band [...] for each calendar month in which the taxpayer held power, function or provided care (to a minor child).” Consequently, the amount of the tax reduction changes every year. Reduction, both in nominal and real dimension, of the child allowance means a lower compensation of costs of their upbringing, therefore reduction of support for families bringing up children.

<sup>28</sup> See B. BALCERZAK-PARADOWSKA: “Ubóstwo rodzin w Polsce.” In: *Współczesne rodziny polskie — ich stan i kierunek przemian*. Ed. Z. TYSZKA. Poznań, 2004, p. 351.

ture), it should be indicated that according to Z. Zaborowski, a family is “an educational group, with parents bound by mutual relations and relations with children, having specific positions and roles to accomplish the norms and values that they recognize.”<sup>29</sup> For B. Tobiasz-Adamczyk, a family is a group of persons bound by marriage, consanguinity, affinity or adoption links — in comparison to other social communities, it is distinguished by the intimacy of relations uniting its members and durability of emotional links.<sup>30</sup> In the opinion of M. Przetacznikowa, “a family is one of the most important primary groups, that is such that are characterised by close and direct contact of their members: they establish close emotional relations and are bound by permanent and personal links based on cooperation and solidarity.”<sup>31</sup> Z. Tyszka points out to the fact that a family is considered, first of all, as a sociological category, creating a specific community, the members of which are bound by links of marriage, kinship, relation or adoption.<sup>32</sup> J. Rembowski, in turn, claims that a family is “a group which consists of a man and a women bound by marriage, their offspring (own or adopted) and in some cases of other persons, most frequently the closest relatives.”<sup>33</sup> M. Ziemska, on the other hand, says that “a family is a small social group consisting primarily of spouses and their children. It constitutes an entirety, subject to dynamic transformations related to the course of life of individuals it is composed of. It is based on existing social traditions and develops on its own.”<sup>34</sup> According to S. Kawula, a family is “a social group, in which the first ethical and moral forms, distinction between good and evil, classification of persons, objects and phenomena takes place.”<sup>35</sup> In the opinion of M. Jurczak “a family is a basic educational unit, made up of spouses or spouses and children, and also the relatives of both spouses. A family plays a significant role in the society. Full equality of both spouses exists in the family. They should cooperate for its good and satisfaction of its needs. A particular obligation of spouses is to care for children and to raise them properly.”<sup>36</sup>

Consequently, the notion of family itself is not — as results from the foregoing — a uniform term. It refers both to groups, which are composed only of parents and their children, as well as a broader group of persons

<sup>29</sup> J. SZCZEPAŃSKI: *Elementarne pojęcia socjologii*. Warszawa 1963, p. 34.

<sup>30</sup> B. TOBIASZ-ADAMCZYK: *Wybrane elementy socjologii zdrowia i choroby*. Kraków 1998, p. 68.

<sup>31</sup> The view provided in: J. REMBOWSKI: *Rodzina w świetle psychologii*. Warszawa 1986, p. 91.

<sup>32</sup> Z. TYSZKA: *Socjologia rodziny*. Warszawa 1976, p. 74.

<sup>33</sup> J. REMBOWSKI: *Rodzina w świetle...*, p. 94.

<sup>34</sup> M. ZIEMSKA: *Rodzina a osobowość*. Warszawa 1977, p. 28.

<sup>35</sup> S. KAWULA: *Funkcja opiekuńcza współdziałania rodziny*. Białystok 1988, p. 147.

<sup>36</sup> M. JURCZAK: *Leksykon. Wyrazy trudne, ważne i ciekawe*. Warszawa 1977, p. 59.

linked by descent from a common ancestor (blood ties) or bound by the common living “under one roof.”<sup>37</sup> Sociology applies the term of a small (nuclear) family, including parents and their children, and an extended family including a broader circle of relatives, especially grandparents with independent siblings belonging to the common household.<sup>38</sup>

The literature of the subject is still dominated by the thesis that the foundation of the family, both from the sociological and legal perspectives, is a couple consisting of a man and a woman, and not a same-sex couple.<sup>39</sup> However, there are views that the traditional terminology nowadays has become too narrow to specify new social units, which are more and more frequently occurring (no legal bond relationships, e.g. cohabitation, the LAT type relationships, i.e. Living Apart Together — persons not living together, or DINKS, i.e. Double Income No Kids — childless pairs of separate incomes, or homosexual relations, sometimes also bringing up children); consequently, such definitions of a family are proposed that take into account the changing dynamics of this institution and the growing role of “family unions.”<sup>40</sup> This broad perspective, treating a family as “universal social institution,”<sup>41</sup> describes a family as “strengthened in the tradition of all cultures, ritualized by a set of human actions directed at satisfying the needs of its members (mainly sexual, procreation and socialisation ones)<sup>42</sup> through which its understanding is not limited to the legalised union of a woman and a man by law.<sup>43</sup>

A legal definition of the notion of family does not exist in the effective legal order. The great majority of legal acts cover the family spouses, their common children, children of the other spouse, adopted children, foster children, children under the (legal) care, and sometimes other children brought up and maintained if their parents have died or cannot maintain them, or have been deprived of or restricted in their parental authority. Such an interpretative direction results from the regulations of the Family and the Guardianship Code (further FGC), in which the notion of family is based on the links of marriage, kinship or affinity. Pursuant to Art. 27

<sup>37</sup> T. SMYCYŃSKI: *Prawo rodzinne i opiekuńcze (Family and Guardianship Law)*. Warszawa 2005, p. 1.

<sup>38</sup> F. ADAMSKI: *Socjologia małżeństwa i rodziny. Wprowadzenie*. Warszawa 1982, p. 19.

<sup>39</sup> B.M. KAŁDON: “Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym.” *Forum Pedagogiczne UKSW* 2011, no. 1.

<sup>40</sup> A. MATUSIK: *Polityka rodzinna w Polsce*. Available at: <http://spolecznieodpowiedzialni.pl/files/file/p5wwcq2dewv2b7zu7irxaab4d3kom2.pdf> (accessed 10 March 2013).

<sup>41</sup> T. SZLENDAK: *Socjologia rodziny: edukacja, historia, różnicowanie*. Warszawa 2010, p. 95.

<sup>42</sup> Ibidem.

<sup>43</sup> A. MATUSIK: *Polityka rodzinna...*

FGC, a family is established in a formalized way, as a result of a woman and a man contracting the marriage. Persons living in actual relationships (cohabitations) can exercise common parental authority over common minor children, but this type of relationship does not constitute a family in the meaning of FGC provisions.

However, the actual common life of a woman and a man following a formalized marital bond, can be considered a manifestation of a family life in other regulations effective in the Republic of Poland.<sup>44</sup> A broader concept of family is provided by the Tax Ordinance Act of 29 August 1997<sup>45</sup> and Art. 691 CC.<sup>46</sup> Certain legal acts can contain the notion of “the nearest, close member of a household” while this term — as a rule — is given a sense corresponding to the purposes of the act in which it is used. To interpret both the notion of family as well as a related term of “a member of household,” the purposive interpretation is used in principle.<sup>47</sup> For instance, it should be indicated that a family according to the Social Welfare Act<sup>48</sup> (Art. 6.14) is understood as related or unrelated persons living in an actual relationship, living together and keeping a common household.

The issue concerning the notion of family in the light of the above-mentioned Act on Counteracting Domestic Violence seems to be particularly interesting. The act under discussion, although it uses the term

---

<sup>44</sup> Thus A. MATUSIK: *Polityka rodzinna...*, after J. IGNATOWICZ, M. NAZAR: *Prawo rodzinne*. Warszawa 2010, pp. 22—23.

<sup>45</sup> Dz.U. 1997 nr 137 poz. 926 as amended. K. Świąch points out that the definition of family has not been formulated for the purposes of the tax law. The legislator formulates construction elements only for particular acts of detailed tax law, which directly or indirectly establish the legal position of the members of the family. However, it should be noticed that on the ground of regulations traditionally included into the matter of general tax law, namely the Tax Ordinance Act, the term “family” is used to specify the conditions governing liability for tax obligations of persons considered to be members of the family. Nevertheless, the universal definition of family that could be applied in the entire tax law system has not been defined. The members of family who are jointly and severally liable for the tax obligations, in accordance with the tax ordination provisions, also include persons actually living with the tax payer if other statutory premises of this liability are satisfied (K. ŚWIĘCH: *Pozycja rodziny w polskim prawie podatkowym*. Warszawa 2013, p. 16).

<sup>46</sup> Art. 691 § 1 provides as follows: In case the tenant of the housing unit dies, the tenancy relation is succeeded by: the spouse not being the joint tenant of the unit, children of the tenant and his/her spouse, other persons towards whom the tenant was obliged to provide maintenance, and the person remaining in *de facto* cohabitation with the tenant.

<sup>47</sup> See Judgement of the Supreme Court of 13 April 2005 IV CK 648/04, OSNCP 2006/3/54.

<sup>48</sup> The Social Welfare Act of 24 March 2004 (consolidated text: Dz.U. 2009, nr 175 poz. 1362 as amended).

“family” both in the title and in the text, also does not define this term.<sup>49</sup> In Art. 2.1, it is only indicated that whenever the act refers to a “member of the family,” it should be understood as the next of kin in the meaning of Art. 115 § 11 of the Penal Code, as well as any other person cohabiting or managing a common household.

Pursuant to Art. 115 § 11 CCP, the next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation as well as his spouse, and also a person actually living in cohabitation. Thus, in the light of indicated Art. 115 § 11 CCP, not all persons bound with blood ties are members of the family towards one another in the meaning provided above. This status will not be enjoyed by persons having relations in further branch lines (aunts, uncles, nieces, nephews, cousins), since they do not belong to the above-mentioned catalogue.<sup>50</sup> According to the above definition, the members of the family would be persons living in cohabitation, even if this cohabitation concerns persons of the same sex. In the said regulation, the legislator does not use the term being the Polish equivalent of “cohabitation” — that is *konkubinacja* (in relation to which the Polish judiciary<sup>51</sup> and the doctrine<sup>52</sup> is still dominated by the view that this means a relationship between a man and a woman), but it applies a subjectively broader term. In the light of linguistic interpretationalism, there are no grounds to claim that cohabitation can only unify persons of different sex, which means that the term “cohabiting persons” also refers to cohabitation of homosexual couples.<sup>53</sup>

<sup>49</sup> M. TOMKIEWICZ: “Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość.” *Studia Warmińskie* 2012, no. 49, pp. 271—285.

<sup>50</sup> See e.g. Judgement of the Supreme Court of 5 February 1971, in case IV KR 253/70, *LexPolonica* nr 322409; Judgement of the Administrative Court in Kraków of 23 April 1992, in case II Ak. 37/92, *KZS* 1992 nr 3—9 poz. 54.

<sup>51</sup> See Judgement of the Supreme Court of 16 May 2000 in case IV CKN 32/00, *OSNC* 2000 nr 12 poz. 222; Judgement of the Supreme Court of 5 March 2003 in case III CZP 99/02, *OSNC* 2003 nr 12 poz. 159; Judgement of the Supreme Court of 12 January 2006 in case II CK 324/05, *Monitor Prawny* 2006 nr 4, p. 172.

<sup>52</sup> M. NAZAR: “Konkubinacja a małżeństwo — wybrane zagadnienia.” In: *Księga jubileuszowa Prof. dr hab. Tadeusza Smyczyńskiego*. Ed. M. ANDRZEJEWSKI. Toruń 2008, pp. 219—237; T. SMYCZYŃSKI: “Czy potrzebna jest regulacja prawna pożycia konkubencznego (heteroseksualnego i homoseksualnego).” In: *Prawo rodzinne w Polsce i w Europie. Zagadnienia wybrane*. Lublin 2005, pp. 462—467.

<sup>53</sup> The thesis that “cohabitation” can also apply to the common life of homosexual pairs, and consequently that persons remaining in relations of this type have the status of the next of kin can be found, e.g. in: S. SPUREK: *Ustawa o przeciwdziałaniu przemoc w rodzinie. Komentarz*. Warszawa 2008, p. 62; J. MAJEWSKI: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks karny. Część ogólna. Komentarz*. Vol. I. Ed. A. ZOLL. Kraków 2004, pp. 1437—1447; M. KULIK: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks karny. Komen-*

While referring to the term “persons living under the same roof or managing a common household,” it can be easily noted that this wording is highly imprecise. First of all, replacing the conjunction “and” with “or” means that also persons who only live together (without managing a common household) or who only manage a common household without living together will be a member of the family for each other.<sup>54</sup> Undoubtedly, the intention of the government redaction of the above-mentioned Art. 2.1 was to cover by the said protection a wide circle of persons who did not fit the definition of the next of kin included in Art. 115 § 11 of the Penal Code, and who often fell victim to domestic violence which, above all, concerned divorced spouses living under one roof, or members of the cohabitant families living with them. However, the provision specifying that members of the family are also persons living under the same roof or managing a common household leads to a conclusion that is absurd in its significance, namely, that a group of students living together in a rented flat should be also considered members of a family,<sup>55</sup> as well as any lodgers in a family home.<sup>56</sup>

The subject matter of a family makes an important part of the social policy, and currently it is difficult to imagine a modern, democratic state which does not have a policy towards such a significant social unit as the family. In this context, as well as in the light of comments presented above, it would appear that family policy in Poland meets the standards specified in Art. 9 of the Charter of the Rights of the Family presented by the Holy See in 1983. Pursuant to its contents, families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.

---

*tarz praktyczny*. Ed. M. MOZGAWA. Warszawa 2010, pp. 232—233; J. GIEZEK: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks karny. Część ogólna. Komentarz*. Ed. J. GIEZEK. Warszawa 2007; *Kodeks karny. Część ogólna. Komentarz*. Ed. J. GIEZEK. Warszawa 2007, pp. 730—735; A. MAREK: *Kodeks karny. Komentarz*. Warsaw 2007, pp. 316—317; A. MICHALSKA-WARIAS: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks Karny. Komentarz*. Ed. T. BOJARSKI. Warszawa 2011, pp. 222—225.

<sup>54</sup> During legislative works concerning the Act on Counteracting Domestic Violence in its reading of 2005, representatives of the government expressed doubts whether it would be possible that given persons only managed a common household without living together, but these doubts did not affect the final version of the article under discussion (see shorthand notes of the meeting of the Commission of Social Policy and Family and the Commission of Justice and Human Rights of 29 June 2005. In: Archive of the works of Sejm of the Republic of Poland of 4th term of office, [www.sejm.gov.pl](http://www.sejm.gov.pl)).

<sup>55</sup> K. DUDKA: “Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie.” WPP 2006, no. 2, pp. 44ff.

<sup>56</sup> M. TOMKIEWICZ: *Bezpieczeństwo rodziny...*, p. 278.



- a) Families have the right to economic conditions which assure them a standard of living appropriate to their dignity and full development. They should not be impeded from acquiring and maintaining private possessions which would favour stable family life; the laws concerning inheritance or transmission of property must respect the needs and rights of family members.
- b) Families have the right to measures in the social domain which take into account their needs, especially in the event of the premature death of one or both parents, of the abandonment of one of the spouses, of accident, or sickness or invalidity, in the case of unemployment, or whenever the family has to bear extra burdens on behalf of its members for reasons of old age, physical or mental handicaps or the education of children.
- c) The elderly have the right to find within their own family or, when this is not possible, in suitable institutions, an environment which will enable them to live their later years of life in serenity while pursuing those activities which are compatible with their age and which enable them to participate in social life.
- d) The rights and necessities of the family, and especially the value of family unity, must be taken into consideration in penal legislation and policy, in such a way that a detainee remains in contact with his or her family and that the family is adequately sustained during the period of detention.

However, after analysing the provisions of the Charter of the Rights of the Family and solutions adopted in the contemporary family policy carried out by the state, it should be concluded that it is the problem of the subjectivity of the family that makes them substantially different. According to the Charter of the Rights of the Family, the subject of the family policy should be the family as a whole, and not its individual members. Such subjectivity of the family is difficult to be found either in principles or in specific normative regulations of the Polish family policy.

The family does not occur as a subject on a legal plane. The thesis prevailing in the doctrine is that law — particularly criminal law — only protects individual rights of people forming a family, and not a family understood as a community. In the opinion of H. Waśkiewicz, a family does not have existence that would be independent of specific persons living in this family.<sup>57</sup> Also, A. Grzejdziaż voices his opinion in a similar spirit. According to him, “although, undoubtedly, a family constitutes an organised social entity, legal regulations do not grant it a legal status.

---

<sup>57</sup> See H. WAŚKIEWICZ: “Prawa człowieka a prawa rodziny.” *Chrześcijaństwo w świecie* 1985, no. 139, p. 52



It is family members who are the subject of legal relationships, and not the family as an organised entity.”<sup>58</sup>

The existing state of affairs somehow “blurs” the traditional, culturally and historically conditioned concept of family, introducing, implicitly, its “mental redefinition.” Behind the facade of supporting the family, various forms of mutual coexistence are more and more intentionally protected, including — pursuant to the gender perspective of LGBT movement — same-sex relationships.

For that reason, the current family policy is not a policy that would perceive the family in a comprehensive perspective and would be used for full protection of all aspects of the family life. Consequently, it should be explicitly declared that the family should be treated as an autonomous community, stressing at the same time its unique character based on marriage between a woman and a man, which cannot be replaced by any other interpersonal relations. Thus, the family, although it is of a social value with an established constitutional position, is not a subject of state protection and support adequate for this position.

The central point of the contemporary axiology of law — and consequently, the family policy — should include protection of the individual goods of any given person, accompanied by the protection of the family as a subject with its own, autonomous rights, which are not only a sum of rights of individual persons making up the family.<sup>59</sup>

<sup>58</sup> A. GRZEJDZIAK: “Prawo do wychowania w rodzinie.” In: *Prawa i wolności obywatelskie w Konstytucji RP*. Eds. B. BANASZAK, A. PREISNER. Warszawa 2002, p. 464.

<sup>59</sup> S. HYPŚ: *Family protection...*, p. 267.

## Bibliography

- ADAMSKI F.: *Rodzina. Wymiar społeczno-kulturowy*. Kraków 2002, pp. 67—137.
- ADAMSKI F.: *Socjologia małżeństwa i rodziny. Wprowadzenie*. Warszawa 1982.
- BALCERZAK-PARADOWSKA B.: “Ubóstwo rodzin w Polsce”. In: *Współczesne rodziny polskie — ich stan i kierunek przemian*. Ed. Z. TYSZKA. Poznań, 2004.
- BALCERZAK-PARADOWSKA B.: “Polityka państwa wobec rodziny”. In: *Polityka społeczna w latach 1994—1996*. Ed. S. GOLINOWSKA. Report of the Institute of Labour and Social Affairs 1996, No. 11, Warszawa 1996.
- BYSTROŃ J.: *Dzieje obyczajów w dawnej Polsce. Wiek XVI—XVIII*. Vol. II. Warszawa 1960.
- Code of Criminal Procedure Act of 6 June 1997 (Dz.U. nr 89. poz. 555).
- Council Decision 2010/707/EU of 21 October 2010.

- DUDKA K.: “Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie.” *WPP* 2006, No. 2, pp. 44ff.
- FIRLIT-FESNAK G., SZYLKO-SKOCZNY M. (eds.): *Polityka społeczna: podręcznik akademicki*. Warszawa 2008.
- GIEZEK J.: *Komentarz do art. 115 § 11 k.k.* In: *Kodeks karny. Część ogólna. Komentarz*.
- GLEBICKA K.: *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej*. Radom 2004.
- Government Population Council, Assumption of Poland’s population policy 2013 (project) (*Założenia polityki ludnościowej Polski 2013 (projekt)*). Available at: [http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP\\_zalozenia\\_polityki\\_ludnosciowej\\_Polski\\_2013\\_projekt\\_luty\\_2013.pdf](http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP_zalozenia_polityki_ludnosciowej_Polski_2013_projekt_luty_2013.pdf). Accessed 20.5.2013.
- GRZEJDZIAK A.: “Prawo do wychowania w rodzinie.” In: *Prawa i wolności obywatelskie w Konstytucji RP*. Ed. B. BANASZAK, A. PREISNER. Warszawa 2002.
- HYPŚ S.: *Ochrona rodziny w polskim prawie karnym*. Lublin 2012.
- IGNATOWICZ J., NAZAR M.: *Prawo rodzinne*, Warszawa 2010.
- Judgement of the Administrative Court in Kraków of 23 April 1992, in case II Akr. 37/92, KZS 1992, No. 3—9, item 54.
- Judgement of the Supreme Court of 12 January 2006 in case II CK 324/05, *Monitor Prawny* 2006, No. 4.
- Judgement of the Supreme Court of 13 April 2005 IV CK 648/04, OSNCP 2006/3/54.
- Judgement of the Supreme Court of 16 May 2000 in case IV CKN 32/00, OSNC 2000 nr 12 poz. 222.
- Judgement of the Supreme Court of 5 February 1971, in case IV KR 253/70, Lex-Polonica nr 322409.
- Judgement of the Supreme Court of 5 March 2003 in case III CZP 99/02, OSNC 2003 nr 12 poz. 159.
- JURCZAK M.: *Leksykon. Wyrazy trudne, ważne i ciekawe*. Warszawa 1977.
- KALDON B.M.: “Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym.” *Forum Pedagogiczne UKSW* 2011, No. 1.
- KAMERMAN S.B.: “Rodzina: problemy teorii i polityki.” In: *O polityce rodzinnej: definicje, zasady, praktyka*. Materiały z Zagranicy vol. 2, Instytut Pracy i Spraw Socjalnych. Warszawa 1994.
- KAWULA S.: *Funkcja opiekuńcza współdziałania rodziny*. Białystok 1988, p. 147.
- KULIK M.: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks karny. Komentarz praktyczny*. Red. M. MOZGAWA. Warszawa 2010, pp. 232—233.
- KURZYNOWSKI A.: *Problemy rodziny w polityce społecznej*. Warszawa 1991, pp. 8—9.
- MAJEWSKI J.: “Komentarz do art. 115 § 11 k.k.” In: *Kodeks karny. Część ogólna. Komentarz*. T. 1. Ed. A. ZOLL. Kraków 2004, pp. 1437—1447.
- MAREK A.: *Kodeks karny. Komentarz*. Warszawa 2007.
- MATUSIK A.: *Polityka rodzinna w Polsce*. Available at: <http://spolecznieodpowiedzialni.pl/files/file/p5wwcq2dewv2b7zu7irxaab4d3kom2.pdf>. Accessed 10.3.2013.

- MICHALSKA-WARIAS A.: "Komentarz do art. 115 § 11 k.k." In: *Kodeks Karny. Komentarz*. Ed. T. BOJARSKI. Warszawa 2011, pp. 222—225.
- NAZAR M.: "Konkubinaty a małżeństwo — wybrane zagadnienia (Concubinage and marriage — selected issues)." In: *Księga jubileuszowa Prof. dr. hab. Tadeusza Smoczyńskiego*. Ed. M. ANDRZEJEWSKI. Toruń 2008, pp. 219—237.
- PARADOWSKA-BALCERZAK B.: *Rodzina i polityka rodzinna na przełomie wieków*. Instytut Pracy i Spraw Socjalnych. Warszawa 2004.
- REMBOWSKI J.: *Rodzina w świetle psychologii*. Warszawa 1986. Shorthand notes of the meeting of the Commission of Social Policy and Family and the Commission of Justice and Human Rights of 29 June 2005. In: Archive of the works of Sejm of the Republic of Poland of 4th term of office, www.sejm.gov.pl.
- Smoczyński T.: *Prawo rodzinne i opiekuńcze (Family and Guardianship Law)*. Warszawa 2005.
- SMYCYŃSKI T.: "Czy potrzebna jest regulacja prawna pożycia konkubentckiego (heteroseksualnego i homoseksualnego)." In: *Prawo rodzinne w Polsce i w Europie. Zagadnienia wybrane*. Lublin 2005, pp. 462—467.
- SPUREK S.: *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*. Warszawa 2008.
- SZCZEPAŃSKI J.: *Elementarne pojęcia socjologii*. Warszawa 1963.
- SZLENDAK T.: *Socjologia rodziny: edukacja, historia, zróżnicowanie*. Warszawa 2010.
- SZYSZKA M.: *Polityka rodzinna w Polsce 1990—2004*. Lublin 2008.
- ŚWIĘCH K.: *Pozycja rodziny w polskim prawie podatkowym*. Warszawa 2013.
- The Civil Code Act of 23 April 1964 (Dz.U. 1964 nr 16 poz. 93 as amended).
- The Executive Penal Code Act of 6 June 1997 (Dz.U. 1997 nr 90 poz. 557).
- The Family and Guardianship Code Act of 25 February 1964 (Dz.U. 1964 nr 9 poz. 59 as amended).
- The Family Benefits Act of 28 November 2003 (consolidated text: Dz.U. 2006 nr 139 poz. 992 as amended).
- The Social Welfare Act of 24 March 2004 (consolidated text: Dz.U. 2009 nr 175 poz. 1362 as amended).
- TOBIASZ-ADAMCZYK B.: *Wybrane elementy socjologii zdrowia i choroby*. Kraków 1998.
- TOMKIEWICZ M.: "Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość." *Studia Warmińskie* 2012, No. 49, pp. 271—285.
- TYSZKA Z.: *Socjologia rodziny*. Warszawa 1976.
- WAŚKIEWICZ H.: "Prawa człowieka a prawa rodziny." *Chrześcijanin w świecie* 1985, No. 139.
- ZIEMSKA M.: *Rodzina a osobowość*. Warszawa 1977.

MAŁGORZATA TOMKIEWICZ

## Protection of the Family in the Family Policy of the State: Legal, Social and Economic Aspects

### Summary

The article concerns the subject matter of contemporary family policy in Poland, analysed in the context of Art. 9 of the Charter of the Rights of the Family. It contains a synthetic analysis of legal regulations, the subject of which is the broadly understood protection of the family, as well as indicates other measures through which the state will achieve the assumed objectives of this policy.

It demonstrates that although *prima facie* it would appear that the family policy in Poland accomplishes standards specified in the quoted standard of the Charter of the Rights of the Family, there are significant differences between these matters. According to the Charter of the Rights of the Family, the subject of the family policy should be the family as a whole. However, it is not treated in this way by the Polish state. The family is not a subject on a legal plane, and subjectivity of the family can hardly be found either in the assumptions or in specific normative regulations of the Polish family policy. The existing state of affairs leads to certain “blurring” of the traditional, culturally and historically conditioned concept of the family, introducing, implicitly, its “mental redefinition.” Behind the facade of providing support for the family, various forms of common coexistence have started to enjoy increasingly more open protection, including — pursuant to the gender perspective of LGBT movement — same-sex relationships.

This publication advances the thesis that the current family policy is not a policy that perceives the family in a comprehensive perspective or could be used for full protection of the entire family life. Consequently, one must explicitly opt for treating a family as an autonomous community, stressing at the same time its unique nature, based on the marriage between a woman and a man, which cannot be replaced by any other interpersonal relationships.

The central point of the contemporary axiology of law — and consequently, family policy — should be the protection of individual goods: the protection of individual goods of any given person, accompanied by the protection of a family as a subject with its own, autonomous rights, which are not only a sum of rights of individual persons making up a family.

MAŁGORZATA TOMKIEWICZ

## Famille en tant que sujet de protection dans la politique familiale polonaise Aspect juridique, social et économique

### Résumé

L'article aborde la problématique de la politique familiale contemporaine en Pologne analysée dans le contexte de l'article 9 de la Charte des droits de la famille. Il contient une analyse synthétique des solutions légales dont le sujet est, au sens large du mot, la

protection de la famille, et il présente d'autres moyens à l'aide desquels l'État réalise les buts fixés de cette politique.

Quoiqu'il paraisse que la politique familiale en Pologne réalise les standards définis dans la norme mentionnée de la Charte des droits de la famille, l'article dénote qu'il existe des différences fondamentales dans ces deux matières. Suivant la Charte des droits de la famille, le sujet de la politique familiale devrait être la famille en tant qu'un tout. Cependant, elle n'est pas traitée de cette façon par l'État polonais. La famille ne figure pas comme le sujet sur la surface juridique, et il est difficile de trouver une telle subjectivité de la famille aussi bien dans les principes que dans les réglementations normatives concrètes de la politique familiale polonaise. Un tel état de choses aboutit à une certaine « dilution » de la conception d'une famille traditionnelle, conditionnée culturellement et historiquement tout en introduisant sa redéfinition « mentale » d'une façon entendue. En se servant du nom du soutien à la famille, on protège avec de plus en plus d'assurance différentes formes de coexistence, y inclus — conformément à l'optique genriste du mouvement LGBT — les unions monosexuelles.

La publication avance la thèse que la politique familiale contemporaine n'est pas une politique qui apercevrait la famille d'une façon globale et qui assurerait une protection complète de tous les aspects de la vie familiale. En l'occurrence, il faut se déclarer pour le traitement de la famille comme une communauté autonome ayant ses propres droits, tout en soulignant qu'il s'agit d'une communauté unique dans son genre basant sur le mariage d'une femme et d'un homme et ne pouvant pas être remplacée par d'autres unions interpersonnelles.

Il faut qu'au centre de l'axiologie juridique contemporaine — et ce qui s'ensuit, aussi de la politique familiale — soit placée, à côté de la protection des biens individuels de chaque homme, la protection de la famille en tant que sujet de ses propres droits autonomes qui ne sont pas uniquement une somme des droits individuels des personnes qui la constituent.

**Mots clés:** famille, politique familiale, droit familial, prestations familiales, protection juridique de la famille

MAŁGORZATA TOMKIEWICZ

## La famiglia come soggetto di tutela nella politica familiare polacca: aspetto legale, sociale ed economico

### Sommario

L'articolo riguarda la problematica della politica familiare contemporanea in Polonia, analizzata nel contesto dell'art. 9 della Carta dei Diritti della Famiglia. Contiene l'analisi sintetica delle norme giuridiche il cui oggetto è la tutela della famiglia nella sua concezione ampia ed introduce altre forme di mezzi con i quali lo stato realizza gli obiettivi prefissati di tale politica.

Indica che, sebbene *prima facie* potrebbe sembrare che la politica familiare in Polonia realizzi gli standard specificati nella norma menzionata della Carta dei Diritti della Famiglia, invece in entrambi i materiali sono presenti differenze sostanziali. Secondo la Carta dei Diritti della Famiglia l'oggetto della politica familiare dovrebbe essere la famiglia nel suo complesso. Tuttavia non è trattata in tal modo dallo stato polacco.

La famiglia non è un soggetto sul piano giuridico e tale soggettività della famiglia è difficile da trovare sia nelle premesse, sia nei regolamenti normativi concreti della politica familiare polacca. Una situazione simile porta ad un certo “offuscamento” della concezione tradizionale, condizionata culturalmente e storicamente, della famiglia introducendo implicitamente la sua ridefinizione “mentale”. Sotto la facciata dell’aiuto alla famiglia vengono difese sempre più audacemente molteplici forme di coesistenza comune, tra cui anche — secondo l’ottica gender del movimento LGBT — i legami di due persone dello stesso sesso.

La pubblicazione presenta la tesi secondo la quale la politica familiare attuale non è una politica che scorge la famiglia nel suo complesso e che servirebbe alla tutela piena di tutti gli aspetti della vita familiare. Pertanto occorre esprimersi esplicitamente in favore del trattamento della famiglia come comunità autonoma che ha i suoi diritti, sottolineando nel contempo che è una comunità unica nel suo genere, basata sul matrimonio di una donna e di un uomo, che non può essere sostituita da nessun altro legame interpersonale.

Il punto centrale dell’assiologia contemporanea del diritto — e quindi anche della politica familiare — accanto alla tutela dei beni individuali di ciascun uomo, dovrebbe essere la tutela della famiglia come soggetto dei propri diritti autonomi che non sono unicamente la somma dei diritti singoli delle persone che la creano.

**Parole chiave:** famiglia, politica familiare, diritto familiare, oneri familiari, tutela giuridica della famiglia