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Introduction

The term "young generation" or "youth" describes a dynamic social structure. In various places and at different times, these notions were variously understood. Thus, who do we mean today when we use the term "youth"?

In *Encyclopaedia of Sociology*, the entry "youth" offers an explanation that "what determines if one belongs to the youth group is the biological criterion of age."[1] However, in social sciences, there are many different concepts regarding this matter.[2] According to, for example, the classic phenomenological concept by H. Schelski, the term "youth" describes the transition state between the opposing poles of childhood and adulthood,[3] according to F. Znaniecki, "youth" constitutes "a community of individuals who are just assuming the social roles of adults,"[4] and according to

[1] K. Koseła: „Młodzież" ("Youth"). In: A. Kojder (ed.): *Encyklopedia Socjologii* (*Encyclopaedia of Sociology*), Vol. 2. Warszawa 1999, p. 252.

[2] For more details, see: W. Pawliczuk: „Definicje terminu »młodzież« — przegląd koncepcji" ("Definitions of the Term »Youth« — Review"). *Postępy Nauk Medycznych* 6 (2006), pp. 311—315.

[3] Ibidem, p. 311.

[4] F. Znaniecki: *Socjologia wychowania* (*Sociology of Education*). Warszawa 1973, pp. 20—27.

K. Koseła, entering the period of adolescence is determined by puberty, while a sign of leaving this phase behind is the moment of reaching social maturity."[5] Traditionally, this term refers to people who have not yet attained independence in life,[6] whereas the criterion that determines entering the stage of life independence is either taking up a professional work or establishing a family.[7]

Nowadays, preparation for family life takes place on many levels. We are accustomed to thinking of this phenomenon in the context of pedagogy (a school subject which translates from Polish as Family Life Education[8]), religion,[9] or — as indicated above — society. It is worth noting, however, that this preparation also takes place — indirectly — in the legal context. After all, legal awareness plays an important part in shaping social attitudes. Without going into details of the whole complexity of issues concerning the role of law in society, it is enough to say that the

[5] K. Koseła: „Młodzież" ("Youth"), p. 253.

[6] K. Szafraniec: "Młodość jako wyłaniający się problem i nowa polityczna siła" ("Youth as an Emerging Problem and a New Political Force"). *Nauka* 1 (2012), p. 103. The authoress notes that today, unlike 20 years ago, the criteria separating adults from adolescents are not clear. Occurring in contemporary societies, the phenomena of pluralism and hybridization in age categories have their roots in the social, economic, and cultural realities alike, and make it very difficult to determine the point at which we cease to belong to the "youth" category and become "adults." "Evidently, in modern societies the former social, psychological, and cultural characteristics, which have hitherto been assigned to particular phases of life, fall apart. First, youth and adulthood get detached from age categories, then from social roles and respective lifestyles, and finally, from their psychological and developmental characteristics" (Ibidem, p. 103).

[7] Young people become independent and leave their family homes at an ever later age. This thesis has been recorded in almost all reports describing the process of growing up of today's youth. Poland is in the top ten EU countries, where adult children do not leave the family home for a long time (women at the age of 28.5 and men — 30). The status of "family home dwellers" (i.e. the so-called "basement dwellers" or "parasite singles" — translator's comment) applies to almost half of the population aged 18—34. (K. Szafraniec: *Młodzi* (*2011 The Young*). Prime Minister's Office, Warszawa 2011, pp. 184—185).

[8] This is a school subject taught in Polish primary school, junior high, and high school, the aim of which is to prepare young people for life in the family. It has the status of an extra-curricular subject and is taught to students from the fifth grade of primary school upwards. (It constitutes the equivalent of British PHSE, i.e. Personal Health and Social Education, and Life Skills in American schools — translator's comment). (For more details, see: M. Pyter, A. Balicki: *Leksykon prawa oświatowego i prawa o szkolnictwie wyższym. 100 podstawowych pojęć* (*Lexicon of Law on Education and Higher Education. 100 Basic Concepts*). Warszawa 2014, p. 324).

[9] For more details, see the assumptions of the Apostolic Exhortation of Pope John Paul II: *Familiaris consortio* (FC 65—67); Polish Bishops' Commission for Catholic Education: *Przygotowanie do życia w małżeństwie i rodzinie* (*Preparation for Marriage and Family Life*). Sandomierz 1997.

social control exercised through legal norms performs (to put it in a nutshell) three basic functions: it protects the sphere of human freedom, it serves as a means of achieving specific objectives, and — what is especially worth mentioning in the context of the titular issues — it sets binding standards of conduct (indicating the universal character of values generally considered fundamental[10]). The purpose of the law is to shape community members according to a generally accepted standard of conformist behaviour through internalization of forms and attitudes in the process of socialization. In this process, a significant role is played by institutions (such as e.g. courts), which are seen not only as entities entitled to impose sanctions but also as bearers of values which are distributed in society.[11]

What then is the preparation for life in the family at the normative level, that is, for life in what kind of family does the law prepare one nowadays? What is the present-day family in the legal sense and is the sense analogous in both the European and Polish judicial practice? Are the indicated areas of preparation for family life in the current social reality "congruent" with each other?

1. Family in the ECHR judicial practice: Trends in interpretation

EU rules generally do not regulate questions of substantive family law and therefore, they do not contain legal acts providing for equality of marriages or permanent, registered relationships of same-sex persons. Regulations in this area remain the responsibility of the Member States legislation.[12] There is no doubt, however, that the judicial practice plays

[10] T. Burdzik: „Prawo jako narzędzie kontroli społecznej" ("Law As a Tool of Social Control"), (in:) E. Moczul, B. Sagan (eds.): *III Forum Socjologów Prawa „Prawo i ład społeczny"* (*3rd Forum of Sociologists of Law "Law and Social Order"*). Rzeszów 2010, pp. 68—69.

[11] Ibidem, p.63.

[12] As a side note, it should be mentioned that many concerns in this respect were brought to life by Regulation (EU) 1259/2010 of 20th December 2010, implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ EU L 343 of 29 Dec. 2010, p. 10); the concerns related to whether or not it would lead to sanctioning same-sex marriages — through the back door, so to speak — by means of creating a legal framework to dissolve such marriages in countries where they are not legally recognized. For instance, same-sex persons, who have entered into marriage in a country allowing such unions (e.g. the Netherlands), signed an agreement in which they selected the Polish law as the law applicable in case of divorce or separation (because

a significant role in the interpretation of family law concepts and principles.

The position of the European Court of Human Rights in terms of understanding the concept of "family" and "family life" — articulated mainly in the context of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms[13] — is not uniform. Over the years, the Court's views on what is family and family life have been undergoing significant changes — these views have been evolving over time along with the evolution of European societies' habits and attitudes. These changes, mostly in the understanding of the factors that constitute family life are visible both in terms of gender of people establishing marriage/family and in terms of parenting.

Referring to the first of those aspects, it should be noted that in the initial period of its activity, the Court not only would not protect same-sex relationships in the manner it owed to families, but it also advocated criminalization of homosexual relationships (judgment of 17th December 1955 and 7th July 1977, complaints No. 104/55 and 7215/75).[14]

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they both have their place of residence in Poland). In such a situation, there may appear a concern that the Polish courts will have to settle the divorce pursuant to the provisions of the Polish law while this same law does not recognize marriages between persons of one sex. However, as M. Rynkowski rightly explained, this Regulation takes into account such situations and in Art. 13 provides that none of its provisions shall oblige the courts of a Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation. Moreover, motive 26 provides that if the law of the participating Member State whose court is seized does not recognize such marriages as valid for the purposes of divorce proceedings, this should be interpreted to mean, inter alia, that marriage does not exist under the law of that Member State. In such a case, the court should not be obliged to pronounce a divorce by virtue of this Regulation. (M. Rynkowski: *Sądy wyznaniowe we współczesnym europejskim porządku prawnym* (*Religious Courts in Modern European Legal Order*), Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego. Wrocław 2013, pp. 79—80).

[13] An international agreement concluded by the Member States of the Council of Europe in Rome on 4th November 1950, which came into force on 3rd September 1953. Poland signed the Convention on 26th November 1991, and ratified it on 19th January 1993. Art. 8 of the Convention provides that everyone has the right to respect for his private and family life, his home and his correspondence (section 1); there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (section 2).

[14] G. Puppinck: "Wyrok w sprawie Vallianatos przeciwko Grecji w świetle przemian w sposobie pojmowania rodziny i »życia rodzinnego« w orzecznictwie ETPCz" ("Judgment on Vallianatos against Greece in the light of changes in the understanding of the

With time, the Court decided that this kind of relationship should admittedly be protected but "only" in the context of the protection of private life to finally conclude that homosexual relationships are protected not only within the scope of the private life but should be treated in terms of legitimate family life and covered with the protection owed to family life. In the P. B and J. S against Austria (judgment of 22nd July 2010, complaint No. 18984/02), the Court pointed out that since 2001, that is, since the verdict in the Mata Estevez case (complaint No. 56501/00), there has been a rapid evolution of attitudes towards same-sex couples in many Member States and a large number of countries have effected their legal recognition; thus, it would be artificial to maintain the view that the concept of "family" should not apply to same-sex couples and that they cannot benefit from the protection of family life within the meaning of Art. 8 of the Convention.[15] Since the judgment in the case Schalk and Kopf against Austria (judgment of 24th June 2010, complaint No. 30141/04) a stable joint cohabitation of the people forming a couple has constituted a circumstance sufficient for the establishment of family life.[16] The ECHR modified their views still further on the occasion of Vallianatos and others against Greece case (judgment of 7th November 2013, complaint No. 29381/09 and 32684/09). In the justification of their position the Grand Chamber of the ECHR found that two grown men living separately should benefit from the protection granted to families if they maintain constant homosexual relations because the state should take into account the development of society, gradual changes in morality and in perception of marital status. In the Court's view, in this context the circumstances and type of actually existing relations should be taken into account, including the fact that there is not just one way or one choice of the forms of family life and private life (§ 84).[17]

The views of the Court evolved in an equally significant fashion on the issue of having a child as a constitutive factor for the family. In the case of Johnston against Ireland (judgment of 18th December 1986, complaint No. 969/82), the Court noted that in the absence of marriage, it is the presence of a child that provides the constitutive factor for family life

concept of family and 'family life' in the judicial practice of the ECHR," translation: Maria Jackowska and Bartosz Soloch, http://www.ordoiuris.pl/wyrok-w-sprawie-vallianatos-przeciwko-grecji-w-swietle-przemian-w-sposobie-pojmowania-rodziny-i-zycia-rodzinnego-w-orzecznictwie-etpcz,3397,analiza-prawna.html; (date of access: Feb. 22, 2016).

[15] M. A. Nowicki: *Europejski Trybunał Praw Człowieka: Wybór Orzeczeń 2010* (*The European Court of Human Rights: Selection of Decisions 2010*). Warszawa 2011, pp. 177—178.

[16] G. Puppnick: „Wyrok…", ibidem.

[17] Ibidem.

and extramarital couples without children generally cannot apply for the protection analogous to the protection granted to families (similarly in the case of Elsholz against Germany, judgment of 13th July 2000, complaint No. 25735/94).[18] However, since the time of the aforementioned Schalk and Kopf against Austria judgment, neither marriage nor the presence of a child is necessary for granting the protection for family life. It should be emphasized that in the Serife Yigit against Turkey (judgment of 2nd November 2010, complaint No. 3976/05), the Court ruled that a polygamous family is also to be treated as family life.

2. Notion of family in Polish judicature

Pursuant to Art. 18 of the Constitution of the Republic of Poland of 2nd April 1997[19] marriage as a relationship of a man and a woman, family, maternity and parenthood are under the protection and care of the Republic of Poland. However, in Polish law there is no legal definition of the notion of "family."[20] Despite the fact that the term appears in various normative acts, it is not defined in most of them.[21] It is defined precisely only in some of them, whereas the notion is usually given the meaning corresponding to the purposes of the act, where the term was used.[22] What is important here is that the legislator in the used terminology is not consistent and, next to the notion "family," they frequently use also

[18] Ibidem.

[19] J.o.L. 1997, No. 78, it. 483.

[20] More on the notion of family see P. Telusiewicz: *Ancillary role of the notion "familiar" in the provisions of the Polish law*, Lublin 2013.

[21] Such notion of the notion of family is not included inter alia in the Law of 19th August 1994 on the protection of mental health (J.o.L. of 2011 No. 231, it. 1375 as amended), Law of 29th July 2005 on counteracting drug addiction (J.o.L. of 2012 it. 124 as amended) or Law of 17th November 1964 the Code of Civil Proceedings (J.o.L. of 2014 it. 101 as amended).

[22] For example in Art. 3 it. 16 of the Law of 28th November 2003 on family benefits (J.o.L. of 2013 it. 1456 as amended) it was indicated that **a family** means adequately the following members of family: spouses, children's parents, actual child's guardian and children being maintained aged up to 25 years old and a child who is 25 and older and having a certificate on a significant degree of disability or benefit for the guardian, whereas members of the family are not a child under the legal guardian custody, a child in a marital relationship and an adult child having one's own child.

the notion of "the closest family,"[23] "members of the family,"[24] or "the closest members of the family."[25]

The majority of legal acts count among the family spouses, their common children, children of the second spouse, adopted children, children to be brought up in a foster family, children under (legal) custody, and sometimes even foreign children to be brought up and supported if parents are dead or cannot take care of them or were deprived of or limited as to their parental authority.

However, the way of understanding people who create a family is subject to apparent evolution leading sometimes to almost paradoxical conclusions. As an example one should indicate that in Art. 2 item 1 of the Act of 29th July 2005 on counteracting violence in family,[26] it was indicated that whenever spoken of "a member of family" one should understand the closest person under Art. 115 § 11 of the Criminal Code[27] as well as another jointly cohabiting or managing person. Taking a look at the last definition, that is, "a jointly cohabiting or managing person," it is hard not to notice that the wording is highly imprecise. First of all, instead of the conjunction "and" using the word "or" means that the members of family will also include those persons who only live with one another (not running joint household) or only run joint household and do not live together. Such a provision leads to a grotesque conclusion that under this regulation family members can

[23] For example in Art. 2 it. 2 of the Law of 9th November 2000 on repatriation (J.o.L. of 2004 No. 53, it. 532 as amended), it was indicated that **the closest family** of a repatriant means the repatriate's spouse and a minor under parental authority of at least of one of the spouses.

[24] For example in Art. 77 it. 1 of the Act of 6th April 1990 on the Police (J.o.L. of 2011, No. 287, it. 1687, as amended), it was indicated that the spouse and children are considered to be **family members** of a policeman entitled to benefits, while e.g. in Art. 10 it. 1a of the Act of 20th December 1990 on Social Insurance for Farmers (J.o.L. of 2013, it. 1403 as amended), the persons indicated as **family members** are as follows: the spouse; own and adopted children, stepchildren, grandchildren, siblings meeting the conditions required to obtain a survivor's pension at the date of death of the insured person; parents, second degree straight relatives, stepmother, stepfather, if on the date of death of the insured person they ran a joint household with him or her or if the insured person contributed significantly to their upkeep or if the right to alimony on his or her part was determined by court judgment or court settlement.

[25] According to Art. 446 § 4 of the Civil Code Act of 23 April 2016 (J.o.L. of 2016, it. 380; hereinafter referred to as the Civil Code): "the court may also grant **the closest family members** of the deceased the appropriate amount by way of financial compensation for the non-material damage suffered."

[26] J.o.L. 2015, it. 1390.

[27] Law of 6th June 1997 the Criminal Code (J.o.L. 1997, No. 88, it. 553 as amended); further as the Criminal Code.

be a group of students living together in a rented flat or those who dine against payment by a given family.[28]

However, irrespectively of the lapses, which are difficult to be taken as a conscious action of the legislator, one should record that the main — and already fully purposeful — change in the discussed issue takes place with reference to the notion of "the closest persons" and in particular "persons remaining in cohabitation."

Pursuant to Art. 115 § 11 of the Criminal Code, the closest person is a spouse, ascendant, descendant, siblings, relative in the same line or degree, person remaining in an adoptive relationship or his/her spouse as well as a person remaining in cohabitation.[29]

On the grounds of the Criminal Code of 1969[30] and the Code of Criminal Proceedings of 1969,[31] judicature understood under the notion of "joint cohabitation" was a relationship of persons of different sex deprived of the formal noose featuring the existence of a mental, physical and economic bond.[32] This interpretation stream also equalled the scope of relations between the spouses and the persons remaining in joint cohabitation indicating clearly that the term refers exclusively to relations

[28] Law of 6th June 1997 the Criminal Code (J.o.L. 1997, No. 88, it. 553 as amended); further as the Criminal Code.

[29] One should record that the term "joint cohabitation" appears not only in the widely understood criminal law. It also appears in the Family and Guardianship Code (Articles: 16, 23, 28 § 1 and § 2, 29, 611) and also in other laws (e.g. Art. 691 § 1 of the Civil Code, Art. 2, it. 5 of the Law of 15th December 2000 on housing cooperatives — i.e. J.o.L. 2013, it. 1222 as amended; Art. 32a § 7 it. 1 of the Law of 27th July 2001 — Law on the system of common courts — i.e. J.o.L. 2015, it. 133 as amended, Art. 71h § 1 it. 3 of the Law of 14th February 1991 — Law on the institution of the notary public — i.e. J.o.L. 2014, it. 164 as amended). The legislator contained the legal definition of the term in none of the acts.

[30] Law of 19th April 1969, the Criminal Code (J.o.L. of 1969, No. 13, it. 98, as amended)

[31] Law of 19th April 1969, the Code of Criminal Procedure (J.o.L. of 1969, No. 13, it. 96, as amended).

[32] See among others: Supreme Court judgments of: 5th September 1973, IV KR 197/73, Lex No. 63773; 15th October 1975, V KR 93/75, Lex No. 63538; 12th November 1975, V KR 203/75, *Judgements of Polish Courts* 10 (1976), it. 187; 13th August 1987, II CoR 187/87, *Case law of the Supreme Court, Criminal and Military Chambers* 1(1988), it. 11; 31st March 1988, I CoR 50/88, *Case law of the Supreme Court, Criminal and Military Chambers* 9—10 (1988), it. 71; 9th November 1990, WR 203/90, *Judgements of Polish Courts* 9 (1991), it. 205; *Judgments of the Court of Appeals*: in Kraków of 11th December 1997, II AKa 226/97, *The Cracow Court Notebooks* 2(1998), it. 26; in Lublin of 30th December 1997, II AKa 51/97, *Apelacja Lubelska* (*Lublin Appeal*) 1(1998), it. 7; in Warsaw of 5th December 1995, II AKr 459/95, *Judgements of the Court of Appeal* 4(1996), it. 15.

between a woman and a man. In the judgement of 31st March 1988,[33] the Supreme Court unequivocally decided that "the provisions of the Criminal Court extend the term of the closest persons to persons actually remaining in joint cohabitation, that is, in the so-called concubinage. In this interpretation concubinage is understood as coexistence analogous to marital coexistence with the only difference that it is deprived of the legal noose. It means the existence of home featuring spiritual, physical and economic bonds that tie a man and a woman. This way of interpretation was also recorded in the decisions of the Supreme Court and common courts also on the basis of the Criminal Code and the Code of Criminal Proceedings effective contemporarily.[34]

In recent years in the decisions of the Supreme Court there appeared also other opinions. In the judgement of 21st March 2013,[35] the Supreme Court expressed the opinion that joint cohabitation may also refer to persons of the same sex, whereas — as emphasized — in order to assume the existence of "joint cohabitation" the existence of physical bond is not necessary, but only running joint household and the existence of the defined mental bond. Whereas in the order of 4th March 2015,[36] while analysing the mentioned term the Supreme Court decided that it is necessary to treat individually each case, although an intermediate solution should be assumed, that is, a solution that "does not limit the notion of joint cohabitation to regularly functioning marriage or concubinage or to similar living together of persons of the same sex, but also does not assume that joint cohabitation takes place always when joint living is accompanied by strong, positive emotional bond." Further in the order it was stipulated that just the existence of the strong and positive emotional bonds allows to determine the existence of "particularly close personal relationship," which in turn gives grounds to apply for exemption from the duty to testify (Art. 185 of the Code of Criminal Proceedings), and which must have a different meaning than "joint cohabitation," which classifies a person remaining in such a relation to the party in a court

[33] I KR 50/88, *Case Law of the Supreme Court, Criminal and Military Chambers* 9—10 (1988), it. 71.

[34] See the judgement of the Supreme Court of 2nd March 2015, IV KO 1/15, *The Bulletin of the Criminal Law* 3(2015), pp. 59—63, the decisions of the Supreme Court of: 4th February 2010, V KK 296/09, *Decisions of the Supreme Court Criminal and Military Chamber* 6 (2010), it. 51; 7th July 2004, II KK 176/04, Lex No. 121668; 27th May 2003, IV KK 63/03, Lex No. 80281 and the judgements of the Court of Appeal: in Szczecin 21st December 2006, II Aka 157/06, Lex No. 283401; in Katowice of 15th March 2007, II Aka 24/07, The Cracow Court Notebooks 7—8 (2007, p. 109; in Cracow of 27th June 2002, II Aka 135/02, The Cracow Court Notebooks 7—8 (2002), p. 52.

[35] III KK 268/12, Lex No. 1311768.

[36] IV KO 98/14, OSNKW 2015, issue 8, item 67.

proceeding as "the closest person." The Supreme Court in this matter decided that "the unmarried persons remain in joint cohabitation, apart from obvious assumption resulting from the institution of marriage, if they are bound by an emotional, physical and economic bond who due to joint long-lasting living and assumption of a particular mode of life became related identically as the closest family members as mentioned in Art. 115 § 11 of the Criminal Code, for example relations that occur between parents and children or between siblings."

The first of the presented interpretative streams, that is, the one that understands joint cohabitation as the existence of bonds and relationships like in a marriage without a formal noose, that is, mental, physical bond, economic community and relationship durability, found strong support in the doctrine of law and legal process. However there also occurred other positions in literature,[37] whereas the discrepancies did not refer only to the matter of sex, but also comprised the nature of interpersonal relationships, even when assuming different sex.[38]

The above indicated interpretative doubts were solved by the Supreme Court in the resolution of 25th February 2016. In the ruling the seven-person panel of judges, the Supreme Court decided that a person living in the same-sex relationship can deny to testify if his/her partner is accused. The difference of sex of persons remaining in the relation of joint cohabitation is not a necessary condition in the understanding of Art. 115 § 11 of the Criminal Code. According to the Supreme Court "a person remaining in joint cohabitation" means a person who remains in such factual relation with another person, where there exist simultaneously spiritual

[37] More see M. Kalitowski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek: *The Criminal Code. Commentary*, vol. 2. Gdańsk 1999, p. 393; R. Krajewski: "The closest person in the criminal law", *The Court Review* 3(2009), p. 111, P. Daniluk: "Joint cohabitation as a criminal notion", *The Procurator's Office and the Law* 6(2015), pp. 10—11; J. Haÿduk-Hawrylak, S. Szałucha: "Selected issues of the right to deny to testify", (in:) P. Hofmański (ed.) The nodal problems of the criminal process. Warsaw 2012, pp. 1004—1005; A. Zoll (ed.): *The Criminal Code. General Part. Vol. 1. Commentary to Art. 1—116 of the Criminal Code*. Warsaw 2012, pp. 1393—1194, J. Giezek (ed.): *The Criminal Code. General Part. Vol. 1. Commentary*. Warsaw 2012. pp. 704—705, P. Daniluk: „Joint cohabitation as a criminal notion", *The Procurator's Office and the Law* 6, pp. 7—10 and A. Siostrzonek-Sergiel: "Partners in homosexual relationships and »the closest persons« in the criminal law," *The State and the Law* 4 (2011), pp. 73—74

[38] K. Buchała (ed.): *Commentary to the Criminal Code. General Commentary Section*, Warsaw 1994, p. 508; Idem in: K. Buchała, A. Zoll: *The Criminal Code. General Commentary Section*. Warsaw 1998, p. 634, or only permanent sexual life (J. Gajek: "On the notion of »actual joined cohabitation« in criminal law," *Palestra* 1972, No. 3, p. 46), or psychological and economic bond is sufficient (A. Szlęzak: "Glosa do wyroku SN [Glosa to the Judgement of the Supreme Court] of 31st March 1988r, No. I KR 50/88, *Judgements of Polish Courts and Arbitration Commissions* 4(1989), pp. 205—207.

(emotional), physical and economical (joint household) bonds. Simultaneously, if the lack of a particular type of bond is objectively justified, then it does not anyhow change the nature of the relation. The result of this assumption is a conclusion that permanency of the relationship is not at all necessary only if it is "objectively justified."

Conclusion

Attempting to answer the question posed in the Introduction, it needs to be stated that a substantial change in the perception of the family has in recent years taken place in judicial decisions in both the European Court of Human Rights and Polish judicature. These changes have now made it difficult to define what a family is. Marriage, children or even cohabitation are no longer sufficient to characterize a family. The undermining of the traditional family — culturally and historically conditioned — led to an erosion of all objective and relevant criteria of what a family is.

Given this, it is impossible not to notice that there is a peculiar, clearly visible dissonance among the various forms of preparation for family life. If, in the light of currently obtaining legal arrangements, it is difficult to establish who and in what degree forms a family, the speaking about the preparation for family life loses is primary sense.

This situation can no doubt provoke anxiety especially given that — as rightly argued by Puppnick — the process of the legal dismantling of the family is not yet complete. What is significant here, "[…] this process is not an inevitable historical phenomenon, but a consequence of legal and political decisions, which gradually led the European Court to something entirely different from the initial intention of the authors of the Convention, who wanted to protect the family from the state rather than give the state the power to arbitrarily define it. The Court in Strasbourg not only traces the evolution of mentality; it also runs ahead of it and stimulates it, acting as a 'court-guide' for national courts and members of parliament."[39]

Translated from Polish by Dominika Pieczka

[39] G. Puppnick: „Wyrok", ibidem.

Bibliography

Buchała K. (ed.): *Komentarz do kodeksu karnego. Część ogólna*. Warszawa 1994.

Buchała K., Zoll A.: *Kodeks karny. Część ogólna*. Warszawa 1998.

Burdzik T.: „Prawo jako narzędzie kontroli społecznej", (w:) E. Moczul, B. Sagan (red.) *III Forum Socjologów Prawa „Prawo i ład społeczny"*. Rzeszów 2010, pp. 63—72.

Daniluk P.: „Wspólne pożycie jako pojęcie karnoprawne", *Prokuratura i Prawo* 6(2015), pp. 5—27.

Gajek J.: „O pojęciu »faktycznego wspólnego pożycia« w prawie karnym", *Palestra* 3(1972), pp. 39—48.

Giezek J. (red.): *Kodeks karny. Część ogólna. Komentarz*. Warszawa 2012.

Hofmański P. (ed.): *Węzłowe problemy procesu karnego*. Warszawa 2012.

Jan Paweł II: Adhortacja apostolska *Familiaris consortio*.

Kalitowski M., Sienkiewicz Z., Szumski J., Tyszkiewicz L., Wąsek A.: *Kodeks karny. Komentarz*, t. II. Gdańsk 1999.

Komisja Episkopatu Polski do Spraw Wychowania Katolickiego, *Przygotowanie do życia w małżeństwie i rodzinie*. Sandomierz 1997.

Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r., Dz. U. 1997, nr 78, poz. 483.

Konwencja o ochronie praw człowieka i podstawowych wolności z 4 listopada 1950 r.

Koseła K.: „Młodzież" (w:) A. Kojder (red.), *Encyklopedia Socjologii*, tom 2, Warszawa 1999.

Krajewski R.: „Osoba najbliższa w prawie karnym", *Przegląd Sądowy* 3(2009), pp. 103—114.

Nowicki M.: *Europejski Trybunał Praw Człowieka: Wybór Orzeczeń 2010*. Warszawa 2011.

Pawliczuk W.: „Definicje terminu »młodzież« — przegląd koncepcji", *Postępy Nauk Medycznych* 6 (2006), pp. 311—315.

Puppinck G.: „Wyrok w sprawie Vallianatos przeciwko Grecji w świetle przemian w sposobie pojmowania rodziny i »życia rodzinnego« w orzecznictwie ETPCz", tłumaczenie: Maria Jackowska i Bartosz Soloch, http://www.ordo iuris.pl/wyrok-w-sprawie-vallianatos-przeciwko-grecji-w-swietle-przemian-w-sposobie-pojmowania-rodziny-i-zycia-rodzinnego-w-orzecznictwie-etpcz, 3397,analiza-prawna.html; date of access: 22.02.2016r.

Pyter M., Balicki A.: *Leksykon prawa oświatowego i prawa o szkolnictwie wyższym. 100 podstawowych pojęć*. Warszawa 2014.

Rozporządzenie (UE) 1259/2010 z dnia 20 grudnia 2010 r. w sprawie wprowadzenia w życie wzmocnionej współpracy w dziedzinie prawa właściwego dla rozwodu i separacji prawnej, Dz.U. UE, L 343 z 29.12.2010, p 10.

Rynkowski M.: *Sądy wyznaniowe we współczesnym europejskim porządku prawnym*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego. Wrocław 2013.

Siostrzonek-Sergiel A.: „Partnerzy w związkach homoseksualnych a »osoby najbliższe« w prawie karnym", *Państwo i Prawo* 4 (2011), pp. 73—84.
Szafraniec K.: „Młodość jako wyłaniający się problem i nowa polityczna siła", *Nauka* 1(2012), pp. 101—122.
Szafraniec K.: *Młodzi 2011*, Kancelaria Prezesa Rady Ministrów. Warszawa 2011.
Szlęzak A.: „Glosa do wyroku SN z dnia 31 marca 1988r,sygn.I KR 50/88, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 4(1989), pp. 205—207.
Telusiewicz P.: *Służebna rola zwrotu „rodzinny" w przepisach prawa polskiego*. Lublin 2013.
Tomkiewicz M.: „Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość", *Studia Warmińskie* 49 (2012), pp. 271—285.
Ustawa z dnia 23 kwietnia 1964r. Kodeks Cywilny, Dz.U.2016, poz. 380.
Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, Dz.U. z 2014 r. poz. 101 z późn zm.
Ustawa z dnia 19 kwietnia 1969 r. Kodeks karny, Dz.U. 1969, nr 13, poz.98 z późn. zm.
Ustawa z dnia 19 kwietnia 1969 r. Kodeks postępowania karnego, Dz.U. 1969, nr 13, poz.96 z późn. zm.
Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników, Dz.U. z 2013 r. poz. 1403 z późn zm.
Ustawa z dnia 6 kwietnia 1990 r. o Policji, Dz.U. z 2011 r. Nr 287, poz. 1687 z późn zm.
Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie, Dz.U. 2014, poz. 164 ze zm.
Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego, Dz.U. z 2011 r. Nr 231, poz. 1375 z późn zm.
Ustawa z dnia 6 czerwca 1997 r. Kodeks karny, Dz. U. 1997, nr 88, poz.53 z późn. zm.
Us awa z dnia 15 grudnia 2000 r. o spółdzielniach mieszkaniowych, Dz.U. 2013, poz. 1222 ze zm.
Ustawa z dnia 9 listopada 2000 r. o repatriacji, Dz.U. z 2004 r. Nr 53, poz. 532 z późn zm.
Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych, Dz.U. 2015, poz. 133 ze zm.
Ustawa z dnia 28 listopada 2003r, o świadczeniach rodzinnych, Dz.U. z 2013 r. poz.1456 z późn zm.
Ustawa z dnia 29 lipca 2005r. o przeciwdziałaniu narkomanii, Dz.U. z 2012 r. poz. 124 z późn zm.
Ustawa z dnia 29 lipca 2005r. o przeciwdziałaniu przemocy w rodzinie, Dz.U. 2015, poz. 1390.
Wyrok Sądu Apelacyjnego w Katowicach z dnia 15 marca 2007 r., II AKa 24/07, *Krakowskie Zeszyty Sądowe* 7—8 (2007), p. 109.
Wyrok Sądu Apelacyjnego w Krakowie z dnia 11 grudnia 1997 r., II AKa 226/97, *Krakowskie Zeszyty Sądowe* 2(1998), poz. 26.

Wyrok Sądu Apelacyjnego w Krakowie z dnia 27 czerwca 2002 r., II AKa 135/02, *Krakowskie Zeszyty Sądowe* 7—8 (2002), s. 52.
Wyrok Sądu Apelacyjnego w Lublinie *z* dnia 30 grudnia 1997 r., II AKa 51/97, *Apelacja Lubelska* 1 (1998), poz. 7.
Wyrok Sądu Apelacyjnego w Szczecinie z dnia 21 grudnia 2006 r., II AKa 157/06, Lex nr 283401.
Wyrok Sądu Apelacyjnego w Warszawie z dnia 5 grudnia 1995 r., II AKr 459/95, *Orzecznictwo Sądów Apelacyjnych* 4(1996), poz. 15.
Wyrok Sądu Najwyższego z dnia 12 listopada 1975 r., V KR 203/75, *Orzecznictwo Sądów Polskich* 10 (1976), poz. 187.
Wyrok Sądu Najwyższego z dnia 5 września 1973 r., IV KR 197/73, Lex nr 63773;
Wyrok Sądu Najwyższego z dnia 15 października 1975 r., V KR 93/75, Lex nr 63538.
Wyrok Sądu Najwyższego z dnia 13 sierpnia 1987 r., II KR 187/87, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 1(1988), poz. 11.
Wyrok Sądu Najwyższego 31 marca 1988 r., w I KR 50/88, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 9—10 (1988), poz. 71.
Wyrok Sądu Najwyższego z dnia 9 listopada 1990 r., WR 203/90, *Orzecznictwo Sądów Polskich* 9 (1991), poz. 205.
Wyrok Sądu Najwyższego z dnia 27 maja 2003 r., IV KK 63/03, Lex nr 80281.
Wyrok Sądu Najwyższego z dnia 7 lipca 2004 r., II KK 176/04, Lex nr 121668.
Wyrok Sądu Najwyższego z dnia 4 lutego 2010 r., V KK 296/09, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 6 (2010), poz. 51.
Wyrok Sądu Najwyższego z dnia 21 marca 2013 r., III KK 268/12, Lex nr 1311768.
Wyrok Sądu Najwyższego z dnia 2 marca 2015 r., IV KO 1/15, *Biuletyn Prawa Karnego* 3(2015), s. 59—63.
Wyrok Sądu Najwyższego z dnia 4 marca 2015 r., IV KO 98/14, OSNKW 2015, z. 8, poz. 67.
Znaniecki F.: *Socjologia wychowania*. Warszawa 1973.
Zoll A. (red.): *Kodeks karny, Część ogólna. Tom I*. Warszawa 2012.

Małgorzata Tomkiewicz

Modern Youth vs. Preparation for Family Life. Legal Issues

Summary

Nowadays, preparation for family life is conducted on many different levels. We have come to think about this phenomenon in the context of teaching (school subject: family education), religion or society at large. It can be noticed, however, that this education — albeit indirectly — also takes place in the context of the law. Legal consciousness plays a fundamental role in the shaping of civic behaviour. Without going into the complex questions of the function of the law within society, it should suffice to say that social

control maintained by legal norms performs, to put things briefly, three essential functions: it protects the sphere of human freedom; it is a tool with which to achieve particular goals; and, what is especially noteworthy here, it defines the standards of behaviour which bind people (it points to the universal character of the values commonly held to be fundamental). The aim of the law is to shape the members of a community according to a commonly assumed model of conformist behaviours, which is achieved through the internalization of norms and in the process of socialization. Institutions (such as courts), perceived to be not only as entities entitled to impose sanctions but also as carriers of values distributed across the community, play a significant role here.

What does preparation for family life look like on the normative level? In other words, for life in what kind of family does the law prepare us nowadays? What is a contemporary family in legal terms and is it the same in both European and national judicature? Are the levels of preparation for family life in contemporary circumstances congruent?

Through its synthetic analysis of legal regulations, the object of which is the broadly understood family protection, and of the respective judicatures of the European Court of Human Rights and Polish courts, attempts to answer this question.

Małgorzata Tomkiewicz

Les jeunes gens d'aujourd'hui et la préparation à la vie familiale
Des questions juridiques

Résumé

La préparation contemporaine à la vie en famille se produit à beaucoup de niveaux. On s'est habitué à penser à ce phénomène dans le contexte pédagogique (sujet : la préparation à la vie en famille), religieux ou bien dans le contexte social mentionné plus haut. Il faut pourtant remarquer que cette préparation s'opère — indirectement — également dans le contexte juridique. La conscience juridique joue en effet un rôle fort significatif dans le processus de formation des attitudes sociales. Sans entrer dans la complexité tout entière concernant le rôle du droit dans la société, il suffit de dire que le contrôle social exercé par les normes juridiques réalise (brièvement parler) trois fonctions fondamentales : il protège les sphères des libertés humaines, il sert de moyen de réalisation des buts définis et — ce qui est particulièrement digne d'être souligné dans la question éponyme — il établit les standards de comportement unissant les gens (il indique le caractère universel des valeurs communément considérées comme essentielles). L'objectif du droit est de former les membres d'une collectivité selon le modèle de comportement conformiste généralement adopté, grâce à l'internalisation de formes et d'attitudes au cours du procédé de socialisation. Dans ce procédé jouent un rôle significatif les institutions (telles que par exemple les tribunaux) qui sont perçues non seulement comme des entités autorisées à infliger des sanctions, mais aussi comme des porteurs de valeurs qui sont distribués dans la société.

Comment se présente alors la préparation à la vie en famille au niveau normatif, c'est-à-dire à la vie dans quel type de famille prépare aujourd'hui le droit ? Comment la famille contemporaine est-elle perçue au sens juridique et si ce sens est analogique dans la judicature européenne et nationale ? Est-ce que les champs indiqués concernant la préparation à la vie en famille « joignent bien » dans les réalités sociales actuelles ?

L'article tente de trouver des réponses à ces questions sur la base d'une analyse synthétique des réglementations juridiques, dont l'objet est la protection de la famille en sens large du terme et des sentences judiciaires correspondantes de la Cour européenne des droits de l'homme ainsi que des tribunaux polonais.

Mots clés: famille, vie familiale, droit familial, protection de la famille, jeunes gens

Małgorzata Tomkiewicz

I giovani contemporanei e la preparazione alla vita familiare Questioni giuridiche

Sommario

Nei tempi contemporanei la preparazione alla vita in famiglia ha luogo su molti piani. Ci siamo abituati a pensare a tale fenomeno nel contesto pedagogico (materia: educazione alla vita in famiglia), religioso o nel contesto sociale sopraindicato. Tuttavia occorre notare che la preparazione — indirettamente — ha luogo anche nel contesto giuridico. La consapevolezza giuridica svolge un ruolo non trascurabile nella formazione delle condotte sociali. Non entrando in tutta la complessità della problematica riguardante il ruolo del diritto nella società è sufficiente dire che il controllo sociale esercitato dalle norme giuridiche realizza (considerando la questione per sommi capi) tre funzioni essenziali: tutela la sfera delle libertà umane, serve come mezzo di realizzazione di obiettivi specifici e — cosa particolarmente degna di essere sottolineata nella problematica citata nel titolo — stabilisce standard di comportamento vincolanti per le persone (indica la natura universale dei valori riconosciuti comunemente come fondamentali). L'obiettivo del diritto è la formazione dei membri della collettività secondo un modello assunto universalmente di comportamento conformista, grazie all'internalizzazione delle forme e delle condotte nel corso del processo di socializzazione. In tale processo un ruolo significativo viene svolto dalle istituzioni (quali ad es. i tribunali) che sono percepite non solo come soggetti autorizzati ad applicare sanzioni, ma anche come portatrici di valori che sono distribuiti nella società.

Pertanto com'è la preparazione alla vita in famiglia a livello normativo ossia alla vita in quale famiglia il diritto prepara oggi? Cos'è la famiglia contemporanea nel significato giuridico e tale significato è analogo nella giurisdizione europea e nazionale? I piani indicati di preparazione alla vita in famiglia "combaciano" con la realtà sociale attuale?

L'articolo, mediante un'analisi sintetica delle norme giuridiche il cui oggetto è la tutela concepita in modo ampio della famiglia come pure dei relativi giudicati della Corte Europea dei Diritti dell'Uomo e dei tribunali polacchi, contiene un tentativo di rispondere a tali domande.

Parole chiave: famiglia, vita familiare, diritto di famiglia, tutela della famiglia, giovani