

# Lucjan Świto

---

## Family as a Subject of Protection in the State Family Policy

---

Philosophy and Canon Law 1, 215-230

---

2015

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

Tekst jest udostępniony do wykorzystania w ramach  
dozwolonego użytku.

**Łucjan Świto**

University of Warmia and Mazury in Olsztyn, Poland

## Family as a Subject of Protection in the State Family Policy

**Abstract:** This article analyzes the subject of the state family policy and whether it really serves the protection of the family on the example of Poland. The research carried out leads to the conclusion that the existing state of affairs results in a “blurring” of the traditional culturally and historically conditioned concept of the family, implicitly introducing its “mental redefinition.” Behind the facade of support for the family, various forms of common coexistence are protected with increasing boldness, which also includes—pursuant to the LGBT gender perspective—same-sex couples. The current family policy is not a policy that perceives the family in a comprehensive perspective and is used for the full protection of all family life. The family, although it is a social value with established constitutional position, is not a subject of state protection and support that would be relevant for this position. The existing legal norms rather protect the interests of individual persons belonging to the family than the family as a whole. At the same time, the range of persons making up a family—according to a trend to extend the definition of a family—is increasingly widening.

**Keywords:** family, family policy, protection of family, gender

### Introduction

The family, as the most basic social group present at each stage of human development, is the object of interest of various subjects, including the state. It seems that the state is interested in the family, perceiving the significance of the function fulfilled by the family in the society, and consequently, supports it with various means under the family policy pursued. However, the deepening crisis of marriage observed in the latest years in our society and undertaken at-

tempts to extent the definition of the family have raised the question about what is the subject of the family policy of the state and whether it really serves the protection of the family.

In an attempt to face a problem formulated in this way, one should ask several detailed questions, the answers to which will be searched using the family policy followed in Poland as an example. The questions are as follows: (1) What is the family policy? (2) What does the family policy of the state consist in and how does it manifest itself? (3) What is the subject of protection in the state family policy: is it really a family? and whether it is a family, then what kind of family it is?

## The Notion of the Family Policy

The first question that needs to be answered concerns the family policy itself. The term ‘family policy’ was used in discussions over the social policy conducted in 1940s in Europe. According to the prevailing theory<sup>1</sup> “a family policy is the entirety of legal norms, actions, and means launched by the state in order to create appropriate living conditions for a family, its emergence, proper functioning, and satisfaction of all socially important roles.”<sup>2</sup> It can be also defined as “a sphere of purposeful activity concerning creation of conditions favoring founding and functioning of families and exerting influence of the functioning of the entire society.”<sup>3</sup> Therefore, the following assumptions underlie the definition of the family policy: (1) a family is the basic and the most important social institution, (2) a family should be supported by the state, (3) family policy is composed of numerous policies, and it is not a single and consolidated legal act.

The term ‘family policy’ interpreted in this way should be differentiated from the ‘pro-family policy,’ as this term is not applied in the literature of the subject concerning the social policy and it is only used in a colloquial language. The term is of an evaluative nature—the social policy of the state towards the

---

<sup>1</sup> In the literature of the subject, the family policy was depicted in multiple ways (further discussed in Małgorzata Szyszka, *Polityka rodzinna w Polsce 1990–2004* (Lublin: KUL, 2008), 39–46.

<sup>2</sup> Sheila B. Kamerman, “Rodzina: problemy teorii i polityki,” in *O polityce rodzinnej: definicje, zasady, praktyka*, Materiały z Zagranicy, vol. 2, Instytut Pracy i Spraw Socjalnych (Warszawa: Instytut Pracy i Spraw Socjalnych, 1994). This definition corresponds to the definition by Adam Kurzynowski (see Kurzynowski, *Problemy rodziny w polityce społecznej* (Warszawa: Ośrodek Badań Społecznych, 1991)), 8–9.

<sup>3</sup> Bożena Paradowska-Balcerzak, *Rodzina i polityka rodzinna na przełomie wieków*, Instytut Pracy i Spraw Socjalnych (Warszawa: Instytut Pracy i Spraw Socjalnych, 2004), 16.

,family can be regarded as pro-family policy if it fulfills clearly established aims that the state wants to achieve in terms of creating conditions for the development of a family and satisfying the living and cultural needs of the family.<sup>4</sup>

Contemporary democratic states perceive the importance of the function played by the family in the society, and consequently, they support it with various means under the family policy pursued. The means and instruments through which the state can implement the family policy include: legal measures, financial benefits, benefits in kind or benefits in the form of services, while it should be emphasized that the law plays a major role. Legal norms govern family relations and relations between the family and the state or other institutions, but also—through normalization of various aspects of the family functions—they are aimed at its protection.

Now I will proceed to examine the measures and instruments of the family policy on the example of the Polish state.

## Legal Protection of the Family

At first glance, Polish legislation includes broadly understood protection of the family. This is expressed, first of all, in the Constitution of the Republic of Poland of 1997.<sup>5</sup> While analyzing the provisions of the Constitution in the context of regulations aimed at protection of the family, it should be clearly emphasized 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 shall be placed under the protection and care of the state.<sup>6</sup> It grants the parents the right to rear their children in accordance with their own convictions, considering that limitation or deprivation of parental rights is an exceptional situation that can be affected only in cases specified by statute and only on the basis of the final court judgement. It recognizes that parents have the right to bring up their children according to their own convictions. Such upbringing shall respect the degree of maturity of a child as well as its freedom of conscience and belief and also child's convictions.<sup>7</sup> It refers the above-mentioned directive to the right to ensure children a moral and religious upbringing.<sup>8</sup> It imposes on

---

<sup>4</sup> Katarzyna Głąbicka, *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej* (Radom: Instytut Pracy i Spraw Socjalnych, 2004), 93.

<sup>5</sup> Dz.U. 1997, no. 78, item 483 as amended. Dziennik Ustaw Rzeczypospolitej Polskiej—Journal of Laws of the Republic of Poland, hereafter as Dz.U.).

<sup>6</sup> Ibid., Art. 18.

<sup>7</sup> Ibid., Art. 48.

<sup>8</sup> Ibid., Art. 53.

the state an obligation to take the interests of the family into account in its social and economic policy. Families in difficult material and social circumstances, particularly those with many children or single parent families, shall have the right to receive special assistance from public authorities.<sup>9</sup> The Constitution ensures protection of the rights of the child—everyone has the right to demand from public authority bodies the defence of 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.<sup>10</sup>

Besides constitutional provisions, regulations concerning in its assumptions the protection of the family are directly included also in family law, indirectly in material civil law, in the civil procedure, in labor law, in material and procedural criminal law, as well as in criminal punishment law. Implementation of constitutional principles of family protections also depends on regulations included in a series of other normative acts, including tax, security or tenancy law.

## Family and Guardianship Code

The provisions of the Family and Guardianship Code,<sup>11</sup> which is the basic legal act defining family relations in Poland, govern such crucial areas of family life as the subject matter of contracting and cessation of marriage, property relations between spouses, alimony obligations, descent of a child, institutions of adoption, care and guardianship, etc. Protection of the family included in the regulations of the aforementioned act is based on such principles as:

- principle of the child's welfare, that 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, for example in social welfare, court acts, decisions of administrative authorities, and legislative bodies;
- the principle of autonomy of the family in relation to external influence, including the state, that is, the prohibition to interfere into the family matters without a justified reason;
- the principle of the primacy of the family in rearing children;
- the principle of monogamy;
- the principle of the secular character of the family law, that is, granting the authority of state bodies to settle family cases;
- the principle of equality of spouses in their mutual relations and towards children;
- the principle of durability of the marital union.

---

<sup>9</sup> *Ibid.*, Art. 71.

<sup>10</sup> *Ibid.*, Art. 72.

<sup>11</sup> The Family and Guardianship Code Act of 25 February 1964 (Dz.U. 1964, no. 9, item 59 as amended); hereafter as FGC.

## Civil Code and the Code of Civil Procedure

As regards civil law,<sup>12</sup> the regulations that should be emphasized, among others, concern minors in legal transactions and principles of the inheritance law. The interest of the family is protected, for example by statutory inheritance occurring in a situation of lack of a testament, when under the act, children of the testator and the spouse are appointed to inherit in the first place.<sup>13</sup> On the other hand, in case of a testament that omits family members, law provides for a protective institution—legitimate portion. Family members excluded from inheritance are then entitled to address the claim to the inheritor to pay the sum of money specified in provisions.<sup>14</sup>

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>15</sup> as well as the possibility of appearing in these cases in the capacity of the plenipotentiary of the proper representative for social welfare of the municipal authority, as well as the social organization aimed at providing support to the family.

## Labor Code

The Labor Code<sup>16</sup> protects the interests of the family, in particular through protection of motherhood and of women's health. The provisions of Chapter VIII "Protection of Women's Work" specify, among others, that pregnant women cannot be employed overtime at night or delegated beyond the permanent place of work without their consent. The employer is obliged to transfer a pregnant woman to alternative position if it is medically necessary. The employer is obliged to release a pregnant employee from work to attend medical examinations ordered by a physician in relation to the pregnancy. Additionally, the provisions of the Labor Code provide a guarantee for obtaining a maternity leave and for granting parental leave.<sup>17</sup>

---

<sup>12</sup> The Civil Code Act of 23 April 1964 (Dz.U. 1964, No. 16, item 93 as amended); hereafter as CC.

<sup>13</sup> CC, Art. 932–933.

<sup>14</sup> CC, Art. 991.

<sup>15</sup> As set forth in Art. 96 par. 1, point 1 and 2 of the Act on Court Costs in Civil Cases of 28 July 2005 (Dz.U. 2005, No. 167, item 1398).

<sup>16</sup> Act of 26 June 1974 (Dz.U. 1974, no. 24, item 141 as amended); hereafter as LC.

<sup>17</sup> LC, Art. 176–89.

## Penal Code

The family is also protected in broadly understood penal law.<sup>18</sup> Within this area, the legislator does not only aim at protection of significant attributes of the family, but also provides for a specific model of behaviors and an appropriate level of relation occurring within it. In the Penal Code<sup>19</sup> there can be singled out such provisions that aim both at penal protection of the personal status of the family (prohibition of bigamy,<sup>20</sup> prohibition of organizing adoption against the provisions of the act<sup>21</sup>), as well as protection of the procreation function of the family (penalization of termination the pregnancy without the consent of the mother<sup>22</sup> and with consent of the mother, but in violation of the Act of 7 January 1993 On Family Planning, Protection of the Human Fetus and Conditions for Permissibility of Abortion,<sup>23</sup> determining the crime of infanticide during the delivery and under the influence of its course<sup>24</sup>), 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 or her mental or physical condition,<sup>25</sup> the crime of abducting a child under 15 years of age,<sup>26</sup> the crime of exposing a person under his or her care to an immediate danger of loss of life or a serious impairment of health<sup>27</sup>), as well as the protection of the functioning of the family (prohibition of abuse,<sup>28</sup> prohibition of incest,<sup>29</sup> prohibition of sexual abuse of children,<sup>30</sup> prohibition of using children in pornography,<sup>31</sup> prohibition of child prostitution,<sup>32</sup> prohibition against providing minors with alcohol,<sup>33</sup> penalization of maintenance payment avoidance<sup>34</sup>). Also (according to the assumption), the solutions adopted in an amended Act of 10 June 2010 are aimed at increasing the efficiency of counteracting domestic violence on Counteracting Domestic

---

<sup>18</sup> More about the legal and penal protection of the family see Sławomir Hypś, *Ochrona rodziny w polskim prawie karnym* (Lublin: KUL, 2012).

<sup>19</sup> Act of 2 June 1997 (Dz.U. 1997, no. 88, item 553); hereafter as PC.

<sup>20</sup> PC, Art. 206.

<sup>21</sup> PC, Art. 211a.

<sup>22</sup> PC, Art. 153.

<sup>23</sup> Dz.U. 1993, no. 17, item 78 as amended; Art. 152 PC.

<sup>24</sup> PC, Art. 149.

<sup>25</sup> PC, Art. 210.

<sup>26</sup> PC, Art. 211.

<sup>27</sup> PC, Art. 160.

<sup>28</sup> PC, Art. 207.

<sup>29</sup> PC, Art. 201.

<sup>30</sup> PC, Art. 197 § 3, point 2, Art. 199 § 2 and 3, Art. 200.

<sup>31</sup> PC, Art. 202.

<sup>32</sup> PC, Art. 204.

<sup>33</sup> PC, Art. 208.

<sup>34</sup> PC, Art. 209.

Violence.<sup>35</sup> Recognizing that domestic violence breaches fundamental human rights, including the right to life and health and respect for personal dignity, public authorities are to ensure to all citizens equal treatment and respect for their rights and freedoms, the above-mentioned act is also aimed at initiating and supporting activities consisting in improving the social awareness as regards causes and results of domestic violence.

## Code of Criminal Procedure

The Code of Criminal Procedure<sup>36</sup> also includes finding provisions aimed at the protection of the family. This can be proved by the existence of the right to refuse to testify, which the next of kin of the accused is entitled to,<sup>37</sup> 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.<sup>38</sup>

## Executive Penal Code

The concern of the legislator for maintaining family ties in case of separation caused by serving an imprisonment sentence can be found in regulations of the criminal punishment law. As an example it should be indicated that the Executive Penal Code<sup>39</sup> in Art. 105 § 1 clearly sets forth that the convict should be provided with the possibility to maintain links first of all with the family and with other close friends through visits, telephone calls, parcels, and money orders, and in justified cases, upon consent of the director of the penitentiary facility, also through other means of communication. To maintain the links with the family of a person sentenced for unconditional imprisonment there are also applied solutions adopted in the Act of 7 September 2007 on serving a custodial sentence beyond the penitentiary facility in the system of electronic tagging.<sup>40</sup> Pursuant to Art. 6 §1 of this Act, the penitentiary court can allow the convict to serve a custodial sentence not exceeding one year in a system of electronic tagging.<sup>41</sup>

---

<sup>35</sup> Dz.U. 2010, no. 125, item 842.

<sup>36</sup> The Code of Criminal Procedure Act of 6 June 1997 of 1997 (Dz.U. no. 89, item 555); hereafter as CCP.

<sup>37</sup> CCP, Art. 182 § 1.

<sup>38</sup> CCP, Art. 183 § 1.

<sup>39</sup> The Executive Penal Code Act of 6 June 1997 (Dz.U. 1997, no. 90, item 557); hereafter as EPC.

<sup>40</sup> Consolidated text Dz.U. 2010, no. 142, item 960.

<sup>41</sup> Serving the sentence in this system consists in that the convict is obliged to stay in the flat established by the court as the place of serving the sentence, and can leave it only at precisely



In the period of imprisonment of any of its members, the family can rely on the support of the state within the support provided from the Post-Penitentiary Assistance Fund.<sup>42</sup> Such 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 center. However, this period can be extended up to six months in case of particular circumstances, such as disease or temporary unfitness to work.

## Other Support from the State

The state care for the family is not exclusively confined within the normative sphere. The family is the subject of concern of the state also in its economic and social dimensions. Economic and social instruments of the family policy of contemporary democratic states may include financial benefits, benefits in kind, and benefits in the form of services.<sup>43</sup>

While analyzing the family policy of Poland in the last thirty years, the following instruments of support for families should be observed:

- cash benefits in the form of allowances, allowances for a disabled child, childcare during parental leave, single parent supplement, new school year allowance, taking up learning by a child outside the place of residence, newborn allowance;
- means 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, exempting family benefits from taxation;
- benefits in kind delivered to families, for example in the form of clothes, fuel, and food;
- services and benefits in the field of education and health care carried out through various institutions, such as day nurseries, kindergartens, school common rooms, primary schools, junior secondary schools, educational and

---

specified hours and in a precisely specified purpose, e.g. to perform work. The behavior of the convict is supervised by the probation officer.

<sup>42</sup> Pursuant to Art. 43 of the Executive Penal Code, 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 moneys originating from deduction of 20 percent of remuneration that the convicts are entitled to. The aim of the Fund is to aid the imprisoned persons released from penitentiary facilities and remand centers and their families.

<sup>43</sup> Bożena Balcerzak-Paradowska, "Polityka państwa wobec rodziny," in *Polityka społeczna w latach 1994–1996*; Stanisława Golinowska, ed., *Raport Instytutu Pracy i Spraw Socjalnych 1996*, nr 11, Warszawa: IPiSS, 1996.

cultural facilities, special schools, post primary schools, special education centers, and state health care.<sup>44</sup>

Looking at the above-mentioned benefits and state support for a family, the social character of the family policy that has been prevailing in the latest years can be clearly seen, expressed in addressing the main solutions to families living in a difficult situation and at risk of dysfunctions.

Currently, the Polish state perceives the need to follow family policy to increase the birth rate in Polish society. The pronatalist trend is clearly exposed, for instance, by the Government Population Council in the “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 favoring establishment of families, first of all, through contracting marriages and realization of procreation plans; (2) create conditions favoring integration in the aging society—reducing the scale of risk of exclusion of the elderly, dependent, and disabled people; (3) undertake actions aiming at improvement of the health condition of population and reduction of mortality rate; (4) specify the directions and principles of migration policy of Poland in times of the European integration.<sup>45</sup> With reference to the first of the indicated aims, it should be emphasized that the following statement was adopted as a priority specified in point I.1.2 “Promotion of gender equality and social equality and striving for ensuring conditions for free choice of allocation of roles of women and men in the family”<sup>46</sup> including taking up activities aimed at challenging the stereotype concerning the allocation of roles in the family.<sup>47</sup>

---

<sup>44</sup> After Małgorzata Szyłko-Skoczny and Grażyna Firlit-Fesnak, eds., *Polityka społeczna: podręcznik akademicki* (Warszawa: Wydawnictwo Naukowe PWN, 2008), 196–97. More on the issue of family policy in Poland in 1990–2004 see Małgorzata Szyszka, *Polityka rodzinna w Polsce 1990–2004* (Lublin: KUL, 2008).

<sup>45</sup> More about this issue, see Rządowa Rada Ludnościowa, *Założenia polityki ludnościowej Polski 2013* (projekt), accessed May 20, 2013. [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).

<sup>46</sup> Pursuant to 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 towards an increase in employment rate, reduction of poverty, directed at striving for ensuring social cohesion and fight against social exclusion, but also a significant instrument in condition 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 of Laws of 24.11.2010].

<sup>47</sup> Rządowa Rada Ludnościowa, *Założenia polityki*.

## Subject of Protection

As it can, therefore, be seen based on the example of Poland, broadly understood family issues constitute an important part of the social policy of the state, carried out on many levels. However, while analyzing the solutions adopted in the contemporary family policy of the state, the question of whether the subject of protection in the family policy of the state is really a family, and if it is a family, then what kind of a family it is.

The family policy, although *expressis verbis* refers to the family, does not define this term. The family does not occur as a subject in the legal dimension. The definition of family is one of the disputable issues in the literature, which determines the vision of the model of family. The discussion is primarily going on between supporters of the definition of a family in a narrow meaning, contrary to supporters of an extended definition. According to supporters of the narrow definition, the family is considered to be a marriage of a man and a woman, with lineal ancestors or descendants, provided that they live in a common household.<sup>48</sup> This model of family best corresponds to the vision of a family depicted by John Paul II in his Letter to Families *Gratissimam Sane*. On the other hand, according to supporter of an extended definition, also other social groups are considered a family, such as:

- single-parent families;
- single-generation families, for example: a childless marriage, siblings living together, etc.
- families that do not run a common household, that is, due to housing difficulties, fortuitous circumstances, separation, LAT relations (living-apart-together) or DINKS (double-income-no-kids), childless couples of separate income or homosexual relations sometimes also bringing up children);
- couples running a common household without being formally married (cohabiting) with ancestors or descendants;
- same-sex couples running a common household (for example, civil partnership, cohabitation, registered relation, homosexual marriage) with ancestors or descendants of at least one of those persons.<sup>49</sup>

---

<sup>48</sup> See Jan Szczepański, *Elementarne pojęcia socjologii* (Warszawa: Wydawnictwo Naukowe PWN, 1963), 34; Beata Tobiasz-Adamczyk, *Wybrane elementy socjologii zdrowia i choroby* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 1998), 68; Józef Rembowski, *Rodzina w świetle psychologii* (Warszawa: WSiP, 1986), 91; Maria Ziemska, *Rodzina a osobowość* (Warszawa: Wiedza Powszechna, 1977), 28; Barbara Kałdon, "Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym," *Forum Pedagogiczne UKSW*, no. 1 (2001).

<sup>49</sup> See Tomasz Szlendak, *Socjologia rodziny: edukacja, historia, zróżnicowanie* (Warszawa: Wydawnictwo Naukowe PWN, 2010), 95; Adam Matusik, *Polityka rodzinna w Polsce* (Warszawa: Wyższa Szkoła Pedagogiczna TWP w Warszawie, 2013).

The above-presented Polish legislation does not solve the problem of what kind of family is the subject of the family policy of the state, since not only—as it has been already mentioned—it does not provide a legal definition of a family, but also does not constitute norms ensuring protection of a family treated comprehensively. Individual norms protect rather autonomous rights of individual persons creating a family than a family understood as a community. This thought is expressed well by Hanna Waśkiewicz, claiming that “a family does not have existence that is independent of specific persons living in this family.”<sup>50</sup> Andrzej Grzejdziaś expressed his opinion in a similar spirit, stating that “although, undoubtedly, a family constitutes an organized social entity, legal regulations do not grant it legal status. These are family members who are the subject of legal relationships, and not the family as an organized entity.”<sup>51</sup> The acceptance of such a solution opens the possibility that the subject of protection of the family policy of the state will be relations of persons that do not fit the definition of a family arising from the Letter to Families *Gratissimam Sane* of John Paul II.

Therefore, who, in the light of the Polish legislation, can create a family? The great majority of legal acts view a family as including: spouses, their common children, children of the other spouse, adopted children, foster children, children under (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 interpretation direction results from regulations of the Family and the Guardianship Code, in which the notion of a family is based on the links of marriage, kinship or affinity.

But the Social Welfare Act of 24 March 2004 extends the range of persons belonging to the family, since in its light, not only related persons, but also (!) unrelated persons living in an actual relationship, living together and keeping a common household.<sup>52</sup> And those who live and keep a common household together can be homosexual couples.

The amended Act of 10 June 2010 on Counteracting Domestic Violence goes even further.<sup>53</sup> Although the act does not define the term of the family, even if it uses it both in the title and in the text,<sup>54</sup> yet in Art. 2 par. 1 it specifies that

---

<sup>50</sup> See Hanna Waśkiewicz, “Prawa człowieka a prawa rodziny” *Chrześcijanin w świecie*, no. 139 (1985): 52.

<sup>51</sup> Andrzej Grzejdziaś, “Prawo do wychowania w rodzinie,” in *Prawa i wolności obywatelskie w Konstytucji RP*, ed. Bogusław Banaszak and Artur Preisner (Warszawa: C.H. Beck, 2002), 464.

<sup>52</sup> Social Welfare Act of 24 March 2004 (consolidated text: Dz.U. 2009, no. 175, item 1362 as amended, art. 6, point 14.

<sup>53</sup> Dz.U. 2010, no. 125, item 842.

<sup>54</sup> Małgorzata Tomkiewicz, “Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość,” *Studia Warmińskie*, no. 49 (2012): 271–285.

whenever the act refers to a “family member” it should be understood as a next of kin in the meaning of Art. 115 § 11 of the Penal Code, as well as any other person cohabiting or keeping a common household.

Pursuant to Art. 115 § 1 of the Penal Code, a 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. Therefore, in the light of the above-referred norm of the Penal Code, a member of family can be—as according to the Social Welfare Act—a person living outside of marriage, even if cohabitation concerns persons of the same sex. In light of the linguistic interpretation directives, there are no grounds to claim that cohabitation can exist only between persons of different sexes.<sup>55</sup>

On the other hand, while referring to the term “persons living under the same roof or keeping a common household” one must notice that this wording is highly imprecise. First of all, the use of the word “or” instead of conjunction “and” means that persons will be family members for each other also when they only live together (without keeping a common household) or when they only keep a common household without living together.<sup>56</sup> Undoubtedly, the intention of the legislator formulating the above-mentioned Art. 2 par. 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 concerned first of all divorced spouses living under one roof, or family members of live-in partners residing at the same place. However, the provision specifying that members of the family are also persons living under one room or managing a common household leads to the conclusion which is grotesque in its interpretation, namely, that a group of students living

---

<sup>55</sup> The thesis that “cohabitation” can apply also to the common life of homosexual couples, and consequently that persons remaining in this types of relationships have the status of the next in kin, can be found, e.g. in Sylwia Spurek, *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz* (Warszawa: Wolter Kluwer SA, 2008), 62; Jan Majewski, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Część ogólna. Komentarz*. Tom I, ed. Andrzej Zoll (Kraków: Zakamycze, 2004), 1437–447; Magdalena Kulik, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Komentarz praktyczny*, ed. Marek Mozgawa (Warszawa: Oficyna 2010), 232–33; Jacek Giezek, ed., “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Część ogólna. Komentarz* (Warszawa: Wolter Kluwer SA, 2007), 730–35; Andrzej Marek, *Kodeks karny. Komentarz* (Warszawa: Wolter Kluwer SA, 2007), 316–17; A. Michalska-Warias, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks Karny. Komentarz*, ed. Tadeusz Bojarski (Warszawa: LexisNexis, 2011), 222–25.

<sup>56</sup> During legislative works on the Act on Counteracting Domestic Violence in its reading of 2005, representatives of the government had 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 the Sejm of the Republic of Poland of 4th term of office, [www.sejm.gov.pl](http://www.sejm.gov.pl)).

together in a rented flat should also be considered members of the family,<sup>57</sup> as well as those who only eat at a given family for payment.<sup>58</sup>

## Conclusion

The existing state of affairs somehow “blurs” a traditional, culturally and historically conditioned concept of a family, introducing, implicitly, its “mental redefinition.” Behind the facade of support for the family, more and more intentionally there are protected various forms of common coexistence, also including—pursuant to the gender perspective of LGBT—same-sex couples.

The current family policy is not a policy that perceives the family in a comprehensive perspective and is used for the full protection of all family life. The family, although it is a social value of established constitutional position, is not a subject for state protection and support, appropriate for this position. The existing legal norms seem to protect the interests of individual persons belonging to the family rather than the family as a whole. At the same time, the range of persons making up a family—according to a trend of extending the definition of a family—is increasingly widening.

Consequently, it should be explicitly supported that the family should be treated as an autonomous community, emphasizing at the same time that this is a unique community, based on marriage between a woman and a man, which cannot be replaced by any other interpersonal relationship. In the central point of the contemporary axiology of law—and consequently, also the family policy—protection of individual goods of any given person should be accompanied by the protection of a family as a subject of its own autonomous rights that are not only a sum of rights of individual persons creating it.

## Bibliography

Balcerzak-Paradowska, Bożena. “Polityka państwa wobec rodziny.” In *Polityka społeczna w latach 1994–1996*, edited by Stanisława Golinowska. Raport Instytutu Pracy i Spraw Socjalnych 1996, nr 11. Warszawa: IPiSS, 1996.

---

<sup>57</sup> Katarzyna Dudka, “Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie,” WPP, no. 2 (2006): 44ff.

<sup>58</sup> Tomkiewicz, *Bezpieczeństwo rodziny*, 278.

- Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States, Official Journal of Law of 24 November 2010.
- Dudka, Katarzyna. "Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie." WPP, nr 2 (2006): 44–48.
- Firlit-Fesnak, Małgorzata, and Grażyna Szyłko-Skoczny. eds. *Polityka społeczna: podręcznik akademicki*. Warszawa: Wydawnictwo Naukowe PWN, 2008.
- Głąbicka, Katarzyna. *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej*. Radom: Instytut Technologii Eksploatacji, 2004.
- Grzejdziak, Andrzej. "Prawo do wychowania w rodzinie." In *Prawa i wolności obywatelskie w Konstytucji RP*, edited by Bogusław Banaszak and Andrzej Preisner. Warszawa: C.H. Beck, 2002.
- Hypś, Sławomir. *Ochrona rodziny w polskim prawie karnym*. Lublin: KUL, 2012.
- Kałdon, Barbara. "Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym." *Forum Pedagogiczne UKSW*, nr 1 (2011): 99–108.
- Kammerman, Sheila B. "Rodzina: problemy teorii i polityki." In *O polityce rodzinnej: definicje, zasady, praktyka*. Materiały z Zagranicy z. 2, Instytut Pracy i Spraw Socjalnych, Warszawa: IPiSS, 1994.
- Kodeks karny. Część ogólna. Komentarz*. Edited by Jacek Giezek. Warszawa: Wolter Kluwer SA, 2007.
- Kodeks karny. Część ogólna. Komentarz. Tom I*. Edited by Andrzej Zoll. Kraków: Zakamycze, 2004.
- Kodeks karny. Komentarz praktyczny*. Edited by Marek Mozgawa. Warszawa: Wolter Kluwer SA, 2010.
- Kodeks Karny. Komentarz*. Edited by Tadeusz Bojarski. Warszawa: LexisNexis, 2011.
- Konstytucja Rzeczypospolitej Polskiej z 1997 r., Dz.U. 1997, nr 78, poz. 483.
- Kurzynowski, Adam. *Problemy rodziny w polityce społecznej*. Warszawa: Ośrodek Badań Społecznych, 1991.
- Marek, Andrzej. *Kodeks karny. Komentarz*. Warszawa: Wolter Kluwer SA, 2007.
- Matusik, Adam. *Polityka rodzinna w Polsce*. Warszawa: Wyższa Szkoła Pedagogiczna TWP w Warszawie, 2013.
- Paradowska-Balcerzak, Bożena. *Rodzina i polityka rodzinna na przełomie wieków*. Warszawa: Instytut Pracy i Spraw Socjalnych, 2004.
- Rembowski, Józef. *Rodzina w świetle psychologii*. Warszawa: WSiP, 1986.
- Spurek, Sylwia. *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*. Warszawa: Wolter Kluwer SA, 2008.
- Szczepański, Jan. *Elementarne pojęcia socjologii*. Warszawa: Wydawnictwo Naukowe PWN, 1963.
- Szlendak, Tomasz. *Socjologia rodziny: ewolucja, historia, zróżnicowanie*. Warszawa: Wydawnictwo Naukowe PWN, 2010.
- Szyska, Małgorzata. *Polityka rodzinna w Polsce 1990–2004*. Lublin: KUL, 2008.
- Tobiasz-Adamczyk, Beata. *Wybrane elementy socjologii zdrowia i choroby*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 1998.
- Tomkiewicz, Małgorzata. "Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość." *Studia Warmińskie*, no. 49 (2012): 271–285.
- Ustawa z dnia 10 czerwca 2010 r. o przeciwdziałaniu przemocy w rodzinie, Dz.U. 2010, nr 125, poz. 842.
- Ustawa z dnia 10 czerwca 2010 r. o przeciwdziałaniu przemocy w rodzinie, Dz.U. 2010, nr 125, poz. 842.
- Ustawa z dnia 2 czerwca 1997 r., Kodeks karny, Dz.U. 1997, nr 88, poz. 553.

- Ustawa z dnia 23 kwietnia 1964 r., Kodeks cywilny, Dz.U. 1964, nr 16, poz. 93.  
Ustawa z dnia 24 marca 2004 r. o pomocy społecznej, Dz.U. 2009, nr 175, poz. 1362.  
Ustawa z dnia 25 lutego 1964 r., Kodeks rodzinny i opiekuńczy, Dz.U. 1964, nr 9, poz. 59.  
Ustawa z dnia 26 czerwca 1974 r., Kodeks pracy, Dz.U. 1974, nr 24, poz. 141.  
Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych, Dz.U. 2005, nr 167, poz. 1398.  
Ustawa z dnia 6 czerwca 1997 r., Kodeks karny wykonawczy, Dz.U. 1997, nr 90, poz. 557.  
Ustawa z dnia 6 czerwca 1997 r., Kodeks postępowania karnego, Dz.U. 1997, nr 89, poz. 555.  
Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży, Dz.U. 1993, nr 17, poz. 78.  
Ustawa z dnia 7 września 2007 o wykonywaniu kary pozbawienia wolności poza zakładem karnym w systemie dozoru elektronicznego, Dz.U. 2010, nr 142, poz. 960.  
Waśkiewicz, Hanna. "Prawa człowieka a prawa rodziny." *Chrześcijanin w świecie* 1985, no. 139.  
Ziemska, Maria. *Rodzina a osobowość*. Warszawa: Wiedza Powszechna, 1977.

Lucjan Świto

## Famille en tant que sujet protégé dans la politique familiale de l'État

### Résumé

Le présent article, à l'exemple de la Pologne, essaye de répondre à la question ce qui est le sujet de la politique familiale de l'État et si elle assure vraiment la protection de la famille. Les études menées conduisent à la conclusion que l'état de choses existant contribue à la « dilution » de la conception traditionnelle de la famille conditionnée culturellement et historiquement tout en introduisant d'une façon sous-entendue sa redéfinition « mentale ». 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 homosexuelles. La politique familiale actuelle 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. Bien que la famille soit une valeur sociale ayant une position constitutionnelle bien fondée, elle n'est pourtant pas protégée et soutenue par l'État de la façon adéquate à la position qui lui est assurée. Les normes juridiques existantes protègent plutôt les biens des personnes particulières qui y appartiennent, et non la famille comme un tout. Et en plus, le cercle de personnes constituant une famille — conformément à l'élargissement de la définition de la famille — devient de plus en plus large.

Mots clés: famille, politique familiale, protection de la famille, genre



Lucjan Świto

## La famiglia come oggetto di tutela nella politica familiare statale

### Sommario

Il presente articolo prova a rispondere, in base all'esempio polacco, alle domande su ciò che è oggetto di politica familiare dello Stato, e se effettivamente è necessaria una protezione della famiglia. I risultati della ricerca condotta provano che l'attuale situazione provoca una "diluizione" del concetto di famiglia, condizionata culturalmente e storicamente e porta alla sua ridefinizione "mentale". Nel nome del sostegno alla famiglia, sempre più coraggiosi sono i numerosi tentativi di coesistenza sociale, fra i quali — secondo l'ottica gender GLBT — le relazioni monosessuali. L'attuale politica della famiglia in Polonia non è pertanto una politica che riconosce la famiglia nel suo complesso e che tutela pienamente tutti gli aspetti della vita familiare. La famiglia, nonostante il suo valore sociale sia rafforzato dalla costituzione, non è adeguatamente protetta e sostenuta dallo stato. Le attuali norme giuridiche tutelano piuttosto gli individui e non l'intera famiglia. Per questo l'insieme delle persone che rappresentano la famiglia — in accordo con la tendenza dell'ampliamento della definizione di famiglia stessa — è sempre più ampio.

Parole chiave: famiglia, politica della famiglia, tutela della famiglia rodzina, gender