

**STATE
OF DEMOCRACY
HUMAN RIGHTS
AND THE RULE
OF LAW IN POLAND**
RECENT
DEVELOPMENTS

EDITED BY

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TABLE OF CONTENTS

INTRODUCTION	11
1. A DISPUTE OVER THE ORGANISATION AND COMPOSITION OF THE CONSTITUTIONAL TRIBUNAL IN POLAND PAWEŁ JABŁOŃSKI, TYMOTEUSZ ZYCH	12
2. SITUATION OF REFUGEES AND ECONOMIC MIGRANTS IN POLAND PAWEŁ JABŁOŃSKI	50
3. FREEDOM OF ASSEMBLY RAFAŁ DOROSIŃSKI	58
4. FREEDOM OF SPEECH TYMOTEUSZ ZYCH	66
5. MODIFICATIONS IN LEGAL FRAMEWORK OF PUBLIC BROADCASTING JOANNA BANASIUK	76
6. FAMILY RIGHTS AND FAMILY POLICY OLAF SZCZYPIŃSKI	88
7. ANTITERRORISM ACT JANUSZ ROSZKIEWICZ	104
8. PROSECUTION SERVICE LAW BARTOSZ LEWANDOWSKI	126
9. THE AMENDED POLICE REGULATIONS BARTOSZ LEWANDOWSKI	140
10. CITIZENS' LEGISLATIVE INITIATIVE – INSTRUMENT OF PARTICIPATORY DEMOCRACY OLAF SZCZYPIŃSKI	154
11. LIABILITY FOR COMPENSATION DUE TO UNLAWFUL EXERCISE OF OFFICIAL AUTHORITY – POLISH EXPERIENCES AND HOPES MICHAŁ JABŁOŃSKI, KRZYSZTOF KOŹMIŃSKI	164
12. IMPLEMENTATION OF THE RIGHT TO PROTECTION OF REPRODUCTIVE HEALTH IN POLAND JANUSZ ROSZKIEWICZ , KAROLINA PAWŁOWSKA	180
13. THE STATE OF HUMAN RIGHTS IN POLAND IN PERCEPTION OF THE POLISH NGOS – EMPIRICAL SURVEY ANNA SKÓRZYŃSKA, KAROLINA PAWŁOWSKA	194
CONCLUSIONS	209
INFORMATION ABOUT THE AUTHORS	221

FAMILY RIGHTS AND FAMILY POLICY

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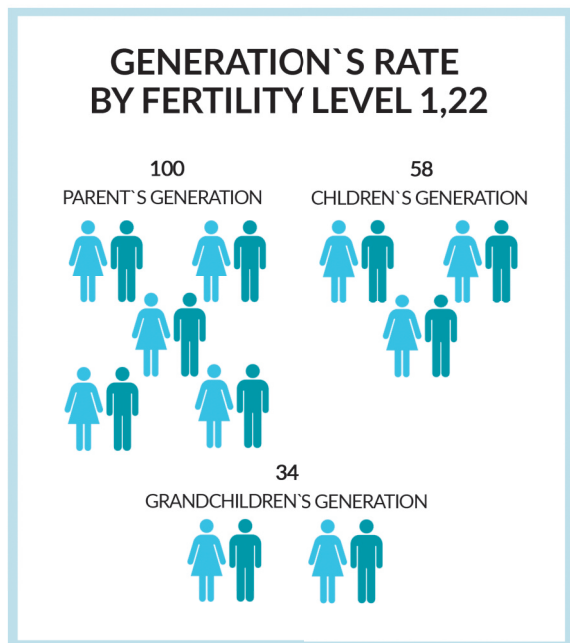
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OLAF SZCZYPIŃSKI

Family rights and family policy are issues of fundamental importance in Poland. The demographic crisis began in Poland towards the end of the 1980s and, in 2014, the country's total fertility rate was among the lowest in the world (1,29). Unlike in most of the other countries in the region, in Poland, changes to that dramatic situation have not been observed nor undertaken. **If the negative trend that has been present for almost 30 years is not reversed, Poland will be not only be under the risk of depopulation, but also under the risk of economic decline resulting from depopulation.** Demographic changes will be a fundamental developmental barrier for Poland.

The Polish Constitution guarantees that the family should be the object of particular protection, rooted in the principle of subsidiarity, which is fundamental for every community. **For the family to be able to fulfil its tasks fully in the society, it needs to be protected and supported, also due to the fact that is the milieu of its members' development and the source of their welfare**¹⁵⁴. At the same time, any interference by public authorities into family life should have proportional character and justification in protection of other constitutional values. All decisions of public authorities concerning family should be undertaken with respect to the principle of child's welfare.

The analysis of the recent changes in the legislation concerning family rights and family policy in Poland will be divided into two parts. The first one will reflect upon legal obligations of public authorities towards families stemming from the Constitution and legal acts. The second one is devoted to an analysis of the recent changes in family-related legal provisions and their evaluation in context of both human rights guarantees and the influence on the welfare of families.



¹⁵⁴ Cf. Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989, Preamble.

CONSTITUTIONAL OBLIGATIONS OF PUBLIC AUTHORITIES TOWARDS THE FAMILY IN POLAND

Polish public authorities are obliged to ensure special protection of the family, marriage, motherhood, and parenthood based on articles 18 and 71 items 1 and 2 of the Constitution of the Republic of Poland of 1997¹⁵⁵ (hereafter: the Constitution). The Constitutional Tribunal emphasises that article 18 of the Basic Law “points to the state’s duty concerning fulfilment of its obligations towards the family”¹⁵⁶. It needs to be underscored that in the opinion of the Court, the fact of placing it in the first chapter of the Constitution, devoted to basic principles of the state system, is vital for defining the importance of that constitutional order – and of the minimum standard of state’s protection and assistance to the family¹⁵⁷. Moreover, the Court emphasises that the norm entailed in **article 18 of the Constitution has character of a guideline, and thus, other provisions of the Constitution should be interpreted through its prism**¹⁵⁸.

Protection of the family and motherhood is also safeguarded in article 71 paragraph 1 of the Constitution, which states that, “the State, in its social and economic policy, shall take into account the good of the family” and that, “families, finding themselves in difficult material and social circumstances – particularly those with many children or a single parent – shall have the right to special assistance from public authorities”.

The Constitutional Tribunal stresses that assistance for families in a dire economic situation should, therefore, have the character of “assistance exceeding ordinary assistance”¹⁵⁹, “going beyond ordinary consideration of its needs”¹⁶⁰. In this respect, the safeguards are compared by the Constitutional Tribunal with “special

¹⁵⁵ Journal of Laws of 1997 nr 78 item 483 as amended.

¹⁵⁶ Judgment of the Constitutional Tribunal of 15 November 2005, file no. P 3/05, item III.3.

¹⁵⁷ Ibid, item III.3.

¹⁵⁸ Ibid.

¹⁵⁹ Ibidem.

¹⁶⁰ Judgment of the Constitutional Tribunal of 8 May 2001, file no. P 15/00, item III.4.

care” of veterans of the struggle for independence (article 19 of the Constitution)¹⁶¹. They are complemented by the subjective right established in article 71 paragraph 2 of the Constitution, according to which “a mother, before and after birth, shall have the right to special assistance from public authorities”. Furthermore, it is to that **constitutional model that the Constitutional Tribunal refers its remarks concerning the special character of the assistance provided by the state, pointing out that public authorities’ support for mothers should go further than ordinary consideration of their needs**¹⁶². The constitutional safeguards of motherhood protect not only the mother, but also the child who enjoys the right of correct development¹⁶³. Provision of state assistance should take into consideration the rights of parents to rear their children in accordance with their own convictions (article 48 paragraph 1 of the Constitution), which encompasses both childcare as well as education and, moreover, is rooted in an array of international agreements. Granting of state support in the field of childcare cannot be differentiated based on arbitrarily specified criteria (article 32 paragraph 1 of the Constitution¹⁶⁴). Interpreting the constitutional prohibition of discrimination (article 32 paragraph 2), the Constitutional Tribunal stresses that, “in the case of similar entities, belonging to the same vital class (category), presumption supports non-differentiation”¹⁶⁵. State support provided to various forms of childcare should have a pluralistic nature. These provisions are integrally combined with remaining constitutional guarantees of the family’s autonomy, including the right to the protection of family life (article 47 of the Constitution) and the right of parents to ensure their children a moral and religious upbringing and teaching in accordance with their convictions (article 53 paragraph 3). Furthermore, the Constitution limits the possibility of restriction or deprivation of parental rights¹⁶⁶. In the context

¹⁶¹ Judgment of the Constitutional Tribunal of 15 November 2005, file no. P 3/05.

¹⁶² Judgment of the Constitutional Tribunal of 8 May 2001, file no. P 15/00, item III.5.

¹⁶³ Ruling of the Constitutional Tribunal of 28 May 1997, file no. K 26/96, item 3.

¹⁶⁴ Article 32 paragraph 1 of the Constitution of the Republic of Poland stipulates that “all persons shall have the right to equal treatment by public authorities”.

¹⁶⁵ Judgment of the Constitutional Tribunal of 15 July 2010 r., file no. K 63/07. The Constitutional Tribunal consistently points out that differentiating among entities displaying similar features is admissible solely if the differentiating criterion is relevant, proportional and is based on constitutional values.

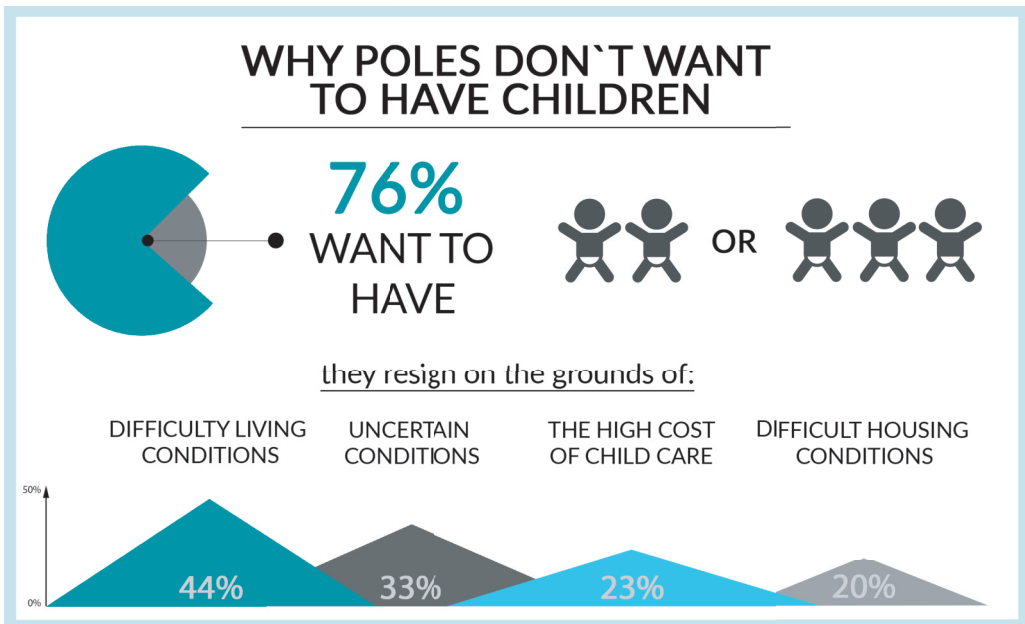
¹⁶⁶ Article 48 paragraph 2 of the Constitution states that “limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment”.

of such explicit constitutional safeguards provided for the family and consistent jurisprudence of the Constitutional Tribunal, the standard of protection and support for the family defined in ordinary legislation, which is lower than in majority of European states, including in the countries of our region, results in a surprise. Astonishment is also awoken by the character of the support provided, as it is not granted in respect of the pluralistic nature of the forms of childcare.

RECENT CHANGES IN LEGAL PROVISIONS CONCERNING FAMILY RIGHTS AND FAMILY POLICY

As regards the changes that deserve attention in the context of the above described obligations of public authorities towards families, as well as the guarantees of family autonomy and protection of child welfare, a number of important measures have been applied and proposed in first 6 months of 2016.

The Child raising benefit, a brand new instrument, unknown to the Polish family policy, which will be discussed in the first part of the present analysis, is of highest social importance. Attention needs to be further drawn to the change in the procedure of placing a child in foster care, which resulted from the amendment of the Family and Guardianship Code. In the public debate, the change was called “a ban on taking away a child due to poverty”. A housing project addressed to families can only be hinted at, as it is in the stage of devising.



Source: J. Czapiński, T. Panek, *Diagnoza Społeczna 2013*, Warszawa 2013, s. 156.
 Respondents could choose no more than three answers

ACT ON STATE AID IN RAISING CHILDREN

In recent years, family policy has been treated by Polish governments as a costly burden on the budget. Although in the last decade the expenses on family policy in our country have grown, the system was incoherent and costly, meeting rather criteria of social policy than family policy in a narrow sense. Many of the solutions presented as family-oriented mechanisms do not have any meaningful relation to the financial standing of families with children. Similarly, material support, relatively small in particular for big families and addressed to the poorest, has up until now had the form of social benefits, which did not compensate in any way for indirect taxes paid by parents in relation to raising children¹⁶⁷. The solutions adopted in Poland in the field of small child care are highly statist in nature in comparison with the legislations of other European states – only care in the collective care centres is supported, and parents who cannot use it (e.g. due to the fact that they live in the countryside) or prefer other models of small child care are totally deprived of support. **Only few solutions, such as parental leave and family relief concerning income tax, are instruments of family-oriented policy as such¹⁶⁸, meeting the criteria of universality, directness and neutrality.**

Up until now, the family-oriented policy mechanisms did not have any significant positive impact on the economic situation of families, which according to Poles is one of the main barriers in making the decision to have children¹⁶⁹. At the same time, the cost of raising a child is currently incurred by the parents themselves, whereas its strong positive external effect spans over the whole society¹⁷⁰. When children grow up, they finance pensions and pay taxes, and the beneficiaries of their work also include childless persons.

¹⁶⁷ In certain European states, the sum of material support is as a rule equal or slightly lower than the average indirect taxes paid in relation to raising a child. See: Report of the Institute for Legal Culture Ordo Iuris, *Jakiej polityki rodzinnej potrzebuje Polska? /What is the Family Policy that Poland Needs?/,* T. Zych, K. Dobrowolska, O. Szczypiński (eds.), Warsaw 2015, in particular pp. 31-68. The report is also available at: demografia.ordoiuris.pl, access: 1 August 2016.

¹⁶⁸ *Ibid.*, pp. 97-153.

¹⁶⁹ J. Czapiński, T. Panek, *Diagnoza społeczna 2013 /Social Diagnosis 2013/,* Warsaw 2013, p. 156.

The above described situation is changed to a large extent by the child raising benefit, previously unknown to the Polish family policy, the aim of which is to compensate for economic discrimination of families, in particular with many children. This approach was directly reflected in the act introducing this family policy instrument. Article 4 paragraph 1 of the act of 11 February 2016 on state aid in raising children¹⁷¹ states that **“the aim of the child raising benefit is to cover the expenses related to raising a child, including providing the right care and fulfilling his or her needs”**. Hence, **it is a confirmation that the state perceives child upbringing as an investment from the economic perspective.**

The act on state aid in raising children (hereafter: ASARC) introduced common child raising benefits for the second and each subsequent child (article 5 paragraph 1 of ASARC) and a child raising benefit for the first child dependent on the income per family member (article 5 paragraph 3 and 4 of ASARC). Adoption of that act constitutes fulfilment of the obligations of public authorities, discussed in the first point, resulting directly from the Constitution of the Republic of Poland. **In the form foreseen for the second and each subsequent child, it is a common benefit, which makes it an instrument of family policy in strict sense – the support will be granted irrespective of the family’s income and the parents themselves will decide on how to use it.** In the current economic conditions, the amount of the benefit, i.e. 500 PLN, compensates for only a part of the cost of raising a child, yet for most of the parents it should constitute important financial support facilitating the performance of child raising duties. Children will be entitled to it until turning 18. Therefore, the benefit covers the whole period of a child’s upbringing (article 5 paragraph 2 of ASARC).

¹⁷⁰ Cf. Ł. Hardt, M. Kot, *Polityka rodzinna jako narzędzie łagodzenia negatywnych trendów demograficznych /Family Policy as a Tool Mitigating Negative Demographic Trends/*, [in:] *W jaki sposób państwo może wspierać rozwój gospodarczy /How the State Can Boost Economic Growth/*, M. Kędziński (ed.), Warsaw 2015, pp. 50–52; Ł. Hardt, *Do bólu ekonomicznie o rodzinach /Families and Economy/*, „Wprost”, 28 June 2015, the text is available at: <http://www.wprost.pl/ar/511992/Hardt-dla-Wprost-Do-bolu-ekonomicznie-o-rodzinach/>; access: 29 July 2015. Hardt and Kot point out that public benefits stemming from bringing up another child significantly surpass private benefits. Therefore, disregarding public benefits when taking decisions concerning procreation may negatively impact fertility rate (Ł. Hardt, M. Kot, op. cit., p. 51).

¹⁷¹ Journal of Laws of 2016, item 195.

The proposed mechanism is based on experience of other European states, as solutions of similar character function *i.a.* in France, the United Kingdom and the Nordic countries. Examples of these countries show, moreover, that certain negative demographic trends may be reversed. To a large extent, the success of such policies depends on direct and real support of families and children and a guarantee of free choice of the form of child-care. Family policy systems in the aforementioned states are characterised by low complexity and bureaucratisation. This impacts their transparency, yet above all obtaining the benefit is relatively simple and there is no requirement to present and verify a number of documents. As a consequence, the budgetary cost related to handling the benefit systems are relatively low¹⁷².

The child raising benefit, which has been in force in Poland for a short time, and which has been applied for by almost

2.5 million families¹⁷³

owes its popularity to the fact that the procedure of obtaining it is characterised by the above mentioned simplicity typical for benefits functioning in other countries. In accordance with article 13 paragraph 5 of ASARC, an application for a child raising benefit maybe submitted electronically via an IT system. The amount of information and the number of documents necessary were limited to a minimum (article 13 paragraphs 3 and 4 of ASARC); parallel to that, **authorities competent for granting child raising benefits were obliged to independently collect information specified in the provisions on population registers** (article 17 paragraph 1 of ASARC) **or to verify it with tax bodies or the minister responsible for public finance, pension and disability pension authorities and public registers, including the PESEL (Universal Electronic System for Registration of the Population) register.** Moreover, persons applying for the child raising benefit for

¹⁷² Ibid, p. 67.

¹⁷³ Data of the Ministry of Family, Labour and Social Policy: <http://www.mpips.gov.pl/aktualnosci-wszystkie/rodzina-500-plus/art,7987,2-5-mln-zlozonych-wnioskow.html>, access: 1 August 2016.

the second and each subsequent child only submit an application and are not required to submit any additional documents (article 13 paragraph 17 of ASARC).

The introduced child raising benefit may constitute one of the pillars of a coherent family policy, next to parental leave and income tax family relief, with significant impact on the financial situation of families with children. However, it needs to be complemented by a system of support of small child care, in particular from the first to the third year of age, based on respect for parents' freedom in selecting the form of small child care¹⁷⁴.

COST OF A CHILD CARE IN POLAND

Age of a child	One child	Two children	Three children	Four children
0-20 y/o	176 000 (40 480)	317 000 (72 910)	422 000 (121 210)	528 000 (121 440)
0-25 y/o	231 000 (53 130)	427 000 (98 210)	587 000 (121 210)	748 000 (172 040)

In the brackets is given a tax amount (VAT), which is discharged to the state budget due to upbringing of the child.

Source: Centrum im. Adama Smitha, Koszty wychowania dzieci w Polsce 2015, Warszawa 2015, p. 7.

AMENDMENT OF THE FAMILY AND GUARDIANSHIP CODE

One of the basic principles of the Polish Family and Guardianship Code is the principle of the child's welfare. It is in a way a constitutional general clause, the reconstruction of which should take place through reference to constitutional axiology and general systemic assumptions. From this point of view, the content of art. 18 of the Constitution, placed among the fundamental principles of constitutional order guaranteeing protection and care of the Republic of Poland to marriage, family, motherhood and parenthood, plays a key role¹⁷⁵. Therefore, raising

¹⁷⁴ Ibid, pp. 132-133.

¹⁷⁵ Judgement of the Constitutional Tribunal of 17 April 2007, file no. SK 20/05

a child in the family milieu is considered appropriate and desired, and hence it is presumed that children's rights are equivalent to rights of the family. **In particular, according to article 48 paragraph 1 of the Constitution, "Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions"**, and in accordance with article 53 paragraph 3 of the Constitution, "Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate". As stipulated in article 96 § 1 of the act of 25 February 1964 – Family and Guardianship Code¹⁷⁶ (hereafter: FGC) "Parents raising and guiding a child under their parental authority are duly bound to care for the child's physical and spiritual development and to equip the child appropriately to work for the good of society according to his or her abilities", and according to article 95 § 2 of FGC **"A child under parental authority owes obedience to his or her parents, and in matters in which he or she cannot take independent decisions and present declarations of will, the child should listen to the opinions and recommendations of parents formulated for his or her best interests."** Therefore, what is the child's welfare cannot be construed solely based on the child's will but must stem from constitutional axiology and the principles of social coexistence concerning the role and the core of the family, and should also take into consideration the parent's will. In particular, a court's intervention in the form of placing a child in foster care cannot be deemed grounded by the premise of a threat to the child's welfare if parents are using coercion towards their child, who is not consenting to undertake actions aimed at his or her development or who is not interested in society's welfare. The threat to the child's welfare also cannot be an expression of the judge's private views, but must be based in constitutional axiology and the duties and rights of its members defined in it. Furthermore, the court should take into consideration the fact that in the case of placing a child in foster care, his or her interest will be protected to a higher extent than up until that time in the family, even if they are not protected there to a degree that would commonly be found optimum. Thus the court should deem a situation in which the family is not meeting its objective obligations resulting from the constitutional axiology, in particular does not ensure the child any upbringing that would prepare him or her to work for the sake of the society a threat to the child's welfare.

¹⁷⁶ Journal of Laws of 1964, no. 9, item 59 as amended

The lack of material help until now (as presented above), which would improve the economic situation of families in a real manner, indirectly contributed to the situation in which the state was intervening into family ties, often causing their disintegration by taking children away. The act of 18 March 2016 amending the act – Family and Guardianship Code was aimed at changing the provision concerning placing the child in foster care so as to strengthen the role of measures foreseen in article 109 §2 items 1 – 4 and forms of assistance to the child’s parents specified in the provisions on supporting family and foster care system¹⁷⁷. Up until now, according to the provisions of law, the court could use the most severe measure in its first decision and place the child in foster care¹⁷⁸.

Placing a child in foster care was so far possible based on article 112³ of FGC, which states that, “Placing a child in foster care should take place after exhausting all other forms of help to the child’s parents, mentioned in the provisions concerning support for the family and foster care system, unless the child’s welfare requires that foster care should be ensured to him or her immediately”. As a result of the adopted amendment, the legislative form of the article was changed, and the word “should” was replaced with unequivocal wording “may only take place if”. Secondly, the court was obliged to first rule other measures based on article 109 § 2 of FGC (in which the legislator grants the court the power to place a child in foster care). These measures include: obliging parents and the minor to specific behaviour (point 1); imposing restrictions on parental responsibility (point 2); subjecting the exercise of parental responsibility to permanent supervision of a probation officer (point 3) and directing the minor to an organisation or institution established for the purpose of providing occupational preparation or to another centre providing partial custody of children (point 4). However, it is not an exhaustive list, as proved by the wording of the provision: “Guardianship Court may in particular”. This was also the interpretation of the Supreme Court: “Based on article 109 of FGC, Guardianship Court can pass any order that the child’s welfare may require in given circumstances. The list contained in §2 is of exemplary nature”¹⁷⁹.

¹⁷⁷ Act of 9 June 2011 on supporting family and foster care system, Journal of Laws of 2011 no. 149 item 887 as amended

¹⁷⁸ This was also the interpretation of the Supreme Court: “Deprivation of parental responsibility, though being the most severe measure, does not have to be preceded by any orders of restricting character” (Decision of the Supreme Court of 3 December 1998, II CKN 871/98).

¹⁷⁹ Decision of the Supreme Court – Civil Law Chamber of 4 March 1999, II CKN 1106/98.

After the amendment, a possible premise to place a child in foster care could be ineffectiveness (as regards removal of the threat to the child) of previously applied measures specified in article 109 § 2 items 1–4 of FGC and of forms of assistance to the child’s parents, as mentioned in the provisions on supporting family and foster care system. Thus for a child to be placed in foster care, cumulative application of measures foreseen in the two legal acts is necessary. The amendment does not state whether these need to be all possible elements; this understanding would, however, be contrary to the principle of the reasonable legislator, as firstly, not all measures must be adequate to a given situation (or applicable in general), and secondly, both catalogues of measures are of exemplary nature, thus their exhaustion is simply impossible. It seems, therefore, that application of just one measure from each of the lists will be sufficient. In practice, it will often be one and the same measure, based on one legal act – order of the court.

Moreover, as a consequence of the amendment the result of applying such other measures was defined in more detail: non-removal of the condition of threat to the child’s welfare. According to the Supreme Court “article 109 § 1 of FGC conditions restriction of parental responsibility on the premise of a threat to the child’s welfare. The court’s intervention on such basis is not dependent on whether the threat was caused by culpable actions of parents and is repressive in nature. According to the prevalent doctrine view the aim of restricting parental responsibility is the child’s protection as well as providing help to parents to execute their parental power appropriately”¹⁸⁰. **Thus the court indeed should in the first place help both the child and the parents, and only if all other measures have been exhausted severe the ties that according to the Convention of the Rights of the Child are one of the child’s fundamental rights¹⁸¹ and one of the most important rights guaranteed by the Constitution of the Republic of Poland¹⁸².** The very Family and Guardianship Code orders the courts to provide assistance to parents in accordance with article 100. **Placing a child in foster care without using less severe measures can barely be considered such assistance and in this context the adopted amendment changes that state of affairs.**

¹⁸⁰ II CKN 1141/00 Decision of the Supreme Court – Civil Law Chamber of 13 September 2000.

¹⁸¹ Journal of Laws of 23 December 1991 CONVENTION OF THE RIGHTS OF THE CHILD adopted by the UN Assembly General on 20 November 1989, article 7 and 9. It was recalled by the Supreme Court in the RESOLUTION of a panel of seven judges of 14 November 2014, file no. III CZP 65/14

¹⁸² Article 18, 47 and 48 of the Constitution.

The last of the changes introduced by the act of 18 March 2016 is entailed in article 1 paragraph 2, according to which placing a child in foster care against the parent's will solely for reasons of poverty is inadmissible. **Referring this provision to the previous interpretation, it needs to be assumed that parent's poverty cannot be understood as a threat to the child's welfare, mentioned in article 109 § 1 of FGC.** However, there are credible statistics on the number of children placed in foster care for that reason. In 2012, the Ministry prepared a study which stated that such cases constituted 1% of all rulings in that case and concerned six children¹⁸³. **However, according to the report by the Supreme Audit Office the study contained serious methodological errors and is not credible, and what is more was not updated. However, irrespective of the actual number of such cases, each placement of a child in foster care due to parent's poverty is undoubtedly contrary to the principle of proportionality and subsidiarity, and the aforementioned rights of the child and rights of parents. Such a far-reaching intervention of the state apparatus should not take place in a democratic state of law following the principles of social justice. That is why the amendment is complementary towards the introduced child raising benefit, the aim of which is also to counteract poverty.**

GOVERNMENT'S PROGRAMME "FLAT PLUS"

At the beginning of June this year, the government presented its programme called "Flat Plus". **According to the declarations of the Prime Minister, Beata Szydło, the aim of the programme is to ensure a safe future for Polish families through solving housing-related problems of Poles.** In its assumptions, the programme is to be common, i.e. it will be addressed to all Poles. Financial and legal instruments are to be used for that purpose.

The "Flat Plus" programme is to be based on 3 main assumptions: construction of flats on the land belonging to the State Treasury, creation of the National Housing Fund, and support saving for one's own housing goals within the framework of Individual Housing Accounts (support to social housing).

¹⁸³ Supreme Audit Office, „Informacja o wynikach kontroli: Funkcjonowanie Asystentów Rodziny w Świetle Ustawy o Wspieraniu Rodziny i Systemie Pieczy Zastępczej” /Results from the Inspection: Functioning of Family Assistants in the light of the Family Support and Foster Care Act/, <https://www.nik.gov.pl/plik/id,8713,vp,10837.pdf>, access: 1 August 2016.

The task of the National Housing Fund, to be established by the act, will entail housing construction based on land belonging to the State Treasury. Within the framework of the Fund, acting according to market principles, new rental flats with affordable rent will be built and with time, it will be possible to acquire ownership title to them. In the opinion of the government, this solution is to increase people's mobility, also on the labour market.

In order to encourage the citizens to implement their housing-related goals by own means, the project's assumptions foresee the creation of Individual Housing Accounts. Programme's participants will be able to open an account in a bank with a bonus for consistent saving. It will be possible to allocate the funds saved on that account to the purchase, construction and own contribution in the case of purchase of property on credit, or housing contribution in a cooperative. Moreover, it will be possible to use the means for improving the standard of the property: its refurbishment or finishing.

The final element of the programme pertains to social housing. It is in a way a complementation of the whole programme through increasing the government's support for social rental housing. The assistance is addressed at local governments, which will be able to claim support in the amount of 35-55% of the construction cost of communal flats. Moreover, entities such as local governments, municipal companies and social construction associations will be able to apply for preferential credits to Bank Gospodarstwa Krajowego for the construction of social rental housing.

CONCLUSIONS

Although family rights and family policy are issues of particular importance in Poland due to serious demographic crisis, no systematic approach to these problems has been applied in recent years. In practice, numerous examples of doubtful family autonomy infringements by administrative institutions were reported¹⁸⁴.

The analysis shows that two important legal measures introduced during the 8th term of Polish Sejm had significant impact on situation of families, with

¹⁸⁴ Cf. *Główne zarzuty niekonstytucyjności względem ustawy o przeciwdziałaniu przemocy w rodzinie*, <http://www.ordoiuris.pl/glowne-zarzuty-niekonstytucyjnosci-wzgle-dem-ustawy-o-przeciwdzialaniu-przemocy-w-rodzinie,3432,analiza-prawna.html>; access 28 June 2016.

particular respect to children welfare, family autonomy and privacy. Both the act introducing child raising benefit and the act amending the rules of placing children in foster care fulfil the constitutional duties of public authorities to provide special care and assistance to the family and respect the autonomy of family life.

The child raising benefit changed the structure of the Polish family policy, in particular through the introduction of a direct and common benefit for the second and each subsequent child. In this form, it is a compensation for parents, in particular of large families, for the cost of bringing up children in the amount equal to the indirect taxes paid by the family every month. It must be emphasised that although the child raising benefit may constitute one of the pillars of a modern family support system, it should be complemented by mechanisms supporting care for children under 3 years of age based on respect for parents' freedom in selecting the form of small child care.

The changes in the Family and Guardianship Code excluding possibility of taking a child solely due to economic reasons manifest the concern for the family, with particular consideration to the welfare of the child, whose fundamental right is to grow up and be brought up by parents. Intervention of public authorities into family relations should be treated as a means of last resort, yet in the first place it should focus on supporting the family in line with the principle of subsidiarity. It must be emphasised that if in a given situation it is necessary to place a child in foster care in order to protect his or her life or health, the court should be mandated to give a decision in this respect after prior analysis of the family's individual situation.

The outline of the planned Flat Plus Programme is congruent with the expectations of Poles who take the housing conditions in which they function as a family into consideration when taking decisions related to procreation. However, it is not possible to assess its value as long as no specific draft of a normative act is presented that would implement the assumptions described in the present analysis. Nevertheless, **the pluralist form of implementation of the programme may guarantee free choice to parents concerning reaching their housing-related goals with the assistance of the state.**