PRAWO W DZIAŁANIU
LAW IN ACTION
38/2019
DOI: 10.32041/pwd.3803

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Family Justice in Poland: An Outline of the Problem Situation and the Optimum Reform Direction**

Support for families is currently listed as one of the key government policies in Poland. It should be noted that family-oriented policies are implemented primarily through social programmes addressing economic, social and demographic challenges. Changes have therefore mostly been made in the area of administrative law; they relate mainly to the social welfare system. Observation of the evolution of Polish laws on family over recent years leads to the conclusion that a fundamental aspect of these changes, namely the protection of family rights[1], necessitates a fundamental decision of a systemic nature: determining the direction of further reforms of the justice system. It must be decided whether protection of family rights will be implemented primarily on the basis of private law and will maintain its judicial character, or will instead be delegated to administrative law bodies. The author of this paper believes that the former option would be definitely more beneficial from the point of view of family protection, as it provides greater protection against arbitrary decisions and ensures a high standard of procedural guarantees of a fair resolution of a family case[2].

Generally, and formally, speaking, matters falling under the aegis of family law (understood as a branch of private law) are accorded judicial protection in the Polish legal system. However, this coincides with an expansion of the purview of administrative authorities, which have increasing influence on the situation of the family, including in the context of private law. The Act of 9 June 2011 on Support for Families and on Foster Care System (consolidated text: Polish journal of laws

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** The manuscript was submitted by the author on 10 February 2019; the manuscript was accepted for publication by the editorial board on 28 February 2019.

1 In this paper, the notion of family rights is understood to refer to the sphere of private law, i.e., the rights and obligations of spouses, parents and children as defined in family law.

2 For a discussion on the overlap of family law regulations in private and administrative law, cf. M. Andrzejewski, *Współpraca sądów rodzinnych i instytucji pomocy społecznej w umieszczaniu dzieci poza rodziną*, Państwo i Prawo 9(2003), 87 et seq. For arguments supporting the contention of judicial protection being a better option that administrative protection, see also M. Andrzejewski, *Rola sędziów rodzinnych w zreformowanym systemie opieki nad dziećmi* [in:] M. Racław-Markowska (ed.), *Pomoc dzieciom i rodzinie w środowisku lokalnym. Debata o nowym systemie*, Warszawa, 2005, 55.

Dz.U. 2018, item 998, as amended) introduced an extensive and casuistically defined system of foster care institutions managed by local authorities. The casuistic approach employed in this method has also been introduced into the Family and Guardianship Code[3] ('FGC'). There appeared a danger that the jurisdiction of family courts would be restricted, e.g. with regard to decisions concerning the placement of a child in foster care. This trend was reflected in the case law, as courts began issuing orders for the placement of a child in a foster family or a care and educational institution without naming the specific family or institution with which the child is to be placed and instead delegating this task to administrative authorities. This practice was only partially criticized (in respect of foster care placements), in a resolution of a seven-judge panel of the Supreme Court dated 14 November 2014[4]. Issued in response to a question of law presented by the Ombudsman for Children. In another judgment (of 24 November 2016)[5], the Supreme Court rejected the linguistic interpretation of the provisions of the Act on Support for Families and on Foster Care System, opting for a flexible interpretation and emphasising the primacy of the principle of protecting the child's best interests over regulations of administrative law. In this way, the Supreme Court extended the decision-making powers of guardianship courts in selecting the appropriate form of foster care for a given child[6]. These rulings of the Supreme Court should be lauded. However, it must also be noted that the very fact that such decisions needed to be made proves that administrative law had extended its influence on family law, which was mentioned above. Another example of this disquieting trend is the Domestic Violence Prevention Act of 29 July 2005 (consolidated text: Dz.U. 2015, item 1390), which, in Article 12a, authorizes a social worker to remove a child from parental custody. Empirical research on these provisions revealed substantial risks, and even cases of abusive application of the aforementioned measure. These risks involve not only procedural non-compliance, but also instances where a child was removed despite the absence of substantive and legal grounds for such a measure[7].

The aforementioned risks associated with the adoption of a specific system of family rights protection and a specific regulation method may also be observed in certain legislative measures implemented in those systems in foreign jurisdictions that allow a greater degree of administrative interference than that admissible under Polish law.

First of all, we should mention the German Youth Welfare Offices (*Jugendamts*), whose activities are attracting increasing criticism, including at European Union level. The most concerning aspect of *Jugendamt's* work is their power to place a child in foster care. The legal grounds for this interference in the rights of family

[3] The Act of 25 February 1964 – Family and Guardianship Code (consolidated text: Dz.U. 2017, item 682, as amended); an example of problems resulting from this approach is the incorrect use of the *exhaustive* list of forms of foster care in the context of Article 109(2) FGC, which contains a *non-exhaustive* list of types of guardianship court orders. Such legislative errors are a consequence of mixing legislative measures used in private and administrative law.

[4] Case No. III CZP 65/14, published in OSNC 4/2015, item 48.

[5] II CA 1/16, OSNC 7–8/2017, item 90.

[6] Cf., *in extenso*, J. Słyk [in:] K. Osajda (ed.), *Komentarze Prawa Prywatnego. Tom V. Kodeks rodzinny i opiekuńczy. Komentarz. Przepisy wprowadzające KRO*, Warszawa, 2017, 1317–1318.

[7] Cf. J. Słyk, *Odbieranie dzieci rodzicom na podstawie art. 12a ustawy z 29.07.2005 r. o przeciwdziałaniu przemocy w rodzinie*, Prawo w Działaniu 24(2015), 263 et seq.

members (the request of the child, a sudden threat to the child's welfare in the absence of an objection by a guardian or lack of possibility of promptly obtaining a court ruling, the arrival of an unaccompanied child in Germany, as per § 42, Book VIII of the *Sozialgesetzbuch*) are defined so vaguely that much room is left for potential abuses[8]. Notably, a complaint against a *Jugendamt*'s decision to place a child in foster care can be lodged with the administrative court[9]. The *Jugendamt's* operations have been criticized internationally. These offices have been accused of, among other things, frequent human rights violations, acting in an uncontrollable manner, and not complying with court rulings[10].

Controversy also surrounds the activities of the Norwegian Child Welfare Services (*Barnevernet*). Concerns related to the *Barnevernet*'s work are expressed, inter alia, in a draft resolution (and the appended explanatory memorandum) presented by the Parliamentary Assembly of the Council of Europe on 6 June 2018 (doc. 14568). The resolution explicitly states, in the context of findings concerning the Norwegian social welfare system, that a child's right to be protected from all types of violence, abuse and neglect must be accompanied by their right not to be separated from their parents against their will and that any exceptions to that rule must be subject to judicial oversight.

In order to oppose the trends described above, it is necessary not only to halt the process of extending the remit of administrative authorities in the area of family law, but also, and above all, to significantly strengthen the system of judicial protection of family rights, i.e. the family justice system. Accordingly, an appropriate reform should not aim to lay down an absolute principle of family autonomy, but to ensure that any measures interfering with this autonomy, which are necessary in certain situations, are chosen in accordance with the principle of proportionality and with respect for the rights of both the child and the parents; such measures should also receive the most robust guarantees against the abuse of public authorities' power to interfere with family life. Judicial procedures seem the most appropriate for attaining the above objectives, provided that they are tailored to meet the specific needs of family rights protection, which inevitably means that the family justice system must itself be bolstered, both professionally and organizationally.

The concept of family justice was developed in the early 20th century in the United States of America. This concept was based on experiences related to the development of the juvenile justice system and stemmed from the belief that dealing with family matters requires competence in solving social problems, as a frequent cause of problems within the family[11]. A separate family justice system is also associated with the organizational advantages that result from appointing a single court to handle all family matters, which include facilitation of a judge's access to experts in the field of social sciences, prevention of jurisdictional conflicts between different courts dealing with specific aspects of family cases, and acceleration of court

[8] Cf., *in extenso* [in:] K. Kryla-Cudna, *Niemiecki Urząd do spraw Dzieci i Młodzieży (Jugendamt)*, Prawo w Działaniu 25(2016), 194 et seq.; cf. also W. Szafrańska, *Niemiecki Urząd ds. Dzieci i Młodzieży (Jugendamt)* [in:] A. Ziółkowska, A. Gronkiewicz (eds.), *Rodzina w prawie administracyjnym,* Katowice, 2015, 353 et seq.
[9] K. Kryla-Cudna, *Niemiecki Urząd*…, n. 8, 199.
[10] Cf. the Bamberg Declaration, as described in K. Kryla-Cudna, *Niemiecki Urząd*…, n. 8, 204.
[11] Cf. Ch.W. Hoffman, *Social Aspects of the Family Court*, 3(10) Journal of the American Institute of Criminal Law and Criminology, 416 (1919).

proceedings, which may be achieved thanks to centralized access to case files[12]. On the other hand, the personal qualifications and availability of a judge and the high operating costs of family courts have been identified as key risks relating to the implementation of the concept of family justice[13]. Despite the passage of time, the above-mentioned benefits and risks seem to remain fully relevant.

In Poland, the implementation of the concept of family justice began more than half a century ago, initially in the form of experiments and pilot programmes. It should be noted that the original assumption was to design a family justice system based on three pillars, namely: appointing a single judge to hear all types of matters concerning the family; upholding high professional standards for family judges; and providing support for family courts through a network of expert institutions[14]. Although this process started long ago, it has not been completed. Moreover, certain solutions were adopted that proved inconsistent with the original objectives of the family justice system. The first court division that handled only family cases was established on 1 July 1962 in the County Court in Katowice. However, it was not until 1973 that the Minister of Justice issued an executive order allowing the creation of family courts, initially as part of an experiment. Under this scheme, the first seven family courts were created in 1974[15]. In the initial, experimental stage of the implementation of the concept of family justice in Poland, family divisions exercised wider jurisdiction than their contemporary counterparts, since they also heard adult criminal cases that were related to the protection of family and children, as well as cases concerning the division of marital property. Since 1 January 1978, by the executive order of the Minister of Justice of 28 December 1977, ninety--seven Family and Juvenile Divisions (also referred to as 'family courts') have been established; their jurisdiction also covered a similarly wide range of cases[16]. In the early 1980s, criminal cases were removed from the jurisdiction of family courts[17].

Among the significant changes that have negatively affected the operation of the family justice system in Poland one should mention the amendment introduced by the Act of 13 July 1990 (Dz.U. 1990, No. 53, item 306), which transferred divorce cases to the jurisdiction of provincial (currently – regional) courts. This amendment removed a key category of family cases, which involves a nexus of family law problems, from the jurisdiction of courts specialising in family matters only to reallocate these cases to courts which deal with 'typical' civil cases and are above all guided by the principle of adversarial proceedings[18].

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[12] Cf. J. Kubiak, W. Kasprzycki, *Sądy rodzinne – idea i uregulowania prawne*, Nowe Prawo 7–8(1977), 1049.
[13] J. Kubiak, W. Kasprzycki, *Sądy rodzinne*..., 1050.
[14] M. Andrzejewski, *Rola sędziów*..., 55.
[15] *Sądy rodzinne – kompetencje, zadania, organizacja*, Palestra 4/244(1978), 59 et seq.
[16] J. Kubiak, *Sądy rodzinne: od eksperymentu do oryginalnego rozwiązania*, Zeszyty Naukowe Instytutu Badania Prawa Sądowego 7(1977), 201 et seq.
[17] For a discussion on then-proposed scope of jurisdiction of family courts, cf. F. Zedler, *Sądy rodzinne. Wybrane zagadnienia organizacyjne i procesowe*, Warszawa, 1984, 15 et seq.; F. Zedler, *Z rozważań nad kompetencją sądów w sprawach rodzinnych*, Ruch Prawniczy Ekonomiczny i Socjologiczny 3(1980), 165 et seq.; for a further discussion on the introduction of the family justice system in Poland, cf. also M. Bańkowska, *XX-lecie sądownictwa rodzinnego w Polsce*, Przegląd Sądowy 4(1999), 131–136; M. Arczewska, *Historia i organizacja sądów rodzinnych w Polsce*, Problemy Opiekuńczo–Wychowawcze 1(2007), 49–56; M. Arczewska, *Społeczne role sędziów rodzinnych*, Warszawa, 2009, 70–76.
[18] The amendment has been widely criticized in scholarly writings: cf. W. Stojanowska, *Rozwód a ochrona rodziny i dziecka – wybrane zagadnienia*, Rodzina i Prawo 7–8(2008), 6 et seq.; T. Sokołowski [in:] T. Smyczyński (ed.), *System Prawa Prywatnego. Tom 11. Prawo rodzinne i opiekuńcze*, Warszawa, 2014, 726;

The principle of the uniformity of the family justice system has also been departed from at the organizational level. The Act of 18 August 2011 Amending the Act on the System of General Courts (Dz.U. 2011, No. 203, item 1192), abolished the principle of the obligatory creation of family and juvenile divisions in district courts. The most recent reform of the courts system, implemented by the Act of 20 July 2018 (Dz.U. 2018, item 1443), introduced an even more flexible model of organization of general courts, making the creation of *all* types of divisions optional. These changes, resulting, among other things, from the need to align the organizational structure of courts with the availability of personnel, should be complemented by legislative arrangements ensuring that family matters are heard by specialized courts (judges).

Taking into account the above developments, at present, the system of family justice in Poland comprises organizationally separate family and juvenile divisions of district courts, which hear family matters in the first instance, and a network of 'auxiliary bodies' of the family court, i.e. court-appointed family support officers (*kurator sądowy*) and consultative teams of court experts[19].

The above-mentioned trends in the functioning of the family justice system in Poland, namely halting or even reversing the development of this concept, have resulted in numerous proposals being submitted over the years for legislative reforms aimed at returning to the original principles of the family justice system. These proposals have come from, in particular, the Polish community of family judges, represented by two professional organizations: the Association of Family Judges 'Pro Familia' and the Association of Family Judges in Poland[20]. The annual congresses of these associations are an opportunity for adopting resolutions that define the desired direction of legislative amendments in the field of organization and operation of the family justice system. In the last five years, the following postulates have been put forward (some repeatedly)[21]:

1. Specialized family divisions and judges should be appointed in general courts of all levels.
2. Judges should have access to professional education courses in psychiatry; doctors should be able to enrol in courses in child and adolescent forensic psychiatry.
3. Family judges should be assessed in terms of the efficiency of adjudication in family matters; such efficiency should be evaluated on the basis

a critical assessment of the changes in jurisdiction to hear divorce cases based on the results of empirical studies, cf. M. Domański, *Oddalenie powództwa o rozwód w sprawach, w których małżonkowie mieli wspólne małoletnie dzieci w świetle orzecznictwa sądów powszechnych*, Prawo w Działaniu 14(2013), 192 et seq.; M. Domański, *Orzekanie o pieczy naprzemiennej w wyrokach rozwodowych*, Prawo w Działaniu 25(2016), 146; M. Domański, *Powierzenie wykonywania władzy rodzicielskiej jednemu z rodziców w wyroku rozwodowym*, Prawo w Działaniu 21(2015), 55 et seq.

[19] Discussing aspects related to the functioning of these bodies goes far beyond the scope of this paper. However, it should be noted that these aspects are no less important for the operation of family justice as a system.

[20] The views of family judges on the functioning of the family justice system and their role in this system have already been explored by legal scholars. Cf. E. Holewińska-Łapińska, *Wyniki badań opinii sędziów o przedstawionym w „Zielonej księdze" usytuowaniu prawa rodzinnego w przyszłej kodyfikacji*, Zeszyty Prawnicze UKSW 8.1(2008), 297 et seq.; M. Arczewska, *Społeczne role sędziów rodzinnych – wyniki badań własnych*, Rodzina i Prawo 3(2007), 9 et seq.; M. Arczewska, *Społeczne role…,* n. 17, 137 et seq.

[21] The list of these proposals has been compiled on the basis of resolutions adopted at the end of annual congresses of the Association of Family Judges in Poland, on 18 September 2013, 25 September 2014, 10 September 2015, 22 September 2016, and 20 September 2017.

of the duration of proceedings, taking into account the particularities of a given case. This assessment should include the conduct of cases in enforcement proceedings.

4. New rules for horizontal promotion of distinguished family judges should be developed; these new rules should co-exist with the existing procedures for assessing the qualifications of judges for the purposes of their promotion.
5. The process of reducing the number of judicial posts in the family justice system should be stopped.
6. A robust opposition should be raised against the trends of 'administrativization' of family law, restricting the jurisdiction of family courts, and imposing restrictions on the unconstrained and independent resolution of family cases.
7. The ongoing cooperation between family courts and institutions and organizations providing assistance, support and protection for the family and the child should be extended and strengthened.
8. The responsibilities and powers of authorities and institutions cooperating with the family justice system, and in particular the responsibilities and powers of court-appointed family support officers related to the enforcement of judicial decisions should be clearly defined, and day-to-day cooperation in this area should be expanded and intensified.
9. The laws governing the creation and functioning of consultative teams of court experts as well as and selection of their staff should be amended in order to ensure that family courts have access to effective and meaningful diagnostic assistance in the proceedings pending before them.
10. A separate Section with provisions on enforcement proceedings in guardianship and custody matters should be introduced into the Code of Civil Procedure.
11. A new comprehensive juvenile justice regulation, aligned with current social realities and EU standards, should be introduced.
12. The procedural rules applying to the enforcement of parental contact orders should be amended in order to improve their effectiveness.
13. The procedures concerning maintenance payments should be simplified.
14. Provisions regarding interim relief proceedings in family matters should be amended to better address the specific nature and features of these matters and to streamline the conduct of family cases at this stage as well as to prevent protraction.
15. An effective, centralized system for the referral of juveniles to psychiatric hospitals or other appropriate medical facilities should be put in place.
16. The Sober Upbringing and Alcoholism Prevention Act should be amended with respect to family courts' authority to order mandatory addiction treatment.
17. The obligation of sobriety and the consequences of a failure to comply with that obligation by pregnant women should be regulated by statute.
18. Social assistance centres should be obliged to effectively identify candidates for guardians of persons declared legally incapacitated.

19. Separate procedural provisions for cases falling within the scope of 'medical' legislation should be introduced.
20. Mediation in family and juvenile cases should be promoted, both before and after a case is referred to a court.
21. The Family and Guardianship Code should be maintained as a standalone codification.

The above proposals also contain a diagnosis of how the family justice works in Poland. Moreover, the proposals refer to a variety of aspects of family justice: they concern structural issues, they are connected with specific jurisprudential problems that must be addressed by the legislator, and they also refer to a policy pursued by the Ministry of Justice in respect of the organization of general courts. Although all these problems ultimately affect the quality of adjudication in family matters, given the purpose of this paper, which is to define the basic principles of a reform of the family justice system, attention should be paid mainly to the structural aspects, bearing in mind, however, that even a perfectly organized family justice system may prove ineffective without appropriate procedural regulations or a proper personnel policy.

In view of the abovementioned risks to the system of judicial protection of family rights, the original principles guiding the creation of the family justice system, its evolution to date, as well as the proposals put forward by scholars and family judges, one should identify the following areas of desired structural changes.

The key objective of the reform should be to separate the family justice system in organizational terms. At present, one should acknowledge that it would be greatly difficult to create a dedicated and independent system of family courts, as is the case with military courts. This option appears impractical because of the considerable problems that would be likely to affect the organization (especially staffing) and jurisdiction of such courts: some of the cases handled by guardianship courts are closely related to civil law, both property law and personal status law. On the other hand, the most appropriate approach is to transfer exclusive jurisdiction over family matters to special family and juvenile divisions of general courts. The family and juvenile divisions should be established in courts of first and second instance, i.e. district and regional courts[22]. Such a structural arrangement is crucial for achieving the purpose of the family justice system, which is to attain an appropriate level of professionalism of judges in the areas of competence essential for hearing family cases (e.g. psychology, pedagogy, social rehabilitation). Involving family divisions in the processing of family cases in both instances would be beneficial for the purposes of judicial review, whereas the current system, in which decisions of specialized family courts are usually reviewed by 'ordinary' civil

[22] This proposal was made by, among others, the Chief Justice of the Polish Supreme Court, who, recognizing the particular professional challenges for family judges, advised that the establishment of specialized family divisions be taken into consideration, also in regional courts; cf. *Pierwszy Prezes Sądu Najwyższego, Uwagi o stwierdzonych nieprawidłowościach i lukach w prawie*, Warszawa, 2015, 44–45, http://www.sn.pl/osadzienajwyzszym/Uwagi_PPSN_luki_w_prawie/luki-w-prawie-2015.pdf (accessed on 17 January 2019); and also *Pierwszy Prezes Sądu Najwyższego, Uwagi o stwierdzonych nieprawidłowościach i lukach w prawie,* Warszawa, 2016, 49–50, http://www.sn.pl/osadzienajwyzszym/Uwagi_PPSN_luki_w_prawie/luki-w-prawie-2016.pdf (accesed on 17 January 2019).

courts, should be assessed as inconsistent and impractical. The creation of family divisions in both instances would also create realistic promotion opportunities for family judges sitting in district courts, who could make full use of their expertise to advance their professional careers[23].

The aforementioned reforms should be accompanied by abolition of the appellate jurisdiction of courts of appeal in family cases. Due to their position within the court system, courts of appeal are unable to adjudicate in family cases in a fully functional manner, i.e. in permanent cooperation with auxiliary bodies of the family courts (family support officers, consultative teams of court experts). The establishment of family and juvenile divisions in district and regional courts should therefore be accompanied by the submission of all family matters to the jurisdiction of district courts as courts of first instance. Transfer of divorce and separation proceedings to these courts poses a serious organizational challenge and could therefore be carried out over a longer period of time, which would be required for a readjustment of the organizational and staffing resources within the system of general courts. However, this jurisdictional rearrangement clearly has merit as no tangible benefits are associated with divorce cases being handled by regional courts. There is no evidence that regional courts ensure a more professional assessment of family law questions, demonstrated by e.g. a reduction of the number of divorces. On the contrary, the empirical studies of judicial practice mentioned earlier suggest that in deciding on family rights, civil divisions of regional courts often rely heavily on the principle of adversarial proceedings, a feature characteristic of 'typical' civil cases, which adversely affects the quality of adjudication on issues such as the parental authority of divorcing parents.

The organizational separation of the family justice system must be coupled with the creation of mechanisms ensuring an adequate level of competence of judges hearing family and juvenile matters[24]. Currently, the obligation for judges to continuously improve their professional qualifications results from Article 82a of the Act of 27 July 2001 on the System of General Courts (Dz.U. 2018, item 23, as amended – hereinafter referred to as the 'Courts Act'). This general obligation is imposed on all judges and does not require development courses to be taken on a regular basis. There is no continuing development regulation specifically designed for a given profile of judicial activities. Improving the qualifications of family judges therefore depends on their commitment and the educational offer presented to them, in particular by the National School of the Judiciary and Public Prosecution as the provider of the relevant professional and continuing education services (Article 2, Article 15a et seq. of the National School of the Judiciary and Public Prosecution Act of 23 January 2009, Dz.U. 2018, item 624, as amended). Arguably, a proposal to introduce the requirement of field-specific education (a degree in psychology or pedagogy) for family judges seems excessive. A family judge does not need to have the professional skills of an expert witness, but should have the ability to assess

[23] M. Arczewska, *Społeczne role*…, n. 20, 22.

[24] This issue has been repeatedly raised in scholarly writings over the years. Cf., e.g. F. Zedler, *Sądy rodzinne*…, n. 17, 40–45; M. Arczewska, *Społeczna role*…, n. 20, 20–21; M. Arczewska, *Społeczne role*…, n. 17, 111–117; E.Holewińska-Łapińska, *Wyniki badań*…, n. 20, 299; cf. also the argument raised by M. Andrzejewski, who puts a greater emphasis on support for, and the development of, expert institutions assisting family courts: M. Andrzejewski, *Rola sędziów*…, n. 2, 59.

evidence (which has special character in family cases) and should know how to receive such evidence and how to select appropriate measures that interfere with family rights (e.g. the hearing of a child) as well as be familiar with social welfare institutions and foster care systems, services provided by NGOs, etc. In this context, the best course of action is, arguably, to set up a system of advanced courses dedicated to family judges, the completion of which would be required from all judges sitting in family and juvenile divisions[25]. Such courses would include selected topics related to the family judge's working methodology as well as developmental and educational psychology, pedagogy, psychiatry, social rehabilitation, social welfare system, and foster care system. The organization and delivery of the courses may be entrusted to the National School of the Judiciary and Public Prosecution through an amendment to the National School of the Judiciary and Public Prosecution Act. The requirement of completing continuing education courses may be imposed on family judges by way of an amendment to the Courts Act.

The particular character of work in a family court, which means being constantly involved in solving problems affecting families, is a significant psychological burden for judges, who themselves need special support. Such support should ensure that professional standards in the work of judges are maintained, their skills are enhanced, and that judges are protected against professional burnout; this support should also enable judges to acquire self-assessment and problem identification skills and to strengthen their communication skills. All these goals can be achieved through supervision, provided on an individual or group basis. At this point one should recall the experience of the Ministry of Family, Labour and Social Policy, which implemented a programme of supervision for social workers. This supervision is envisaged in Article 121a of the Social Welfare Act of 12 March 2004 (Dz.U. 2018, item 1508, as amended) and in an executive regulation issued on the basis of Article 121a thereof. The model of supervision provided for in these normative acts, together with a definition of its objectives, may serve as an inspiration for the reform of family justice. Following the example of the supervision scheme for the social welfare system, the implementation of a similar system for family judges should start with the employment of a sufficient number of supervisors to support the judges of all family and juvenile divisions in Poland. A system of professional qualifications and training for supervisors should therefore be established. As in the case of the aforementioned legislation, the specifics of a supervision system may be laid down in an executive regulation. Creating the opportunity to undergo supervision for judges requires an amendment to the Courts Act.

As has already been mentioned, a reform of the family justice system should be accompanied by the Ministry of Justice's organizational efforts in the area of staffing policy or a workload assessment system. These efforts should take into account the unique factors specific to the work of a family judge (e.g. enforcement proceedings in guardianship and custody cases), which are absent in other areas of general courts' judicial activity[26].

[25] M. Arczewska formulated this proposal in a similar way in M. Arczewska, *Społeczne role*…, n. 17, 21.

[26] It is worth pointing out that during the period when the family justice system was introduced in Poland, the time-consuming nature of a family judge's work was recognized as a significant burden, cf. M. Arczewska, *Społeczne role*…, n. 20, 75–76.

Another crucial factor is good organization of the work of auxiliary bodies of the family court, i.e. court-appointed family support officers and consultative teams of court experts[27]. Optimum working conditions for these bodies must be ensured to allow them to focus on fulfilling their assigned tasks rather than on bureaucracy. It should be strongly emphasized that without efficient and competent auxiliary bodies, the family court is unable to perform its functions.

The foregoing directions for a reform of the system of general courts pose a major legislative and organizational challenge. In particular, it could be difficult to make all such changes in one step. As already mentioned, in the 20th century, when laws establishing the system of family justice in Poland were introduced, the method of gradual implementation of this concept was used, sometimes on an experimental basis. Nowadays, the constitutional principles of the rule of law arguably prevent the implementation of any experimental reforms in the family justice system. However, it is possible to establish appropriate transitional periods to allow for a gradual introduction of changes. On the other hand, any such difficulties should stand in the way of a reform, which is presently necessary to protect family rights and oppose the trends outlined above.

Abstract

Jerzy Słyk, *Family Justice in Poland: An Outline of the Problem Situation and the Optimum Reform Direction*

The paper discusses the development and functioning of the family justice system in Poland and the necessary legislative amendments in this area. At the outset, the author describes the most efficient mechanisms for the protection of family rights, pointing to judicial protection as the most appropriate option as compared to administrative law measures. Next, the discussion moves on to the origins and evolution of legislative measures that created the family justice system. At this point, legal changes that undermine the original structural concept of family justice are noted. An outline of proposals for family justice reform, made by the community of family judges, is also presented. The findings presented in the paper serve as a basis both for the identification of the key areas in need of legislative amendments and for the definition of a framework for reform proposals.

Keywords: *Family justice system, family courts, family law, protection of the family*

Streszczenie

Jerzy Słyk, *Sądownictwo rodzinne w Polsce – zarys sytuacji problemowej i optymalny kierunek reformy*

W artykule omówiono problematykę tworzenia i funkcjonowania sądownictwa rodzinnego w Polsce oraz niezbędnych zmian legislacyjnych w tym zakresie. W pierwszej kolejności zostało omówione zagadnienie optymalnych mechanizmów ochrony praw rodzinnych. Jako najwłaściwszą wskazano ochronę sądową, przeciwstawiając ją instrumentom administracyjnoprawnym. Następnie została omówiona geneza i ewolucja rozwiązań prawnych tworzących system sądownictwa rodzinnego. Wskazano również zmiany prawne przeciwstawiające się tej koncepcji ustrojowej. Przedstawiony został też zarys postulatów de lege

[27] For a diagnosis of the current problems with regard to consultative teams of court experts, see J. Włodarczyk-Madejska, *Efektywność opiniodawczych zespołów sądowych specjalistów*, Prawo w Działaniu 33(2018), 242 et seq.

ferenda, zgłaszanych przez środowisko sędziów rodzinnych w omawianym zakresie. Dokonane ustalenia prowadzą do wskazania głównych obszarów niezbędnych zmian legislacyjnych i określenia ramowych propozycji reformy.

Słowa kluczowe: *sądownictwo rodzinne, sądy rodzinne, prawo rodzinne, ochrona rodziny*

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