P-ISSN 2233-3746 / E-ISSN 2720-782X
https://doi.org/10.60131/jlaw.2.2024.8314

Łukasz Mirocha*

Crucial Changes in Polish Regulation of Parental Authority Over the Last 100 Years

The article discusses significant changes in Polish family law over the past century. It focuses on the concept of parental authority, explaining its meaning and position in Polish law in the first part of the article. The following section mentions and comments on legal documents related to parental authority during the last century. The final section investigates five legal changes in the institution under study which the author considers crucial for its development. These changes include the legal status of men and women in relation to parental authority, the legal status of out-of-wedlock children, the predominant values underpinning parental authority, the prohibition of corporal punishment, and the state's interference with parental authority. The article argues that despite the changes in legal, political, and economic systems experienced by Poland over the last century, there has been significant continuity and stability in the development of Polish family law.

Keywords: *family law, parental authority, changes in law, protection of the good of the child, disciplining children, out-of-wedlock children*

1. Introduction

The year 2024 marks the 60th anniversary of adopting the Polish Family and Guardianship Code (*Kodeks rodzinny i opiekuńczy*[1]). The fact that the Polish main legal act governing family law remained in force for almost 60 years might be confusing. It should be stressed that such a long period of its force does not mean the realm under study has been free of changes and shifts, and legal regulations have avoided amendments. Considering a period extended of about 40 years, i.e., the last century, which will allow us to examine the time after World War I until now, can demonstrate even greater dynamics in the development of Polish family law.

The last hundred years of Polish history can be divided into three distinct periods: the interwar period between World War I and World War II, the communist-socialist era from 1945 to 1989, and the current democratic era[2]. Each of these periods is strongly linked to a different socio-economic and

* Barrister, Doctor of Law, Assistant Professor at the Institute of Law and Administration, Pomeranian University in Slupsk, https://orcid.org/0000-0002-1498-2960.

1 Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy, Dz.U.2023.2809 consolidated text of 2023.12.29.

2 I omit the time of World War II, during which family law, like other branches, was affected by invading: Nazi Germany and the Soviet Union; on family law in this period see: *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 66-69.

legal system, which has significantly influenced the dynamics of legal changes. This might provoke the impression that family law changes followed political shifts. However, while many legal changes in family law have been enacted over the last century, they were not necessarily linked with changes in socio-economic or political systems. Family law is a branch of law that is deeply rooted in the biological aspects of human life and, moreover, reflects society's moral convictions and customs. These traits contribute to its consistency and stability, making it resistant – to some extent – to political shifts.

The article discusses essential legal changes in Polish parental authority regulations over the past 100 years. Referring to the changes under study as "crucial" may introduce subjectivity. It should be explained that the article aims to analyze changes of "watershed" importance that have significantly impacted almost all citizens. The shifts discussed in the article have firm axiological grounds and are not of a purely technical nature. Still, the arbitrariness caveat can be raised against issues selected to examine in the article.

The first part of the article presents the concept of parental authority (*władza rodzicielska*) in Polish law and discusses controversies concerning it. The second section deals with the issue of sources of Polish law regarding parental authority over the last hundred years. The final section explores substantive legal changes in parental authority that occurred in the period under study.

2. The Concept of Parental Authority in Polish Family Law

The Family and Guardianship Code does not provide a direct legal definition of parental authority[3]. This situation is nothing new in the Polish legal system, as previous legal acts governing the issue also refrained from defining the concept of parental authority. Legal regulations enforced in states that participated in partitions and inherited by the newly reestablished Polish state in 1918 after the partitions period also lacked the definition of parental authority[4]. Polish scholars argue that construing the definition of parental authority is next to impossible because of the variety of situations this concept covers. Due to that, definitions proposed by lawyers are of descriptive and incomplete character[5].

Polish academic thought continues to discuss the legal character of parental authority. As early as 1983, Tomasz Sokołowski could enumerate at least five concepts of parental authority proposed by Polish legal academics and proposed his own. The overwhelming number of authors claim that parental authority should be described as an entitlement – a subjective right; however, this stance is being constantly questioned by advocates of the stance stressing the importance of parental duties[6].

---

3 *Stępień M.*, Istota władzy rodzicielskiej, Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne, 27, 2019, 62; *Smyczyński T.*, Prawo rodzinne i opiekuńcze, Warszawa, 2009, 212.

4 *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010, 155-156.

5 *Mostowik P.*, Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym, Kraków, 2014, 55.

6 *Sokołowski T.*, Charakter prawny władzy rodzicielskiej, Ruch Prawniczy, Ekonomiczny i Socjologiczny, Rok XLIV, zeszyt 3, 1982, 123-124; *Winiarz J.*, Prawo rodzinne, Warszawa, 1977, 214; *Smyczyński T.*, Prawo rodzinne i opiekuńcze, Warszawa 2009, 212; *Stępień M.*, Istota władzy rodzicielskiej, Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne, 27, 2019, 68.

The latter stance has a strong basis in Article 95 of the Family and Guardianship Code, which states: "Parental authority includes, in particular, the obligation and right of parents to take care of the child's person and property and to raise the child, respecting his or her dignity and rights." It is worth emphasizing that an earlier legal act governing parental authority – the Family Code of 1950[7], included Article 54, which used almost identical wording to describe parental authority but placed parents' rights first, whereas parental obligations followed them. The abovementioned influential concept of parental authority proposed by Tomasz Sokołowski asserts that it comprises three legal relations: the first between parents and children (family-law relation), the second between parents and other subjects of civil law relation (civil-law relation), and the third between parents and the state, e.g., family law court (administrative-law relation)[8]. Contemporarily, there is consensus in academic writing and legal doctrine that parental authority mainly relies on obligations burdening parents, who should use their rights to benefit their children. Consequently, parental authority is perceived as a sum of parental obligations and duties, with an apparent priority of the former and an instrumental function of the latter.

Scholars have discussed that the term "authority" (*władza*) does not reflect the emphasis on parental obligations. The term "authority" was traditionally used by Polish legislators, at least after World War II, but was also applied in legal acts before that period. It originates in ancient Roman *patria potestas* and might be suitable for legal regulations prioritizing parental and, particularly, men's rights towards children or other family members. However, nowadays, it is not compliant with the axiology of family law[9]. The ongoing terminological debate intensifies each time the Polish legislator proposes a significant family law amendment. This might be exemplified by Bronisław Dobrzański's considerations over replacing the term "authority" with a more appropriate one before enforcing the Family and Guardianship Code in 1964. The author noticed that Russian or Bulgarian regulations referred to "parental rights, whereas Hungarian law referred to "parental supervision." He also argued that the term "authority" is associated with public law rather than the private sphere[10].

Over the last three decades, the controversy concerning the term "parental authority" has been fueled by the influence of international and European law. The Convention on the Rights of the Child (1989)[11] relates to "responsibilities, rights and duties of parents" while the European Union and the Council of Europe legal acts mention "parental responsibility" which constitutes a concept broader than "parental authority," but result in erasing "parental authority" from the scope of legal terminology[12].

---

7 Ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny, Dz.U.1950.34.308 of 1950.08.22.

8 *Sokołowski T.*, Charakter prawny władzy rodzicielskiej, Ruch Prawniczy, Ekonomiczny i Socjologiczny, Rok XLIV, zeszyt 3, 1982, 133.

9 *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014, 161-163; *Winiarz J.*, Prawo rodzinne, Warszawa, 1977, 213; *Grzybowski S.*, Prawo rodzinne. Zarys wykładu, Warszawa, 1980, 187.

10 *Dobrzański B.*, *Władza rodzicielska w projekcie kodeksu rodzinnego i opiekuńczego*, Palestra, 7/4(64), 1963, 27-28.

11 United Nations General Assembly resolution 44/25 of 20 November 1989.

12 *Mostowik P.*, Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym, Kraków, 2014, 63-64, 71; *Stępień M.*, Istota władzy rodzicielskiej, Studenckie Prace Prawnicze,

Not all parental behaviors toward the child are covered by parental authority. Polish law distinguishes parental authority from the right to contact children or the duty to maintain them (alimony)[13]. There is a consensus among legal scholars that the concept of parental authority comprises three elements: care over the person of a child (*piecza nad osobą dziecka*), supervision of the property of a child (*piecza nad majątkiem dziecka*) and representation of a child (*przedstawicielstwo*).

3. Sources of Law

In 1918, the Polish state was restored as the Republic of Poland (*Rzeczpospolita Polska*) after 123 years of partitions. The state's authorities confronted the situation in which different legal systems governed various parts of its territory. Three different legal systems were inherited after states which participated in partitions. Another legal system was valid in the territory of the Kingdom of Poland (*Królestwo Polskie*), established in 1815, that was not incorporated into the Russian Empire but subordinated to it. Regarding the issue of private law, the situation looked as follows. Part of the territory regained from the German Empire remained under the binding force of *Bürgerliches Gesetzbuch* (BGB, 1896). In Galicia, the part under the influence of the Austro-Hungarian Empire, *Allgemeines Bürgerlisches Gesetzbuch* (ABGB, 1811) remained in force. Territories regained from the Russian Empire stayed under the force of *Swod Zakonow* (1835). The Civil Code, inspired by the Napoleonic Code (1804), was introduced in the Kingdom of Poland in 1825. As a result, during the first period under study – between 1918 and 1939 – the Republic of Poland had four different legal systems governing parental authority: Austrian, German, Russian, and the fourth, influenced by French, Russian, and Polish solutions (area of the Kingdom of Poland)[14].

On the one hand, Polish authorities took steps to facilitate current legal relations in such complex circumstances. This resulted in enforcing the Act on the law applicable to private internal relations (1926)[15]. On the other hand, a more demanding challenge of unifying Polish law was undertaken. The Codification Commission was established in 1919, but its works began much later. Considering private law, the Commission prepared the Code of Obligations and the Commercial Code, which entered into force in 1934. Its contribution to family law was preparing the parent-child relations bill, published for the first time in 1934. The second version of the bill was published in 1938. The person responsible for these achievements was Stanisław Gołąb. Another lawyer who

Administratywistyczne i Ekonomiczne, 27, 2019, 64; *Smyczyński T.*, Prawo rodzinne i opiekuńcze, Warszawa 2009, 213.

13 *Sokołowski T.*, Charakter prawny władzy rodzicielskiej, Ruch Prawniczy, Ekonomiczny i Socjologiczny, Rok XLIV, zeszyt 3, 1982, 127.

14 *Fiedorczyk P.*, Prawo rodzinne ziem wschodnich II Rzeczypospolitej, [in:] Wielokulturowość polskiego pogranicza. Ludzie-idee-praw, *Lityński A.*, *Fiedorczyk P. (eds.)*, Białystok, 2003, 509; *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014, 157-158; *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010, 154.

15 Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwem dla stosunków prywatnych wewnętrznych, Dz.U.1926.101.580 of 1926.10.13.

contributed to the development of Polish family law in the period under study was Karol Lutostański, the author of the progressive bill concerning marriage law[16]. None of these bills entered into force, so family law in the Republic of Poland remained divided. Nevertheless, bills were utilized by the Codification Commission summoned after World War II by communist authorities[17].

Polish Constitutions of this period said little about family law issues. The March Constitution of 1921[18] stated in Article 103: "Children without sufficient parental care, neglected in terms of upbringing, have the right to care and assistance from the State to the extent specified by law." It also guaranteed that: "Parents may only be deprived of authority over their child by way of a court decision." The April Constitution of 1935[19] related exclusively to the matters of the governmental system; it lacked regulations concerning the family.

As mentioned above, communist authorities established the Codification Commission in 1945. The Commission prepared eight bills called "decrees." These were introduced by the Council of Ministers (government) and approved by the Presidium of the State National Council, which considered itself the Polish parliament but was, in fact, a part of the communist Polish Workers' Party. Four of these decrees concerned family law[20]; one particularly important considering parental authority is the Decree of 22 January 1946 Family Law[21]. Decrees were inspired by bills prepared by Stanisław Gołąb and Karol Lutostański. The decrees ultimately led to the unification of Polish private law. The result was not, however, satisfying for the state's authorities. In July 1948, the Polish-Czechoslovak Legal Cooperation Commission was settled and began work on a new legal act concerning family law. It aimed to introduce more progressive solutions in comparison to the Decree of 1946, particularly relating to the legal status of out-of-wedlock children[22]. Fast work resulted in enforcing the Family Code in 1950, which remained in force for almost one and a half decades, despite its flaws: it was too brief and too open to interpretation[23].

Work on the Family and Guardianship Code, which is still in force today, began in 1956. Except for substantive problems faced by its authors, the crucial question begging for a response was whether to treat family law as a part of a newly prepared civil code (following pre-World War II tradition) or to

---

16 See: *Zarzycki Z.*, Attempts to Codify Personal Matrimony Law in the Second Polish Republic. A Fiasco or Perhaps a Success?, Krakowskie Studia z Historii Państwa i Prawa, 15 (2), 2022, 261-273; *Leciak I.*, Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej, Studia Iuridica Toruniensia, vol. XIII, 2014, 81-83.

17 *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014, 159; *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010, 165-167; *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 65-66.

18 Ustawa z dnia 17 marca 1921 r. Konstytucja Rzeczypospolitej Polskiej, Dz.U.1921.44.267 of 1921.06.01.

19 Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Dz.U.1935.30.227 of 1935.04.24.

20 *Grzybowski S.*, Prawo rodzinne. Zarys wykładu, Warszawa, 1980, 26.

21 Dekret z dnia 22 stycznia 1946 r. Prawo rodzinne, Dz.U.1946.6.52 of 1946.03.04.

22 *Winiarz J.*, Prawo rodzinne, Warszawa, 1977, 21; *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010, 167-168; *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 69-73.

23 *Dobrzański B.*, Władza rodzicielska w projekcie kodeksu rodzinnego i opiekuńczego, Palestra 7/4(64), 1963, 28.

continue post-World War II experiences and let family law be comprised in a separate act. Another ongoing controversy concerned the issue of family law's autonomy: some legal academics perceived it as a part of civil law, and others wanted to see it as a distinguished branch[24]. Ultimately, the Family and Guardianship Code was introduced as an act separate from the Civil Code. However, the status of family law as the branch of law independent of civil law is still a matter of discussion in Poland. The Family and Guardianship Code has been amended many times. Changes that affected its substance are discussed in the following section of the article.

The Constitution of the Polish People's Republic of 1952[25] referred to marriage and family in Article 67: "Marriage and family are under the care and protection of the Polish People's Republic. The state takes special care of families with numerous offspring." Further amendments to the Constitution mentioned family as a subject of care and protection guaranteed by the state.

The Constitution of the Republic of Poland of 1997, introduced in conditions of the democratic state, mentions family in a few provisions. Firstly, Article 18 states: "Marriage as a union between a man and a woman, family, motherhood, and parenthood are under the protection and care of the Republic of Poland." The document guarantees "the right to legal protection of private and family life" in Article 47. Furthermore, the Constitution warrants the state's support for families: "The state takes the good of the family into account in its social and economic policy. Families in a difficult financial and social situation, especially those with many children and single-parent families, have the right to special assistance from public authorities." (Article 71).

Poland, as a member state of the European Union, is nowadays bound by its law, which, in principle, should not affect substantial family law but actually influences it. It can be illustrated in the field of so-called surrogate motherhood[26]. Considering the shape of parent-child relations in Poland, it should be taken into account that the state is also bound by the Convention on the Rights of the Child or Convention for the Protection of Human Rights and Fundamental Freedoms[27], which refers to the family in its articles 8 and 12.

4. Selected Shifts Concerning Parental Authority in Poland Over the Last 100 Years

The following part of the article discusses selected changes in the regulation of parental authority across the three periods distinguished above. Five main issues are examined: the legal situation of men and women in the realm of parental authority, the legal status of out-of-wedlock children, the aims and justification of parental authority, the prohibition concerning corporal punishment, and the state's interference with parental authority.

---

[24] *Grzybowski S.*, Prawo rodzinne. Zarys wykładu, Warszawa, 1980, 26, 30-34; *Smyczyński T.*, Prawo rodzinne i opiekuńcze, Warszawa 2009, 14.

[25] Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r., Dz.U.1952.33.232 of 1952.07.23.

[26] *Mostowik P.*, Resolving Administrative Cases Concerning Child Under the Foreign Custody of Same-Sex Persons Without Violating National Principles on Filiation as the Ratio Decidendi of the Supreme Administrative Court (NSA) Resolution of 2 December 2019, Prawo w Działaniu, vol. 46, 2021, 190.

[27] Konwencja o ochronie praw człowieka i podstawowych wolności sporządzona w Rzymie dnia 4 listopada 1950 r., Dz.U.1993.61.284 of 1993.07.10.

4.1. Differentiation of Legal Situations of Men and Women

As mentioned earlier, the term "authority" is still used to describe legal relations between parents and children in Poland. This concept originates from ancient Roman *patria potestas*. The ancient legal concept affected family relations for ages, influencing the Western legal system at least until the end of the XIX century[28]. What should be stressed is that *patria potestas* related not only to children but to all family members. Consequently, the actual and legal status of women in the family was subordinated to men.

Regulations that remained in force in the Republic of Poland described the legal status of men and women in the realm of parental authority in various ways. The Civil Code of the Kingdom of Poland formally acknowledged that both parents hold parental authority. According to Article 336 of the Code: "A child of any age owes honor and respect to its father and mother and stays under the authority of their parents until it comes of age or become independent." Article 337 admits that both parents hold parental authority. However, it recognizes the priority of the father's opinion in conflict with the child's mother[29]. Similar regulation was comprised in *Swod Zakonow*. Formally, both parents held parental authority, but the husband had authority over his wife, so, as a result, he had the "last word" in family matters. The Austrian ABGB, the oldest legal act that remained in force in the Republic of Poland after World War I, contained conservative regulations granting the father almost absolute authority over children. This authority could only be limited if the father neglected his duty to provide for or educate the children. According to ABGB, there was a distinction between paternal and parental authority. Parental authority was granted to both men and women, but women had limitations placed on their authority. Women were responsible for taking care of the child and providing education until the child reached eight years of age. Even in the unfortunate event of the child's father passing away, women did not gain full parental authority; instead, a male guardian was appointed. In the German Civil Code (BGB), distinctions were made between men's and women's rights regarding children. The father played a primary role and was responsible for the child's person and property, while the woman only had authority over issues related to the child's person. Unlike the ABGB, under the BGB, women gained full parental authority after the child's father's death[30]. To summarize, all legal regulations that remained in force in the restored Polish state were highly conservative and recognized the predominant role of men in the family.

The already mentioned bill prepared by Stanisław Gołąb proposed significant changes in the realm under study. The bill aimed to equalize the legal status of men and women as parents. The bill was not enacted because of the World War II outbreak. However, its contribution was utilized by the Decree of 1946. Article 20 par. 1 stated: "Spouses exercise parental authority jointly". In the event of

---

28 *Stępień M.*, Istota władzy rodzicielskiej, Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne, 27, 2019, 65.

29 *Walewski J.*, Kodeks cywilny Królestwa Polskiego (Prawo z r. 1825) objaśniony motywami do prawa i jurysprudencją, Warszawa, 1872, accessible: https://www.bibliotekacyfrowa.pl/Content/78267/PAd_16854.pdf (last accessed: 15.6.2024).

30 *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014, 157-158; *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010, 156-164.

an argument between them, the court would resolve the dispute, not the "last word" of a man. What is worth emphasizing, Article 20 par. 1 referred to "spouses," whereas the following sections related to "parents". It resulted from the Decree distinguishing between children born in wedlock and those born out of wedlock. The Family Code of 1950 petrified the equal status of a man and a woman in the realm of parental authority. Article 50 par. 1 stated that: "Parental authority serves both parents". The following paragraphs reinforced the equal status of parents, e.g. Article 57 par. 1, warranting that: "Each parent is the legal representative of the children who remain under their joint parental authority". The current regulation of the Family and Guardianship Code reiterates the provisions of the Code of 1950 in its Articles 93 and 97.

Although the equal legal status of men and women as parents was introduced scarcely after World War II, it should not be linked only with the activity of communist authorities. Lawyers preparing bills concerning family law before the war's outbreak were aware that the issue demanded new regulation. Still, it was not a matter of priority for the newly restored state. Works on the bill related to family law were also disrupted by the passing of Stanisław Gołąb in March 1939.

4.2. Legal Status of Out-of-Wedlock Children

Whether a child was born in wedlock or out of it for ages affected its legal status and the responsibilities of its parents. The most profound case concerning the issue, one of the European Court of Human Rights milestones, was the judgment of Marckx *versus* Belgium[31]. The facts of the case were simple: a Belgian woman gave birth to a daughter; the child was conceived out of wedlock. Legal regulations in force then in Belgium deprived the mother of legal relations with her daughter; to gain such, the applicant was requested to recognize maternity or adopt the child. The Court ruled that such regulations violate provisions protecting private and family life (Article 8 of the Convention) and also are against Article 14 of the Convention, which relates to the principle of equality.

Austrian, German, and Russian regulations that remained in force in the Republic of Poland after World War I distinguished the status of children born in and out of wedlock. According to the BGB, children born out-of-wedlock had legal relations with their mothers and their families equal to children born in wedlock. However, these mothers did not have parental authority over such children. Mothers of children born out of wedlock were responsible for the child's care, but a guardian's supervision restricted their authority. The father of such children was obligated to provide financial support until the child reached 17[32]. According to Article 1705: "An illegitimate child has a relationship to his mother and the mother's relatives, the legal position of the legitimate child." Article 1707 stated: "The mother is not entitled to parental authority over an illegitimate child. A mother has the right and obligation to care for the person of the child; is not entitled to represent the child."[33] In

[31] Application no. 6833/74, decided 13 June 1979.

[32] *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 63.

[33] Niemiecki Kodeks Cywilny wraz z ustawą wprowadczą, część druga, transl. *Damm H.*, *Garschel K.*, Bydgoszcz, 1922, accessible: https://www.bibliotekacyfrowa.pl/dlibra/publication/22404/edition/34281?language=pl (last accessed: 16.6.2024).

Russian law, the mother of a child born out of wedlock was granted parental authority, and the child was given the mother's surname. The father was only responsible for providing financial support if the mother could not do so. Similar regulations were also implemented in the Kingdom of Poland[34].

It is worth mentioning that the bill prepared by Stanisław Gołąb assumed the unification of the legal status of all children. In his article of 1936, he convinces: "The project does not share the frequently expressed views that the interest of the family requires legal impairment of a child born outside of marriage. Who is allowed to shed blood in defense of the State and pay taxes to it on an equal footing with others – this cannot be denied equal public or private rights."[35] Indeed, the 1934 bill was progressive in that regard. However, the 1938 version represented a step back from ambitious assumptions; progressive solutions met with opposition from, for example, the Catholic church[36].

The situation of out-of-wedlock children did not change until the introduction of the Family Code of 1950, which erased differences in the legal status of children. The Decree of 1946 continued to distinguish between legal situations of out-of-wedlock children and those conceived by married parents. Article 51 of the Decree stated, "A child born out of wedlock has rights derived from kinship in relation to the mother and her family." Article 52 par. 1 expressed rule: "A child born out of wedlock bears the mother's maiden name". After her consent, the mother's husband was allowed to give his surname to her child. By Article 56 par. 1: "The obligation to bear the costs of maintaining and raising a child rest with both parents." Nonetheless, parental authority over illegitimate children was exercised by their mothers: "Parental authority over a child born out of wedlock is exercised by the mother." (Article 62 par. 1). The principles under study seem similar to those present in the regulations of the Russian Empire in that matter. Jan Winiarz, a Polish legal scholar, explains that after World War II, the legislator decided to adopt a compromise solution to the problem of illegitimate children, anticipating changes in social mentality. Liberal solutions were to be gradually introduced[37].

The Family Code of 1950 and the Family and Guardianship Code of 1964 do not differentiate the legal status of children. It is worth noting that the Polish legislature implemented measures promoting equality much earlier than some Western countries, as evidenced by the Marckx *versus* Belgium case.

4.3. Good of the Child

The Convention on the Rights of the Child introduces "the best interests of the child" as an international standard. Article 3 par. 1 of the Convention states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The

---

34 *Fiedorczyk P.*, Prawo rodzinne ziem wschodnich II Rzeczypospolitej, [in:] Wielokulturowość polskiego pogranicza. Ludzie-idee-praw, *Lityński A.*, *Fiedorczyk P. (eds.)*, Białystok, 2003, 515.

35 *Gołąb S.*, Prawo rodziny de lege ferenda, Ruch Prawniczy, Ekonomiczny i Socjologiczny, 16(4), 1936, 317-318.

36 *Leciak I.*, Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej, Studia Iuridica Toruniensia, vol. XIII, 2014, 89 and following.

37 *Winiarz J.*, Prawo rodzinne, Warszawa, 1977, 20.

Polish law recognized similar standards long before the Convention came into force. Article 95 par. 3 of the Family and Guardianship Code of 1964 proclaims: "Parental authority should be exercised as required by the good of the child and the interest of society." "Good of the child" (*dobro dziecka*) should be perceived as an equivalent of "the best interests of the child". The Family and Guardianship Code refers to *dobro dziecka* approximately 20 times, which means that the phrase appears in the Code once every nine articles. "Good of the child" constitutes the standard of conduct not only for parents but also for the court or public prosecutor deciding which stance to take in cases concerning children.

It should be noted that the legal regulations of BGB, ABGB, or *Swod Zakonow* do not relate to similar standards. Aleksander Cywiński argues that historical regulations of the matter relied on prioritizing collective interests over individual interests[38]. The mentioned legal acts do not refer directly to the issue of the general aims of parental authority or its moral basis. However, their content allows us to argue that they aimed to balance parents' interests, particularly the father's, with a child's basic needs.

Stanisław Gołąb's family law bill introduced the standard of the child's interest for the first time in Polish law. He asserted that "parental rights should be exercised solely in the best interests of the children."[39]. The bill was not enacted, but the communist legislature adopted its basic principles in the Decree of 1946. Article 20 par. 3 states: "Parents are responsible for exercising their parental authority in a way that is required for the good of children and the interest of society." Article 54 of the Family Code of 1950 proclaims that parental authority "should be exercised as required by the good of the child and the interest of society." The exact phrase was incorporated to the Family and Guardianship Code of 1964.

The "the good of the child" standard has been employed by courts since its inception and continues to be the primary criteria for decisions in cases involving children. For example, the Supreme Court, in its judgment of 7 April 1952, case no. C 487/52 distinguished "the good of the child" and "the good of parents", which cannot be identified. A similar conclusion was reached in many cases when the Court underlined that the good of the child should not be identified with the interests or sound of any of the child's parents (e.g., the judgment of Supreme Court of 25 August 1981, case no. III CRN 155/81).

The standard under study has a strong basis in Polish law, which, nowadays, encompasses constitutional rules. The 1997 Constitution states: "The Republic of Poland ensures the protection of children's rights. Everyone has the right to demand that public authorities protect children against violence, cruelty, exploitation, and demoralization."

"Good of the child" is not the only general clause affecting parental authority. The second, which presupposes their order of importance, is "the interest of society". It is worth noting that communist legislators did not propose the premise of "the interest of society" for the first time; it had

[38] *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014, 151.

[39] *Gołąb S.*, Prawo rodziny de lege ferenda, Ruch Prawniczy, Ekonomiczny i Socjologiczny, 16(4), 1936, 318.

already been discussed before World War II[40]. An analysis of Polish court case law reveals that the concept of "the interest of society" is less elaborated compared to "the best interest of the child." Although mentioned in the Family and Guardianship Code, courts do not often apply this standard to derive legal implications.

4.4. Disciplining Children and Corporal Punishment

One of the recent changes to the Family and Guardianship Code of 1964 involved the addition of Article 96^1. This article explicitly prohibits individuals with parental authority and acting as guardians over minors from using corporal punishment. The provision became effective in 2010. It's worth noting that even before the amendment, the use of corporal punishment was not widely accepted, and the change reflected the stance of Polish academic writers and courts on this issue. Considering legal changes that resulted in the introduction of Article 96^1, one should take into account the Act of 29 July 2005 on counteracting domestic violence[41], which was initially referred to as "family violence". The definition of domestic violence comprised in the Act assumes that it is: "a single or repeated intentional act or omission violating the rights or personal rights of the persons mentioned in point 1(family members), in particular exposing these persons to the risk of loss of life or health, violating their dignity, bodily inviolability, freedom, including sexual freedom, causing damage on their physical or mental health, as well as causing suffering and moral harm to people affected by violence." Another legal change that contributed to the later introduction of a direct prohibition on corporal punishment was the Family and Guardianship Code amendment of 2008 which enriched Article 95 "Parental authority includes, in particular, the obligation and right of parents to take care of the person and property of the child and to raise the child." by adding "with respect for its dignity and rights"[42]. Since then, raising a child must have been guided by the general principles of dignity and rights.

Changes enforced during the last two decades were relatively uncontroversial at that time; however, earlier, the stance of Polish legislature and scholars was not as unequivocal. Yet in 1977, Jan Winiarz wrote: "The admissibility of disciplining children by parents should not be excluded in advance. The admissibility of parental discipline is based on tolerance on the part of pedagogy, which assumes that in the family, the probability of harm to the child is relatively small and that it is balanced by the excess of love between parents and the child and on the autonomy of the family in the laws of its internal life, which include educational measures used by parents towards children."[43] The view was expressed in opposition to humanitarian pronouncements demanding a ban on corporal punishment utilized by parents. What should be emphasized is that until 2010, the Family and Guardianship Code did not refer directly to corporal punishment. Its admissibility was a matter of

---

40 *Leciak I.*, Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej, Studia Iuridica Toruniensia, vol. XIII, 2014, 86-87.

41 Dz.U.2024.424 consolidated text of 2024.03.21.

42 *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 76.

43 *Winiarz J.*, Prawo rodzinne, Warszawa, 1977, 220.

discussion in academic writing and case law. Over time, the inclination for prohibition increased; "dignitarian" provisions of the Constitution of 1997 or the Convention on the Rights of the Child fostered that change. As evidenced by Winiarz's stance, during the communist period, legal views were more permissible toward disciplining children and corporal punishment. The Family Code of 1950 does not mention them, leaving the issue open for interpretation. Still, the Decree of 1946 stated: "Parents can discipline children under their authority without harming their health, physical or moral, and within limits indicated by the purpose of education." (Article 25 par. 2). The provision was inspired by the Bill prepared by Stanisław Gołąb before World War II[44]. Discipline and corporal punishment were perceived as measures of upbringing that should not be abused. Both the Family and Guardianship Code of 1964 and the Decree of 1946 explicitly state that a child owes obedience to his parents. The Family Code of 1950 does not include such a provision; however, its brief regulation prompted the communist legislature to initiate work on the following legal act quickly.

Generally speaking, legal acts remaining in force between 1918 and 1939 allowed disciplining and corporal punishment. The *Swod Zakonow* approved disciplining and placing children in care and educational facilities by parents. Children were not allowed to complain about their parents, except when the parents committed a crime against them. The prohibition on murdering a child constituted a restriction of parental authority[45]. Article 339 of the Civil Code of the Kingdom of Poland allowed parents to discipline misbehaving children; however, the methods applied by parents should not interfere with children's health and ability to educate. The court was in charge of suggesting softer methods if parents abused their power. BGB considered disciplining as a measure of a child's upbringing; except for discipline utilized by parents, they were entitled to ask the court to apply proper means of discipline (Article 1631).

To summarize, all legal acts enforced in the Polish state over the last 100 years burdened parents with the duty to raise a child. They all burdened a child with the duty of obedience toward its parents. The earlier regulations held a permissive stance concerning discipline and corporal punishment. However, they differed regarding the allowed extent of disciplining and the state's interference in this realm. Over the years, influenced by the concept of a child's dignity and its rights, disciplining and corporal punishment began to be perceived as harmful, which resulted in their prohibition. The significant shift in this field should be perceived as an argument in favor of terminological change concerning parental authority; the prohibition under study deprives parents of one of their imperative means.

4.5. State's Interference with Parental Authority

Considering the extent of the state's interference with parental authority, the most noticeable trend since the end of the 19th century is its increasing role[46]. The abovementioned remarks regarding

---

44 *Leciak I.*, Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej, Studia Iuridica Toruniensia, vol. XIII, 2014, 87.

45 *Fiedorczyk P.*, Prawo rodzinne ziem wschodnich II Rzeczypospolitej, [in:] Wielokulturowość polskiego pogranicza. Ludzie-idee-praw, *Lityński A.*, *Fiedorczyk P. (eds.)*, Białystok, 2003, 516.

46 *Sójka-Zielińska K.*, Historia prawa, Warszawa, 1995, 263

disciplining children provide evidence of that phenomenon. The following considerations also show that the state's interference in the field under study gradually increased.

Currently, Polish law distinguishes three central institutions associated with the state's involvement in parent-child relationships. First, there is the restriction of parental authority (*ograniczenie władzy rodzicielskiej*). Second, there is the suspension of parental authority (*zawieszenie władzy rodzicielskiej*). Finally, there is the deprivation of parental authority (*pozbawienie władzy rodzicielskiej*). It should be underlined that the term *ograniczenie władzy rodzicielskiej* has two meanings. Under the Family and Guardianship Code, *ograniczenie władzy rodzicielskiej* is applied when the child's parents live separately, and there is a need to regulate their competencies (Article 107 par. 2). In the legal discourse, however, the term *ograniczenie władzy rodzicielskiej* is utilized referring to the situation in which the court put certain restrictions on parents abusing or neglecting their authority toward children (Article 109). The following remarks refer to the second meaning of the term.

Regarding the issues under discussion, BGB distinguished the position of father and mother. Article 1666 referred to the situation in which a child's good, mental or bodily, was in danger due to the father's abuse of parental authority. In such a situation, and when the child was neglected or his father misbehaved in another way, the court was in charge of issuing orders preventing danger, particularly by placing a child in an educational institution or another family. When the father met obstacles that limited his abilities to exercise parental authority, the court was competent to state that his authority was suspended (*spoczywanie*). However, the father was entitled to use the child's property during this period. The institution was regulated by Articles 1676-1778. Fathers could be deprived of parental authority over their children when they committed a felony or intentional offense against them, but only if they were sentenced to at least six months of imprisonment (Article 1680). Maternal authority was limited to childcare if the mother was underage; she was not allowed to represent the child (*spoczywanie*). According to Article 1697, the mother lost her parental authority when she remarried; nevertheless, the right and childcare duty remained with her.

The Civil Code of the Kingdom of Poland associated the state's interference in parental authority with the parental right to discipline children. Article 339 states that if parents abuse their rights in a way that places children's health in danger, they should be instructed by the court. If the initial instruction is ineffective, parents could be deprived of authority. In this case, the children are to be placed in another family, but their parents are responsible for their maintenance. Closest relatives were advised to inform the Royal Prosecutor about abuses committed by parents (Article 340).

Legal acts enforced after World War II do not consider "danger to health" when regulating the state's interference with parental authority, significantly expanding its potential extent. Pursuant to Article 40 of the Decree of 1946: "If, in the exercise of parental authority, parents commit negligence or acts that seriously threaten the well-being of the child, the guardianship authority may issue orders necessary to remedy these deficiencies."[47] The institution reflects the contemporary restriction of parental authority. The Decree recognized the institution of suspension of parental authority – applied

[47] According to the Decree of 14 May 1946 Guardianship Law (Dekret z dnia 14 maja 1946 r. Prawo opiekuńcze, Dz.U.1946.20.135 of 1946.05.24): "The municipal court is the guardianship authority."

in case of temporal obstacles in exercising (Article 41). By virtue of Article 42, parents could be deprived of parental authority if they could no longer exercise it, abuse it, or neglect it in a way that does not allow them to maintain it. An interesting premise of depriving parental authority was remarrying, but it required the presence of another specific circumstance to foster such a decision.

The Family Code of 1950 provided brief regulations concerning issues under discussion (Articles 60-62). It recognized the institution of orders issued to parents exercising their authority in no proper way (*ograniczenie władzy rodzicielskiej*), but also suspension of parental authority and deprivation of it. The Family Code distinguished between temporal obstacles (*przeszkoda przemijająca*), which grounded suspension of parental authority, and permanent obstacles (*przeszkoda trwała*), which allowed the guardianship authority to deprive parents of their authority.

The current Polish regulations regarding the state's intervention in parental authority are the most comprehensive compared to the previously mentioned legal acts. They follow the patterns outlined by past legislators and further develop them. Article 109 par. 2 of the Family and Guardianship Code illustrates this. The provision outlines the orders that can be issued by the court to restrict parental authority. It lists five instruments that can be adopted by the court, with the possibility of additional measures. A crucial change in this matter entered into force in 1976[48]. However, the catalog is permanently "under construction" – after adding it in 1976 to the Code, it has been amended four times so far.

5. Conclusions

Family law, as a branch of law, has a specific character. It governs relations that, at first glance, need no legal regulations because of their deep association with intimate human nature. Indeed, the so-called "personal" part of family law, in contrast to issues linked with property relations, was for ages a matter of moral norms or, at best, a matter of customary law regulations rather than a matter of positive law regulation.

Considerations comprised in the article show how stable and indifferent family law is to other legal, political, and economic changes. The article outlines five significant changes in parental authority. Some changes, such as the recognition of equal legal status for men and women and the acknowledgment of equal status of out-of-wedlock children, are widely supported in today's society. However, other changes, such as increased state intervention in parental authority, may be more controversial and open to discussion. What should be underlined and mirrors the thesis concerning family law's stability is that most legal shifts under discussion were initiated before World War II but ultimately enforced after it. It evidences that despite the will to build a new communist society, the legislator was sensitive enough to understand society's inclinations, habits, and social norms, affecting family relations. Furthermore, changes were introduced gradually, which extended the period of time for people to get used to them.

[48] *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020, 75.

It might be controversial that legal changes are portrayed as evidence of legal stability. However, there is indeed a mark of stability in the situation where legislators who share different social, political, and economic views, like these characteristics for three periods discussed in the article, decide to continue changes initiated by their ancestors.

The article focused on historical changes, but Polish family law nowadays faces other substantial controversies concerning parental authority. So-called surrogate motherhood awaits to be regulated or prohibited; legal parenthood of same-sex couples is a matter of dispute; the institution that gains popularity is joint physical custody, especially after divorce, but it is still unregulated.

Bibliography:

1. Dekret z dnia 14 maja 1946 r. Prawo opiekuńcze, Dz.U.1946.20.135 of 1946.05.24.
2. Dekret z dnia 22 stycznia 1946 r. Prawo rodzinne, Dz.U.1946.6.52 of 1946.03.04.
3. Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r., Dz.U.1952.33.232 of 1952.07.23.
4. Konwencja o ochronie praw człowieka i podstawowych wolności sporządzona w Rzymie dnia 4 listopada 1950 r., Dz.U.1993.61.284 of 1993.07.10.
5. Konwencja o prawach dziecka przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U.1991.120.526 of 1991.12.23.
6. Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Dz.U.1935.30.227 of 1935.04.24.
7. Ustawa z dnia 17 marca 1921 r. Konstytucja Rzeczypospolitej Polskiej, Dz.U.1921.44. 267 of 1921.06.01.
8. Ustawa z dnia 2 sierpnia 1926 r. o prawie właściwem dla stosunków prywatnych wewnętrznych, Dz.U.1926.101.580 of 1926.10.13.
9. Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy, Dz.U.2023.2809 consolidated text of 2023.12.29
10. Ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny, Dz.U.1950.34.308 of 1950.08.22.
11. Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy domowej, Dz.U.2024.424 consolidated text of 2024.03.21.
12. *Cywiński A.*, Stosunki pomiędzy rodzicami i dziećmi w perspektywie historyczno-prawnej, Probacja, 1, 2014.
13. *Długoszewska I.*, Przesłanki ograniczenia władzy rodzicielskiej na ziemiach polskich, Zeszyty Prawnicze UKSW, 10.1, 2010.
14. *Dobrzański B.*, *Władza rodzicielska w projekcie kodeksu rodzinnego i opiekuńczego*, Palestra, 7/4(64), 1963.
15. *Fiedorczyk P.*, Prawo rodzinne ziem wschodnich II Rzeczypospolitej, [in:] Wielokulturowość polskiego pogranicza. Ludzie-idee-praw, *Lityński A.*, *Fiedorczyk P. (eds.)*, Białystok, 2003.
16. *Gołąb S.*, Prawo rodziny de lege ferenda, Ruch Prawniczy, Ekonomiczny i Socjologiczny, 16(4), 1936.
17. *Grzybowski S.*, Prawo rodzinne. Zarys wykładu, Warszawa, 1980.
18. *Leciak I.*, Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej, Studia Iuridica Toruniensia, vol. XIII, 2014.

19. *Mostowik P.*, Resolving Administrative Cases Concerning Child Under the Foreign Custody of Same-Sex Persons Without Violating National Principles on Filiation as the Ratio Decidendi of the Supreme Administrative Court (NSA) Resolution of 2 December 2019, Prawo w Działaniu, vol. 46, 2021.
20. *Mostowik P.*, Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym, Kraków, 2014.
21. *Mostowik P.*, Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym, Kraków, 2014.
22. Niemiecki Kodeks Cywilny wraz z ustawą wprowadczą, część druga, transl. *Damm H.*, *Garschel K.*, Bydgoszcz, 1922, accessible: https://www.bibliotekacyfrowa.pl/dlibra/publication/22404/edition/34281? language=pl (last accessed: 16.6.2024).
23. *Smyczyński T.*, Prawo rodzinne i opiekuńcze, Warszawa, 2009.
24. *Sokołowski T.*, Charakter prawny władzy rodzicielskiej, Ruch Prawniczy, Ekonomiczny i Socjologiczny, Rok XLIV, zeszyt 3, 1982.
25. *Sójka-Zielińska K.*, Historia prawa, Warszawa, 1995.
26. *Stępień M.*, Istota władzy rodzicielskiej, Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne, 27, 2019.
27. *Truszkowski B.K.*, Karcenie dzieci na ziemiach polskich. Regulacje prawne od XIX wieku do dziś, Miscellanea Historico-Iuridica, tom XIX, z. 1, 2020.
28. *Walewski J.*, Kodeks cywilny Królestwa Polskiego (Prawo z r. 1825) objaśniony motywami do prawa i jurysprudencją, Warszawa, 1872, accessible: https://www.bibliotekacyfrowa.pl/Content/78267/PAd_16854. pdf (last accessed: 15.6.2024).
29. *Winiarz J.*, Prawo rodzinne, Warszawa, 1977.
30. *Zarzycki Z.*, Attempts to Codify Personal Matrimony Law in the Second Polish Republic. A Fiasco or Perhaps a Success?, Krakowskie Studia z Historii Państwa i Prawa, 15 (2), 2022.