MARRIAGE IN THE LIGHT OF SELECTED JUDGEMENTS OF THE CONSTITUTIONAL TRIBUNAL OF THE REPUBLIC OF POLAND

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ABSTRACT

This article attempts to show how marital issues are treated in the jurisprudence of the Constitutional Tribunal of the Republic of Poland. The issue of marriage accounts for only a small proportion of all family issues taken up by the Constitutional Tribunal for adjudication. The author points out the need for caution, reliability, and thorough analyses in the justifications, and also highlights the care the Tribunal shows for the stability of provisions regulating family life, which corresponds to the delicacy and stability of relations in marriage and family.

KEYWORDS

marriage
entering into marriage
the Constitutional Tribunal
Constitution of the Republic of Poland
Family and Guardianship Code

1. Introduction

The scope of the analysis in this paper was limited to showing the institution of marriage only in the light of the jurisprudence of the Constitutional Tribunal of the Republic of Poland (hereinafter referred to as the Constitutional Tribunal or Tribunal). The role of the Tribunal in investigating the essence of legal institutions, consolidating binding regulations, and influencing their evolution cannot be underestimated. The framework of this paper does not allow us to present the comprehensive jurisprudence of the Constitutional Tribunal, the judgements and decisions of administrative courts that have been significant in recent years, or the judgments of the European Court of Human Rights—all of them would have provided a more complex, fuller picture of the institution of marriage.

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The Polish Constitutional Tribunal was established in 1982.[2] It began adjudicating in 1986.[3] Its genesis is associated with the image-building activities of the communist regime, which, after the introduction of martial law on 13 December 1981, used the apparatus of repression to pacify society (through mass arrests and internment of thousands of people, political trials, mass dismissals from work, censorship, etc.), while trying, especially in the context of its relations with foreign countries, to create the appearance that it cared about the law and the rule of law.

In the beginning, the Tribunal adjudicated on the basis of the Constitution of the People's Republic of Poland of 22 July 1952[4] (hereinafter referred to as the Constitution of the PRP). Based on this document, the communist system was introduced and established in Poland.

After the political breakthrough of 1989, the so-called Small Constitution[5] was adopted, regulating only the most important issues relating to the change of the social and economic system, and work began on the preparation of a new fundamental law that would meet democratic standards. The Constitution currently in force in Poland was passed by the National Assembly on 2 April 1997.[6]

The legal foundations for the functioning of the Constitutional Tribunal of the Republic of Poland are currently regulated by Articles 188 to 197 of the Constitution of the Republic of Poland (hereinafter referred to as the Constitution of the RP or the Constitution) and the Act of 25 June 2015 on the Constitutional Tribunal.[7]

The regulations on marriage and family that were included in the post-war Polish constitutions, to some extent, governed the same issues, and even used similar wordings in some measure. However, their interpretation required reading individual provisions in the context of the political system of the state, which led to significantly divergent results. For example, Article 18 of the Constitution of the RP of 1997 states that '[m]arriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland', and Article 71 reads as follows:

> The State, in its social and economic policy, shall take into account the good of the family. 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.

Semantically, both refer to the language contained in Article 79, sec.1 of the Constitution of the PRP, which states that '[m]arriage, maternity and the family are under the *care*

2 | Act of 26 March 1982 on changing the Constitution of the People's Republic of Poland, Journal of Laws of 1982, No. 11, item 83.
3 | Act of 29 April 1985 on The Constitutional Tribunal, Journal of Laws of 1985, No. 22, item 98 as amended.
4 | Journal of Laws of 1952, No. 33, item 232 as amended.
5 | Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive branch of the Republic of Poland and on territorial self-government; Journal of Laws of 1992, No. 84, item 428.
6 | The Constitution of the Republic of Poland, adopted by the National Assembly on 2 April 1997, was accepted by the nation through a constitutional referendum on 25 May 1997, and signed by the President of Poland on 16 June 1997; Journal of Laws of 1997, No. 78, item 483 as amended.
7 | Journal of Laws of 2015, item 1064 as amended.

and protection of the People's Republic of Poland. Families with numerous children shall be given special care by the state'.

However, if we were to read these sentences in the context of the political systems under which they were written, then *care and protection* in Article 79 of the Constitution of the PRP meant a declaration of a caring attitude towards the socialist state, while *care and protection* in the present Constitution should be perceived in the context of the constitutional principle of subsidiarity, which imposes some responsibilities on the state, although the primary accountability lies with those who are trying to overcome the crisis in which they have found themselves.[8]

Section 2 of Article 79 of the Constitution of the PRP states that '[i]t is the duty of parents to bring up children as righteous citizens of the People's Republic of Poland, conscious of their duties', which refers to children's upbringing. The same aspect can be found in Article 48, sec.1 of the Constitution of the RP, which states that '[p]arents 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, as well as his convictions…'.

In this case, however, both the semantics and meaning of the passage are radically different. The provision of the 1952 Constitution established the primacy of the Communist Party in the upbringing of children and obliged parents to endeavour to implement this line of upbringing in everyday life. In contrast, Article 48, sec.1 and Article 53, sec. 3 of the Constitution of the RP unambiguously expressed the primacy of parents in the upbringing of children, which is consistent with the standards of protection of human rights set out in Articles 5 and 18 of the Convention on the Rights of the Child.[9]

On the other hand, Article 79, sec. 3 of the Constitution of the PRP states that '[t] he Polish People's Republic ensures the fulfilment of alimony rights and obligations', meaning the state took it upon itself to force debtors to pay their maintenance debts. To this end, an alimony fund was created in order to pay benefits to alimony creditors and collect the equivalent of the paid benefits from their debtors. This line of thinking, albeit without explicitly mentioning alimony, is now confirmed by Articles 18 and 71 of the Constitution of the RP.

Only a few regulations in the Constitution refer directly to families. In addition to the ones quoted above, that is, Articles 18, 48, and 71, two more should be mentioned: Article 47, which states that '[e]veryone has the right to the legal protection of one's private life, family life, honour and good name as well as the right to decide about one's personal life', and Article 72, sec.1, which states that '[t]he Republic of Poland shall ensure the protection of the rights of the child'. In legal complaints, judgements, and justifications, frequent references were made to Articles 30, 31 acting as a standard for aspects such as dignity, equality, and prohibition of discrimination.

Throughout the history of the Constitutional Tribunal, the same Family and Guardianship Code (hereinafter referred to as the FGC[10]), which was passed in 1964, remained in force in Poland, that is, when an exceptionally strong ideological group of communists held power. Surprisingly, despite the efforts of some scholars with a dogmatic approach

8 | Andrzejewski, 2003, pp. 76–94; Nitecki, 2008, pp. 76–88; Szurgacz, 1993, pp.32–49.
9 | The Convention on the Rights of the Child was passed by the General Assembly of the United Nations on 20 November 1989. Journal of Laws of 1991, no. 120, item 526 as amended.
10 | Act of 25 February 1964: the Family and Guardianship Code, consolidated text, Journals of Laws of 2020, item 1359.

to Marxism, the codification commission prepared a draft of the FGC free of elements of communist ideology.[11] For this reason, even after the political breakthrough of 1989, there was no need to create a new codification. This was one of the main reasons why the representatives of legal scholars unanimously criticised a new draft of the Family Code prepared in 2018 by the Ombudsman for Children.[12] However, numerous amendments were made to upgrade the FGC and adjust it to the requirements of the present day, but these were not fundamental changes. The exceptions are the provisions on marital property regimes, which could not be reconciled with the rules of the free market economy; as a result, they have been thoroughly revised.[13]

Among the issues related to marriage, the following are regulated in the FGC: conclusion of marriage, basic rights, mutual obligations of spouses in their relationship, separation, divorce, and matrimonial property regimes. Regulations concerning filiation also refer to marriage (they differ depending on whether the woman is married or unmarried), adoption, foster care, and guardianship (only spouses may jointly adopt, create a foster family, take care of the child). However, there is no difference between married and unwedded persons in their exercise of parental responsibility.

Since the second half of the 20th century, significant changes in the functioning of marriages and families have been taking place worldwide, and the pace of such changes in Poland increased after the political breakthrough of 1989. The most radical changes took place in social awareness, customs, and lifestyles. They were often triggered by the opening of borders and technological revolution, including the electronic media revolution. Major changes have been reported in the number of births, divorces, remarriages, and the scale of cohabitation. Substantial transformations have also been observed in moral (including sexual) behaviour, the level of consumption, as well as the approach to religion and the Church.[14] Some of these changes inspired the formulation of legislative postulates in public spaces. Others have led to complaints with the Constitutional Tribunal regarding some newly interpreted provisions that have been found to be inconsistent with the Constitution.

2. Heterosexuality as a premise for marriage

In the last three decades, the most fundamental issue related to marriage, which has generated a lot of emotions, has been the question of its heterosexuality. The importance of this issue stems from the demand raised in Poland to recognise homosexual unions as marriages. This issue has not yet been investigated by the Constitutional Tribunal. However, in its justification of the judgement issued on 11 May 2005[15] on the compliance of the treaty on Poland's accession to the European Union with the Constitution, the

11 | Fiedorczyk, 2014; Holewińska-Łapińska, 2009, pp. 1023–1025; Nazar, 2005, pp. 81–110.
12 | Andrzejewski, 2019, pp. 7–42; Nazar, 2019, pp. 7–25; Sokołowski, 2020, pp. 228–233.
13 | Nazar, 2014, pp. 31–74; Smyczyński, 2014, pp. 13–30.
14 | Adamski, 2002; Kocik, 2006; Kwak, 2007.
15 | Judgement of the Constitutional Tribunal of 11 May 2005, Ref. No./-18/2004, Jurisprudence of the Constitutional Tribunal; collection of judicial decision 2005/5a item 45.

Constitutional Tribunal expressed the view that marriage is a union of a man and a woman and that any change in this respect would require an amendment to the Constitution.[16]

The conjugal character of marriage has been challenged under Polish law in complaints submitted to the Tribunal (as well as to the European Court of Human Rights) regarding the content of Article 1 of the FGC. It clearly says that a man and woman may submit marriage declarations before the head of the registry office. According to the applicants, this is contrary to Article 47 of the Constitution (right to privacy), because it prevents homosexual unions from making such declarations. They claim that it is also inconsistent with Article 31, sec. 3 of the Constitution, which states the following:

> Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Neither does it comply with Article 32, sec.1 and 2 or Article 30 of the Constitution, which states that '[t]he inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities'. The applicants take the view that Article 18 of the Constitution, cited previously, does not define marriage as a heterosexual union, but only stipulates that only heterosexual marriages are under state protection and care. Therefore, it does not exclude homosexual marriages, but only indicates that they cannot expect protection and care from the state. In the appellants' view, the admissibility of marriages of homosexual couples on the grounds of Article 18 of the Constitution is blocked by the content of Article 1 of the FGC, which excludes such a possibility.

The applicants' argumentation is based on a scientific paper,[17] which expresses views that are rather isolated from the Polish family law doctrine. The prevailing view declares that Article 18 of the Constitution defines marriage as a heterosexual union,[18] *inter alia*, because in 1997, when the Constitution was adopted, homosexual unions in several countries already had the status of marriage, which is why the Constitutional Committee unequivocally stated that the intention of this provision was to adopt a position contrary to the trend noticed abroad. In order to strengthen the regulation adopted in Article 18 of the Constitution, it was placed in the chapter defining the state system.[19] Consequently, Article 1 of the FGC was not modified when the Constitution came into force, though it was stipulated that all regulations inconsistent with the provisions of the new Basic Law should be harmonised with the Constitution within three years of its entry into force. Indeed, Article 1 of the FGC was not changed because it was fully synchronised with Article 18 of the Constitution.

16 | Mostowik, 2017, p. 45–46.
17 | Hartwich, 2011; Jezusek, 2015, pp. 67–68; Łętowska and Woleński, 2013, pp. 15–40; Pawliczak, 2014.
18 | Andrzejewski (ed.), 2013; Banaszkiewicz, 2004; 2013; 2016; Borysiak, 2016; Łączkowska-Porawska, 2019; Mączyński, 2012; 2013; Mostowik, 2013; Nazar, 2015, pp. 277–278; Smyczyński, 2013.
19 | Mostowik, 2017, pp. 44–46.

Accepting the argument that homosexual marriages are permissible because they are not forbidden would open the way to the idea (absurd in common opinion) that polygamous marriages (being not forbidden) are also permissible (though they will not benefit from the care and protection of the state).

What is shared by most views that either declare the admissibility of homosexual unions under Article 18 of the Constitution or question the wording of Article 1 of the FGC, and by views that, despite acknowledging the inadmissibility of such marriages *de lege lata*, demand changes in the law to allow them, is their ideological anchoring in the civilisational dispute about family. All propositions to redefine the concepts of marriage and family draw inspiration from neo-Marxism and gender philosophy, which preach the destruction of the family.[20] This provokes restraint and sometimes the resentment of many members of the Polish society because such an attitude has led not only to philosophical, semantic, and pedagogical issues, but also legal disorders in many Western countries.

Although Article 18 of the Constitution does not prevent the passage of an act on civil partnerships (including homosexual ones), the prevailing view in Polish society is that it is neither necessary nor useful. Apart from questioning the formal admissibility of passing such a law, anthropological, cultural, moral, and other arguments are also raised against it.

It is expected that the Constitutional Tribunal will soon issue a judgement on the admissibility of homosexual unions, which has been requested by critics of Article 1 of the FGC for several years. If the ruling is passed by the full panel of judges of the Tribunal, then it will end the dispute over such an important issue and make the legal situation unambiguous and indisputable, thus bringing stability to the constitutional and social order of the state.

3. Mental health of nuptial couples

The legal status of people with intellectual disabilities is an issue that has been the subject of lively legal academic debate[21] in Poland since the beginning of the 21st century, which is reflected in the Resolution of the Full Panel of the Civil Chamber of the Supreme Court[22], in three judgements of the Constitutional Tribunal, as well as in changes in regulations, particularly in the area of the Civil Procedure Code (CPC). In both academic debate and jurisprudence, the greatest emphasis has been placed on the institution of incapacitation. In the context of marriage, what has been discussed mostly is the question of the admissibility of marriage for people with intellectual disabilities. The debate intensified after the Supreme Court ruled that a fully incapacitated person cannot (and has no formal authority to do so) independently request that plenary guardianship be lifted, as the incapacitated person has no legal standing. After the Supreme Court adopted the resolution, relevant provisions of the CPC were appealed to the Constitutional Tribunal

20 | Cuby, 2013; Roszkowski, 2019, pp. 485–526; Sosnowski, 2014; Sztychmiler, 2015, pp. 227–244.
21 | Domański, 2013; Kociucki 2011; Kosek, 2014, pp.573–584; Mróz, 2018, pp. 7–43; Pudzianowska 2014.
22 | Judgement of the Supreme Court of 14 October 2004, III CZP 37/04; Judgement of the Supreme Court of 2005, No. 3 item 42.

on the grounds that they discriminated against persons under plenary guardianship. The Constitutional Tribunal found that the existing situation contradicted the constitutionally protected dignity of the person (Article 30 of the Constitution).[23] The CPC was soon amended to give fully incapacitated persons the right to apply for the revocation of their plenary guardianship.[24]

While this debate was evolving and the revision of the CPC was progressing in Poland, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities on 13 December 2006.[25] Article 23 of this Convention, which is crucial for the present remarks, requires member states to recognise the right of all such persons, provided they are of marriageable age, 'to marry and to found a family, on the basis of the free and full consent of the future spouses…'. This right is correlated with an obligation imposed on a state to provide adequate support to persons with disabilities in carrying out their child-rearing tasks.[26] Poland has filed an objection to this provision, contending that the intention of this objection is not to discriminate against persons suffering from a profound mental disorder, but to protect and safeguard the interests of such persons.

The issue of marriage by persons with mental disabilities has been the subject of two decisions of the Constitutional Tribunal. First, on 28 April 2015, the Constitutional Tribunal discontinued[27]—for formal reasons—a case initiated by a question raised by one of the courts regarding whether Article 12§1 of the FGC is in compliance with Articles 18 and 47 of the Constitution. The provision in question stated the following:

> A person suffering from mental illness or mental retardation shall not conclude a marriage. However, if the state of health or mind of such a person does not endanger the marriage or the health of future offspring, and if the person is not completely incapacitated, the court may permit him or her to conclude marriage.

The dismissal occurred mainly because the question was not related to the subject matter of the case the court was considering.

A year and a half later, the Constitutional Tribunal issued a substantive judgement on the same issue after hearing a complaint filed by the Ombudsman. According to the Ombudsman, Article 12 of the FGC violates the right to privacy of persons with disabilities (Article 47 of the Constitution) and prevents such persons from marrying in contravention of Article 23 of the UN Convention. In the Ombudsman's view, under these circumstances, people with intellectual disabilities are discriminated against. The Constitutional Tribunal did not share the Ombudsman's view and decided that Article 12 of the FGC is consistent with the Constitution.

The Tribunal took the position that barring persons with a serious mental illness (at its advanced stage) or severe intellectual disability from marrying, as stipulated in Article 12 of the FGC, does not discriminate against such persons. From the point of view of the

23 | Judgement of the Constitutional Tribunal of 7 March, 2007, K 28/5; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – 4A 2007, No. 3, item 24.
24 | Cf. Article 559 of the Civil Procedural Code.
25 | Journal of Laws of 2012, item 1169.
26 | Mikrut, 2015; available at http://www.bwmp.up.krakow.pl/wpcontent/uploads/2015/01/Adam-Mikrut.pdf (Accessed on 2.05.2021).
27 | Judgement of the Constitutional Tribunal of 28 April 2015, P 58/13, Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – 4A 2015, item 58.

principle of equality with regard to the right to conclude a marriage, these persons are not in the same situation as persons of good intellect, which is why the unequal treatment is defendable. In addition, people with profound intellectual disabilities cannot fulfil the duties of a spouse and possibly a parent. Therefore, the limitations of Article 12 of the FGC must be viewed from the perspective of the principle of permanence of marriage[28] and the principle of the best interests of children[29] (understood in both pedagogical and eugenic terms). The stability of a marriage should be seen not only from the point of view of the provisions of divorce, but also from the perspective of other regulations that sustain the proper functioning of the marriage.

Regarding the right to privacy (Article 47 of the Constitution), which, according to the complainant, was violated by Article 12 of the FGC, the Constitutional Tribunal stated that Polish family law does not guarantee the freedom to conclude a marriage.[30] As a rule, the provisions are mandatory and their modification, in most cases, is impossible either by the will of the parties or by virtue of decisions of state bodies (courts, administrative authorities); in some situations, however, the provisions can be altered, albeit to a limited extent.

The Constitutional Tribunal shared only the Ombudsman's view that Article 12§1 of the FGC does not meet the standard of due precision as it employs expressions already abandoned by modern science (psychiatry, psychology, pedagogy). It, however, concluded that the outdated terminology did not lead to different decisions from those that would have been reached if the article had been revised and more updated terminology in line with modern science had been used.

The ongoing debate about the legal status of persons with intellectual disabilities[31] is expected to continue to evolve in terms of the positions of the parties to the debate, jurisprudence, and probably also the law.

4. Maintenance obligations between former spouses

In divorce cases, the court may decide to award maintenance to the former spouse. The maintenance obligation between spouses after divorce (Article 60 of the FGC) is a continuation of their obligation to meet the needs of the family during the marriage, which they established through their relationship (Article 27 of the FGC). From the point of view of the premise and scope of both obligations, they are significantly different.[32]

If the divorce has been pronounced on the grounds that the spouses were mutually at fault for the breakdown of their marriage, or if the judgement has been delivered without making an adjudication on the fault, then either spouse may claim maintenance from their former spouse if they prove that they are in need. Such an obligation expires within five years from the date of the divorce pronouncement. The same regulation applies to separation. This solution does not raise any constitutional issues.

28 | Ignatowicz and Nazar, 2016, pp. 354–356.
29 | Radwański, 1981, pp. 3–28; Sokołowski, 2020, pp. 209–211.
30 | Mostowik, 2017, p. 46.
31 | Kmieciak 2018, pp. 93–111; Mróz, 2018, pp. 7–43; Pudzianowska, 2014; Smyczyński and Andrzejewski, 2020, pp. 61–63.
32 | Pawliczak, 2017, pp. 810–811.

On the other hand, if the divorce decree provides that one of the spouses is solely to blame for the breakdown of the marriage, then the other spouse may request alimony only if they can demonstrate that as a consequence of the divorce, their economic situation has deteriorated (which does not have to involve falling into a state of deprivation). In such a case, the maintenance may be sufficient to enable the entitled person to satisfy their needs on a similar economic level as that before the divorce. This alimony obligation is not limited in time and may therefore continue until the death of either party or until the *innocent spouse* remarries (Article 60§3 of the FGC). Its greater scope and indefiniteness are a kind of sanction for causing the breakdown of the marriage.

In a judgement returned on 11 April 2006,[33] the Constitutional Tribunal challenged the claim that the indefinite obligation of maintenance towards the former spouse imposed on the person solely responsible for the breakdown of marriage violates the property rights of the obliged person (Article 64 of the Constitution) and is contrary to Article 31, sec. 3 and Article 2 of the Constitution. In the key part of the justification for the judgement, it was found, *inter alia*, that the principal cause of dissolution of marriage is the death of one of the spouses and, therefore,

> ...it should be assumed that certain forms of protection of property claims against the spouse may not only continue despite the divorce, but may also be 'life-long' in nature. If the divorce had not taken place, the spouses would have had the right to expect from each other support as well as material assistance in satisfying their legitimate needs.
> A culpable contribution to the breakdown of one's marriage is undoubtedly an action that must be assessed negatively not only from the point of view of the other spouse, but also the social life of a community, of which marriage and the family it established are important elements. Accordingly, in the light of the substantive regulations of the Constitution, 'harsher' treatment of the spouse at fault cannot in principle be regarded as socially unjust, and the legal nature and social assessment of the institution of divorce itself is of secondary importance in this respect.

In its judgement of 25 October 2012,[34] the Constitutional Tribunal again rejected the argument that Article 60§3 of the FGC is inconsistent with Article 64 sec.1 and 2 of the Constitution in conjunction with Article 31, sec.3 of the Constitution. This means that The Constitution provides that with the lapse of time, the maintenance obligation is not terminated. It was emphasised in the justification that the challenged regulation is not accidental, as it refers to the principle of the permanence of marriage. Moreover, it was found that a man and woman entering into marriage

> ...voluntarily assume an obligation to provide for the needs of the family (cf. Article 27 of the FGC), which...is intended...to last for the rest of their lives... . ... [B]oth should, as a rule, live on an equal living standard, although it may be higher or lower than before the marriage. In the case regulated by Article 60§2 of the FGC, such an assumed relationship between spouses is broken down by a unilateral decision of the spouse who is solely to blame for the marriage breakdown. By refraining from sustaining the marriage, this spouse affects the financial situation of the

33 | Judgement of the Constitutional Tribunal of 11 April 2006, SK 57/04; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – A 2006, No. 4, item 40.
34 | Judgement of the Constitutional Tribunal of 25 October 2012, SK 27/12; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – A 2012, No. 9, item 109.

> innocent spouse, who had the right to expect that the marriage would last and that the financial situation created by it would be relatively stable. In this context, lifetime alimony is a substitute for the guilty spouse's broken promise to live together and help each other for life.[35]

Both decisions of the Constitutional Tribunal have met with complete approval in the doctrine. The two fragments of their justifications quoted above serve to illustrate the principled and axiological argumentation that deserves attention and recognition.

5. Status of marriage and cohabitation in social law

To highlight the constitutional rank of the institution of marriage, including the position of marriage in relation to the state, as well as determine the significance of the responsibilities of the state in relation to marriage, it is important to focus on the judgements of the Constitutional Tribunal on Article 18 of the Constitution. However, what is of interest in this provision is not the most spectacular issue, namely the definition of marriage as a union of a man and a woman, but its imposition on the state the obligation to help and care for marriage, family, maternity, and parenthood.

In this context, the judgement of the Constitutional Tribunal of 18 May 2005[36] is particularly noteworthy, as it declared the nature of regulations governing the single parent allowance to be unconstitutional. In light of the provisions of the Act of 28 November 2003 on Family Benefits,[37] this allowance was formally available to persons who had the status of a single parent, but, in reality, it was also collected by persons who cohabited with others, while married couples with children were not entitled to it. A complaint filed by the Ombudsman argued that such a regulation violated the principle of protection of marriage as expressed in Article 18 of the Constitution because it favoured informal unions. Attention was also drawn to the fact that the provision had the effect of favouring cohabitation over marriage in social law in contravention to Article 18 of the Constitution, resulting in a significant increase in the number of divorces and separation proceedings as well as postponements of the decision to get married. This increase was due to the wish to obtain (or maintain) a single status (formally), which ensured access to benefits. In light of the social benefits, which have proven to be destructive to the functioning of marriages, it was impossible to see marriages as unions particularly protected by the state, which contradicts Article 18 of the Constitution.

Moreover, the Constitutional Tribunal found the challenged provisions of the Family Benefits Act to be inconsistent with the constitutional principle of subsidiarity because the provisions led to an erosion of maintenance obligations imposed on family members.[38] By granting a single parent supplement, the parent obliged to provide child support automatically reduced the amount paid to the child by the equivalent of the benefit. It was not

35 | In Polish literature, the first mention of this kind of argumentation can be found in Sokołowski, 1996.
36 | Judgement of the Constitutional Tribunal of 18 May 2005, K 16/5; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – A 2005, No. 25, item 51.
37 | Journal of Laws of 2003, No. 228, item 2255 as amended.
38 | Kosek, 2009, pp. 1073–1085.

until 2008 that the revised FGC adopted a rule wherein social benefits paid to an eligible person from public funds were not intended to exclude or limit alimony obligations.

Similar situations were treated in the same way in the Constitutional Tribunal judgements of 23 June 2008[39] and 18 November 2014.[40] As a side note, it is worth mentioning that the category of *single parents* was known much earlier to the tax law;[41] however, it did not cause such a significant destruction as after its application into social law.

6. Conclusions

The Constitutional Tribunal is dealing with family issues, including those concerning marriage, more often now than before. Apart from matrimonial issues, judgements concerning filiation, parental authority, and foster custody are also issued.

Many applicants view the Constitutional Tribunal as an institution that can bring about a change in the way regulations are interpreted or can lead to the amendment of regulations that are challenged as being inconsistent with the provisions of the Constitution.

The Constitutional Tribunal exercises caution when adjudicating on the most important issues, showing care towards the institution of family law. In its judgements concerning marriage and family, it grounds its decisions in the principles developed by the doctrine and jurisprudence of the Supreme Court. The principles include, for example, permanence of marriage and family, the interests of a child, the interests of a family, respect for the autonomy of individuals and families, and primacy of parents in raising children. Thanks to this attitude, which is restrained by principles, the laws regulating the functioning of marriage and family in Poland are relatively stable, which is a desirable situation.

Several doubts have been raised in doctrine regarding the constitutionality of certain legal solutions concerning marriage, which, however, have not been submitted for adjudication to the Constitutional Tribunal.

From the point of view of the principle of secularity of the state and the separation of the state and the Church, the possibility of concluding marriages in a denominational form with consequences for the secular law has been questioned.

From the point of view of the principle of equality between men and women under law, an objection has been raised, which is that, by way of exception and with the permission of the court, the law allows a woman who has attained the age of 16 to conclude a marriage, while a 16-year-old man does not have that option.

Apart from the issue of heterosexuality and alimony after divorce, neither the literature nor any complaints submitted to the Constitutional Tribunal have so far challenged the FGC's characterisation of marriage as a relationship of equal partners, obliged to cohabitation, fidelity, and mutual assistance (Article 23 of the FGC).

39 | Judgement of the Constitutional Tribunal of 23 June 2008, sig. P 18/06; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – A 2008, No. 5, item 83.
40 | Judgement of the Constitutional Tribunal of 18 November 2014, sig. SK 7/11; Jurisprudence of the Constitutional Tribunal, collection of the judicial decisions – A 2014, No. 10, item 112.
41 | Ofiarski 2008, pp. 559–563.

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