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WORLD CONGRESS ON JUSTICE FOR CHILDREN

28-30 MAY 2018

STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN

Protection of the child through cooperation of institutions and organizations and protection of the rights of the child during court proceedings.

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1. Cooperation of organizations and institutions - different forms of support in benefit of the children and their families.

a) The wellbeing of the child as the guiding principle of the Polish law.

In the framework of the Polish law, the wellbeing of the child and of the family is a treasured constitutional value. That is why, the Polish Constitution safeguards the wellbeing of the child against violence, cruelty, exploitation and demoralization. Family constitutes the basic social unit and thus the Constitution guarantees that legal protection is given to the institution of marriage, family, motherhood, and parenthood by the state.

The Polish state pays special attention and provides support to families which experience difficulties and are unable to fulfill their basic function of a place where children are nurtured and protected. A well-functioning family guarantees proper



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development of a child. Therefore, actions targeting the family cannot be random and dissociated from its real problems. If the support is to be effective, all the relevant elements which make the family dysfunctional. must be factored in.

It is the responsibility of the Family Court and other state authorities to support the parents whenever such assistance is needed for them to exercise their parental responsibilities correctly.

All public servants, not only Policemen, but also teachers, doctors, social workers - all those, whose work involves children - are obliged to notify the Family Court as soon as they notice any signs of the child being abused, malnourished, neglected or demoralized.

A conscientious public servant, who understands the child's family situation well, should however, make always sure that he knows all the facts before the Family Court is notified. It is then up to the Court to decide whether the presented facts justify institution of proceedings and intervention into parental authority, which is always an extraordinary measure that changes life circumstances of the child and as such, it should be reserved for instances when the applied measures will decidedly change the child's situation for the better.

Effective protection of the child's wellbeing, requires efficient cooperation between local authorities and local community, the courts and their support services (court-appointed guardians, family assistants), Police, educational institutions, health clinics, church and religion groups and non-governmental organizations.



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Therefore, Polish lawmakers created an efficient system geared towards comprehensive child protection. It is however necessary to be watchful: the system is like a machinery which may comply with all the required procedures when it starts moving but one needs to make sure we do not lose the most important goal - the wellbeing of the child – from our sight.

It is child's natural right to be brought up in his biological family. But this right is not absolute, for legal or formal reasons. It is only when it becomes necessary to separate the child from its family, that gives rise to the child's right of being brought up in foster care and the state is obliged to help and protect.

Before the child's case is brought before the family court, different support institutions specializing in providing help to families in distress engage with such family and provide help in the form of:

- 1) consultation, advice and specialized counselling;
- 2) therapy and mediation;
- 3) services for families with children including specialized care services
- 4) legal assistance especially in the scope of family and criminal law and support to the victims of crime;
- 5) participation in support groups for families in order to exchange experiences and prevent isolation.

The Family Court may render any decision that is deemed best for the child in given circumstances, taking into account child's proper spiritual, psychological and physical



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development. The court may also act preventively whenever child's wellbeing is in danger and not only reactively, when harm has already been done.

Whenever child's wellbeing is in danger, the family court may do the following:

- demand that the child's parents work with assigned family assistant. Family assistant's role is to aid the parents solve parenting and every-day life problems in order to achieve basic stability and to prevent child's removal from the family;
- refer the parents and the minor to seek professional help such as family therapy or counselling;
- subject the family to the supervision of a court-appointed guardian who monitors the way parental responsibilities are exercised;
- refer the minor to a facility where he can acquire professional skills or place him in a facility which will share parental responsibilities. Such facilities offer support in every-day care, learning, organize leisure activities and help develop hobbies and interests. They can also provide specialized help such as therapy, speech therapy and physical therapy.

The Court supervises the parents to make sure they fulfill all their obligations.

It is only when the above measures do not yield expected results or when, due to extraordinary circumstances, there is no hope they will do so in the future, that it becomes necessary to separate the child from his parents. The Court may order



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child's placement in a foster family: either kinship – which takes the precedence or non-kinship, also called a professional foster family, in family care facility, in a care institution or in a medical facility.

The system of foster care has been designed to provide temporary shelter and care for the period of time necessary to prepare the family to take the child back – if at all possible. In addition, family foster care takes precedence before institutional forms of care such as state-run facilities. A child is entitled to live in a stable foster environment. Therefore, when placed outside the family, it remains in the same foster family or facility.

The child placed outside the family has the right to return to its family and to maintain personal contact with its parents, except for cases when such contacts were banned by the court because of harm or criminal act committed against the child.

Every 6 months an evaluation group meets to assess the situation of the child placed in foster care. The group is composed of psychologists, pedagogues, social workers, teacher, medical doctor, nurse and child's parents. A report from each meeting is presented to family court.

b) Family advisory proceedings.

In case the family is unable to overcome its difficulties and it intends to divorce, the Polish state is currently preparing a reform which will introduce an advisory session held before divorce proceedings, with the participation of a judge



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and a mediator. The overall goal of such proceedings will be protection of the wellbeing of the children whose parents are in the process of divorce. The pre-divorce proceedings will precede only divorce and separation proceedings of spouses with underage children. Their goal is to maintain the continuity of the marriage and when it is impossible – to work out a compromise concerning the exercise of parental authority, maintaining contact with the underage children and provide child support. It is worth mentioning that the new regulations do not make mediation obligatory. The mediator will advise the spouses on negative social results of the breakdown of the marriage, in particular for them and their children - the fact of which the spouses are often not aware. The advisory family proceedings are to be free of charge in order to encourage the couples use this method. The costs will be covered by the State Treasury.

c) Mandatory participation of the Prosecutor.

In order to better protect the children, Poland introduces a new legislation which makes it mandatory for the family court to notify the Prosecutor about proceedings concerning parental authority if children's wellbeing is deemed in danger. Such provision will encourage cooperation between the family court and the prosecutor in order to protect the wellbeing of the children and will trigger prompt and swift reaction. The prosecutor is equipped with adequate legal tools which other authorities, such as the court-appointed guardian or social services lack, to counter or prevent criminal activity against the children.



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d) Support for the families in the form of universal child benefit resulting in improved living, educational and health conditions for the children.

Polish State, just like so many other European countries, struggles with declining birth rate. Currently, the population of Poland is slightly over 38 million and it has been steadily declining since 2010. Therefore, Poland took the decision to invest in our families. To achieve this goal, national program „Rodzina 500+” - Family 500+ - was introduced in April 2016. It introduced universal, tax-free child benefit in the amount of 500PLN (115euro) for the second and next child, without additional conditions. Low income families receive this benefit also for the first child.

Over 2 400 million families or 3 600 million children benefit from this Program. To this date 42.62 billion zloty (over 10 million euro) has been paid out to the families.

The Programme Family 500+ has been in force for two years and it is possible to see its positive effects, such as improved living, educational and health conditions, decrease in poverty and increased birthrate. The introduction of the programme meant better economic security for the families which positively impacts their decision to enlarge the family. Furthermore, the program gives back a sense of dignity to families – which they deserve. Already in 2017, the first year of the Programme, there were 403 000 life births which is 20 000 more than in 2016.



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60% of people benefiting from the programme considers that it has significant impact on their family budgets. Large facilities noticed the biggest positive difference in their financial standing. This is a long-term programme. It provides for the current needs of the children and its benefits will be seen also in the future. More and more families invest in their children's development and education.

According to the most current EU estimates, Poland is one of the fastest growing European economies. In 2017, the estimated real GDP growth in Poland was 4.6%. It means that only 6 other EU countries had higher growth rate. Consumption rate was higher in 2016 – in general it grew from 2.8% to 3.4% and individual consumption level grew from 3.0% to 3.9% which has direct impact on the wellbeing of the children.

e) Educational activities directed at delinquent minors. Cooperation between the court and other institutions in order to rehabilitate the minor, in light of Young Offenders Act.

In the Polish law, there is a special Act concerning juveniles (Act of 26 October 1982 on proceedings involving young offenders), which applies whenever a minor commits a crime or has become demoralized. The guiding principle of that Act is to prevent demoralization and crime among minors, to facilitate return to normal life for those young offenders who have breached the law or violated the norms of social coexistence, but also to strengthen the families in their role of carers, educators who



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should have strong responsibility to rear the young as responsible members of the society. **The main objective of the juvenile court** is to facilitate rehabilitation rather than to punish. The court is guided by the best interest of the minor, fosters positive changes in the minor's personality and behavior and, if needed, influences the way parental authority is exercised, to the benefit of the society.

In order to facilitate rehabilitation of the minor, Juvenile Court may apply several measures:

- 1) Demand certain behavior, including restitution for the harm or damage done, to perform certain work or services in favor of the aggrieved person or the community, to apologize to the victim, to take up education or work, to participate in educational, therapeutic or instructive activities, to refrain from attending certain places or communities, to give up alcohol or other mood-altering substance;
- 2) to establish supervision by parents or carers;
- 3) to establish supervision by youth organization, other social group, work place or public trust person;
- 4) to appoint a court-guardian;
- 5) to order placement in a specialized institution or organization, experienced in educational, rehabilitation or therapeutic work with juvenile offenders;

Furthermore, the Court may impose isolation of the juvenile delinquent person by placing him in a correctional facility for the youth or in a non-kinship foster family, which has been trained to provide such care, or to place in a correctional institution.



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The provisions of the Act also include some measures which require involvement of the parents or carers: these are: to demand of the parents or carers to improve educational, life or health condition of the minor, to require close cooperation with the school the minor attends or with the psychological-pedagogical counselling center or any other specialized counselling facility, place of work or medical clinic.

The required restitution by parents of the harm or damage done by the young delinquent has educational value as it motivates them to take better care of the minor. The aforementioned measures stress greater involvement of the parents in the upbringing of their offspring.

Furthermore, the Court may request that competent state or social institutions render their support in bettering living or health conditions of the minor

After the Court imposes certain measures, enforcement proceedings start, during which the Court monitors the effectiveness of the applied measure. If the measure turns out ineffective, the Court may change it for another one. In light of the aforementioned provisions, NGOs play an important role in the upbringing and proper functioning of the child and the family.

f) Justice Fund.

The Ministry of Justice implements the **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime,**



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by undertaking activities through the Victim Assistance and Post Penitentiary Assistance Fund - the Justice Fund, established on 1 January 2012.

The Justice Fund is a national special fund at the disposal of the Minister of Justice. The source of income for the Fund are the vindictive damages awarded by the Court and fines paid by the criminals. Almost 170 million zloty – or almost 40 million euro – was dedicated by the Justice Fund to provide help to the victims of crime, out of which NGO received 51 million zloty or 12 million euro.

In 2017 it amounted to over 16 million zloty (4 million euro) and in 2018 – 35 million zloty (almost 9 million euro).

The means from the Fund are dedicated, among others, to support to the victims of crime and their next-of-kin, especially legal aid, psychological counselling and financial support provided by NGOs.

In what regards to children who are victims of crimes, it is important to note, that the means from the Fund can be used to cover costs related to:

- education in public schools and pre-schools, including individual lessons and to cover the costs related to education outside formal schooling, adequate for the child's needs and age.

- the costs incurred to provide care in nurseries run by local authorities;

- costs of training and courses enhancing professional qualifications and the costs of examinations and recognition of professional qualifications;

- temporary accommodation or shelter



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- financial support to cover the costs of utilities (electricity, gas, water, sewage, or rent for a flat or a house which is owned by the entitled person, proportionally depending on the number of persons permanently inhabiting that dwelling;
- to cover the costs of making necessary adjustment to the dwellings of a victim of crime, provided the loss of physical activity resulted from the crime;
- costs related to organization of vacation for a child

Because a picture is worth a thousands words, I would like to show you one of the support centers for victims of crime which is run by the **Association SOS for the Family** which provides help to the victims using the means received from the Justice Fund.

(PRESENTATION SOS)

2. The Notion of fair proceedings from the point of view of a child in the context of protection of child's rights.

a) Elements of *informal justice* in the Polish law.

The specificity of a legal system for juveniles is that it centers on a child who is in the hands of a Juvenile Court. As a rule, the polish legal system does not have, in what concerns the minors, the equivalent of so called informal justice *sensu stricto*.



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Polish justice system contains certain elements which allow the Court to “handle “ the case of a juvenile at an early stage of proceedings without the need to have full court proceedings and to apply a corrective measure. These are:

- ordering mediation between the juvenile delinquent and the victim outside the court
- transferring the case of the juvenile (with his consent) to the school he attends or to a youth, sport, culture organization where he affiliation;
- request the parents or the carers to improve juvenile’s living, education, health conditions as well as mandatory cooperation with the school and other institutions;
- turn to competent state or social authorities to provide support required to improve living and health conditions of the young person.

b) The rights of the minor to ensure fair trial.

According to the Polish law, a juvenile is a party to the proceedings and can act independently even if he does not have partial legal capacity.

A Minor has the following rights:

- the right to a defense, including the right to request free of charge legal aid
- the right to refuse deposition or answer some questions;
- the right to freedom of expression;



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- the right to motion for evidence and appeal – irrespective of minor’s age;
- the right to have defense attorney, including public one;
- the right for mandatory assigned counsel (legal aid) in case when minor’s interest is contrary to his parents’; when the minor is deaf, mute or blind or when there is doubt as to the state of his mental health and when the Court ordered a temporary measure of placing the minor in a shelter for minors.

c) Hearing of minors by the Court.

In all the cases concerning the person or estate of the child, also in parental authority cases, the Court is obliged to hear the child, provided the child is old enough and has adequate mental and health capacity. Furthermore, the Court is obliged to take into consideration reasonable wishes of the child. Broadly speaking, the Court should use the possibility to hear the child with the help of a witness expert, usually a trained psychologist. The Judge may also hear the child personally, especially if the child is approaching the age of maturity.

On the other hand, the Court may limit or exclude personal participation of the minor in the proceedings, if so dictated by the circumstances.

Furthermore, pursuant to the provisions of the Code of penal proceedings, hearing of underage witnesses to crime or victims of a crime may take place only following special procedure, in so called friendly deposition room.



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The hearing that makes part of the pre-trial preliminary proceedings, is performed by the judge in the presence of an expert psychologist in suitable conditions, to ensure comfort to the minor. The Prosecutor, attorney and legal representative of the victim may take part in the deposition but they remain in a technical room, with the equipment allowing them to follow the interrogation, and to contact the Judge in order to ask questions. The hearing room may be located in a Court, Police station, Prosecutor's office, public institution or local authority or in a building which belongs to any other entity which have support to victims of crime within their remit. As you can see in the pictures, the hearing room is in the Court building. It's entrance is away from the part of the building where the accused, detained or victims of other crimes remain.

The hearing room should be painted in light but not very bright colours. The room should be furnished with furniture suitable both for adults and children, with soft carpeting on the floor. There should also be a high-quality, reliable recording equipment, both for audio and video, as the persons making depositions, especially children may be speaking in a low voice, with head bent down – due to traumatic experiences they had experienced.

(Presentation – Rooms)

In 2017, there were 279 child-friendly rooms dedicated to taking testimony from the children. Such room can also be found in Police stations, Prosecutor's



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Offices and NGOs. In total, there are over 600 of such rooms in Poland. It is planned to have such room in every Court and Prosecutor's office.

Summary

Poland continues to reform its legal and judicial system. Along with the rule of law, the centrum principle for the new institutions of the family and juvenile laws remains wellbeing of a child. New circumstances, threats and opportunities constitute challenges to amend the current laws to better protect children and their rights.

The new measures include special benefit for the children, the friendly family assistant, promoting mediation in divorce proceedings and special aid to the victims of crimes. The coming changes to juvenile law focus on education juveniles rather than on punishment.