

Child-Protection Systems – Polish Perspective

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ABSTRACT

The main right of a child is the right to live in a natural family. In this family, actions are taken for the good of the child. This right is sometimes violated and transgressed in social life. This means that the state and its bodies must take over responsibility for the care and upbringing of the child. This responsibility is taken over through the institution of foster care. This care can be implemented in institutional and environmental forms. It is to provide the child with appropriate conditions for development when the natural parents are not or cannot provide care. Foster care is temporary. In the event that the child cannot return to the natural family, domestic or international adoption actions are taken. The childcare system assumes that the child is provided with care by natural or adoptive parents. Unfortunately, this system is not effective. A significant number of children remain in foster care until they reach adulthood. In many cases, longer, until they finish school and complete the process of becoming independent. This system is not efficient. There is a lack of foster families providing care and upbringing for children. The gaps in social infrastructure result from the negligence of the bodies responsible for it. They are a consequence of social changes and the lack of foster families. Negative phenomena in this area force corrective actions to be taken. These actions aim to provide children with proper care and upbringing.

KEYWORDS

child, foster care, family, local government, care and educational facility

1. Introduction

The state, an organism created by a community, comprises different categories of people, ranging from children to adults to senior citizens. The state as invoked here is a common good,¹ i.e. an entity responsible for providing its citizens with conditions in which they can function and satisfy their needs. This means that the state is also obliged to ascertain that children are guaranteed conditions that allow them to live

1 Re. the common good, see: Trzciński, 2018, pp. 23ff.

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in their natural families, and if, for various reasons, this is not possible, it will take measures to create conditions in which they can live and grow peacefully.²

In the initial stage of these considerations, the focus should be on the concept of the child, particularly on how a child is perceived and who is a child. These considerations require the background of international law and the Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly on 20 November 1989. According to the CRC,³ the term “child” refers to any human below the age of 18, unless, as per the law applicable to the child, he or she has attained majority earlier. Meanwhile, the national legal order views a child as any human being from conception until the age of attaining majority.⁴

A child’s proper development depends largely on the proper functioning of the family, which is the basic unit of society and the natural environment of development, and the well-being of all its members, especially children. The concept of a family is enshrined in the Constitution, featured in Arts. 18 and 71 of the Constitution of the Republic of Poland.⁵ Art. 18 stipulates that the family is under the protection and guardianship of the Republic of Poland, while Art. 71 claims that the state considers the well-being of the family in its social and economic policies. Families in difficult economic and social conditions, especially those with many children and single-parent families, are entitled to special assistance from the public authorities. Granting constitutional protection to the family is, however, not tantamount to laying down the scope of this concept. It should be emphasised that the Polish law has numerous definitions of the family, with practically each of them being applied on the grounds of a particular act, and thus there exists no universal approach to this concept. Literature emphasises that on the basis of the provisions of the Basic Law, the notion of a family is understood as spouses, their relatives and kinsmen,⁶ i.e. persons connected by certain rights and obligations arising from blood ties or as a result of a legal act performed before an authorised authority (entering into marriage). A family understood in this way is subject to special care and protection and assistance from public authorities. Within the framework of these considerations, the regulations in the Constitution distinguish two categories of families, namely, large families and single-parent families.

However, it needs to be emphasised that the regulations on family rights included in the Constitution of the Republic of Poland are not cover to civil partnerships (regardless of their nature). Consequently, parents of a child who are not in a formal

2 Re. the state obligations, see: Florczak-Wątor, 2018, p. 119.

3 Journal of Laws 1991, No. 120, item 526.

4 Act of 6 January 2000 on the Ombudsman for Children (Journal of Laws of 2023, item 292). In the study addressing the issue of foster care, the definition of child is applicable only from the moment of birth, as only from that moment they function as independent beings. Thus, considerations related to the legal status of the child from conception to birth will not be analysed. Re. the above topic, see: Blicharz and Zacharko, 2021, pp. 15ff; Nitecki, 2020, p. 147.

5 See: Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws 1997, item 48, item 483 as amended).

6 Smyczynski, 1997, p. 191.

union are deprived of the potential to employ the full scope of the instruments provided for in the provisions of the substantive law, which support the family in the implementation of its custodial and educational function. This lack of provision for such couples is incorrect and needs to change.

2. The Aim of the National Child Protection System in Poland

The norms contained in the substantive legislation regulating the provision of care for the child and family⁷ are aimed at creating mechanisms for delivering effective assistance to families struggling with caring for and raising children. This assistance is achievable through the cooperation of all persons, institutions and organisations working with children and parents. In this regard, principle of subsidiarity plays a special role,⁸ as it assumes that, first, the family is obliged to undertake activities to overcome the challenges it faces; however, when these difficulties exceed its capabilities, it can expect help from other social life participants located at higher organisational levels, i.e. non-public entities, and further from the relevant entities of the executive power at its various levels, as well as from entities of judicial power.⁹

The child protection system aims to, first, ensure that children remain in their natural families. Therefore, measures taken are expected to support families facing difficulties in appropriately fulfilling their custodial and educational duties towards the child.

In a situation where the natural family is unable, for reasons beyond its control (absence of such a family) or for reasons within its control (unable or incapable), to provide care for the child, the state is obliged to take measures to provide care. However, it should be emphasised that in all instances where the return of a child to his or her natural family is possible, the state authorities and all entities acting for and on behalf of the state are obliged to take measures aimed at creating conditions for the child to return to his or her natural family.

The return of the child to his or her natural family is a priority, implying that all forms of (community and institutional) foster care are only ad hoc. Furthermore, foster care is a form of care provided for the child during the period of adoption proceedings, in all instances where launching an adoption procedure is possible and the child can be provided with domestic or foreign adoption.

The objective mentioned is achieved to varying degrees, since much depends not only on the activities undertaken by the authorities and bodies involved, but also on the natural parents. Targeting natural parents to prepare them to fulfil their role as parents in an appropriate manner is crucial and determines whether a temporary

7 In the Polish legal order, the Act of 9 June 2011 rules on support for families and the foster care system (Journal of Laws 2023, item 1426, as amended).

8 See: Nitecki, 2015; Klose, 1985, pp. 13–14; Dudzik, 2004, pp. 51–62; Stopka, 2009; Bąkowski, 2007.

9 For more on this topic, see: Zajączkowska-Burtowy, 2021, p. 1061.

provision of care to a child will be terminated or transformed against its function into a permanent institution. Natural parents are deprived of custody of their children for very different reasons. These include situations where their frailty is noticed, particularly due to deficiencies in their intellectual capacity, as well as the consequence of various kinds of breaches in the proper exercise of their custodial and educational duties due to alcoholism, drug or other addictions. The most drastic reasons involve the use of violence against children.¹⁰

In conclusion, it should be stated that in the light of the current legal regulations on family support, work with the biological family of the child is conducted in order to facilitate the child's return to this family.¹¹ In situations where the above-mentioned activities fail to produce a positive result, activities towards adoption of the child are undertaken. If the child does not receive adequate care in the natural family or through adoption, a foster environment must be give custody of the child. The sequence of the operations presented here seems rational because the legislator seeks to normalise the legal situation of the child so that it is stable and provides the child with a sense of security. The above considerations demonstrate that the legislator has prioritised taking all measures aimed at returning the child to the family.¹²

3. Primary Principles of the National Child Protection System

The principles of child protection must be considered on several levels. The first level of the child protection system involves considering the rights related to all persons living within the country. Children are citizens and, in accordance with the provisions of the Constitution of the Republic of Poland, the main rights included in the aforementioned legal act, i.e. those related to dignity, freedom or equality, also address children. The second tier of the system of protection of children's rights refers to regulations that exclusively address children, or, in other words, children and their rights are at the core of their adoption.

Child protection can be ensured only if the subjectivity of the child is recognised by the law. The child's subjectivity lies at the heart of the child's right. The notion of the child's legal subjectivity should be perceived as any qualification for legally relevant behaviour in the sense of being the recipient or administrator or the point of attachment of rights or obligations.¹³ The capacity to act in proceedings aimed at granting rights or imposing obligations must be determined by the prerequisites of subjectivity deriving from substantive law. The child's subjectivity is the child's entitlement, which implies protecting its autonomy. Another definition of this concept would be to refer to being someone or having an identity that allows one to be distinguished from

10 On the reasons for limiting parental custody, see: Walencik-Ryba, 2019, p. 16.

11 Nitecki, 2017, p. 723.

12 Andrzejewski, Zajączkowska-Burtowy and Gajda, 2020, p. 21.

13 Filipek, 1995, p. 223.

others. Adopting this approach, the legislator has assigned the child the status of a subject who exists, functions in society and remains in relation to it, and anyone who takes action towards the child is obliged to recognise that the child is an autonomous subject who is entitled to protection under the norms of the basic law.¹⁴

The child, as an autonomous subject, has rights granted by the law, which includes the right to protection from arbitrary or unlawful interference in his or her life. This implies that decisions taken in relation to the child by entities applying legal norms, including the Act on Family Support and the System of Foster Care, cannot overlook the child's right to object.¹⁵ The fundamental and natural, and at the same time primary, right of a child is the right to be brought up in a family. Further, if it is necessary for the child to be brought up outside his or her family, it is the right of the child to be cared for and brought up within family foster care forms, if this is consistent with the child's welfare. Furnishing the child with the above right also means that the child placed in foster care has the right to return to his or her biological family. Ensuring that it is possible for the child to return to his or her family is one of the child's natural rights, and this implies that the authorities tasked with this are obliged to undertake actions that will enable the child to return to his or her family. The catalogue of rights includes the rights connected with the upbringing process. Within this group of rights, the focus is to be first on the right to a stable environment for the child's upbringing. In other words, changes to the environment of the child's upbringing should be made only in situations that warrant it, namely, when the natural family or the established form of foster care fails to manage the child's upbringing problems or is no longer able to perform such a function. In addition to the presented rights, the child has the right to protection against degrading treatment and punishment. This right is of a universal nature and applies to all.

As mentioned above, the child is a human being and is therefore covered by the concept of dignity under Art. 30 of the Constitution of the Republic of Poland.¹⁶ This concept includes within its scope the principle of listening to the child, which is anchored in Art. 12 of the Convention on the Rights of the Child.¹⁷ The essence of this principle is that all actors undertaking activities involving children are obliged to listen to them, to the extent allowed by their age and degree of maturity. The child's right to be heard is also addressed to those implementing foster care tasks, particularly to the bodies that assess the situation of a child placed in foster care and qualify the child for adoption. To the extent indicated, this principle amounts to allowing the child to express his or her personal situation and make suggestions. The implementation of this principle should lead to considering child's stance as much as possible.

14 Nitecki, 2022, pp. 696–697.

15 Trynieszewska, 2012, p. 27.

16 On the concept of dignity, see: Duniewska, 2021, p. 155.

17 See: Pawlak, 2015, p. 215.

4. Who Is Responsible for the Child's Protection (State, Municipality, Churches)?

The comments so far have already clarified that the subject obligation to support a family experiencing difficulties in fulfilling its custodial and educational duties, as well as to organise foster care, rests with local government units and government administration bodies. Within the framework of the public administration indicated here, the local government units are responsible for substantive activities undertaken with regard to families experiencing difficulties in performing custodial and educational duties, as well as with regard to persons benefiting from the provided-for forms of foster care. The division of tasks among individual units of the local government is based on the principle of subsidiarity, which implies that entities at the municipal level work with natural families, while foster care is the task of the powiat. The situation is different in the case of government administration bodies, since these bodies, within the discussed scope, do not undertake any activities of a substantive character, yet they bear control powers and, moreover, they undertake activities of a strategic nature, which are important from the perspective of the state and its social policy. The functions of a field authority (voivode) are substantially different from the tasks facing central authorities (the minister responsible for the family division), because the tasks of field authorities are more supervisory and controlling, while the central authorities are oriented towards planning strategies on a national scale to resolve problems of families experiencing difficulties in performing their custodial and educational duties.

4.1. Principle of Subsidiarity

The principle of subsidiarity materialises in two approaches.¹⁸ First, the introduction of this principle means that local and regional government units situated lower in the organisational structure of the state cannot delegate tasks with this scope to the local and regional government units situated at a higher level; in other words, tasks can be transferred in the indicated form only to the units situated lower in the organisational structure of the state. The second implication of principle discussed here amounts to the creation of the possibility for local government units to outsource public tasks to non-public entities and involve them in the performance of tasks provided for in the legal norms concerning family and foster care. Involving the social factor in the implementation of the indicated tasks is significantly important because this contributes to an intensified activity of society. The inclusion of non-public entities may result in parents, who struggle with performing their custodial and educational duties, finding it easier to establish contact and understanding with persons working

18 On the principle of subsidiarity, see: Sierpowska, 2012, p. 144.

in these organisations than with employees representing public administration bodies.¹⁹

4.2. Local Government Units

Local government units and government administration bodies perform the tasks entrusted to them with the cooperation of the local community, courts and their auxiliary bodies, i.e. the police, educational institutions, medical entities, as well as churches and religious associations and social organisations. It should be noted that cooperation indicated here means that the public administration performs the tasks together with the entities mentioned herein on the basis of the legal regulations in force and the position to which these entities are entitled. Thus, none of the entities exceeds the rights to which they are entitled, and each of these entities, guided by the welfare of the child and the family that faces difficulties in performing its custodial and educational duties, strives to resolve the situation and to ensure that the family performs their tasks correctly. Adopting such a solution would mean that local and regional authorities and governmental bodies are not limiting themselves to their own activity. At the same time, this does not mean that the public administration bodies indicated herein have any special powers and hold a dominant position and impose their own will. The catalogue of entities with which the territorial government units and government administration bodies are to cooperate is broad and open, and thus the obligation of such cooperation will also cover other entities not listed therein.²⁰ Such entities, through their operations, aim to support families experiencing difficulties in fulfilling their custodial and educational duties.²¹

Public administration bodies performing the tasks in question are obliged to cooperate with churches and religious associations in supporting families experiencing difficulties in fulfilling their custodial and educational duties and organising foster care. The term “churches” here is understood to include the Catholic Church as well as other churches. At the same time, it should be emphasised that the indicated authorities will cooperate with the relevant bodies of these churches and religious associations.²²

4.3. Social Organisations

In the implementation of tasks with the scope of fulfilling custodial and educational duties and organising foster care, social organisations play a special role. The term “organisation” is not precisely defined in the Polish law; however, it is commonly understood to mean associations.²³ Associations can be of two distinctive types; registered associations and ordinary associations. Only registered associations deal with

19 Blicharz, 2018, p. 44.

20 This issue is treated using an analogous approach by Tryniszewska, 2012, p. 23.

21 Nitecki, 2015, p. 135.

22 For more on this topic, see: Nitecki, 2020, p. 345.

23 See: the Act of 7 April 1989. - Law on Associations (consolidated text: Journal of Laws of 2020, item 2261, as amended).

the issues of children and foster care. The obligation to cooperate indicated herein applies only to those associations whose statutory objectives include support for families as well as measures to organise foster care or adoption procedures. It should be emphasised that the activities of associations within this scope are of a subsidiary nature and contribute to resolving the existing difficulties in the families.²⁴

5. Financing Childcare Tasks

As indicated above, substantive tasks within the field of family support and foster care are assigned to individual local government units. This circumstance bears significance regarding the manner of financing the tasks performed within this scope. It should be emphasised that the tasks within the scope of family support have been recognised as the municipalities' own tasks, which means that the municipalities incur expenditures for the implementation of these tasks from their own resources. In other words, when drawing up the budget, municipalities are obliged to secure funds allowing proper implementation of such tasks. The amount of funds dedicated to the established purpose depends not only on the needs that arise, but also by the possibilities available to a given municipality. In accordance with Art. 177 of the Act on Support for Families and the System of Foster Care, regarding tasks delegated by the government administration, a municipality implements only the tasks under government programmes. These tasks are performed in line with the guidelines of the voivode and within the framework of the funds provided by the government administration.

The powiat's performance of foster care tasks is included in the provisions of the aforementioned Act as the powiat's task. An exception in this respect is the provision of foster care to foreign minors, since the implementation of this task has been included within the scope of government administration. Additionally, the powiat implements government programmes as part of the tasks delegated to it. According to the principles of financing for foster care tasks, powiats are obliged to ensure the fulfilment of such tasks, in terms of community as well as institutional foster care, within their financial resources. At the same time, legal regulations allow powiats to claim reimbursement of expenses incurred from other local government units (municipalities and powiats) for the benefit of which the tasks in the discussed scope are performed. Owing to such an approach to financing for performing these tasks, the amount of funds allocated for the indicated purpose will depend on the possibilities of a given local government unit, the existing needs and the awareness regarding the importance of a given task on the part of the representatives of the legislative and executive authorities of this unit.

24 Nitecki, 2015, p. 137.

When foster tasks are implemented by non-public entities commissioned by the county, their financing is at the expense of the respective local authority, which is obliged to provide the relevant funds when commissioning the tasks.

On the financing of foster care related tasks, it should be noted that the scope of financial resources tasks performed by other administrative entities (social insurance institutions), which perform tasks of a universal nature, including those relating to children in (community or institutional) foster care. The only difference is in this instance, consideration is given to the child's benefit.

6. Indications That the Child Is at Risk

The norms of Polish laws governing the presented issues do not mention the premises that endanger the child and justify taking actions aimed at restricting the role of natural parents and possibly placing the child in the foster care system. The Family and Guardianship Code includes a provision according to which, if the welfare of the child is at risk, the guardianship court will issue appropriate orders.²⁵ Thus, the legislator has introduced only one concept, namely, “endangerment to the welfare of the child”. This covers any situation that could potentially constitute such a risk. The introduction of such a general concept shifts the entire responsibility for decisions taken with regard to the child and the natural parents to the guardianship court. The court will decide in each individual case on the basis of the material presented by the authorities and bodies acting on behalf of the court. This facilitates capturing any risk to the welfare of the child and enables the court to issue an appropriate decision.

It should be emphasised that a child may be placed in foster care only when the previously applied other measures as set out in the provisions of the Family and Guardianship Code and forms of assistance for the child's parents referred to in the provisions on family support and the foster care system have not eliminated the risk to the child's wellbeing. The indicated restriction does not apply when the necessity to provide immediate foster care to the child arises from a serious danger posed to the child's wellbeing, particularly placing his or her life or health at risk.²⁶ The norm cited here mentions two hazards that would require the guardianship court to take radical measures: the child's life and health. Any danger to these compel the said court to take the necessary measures prescribed by law to protect the child. At the same time, placing a child in foster care against the will of the parents solely on the grounds of poverty is not acceptable.²⁷ The above regulation is important because it places a higher priority on the relationship between natural parents and children than on the living conditions in which the children are raised. The primacy of respect for family bonds is confirmed by another regulation providing that siblings should be

25 See: Art. 109 para. 1 of the Family and Guardianship Code (Journal of Laws 2020, item 1359).

26 Ibid., Art. 1123 para. 1.

27 Ibid., Art. 1123 para. 2.

placed with the same foster family, family foster home, foster care centre or regional custodial and therapeutic centre, unless it would be contrary to their wellbeing.²⁸ Within the scope of the discussed issues, another provision mentions that if maintaining contact between the parents and the child seriously threatens or violates the wellbeing of the child, the court would prohibit the same.²⁹

These comments of a general nature should be followed by an analyses of specific risks to s wellbeing.³⁰

6.1. Child Hazard Due to Family Circumstances

Child hazards arising from family circumstances should be considered bearing in mind the family's financial situation or the composition of the family. Regarding the former, the amount of income it has at its disposal and its ability to meet the current needs of its individual members are considered. As mentioned earlier, the poverty of the natural family cannot be a premise for placing a child in foster care. In other words, the financial circumstances of the family cannot be the sole and exclusive basis for making appropriate decisions in this respect. Another risk is the absence of one of the parents. However, the reasons for the absence of the parent do not play any role (natural absence due to their death or due to the reasons lying within the family itself, e.g. divorce or one parent leaving the other parent with the child). The risk referred to hereinabove also may not constitute the sole and exclusive basis for placing a child in foster care.

6.2. Child Hazard Due to Violence

Violence, in any form whatsoever, be it physical or psychological, is not acceptable and, if it occurs, the guardianship court will have to place the child in foster care as per the relevant principles. Violence endangers the child's life or health and, as indicated above, is an absolute prerequisite for placing a child in foster care. The violence could be directed at other persons who constitute the respective family, or it could be directed solely at the children or at a particular child. Documenting the occurrence of this phenomenon is a separate issue, because drastic forms of violence, especially physical violence, are noticeable, while it is difficult to document and demonstrate the occurrence of psychological violence, which in many respects can be equally devastating.³¹

28 Ibid., Art. 1128.

29 On the wellbeing of the child, see: Zacharko and Wanterberg-Kempka, 2017, p. 281.

30 Extensive reflections on the indicated topic are provided by Walencik-Ryba, 2019, pp. 107–109.

31 See the decision of the Supreme Court of 7 September 2000 ref. No. I CKN 931/00 (Lex 1166290).

6.3. Poor Financial Conditions and Risk for the Child

The poor financial condition of the family is most often manifested in family poverty; as indicated above, this circumstance may not be the exclusive basis for the decision to place a child in foster care.³²

6.4. Child Hazard on Moral Grounds

Moral premises creating risks for a child are usually linked to the conduct of the parents, which may constitute the basis for drastic measures such as placing a child in foster care. An example of a moral hazard could be one of the parents of the child involved in prostitution. The risk would be considered severe if such a hazard occurred on the premises where the child resides and the child has witnessed it. This category of risk includes incitement to commit a crime. Another type of moral hazard could be the health of the child's parent, which may prevent the parent from having proper control over their own behaviour and thus creating a risk environment for the child's wellbeing.³³

6.5. Child Hazard Arising From Health Conditions

The child's own health condition can sometimes prove to be a hazard. For instance, if the child is born with certain deficiencies or in such a condition that the parents give up raising the child once they know of its condition after birth and leave the child in an appropriate health care facility or some form of foster care. Another hazard based on health grounds may be due to the professed faith of the parents, which limits the possibility of undertaking the necessary steps for treatment. For instance, some faiths prohibit blood transfusions, a treatment process that could, in particular cases, save the child's life and health. In such instances, action must be taken to enable conducting the relevant procedure, including restricting the parents' custodial rights and placing the child in foster care.

6.6. Child Hazard Due to Parental Neglect

Another type of risk that the child is exposed to could be related to the natural parents' lack of skills in performing their custodial and educational duties towards the child. The child hazard rationale referred to here is very broad, as it encompasses situations where parents lack the necessary skills, or despite being equipped with skills, do not employ them, but instead focus on their own life needs and overlook the child's needs. Such behaviour may be the result of the parents' disabilities, insufficiencies, or an underlying a medical condition (psychological or psychiatric in nature). The neglect may constitute a hazard to the life and health of the child. Negligence on the part of the parents, especially those of a significant nature, and above all a failure

32 Analysis of the premises for placing the child in foster care showed that poverty was not the basis. The issue of poverty was most often associated with another premise for placing the child in foster care, namely, alcoholism or drug addiction of the parents or one of the parents and their incapacity to care and provide educational sustenance.

33 Walencik-Ryba, 2019, p. 16.

to undertake measures to correct their conduct, repeatedly constitutes grounds for placing a child in foster care.

7. Legal Status of Disabled Children

In Poland, the legal situation of children with disabilities is complex. This complexity stems from the fact that disabled children are covered by regulations that cover all children and, in addition, the legislator has introduced norms that regulate the legal situation of disabled children or grant additional rights to persons caring for such children in a different way. It should be noted that the additional benefits provided for disabled children or their guardians do not guarantee that the needs of these children will be met. Among the numerous benefits provided for disabled children is the attendance allowance. This benefit is available to a disabled child and to a disabled person over the age of 16 if they hold a severe disability certificate. This allowance benefit is around PLN 215.84³⁴ per month. Another benefit is the family allowance. According to the Act on Family Benefits,³⁵ the right to family allowance and supplements to this allowance are granted to parents, one parent, or the child's legal guardian or the child's actual guardian. An actual guardian is the person who cares for the child during in the process of adoption of the child. Among the supplements to the family allowance is a supplement for the education and rehabilitation of the disabled child. This allowance is due to a child up to the age of 16 if they hold a disability certificate, and over the age of 16 up to the age of 24 if they have a certificate for moderate or severe disability. The allowance is paid monthly and its amount varies, with PLN 90 for a child up to the age of 5 and PLN 110 for a child over 5 up to the age of 24.

Pursuant to the provisions of Art. 81 para. 1 of the Act on Support for Families and the Custody System, a foster family and a foster home operator are entitled to an allowance of no less than PLN 200 per month for a child with a disability certificate or a certificate of a significant or moderate degree of disability to cover the increased maintenance costs of that child.

A special benefit offered on the grounds of a child's disability is a nursing benefit, due on the grounds of resigning from employment or other gainful work, to the mother or father, the actual guardian of the child, a person who is a foster family relative within the meaning of the Act of 9 June 2011 on Family Support and the System of Foster Care. It may also be given to other persons who, in accordance with the provisions of the Act of 25 February 1964 on the Family and Guardianship Code, bear the responsibility of the alimony obligation. However, for a child with a severe degree of disability, if the carers resign from employment or other gainful

34 See: Art. 2 para. 2 of the Regulation of the Council of Ministers of 31 July 2018 on the amount of family income or learner's income constituting the basis for applying for family allowance and special care allowance, the amount of family benefits and the amount of guardian's allowance (Journal of Laws 2018.1497).

35 Act of 28 November 2003 on family benefits (Journal of Laws of 2023, item 390).

work in order to provide care for the child with a severe disability or with a disability certificate indicating the need for permanent or long-term care or assistance or with significantly limited possibility of independent existence and the need for permanent co-participation of the carer in the child's everyday life for treatment, rehabilitation and education, a benefit amounting to PLN 2458. per month is provided (as of 1 January 2024, this benefit will amount to PLN 2988 per month). As can be understood from the above, this benefit is not addressed to the child, but to the person resigning from work to care for the child who requires assistance.

In addition to the solutions presented, it is important to recognise the provisions of the Act of 4 November 2016 on support for pregnant women and families "Za życiem".³⁶ Pursuant to this Act, a one-off cash benefit is granted for the birth of a child diagnosed with a severe and irreversible disability or an incurable life-threatening illness that arose during the prenatal period or during childbirth. The amount of this benefit is set at PLN 4,000. In addition to this benefit, the parents of such a child are entitled to appropriate health care benefits for the child, with particular consideration for a child diagnosed with a severe and irreversible disability or an incurable disease threatening his or her life, which arose during the prenatal period or during childbirth. Furthermore, the parents of such a child are entitled to access coordination, care and rehabilitation services.

8. Instruments for the Integration of Disabled Children

The situation of children with disabilities in foster care with regard to their integration varies and depends on the form of foster care in which they are placed. Integration of children is understood to mean including them into specific communities with which they have contact. In the case of disabled children in institutional foster care, such children are subject to a process of integration into the particular community residing in the relevant institutional foster care unit. This process depends on whether the relevant unit hosts healthy and disabled children or only disabled children. The process of integration in such entities also depends on the age of the children, because as the child grows older, integration activities become more important will influence the socialisation of the child. Additionally, the degree of disability of the child has to be borne in mind as it will determine the activities undertaken within this scope. Institutional forms of foster care, in the scope of their activities, also undertake activities aimed at the integration of disabled children at various levels.

In the case of children with disabilities in community foster care, the problem of integration is related both to the degree of disability of the child and the type of foster family in which the child is placed. Integration of such a child in a foster family where it is the only child with disability will be more difficult than in the case of foster families caring for several children, including those with disabilities.

36 Journal of Laws 2023, item 1923.

The considerations presented above allow an observation that the current legal regulations do not include legal norms aimed at the integration of disabled children. The process of integration of these children is related to the actions of entities that take care of these children and the environments in which they live.

9. Premises Enforcing Undertaking Activities of a Protective Nature (Definition of Necessary Intervention)

The considerations above concerning the hazards to the child, justifying his or her placement in institutional or community foster care, constitute the premises justifying undertaking protective measures. It should be emphasised that Polish norms do not contain a definition of necessary intervention, while Art. 109 para. 1 of the Family and Guardianship Code stipulates that appropriate actions are to be taken in the instance of a hazard to the child's welfare, and thus this notion constitutes a specific definition of necessary intervention.

9.1. Child Protection System in Poland

The child protection system in Poland is extensive and uneven. However, one should first recognise the relevant regulations adopted by the legislative authority to ensure child protection. Recent laws aimed at child protection have been adopted in the wake of drastic incidents related to violation of child rights.³⁷ The essence of the child protection system is connected with the proper functioning of the judiciary and the executive powers. The legislator provides for action to be taken by the judiciary, particularly by the family and guardianship courts aimed at protecting the wellbeing of the child. The wellbeing of the child determines the actions taken by this authority. The decisions taken by the family court judges are implemented by the executive authority, particularly by the bodies of the local authorities operating at the powiat level. Furthermore, non-public entities also operate within this system, performing the tasks commissioned to them by the executive authorities. The discussed system employs the instruments specific to private law as well as public law.

9.2. Non-Authoritative (Custody) and Authoritative (Foster Care) Forms of Providing Care to a Child

The Polish legal system mentions two situations related to the provision of custody to a child whose parents are unable to provide proper upbringing and care. These form the legal basis of provision of custody to a child. The first situation is related to the provisions of private law and refers to the custody of the child based on the provisions

37 A classic example of this type of action was the Act of 28 July 2023, commonly referred to as 'Lex Kamilek', amending the Family and Guardianship Code and certain other acts (Journal of Laws, item 1606) adopted after the tragic incident involving the child Kamilek.

of Art. 755 (1) of the Code of Civil Procedure.³⁸ Pursuant to it, if the object of security is not a pecuniary claim, the court shall grant security in such manner as it considers appropriate according to the circumstances, not excluding the manners provided for securing pecuniary claims. The court may in particular regulate the manner of custody over minor children and contact with children. This rule provides for the placement of a child in custody, where such placement does not directly entail rights for the custodian on that account. The situation is incomprehensible when the child is placed in the custody of a non-parent. Such a person is then obliged to provide care and upbringing to the child without receiving any financial means for performing such tasks. This was the case until the jurisprudence of the administrative courts ruled that the custodians should be treated in the same way as parents and persons with a legal title to care for and bring up the child.³⁹ It ought to be emphasised that the arrangement presented herein stems exclusively from private law regulations, and within this scope the public administration bodies have no involvement whatsoever, as all actions are a consequence of the decisions made by the common courts, in fact the family divisions of these courts.

Apart from the form characteristic to private law, a form proper to public law, effective in the Polish legal system, is the institution of foster care. The public law form indicated here is in relation to the entity carrying out foster care, since it is the task of the public administration, particularly assigned as tasks of powiats and of cities with powiat rights. At the same time, it should be noted that decisions on placing a child in foster care are, as per principle, made by the family divisions of common courts. Occasional prospects on the part of parents to place a child in foster care or to place a child in such a form of care following an appropriate intervention still require a final decision by the family court.

Within foster care are two distinct forms of care, community foster care and institutional foster care.⁴⁰ Community foster care refers to family foster care, which can be care in a foster family, through care provided by relatives, a non-professional foster family, or a professional foster family; it also includes care by an emergency foster family and professional specialist foster family. This category of foster care also includes a family-type foster home. A child is placed in a foster family or a family-type foster home following consent of foster parents or a family-type foster home's manager, respectively. The indicated entities, upon their request, may be supported by support families.

Institutional foster care can be categorised into custodial and educational units; regional foster care and therapy units; and intervention pre-adoption centres. A custodial and educational facility is run by the powiat or an entity commissioned by the powiat to carry out such tasks. A custodial and educational facility can be of the following types: socialisation; intervention; specialist-therapeutic and family. The

38 Journal of Laws 2023, item 1550.

39 See judgement of the WSA in Warsaw of 26 June 2020 ref. No. I SA/Wa 2519/19 LEX No. 3128070.

40 This issue is discussed at great length in Nitecki and Wilk, 2016, p. 195.

regional foster care and therapeutic centre hosts children who require special care, who, owing to their health condition, require specialised care and rehabilitation and, hence, cannot be placed in family foster care or in a custodial and educational unit. The intervention pre-adoption centre hosts children who require specialised care and cannot be placed in family foster care during the period of awaiting adoption. No more than 20 children may be placed in an intervention pre-adoption centre at any one time, and a child's stay in such a facility cannot last longer than until the child's first birthday.

As has been pointed out, the authoritative form of foster care is a matter of public law, although it should be recognised that placement in foster care requires the opinion of the family court, which undertakes the relevant decision. On the contrary, the public administration needs to administer community and institutional foster care. In this respect, entities run by the powiat play a special role, as it is this local government unit that covers the tasks within this scope.

9.3. Benefits in Cash and in Kind (To the Child as Well as to the Carers)

Guardians of children in the Polish legal system receive benefits from two different sources. The first is benefit provided on the grounds of their function as a foster family or a person running a family orphanage, i.e. a benefit that supports these persons in performing their function. The second is a cash benefit granted on general terms to all children, irrespective of whether they are growing up in a natural family or are in foster care. From this study's viewpoint, the first identified source of benefit plays a key role.

Pursuant to the applicable legal regulations, a foster family and a person running a family-type children's home are entitled to a benefit for each child placed there in order to cover the costs of the child's upkeep, not lesser than an amount of: PLN 660 per month, if a child is placed in a foster family by relatives; if the child is placed in a professional foster family, non-professional foster family or family-type foster home, the amount is PLN 1000 per month. A foster family and a person running a family-type foster home are entitled to an allowance not lesser than PLN 200 per month for a child with a certificate of disability or a certificate with a severe or moderate degree of disability per month to cover higher maintenance costs of that child. Additionally, a professional foster family for a child placed on the basis of the Act of 9 June 2022 on support and re-socialisation of minors is entitled to an allowance not lesser than PLN 200 per month to cover the higher maintenance costs of that child.⁴¹

In addition to the above-mentioned benefits, a starost may grant to a foster family and those running a family-type foster home (1) a subsidy for holidays away from the child's place of residence; and (2) a benefit to cover the necessary costs associated with the needs of the child (received on a one-off basis) and costs associated with the

41 Nitecki and Wilk, 2016, p. 387.

occurrence of random events or other events affecting the quality of care provided (on a one-off basis or periodically).⁴²

Apart from the funds allocated to meet the immediate needs of the children, a non-professional and professional foster family may receive funds for the maintenance of the living premises in a multi-family building or a single-family home. The amount corresponds to the costs incurred by the non-professional or professional foster family for rent, rental fees, cost of electricity and heat, fuel, water, gas, solid and liquid waste collection, a passenger elevator, a collective antenna, television and radio subscriptions, telecommunication services and related operating costs.⁴³

Separate regulations apply only to those running a family-type foster home. Such persons receive funds for the maintenance of the living premises in a multi-family building or a single-family house in which the family-type foster home is run, to an amount corresponding to the costs incurred by the family-type foster home for rent, rental fees, cost of electricity and heat, fuel, water, gas, solid and liquid waste collection, a passenger elevator, a collective aerial, television and radio subscriptions, telecommunication services and related operating costs. An additional form of support is aimed at covering the necessary costs associated with the renovation or refurbishment of the premises in a multi-family building or a single-family house. Apart from the above-mentioned forms of support related to covering the housing maintenance expenses, the operator of a family-type foster home receives funds to cover other necessary and unforeseen expenses related to the care and upbringing of the child or the operation of the family-type foster home. The amount for this type of support is estimated from the provisions of a signed agreement.⁴⁴

Apart from the above-mentioned forms of support for entities performing community foster care aimed at creating appropriate conditions for children, it should be noted that benefits are also earmarked for supporting the community foster care entity itself. Such an instrument, which is used in this respect, is a form of remuneration for the performed tasks. Pursuant to the current legal regulations, a professional foster family and a person running a family-type foster home are entitled to a monthly remuneration not lesser than PLN 4100. A professional foster family acting as a family emergency family service is entitled to a monthly remuneration not lesser than 124% of the amount referred to above. When determining the amount of remuneration referred to herein, the qualifications, training and assessments of the professional foster family and the person running the family-type foster home are considered. The parties to such an agreement are the relevant powiat (city with powiat rights) and the entity of community foster care.

As indicated earlier, community foster care entities receive forms of support provided for all families raising children. Such an instrument is, for instance, a benefit intended for the child. Notably, from the very beginning, this benefit was granted

42 Ibid., p. 397.

43 Ibid., p. 405.

44 Ibid., p. 408.

for children in foster care, and in the initial period it was an appropriate allowance of a similar amount granted to all children. Currently, in accordance with Art. 5a(2) of the Act on State Aid for Upbringing of Children,⁴⁵ a child benefit for a child placed in foster care is granted only to a foster family, a person running a family-type foster home, the director of a custodial and educational unit, the director of a regional educational-therapeutic centre or the director of an intervention pre-adoption centre, respectively. The amount of this benefit is comparable to that received by children residing in a natural family.

An example of another benefit granted as a general rule is an alimony advance granted under the provisions of the Act of 7 September 2007 on assistance for persons entitled to alimony.⁴⁶ Pursuant to the provisions of this Act, children in foster care are also entitled to receive the indicated advance in case the person obliged to pay such monies evades their obligation. Further, attendance allowance is also granted on the grounds of a child's disability or a moderate or severe degree of disability. This benefit amounts to PLN 215.85 per month.

In the context of benefits for raising children, the special situation in relation to the receipt of family allowance has to be recognised as this benefit is not available for children in foster care.

9.4. Childcare Allowances Under Personal Care Services (e.g. Child Day Care; Temporary Childcare; Enhancing Children's Opportunities, Work)

The above considerations demonstrate that the Polish legal system offers benefits whose recipients are persons caring for children. An example of such a benefit is the attendance allowance, which is granted on the grounds of resigning from employment or other gainful work and is due to a) the mother or father; b) the actual guardian of the child (a person applying for adoption of a child); c) a person who is a related foster family; d) other persons who are subject to maintenance obligation, with the exception of persons with a severe degree of disability – if they do not take up or resign from employment or other gainful work in order to take care of a person with a certificate of a severe degree of disability or a certificate of disability, with the following indications: the necessity of permanent or long-term care or assistance of another person in connection with the severely limited possibility of independent existence and the necessity of permanent daily participation of the child's guardian in the process of the child's treatment, rehabilitation and education.

9.5. Authoritative Forms of Foster Care

Since the issue of authoritative forms of foster care have been discussed earlier, the focus here will be on the main issues within this scope. Authoritative forms of foster care include community foster care and institutional foster care. While placing a

45 Journal of Laws 2023, item 810.

46 Journal of Laws 2023, item 1993.

child in community-based foster care is the preferred form, institutional foster care is allowed when it is not possible to provide care in a community-based form.⁴⁷

9.5.1. *Environmental Assistance in the Form Of..*

As mentioned earlier, community care is provided through various types of foster families and by means of a family-type foster home. Performing as a foster family and running a family-type foster home may be entrusted to persons⁴⁸ who guarantee proper exercise of foster care; are not and have not been deprived of parental rights, and their parental rights are not limited or suspended; fulfil the obligation of alimony – where such an obligation towards them results from an enforcement order; are not limited in their legal capacity; are capable of providing proper care for a child, which has been confirmed by an appropriate medical certificate on their health condition issued by a general practitioner and an opinion on their predispositions and motivation to perform the function of a foster family or to run a family-type foster home issued by a psychologist; and reside within the territory of the Republic of Poland.

However, in the instance of the foster family being foreigners and their stay is legal, they shall provide appropriate living and housing conditions satisfying the child's individual needs, including emotional, physical and social development, proper education and development of interests, leisure and organisation of leisure time. Furthermore, such persons may not or shall not have featured in the database of the Sexual Offenders Register with restricted access.

According to the provisions of Art. 41 para. 2 of the Act on Support for Families and the Foster Care System, a related foster family refers to a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is the child's ascendant or sibling.

An unrelated foster family, in accordance with the provisions of Art. 41(3) of the aforementioned Act, is understood to be a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is not the child's ascendant or sibling. Serving as this type of family may be entrusted to persons who have not been convicted of an intentional crime by a final judgement. In this type of foster family, at least one person forming the family must have a regular source of income.

According to the above provision, a professional foster family is understood to be a spouse or an unmarried person with whom a child is placed for provision of foster care, and who is not the child's ascendant or sibling. Serving as this type of family may be entrusted to persons who have not been convicted of an intentional crime by a final judgment.

A family-type foster home as a community-based form of foster care in accordance with Article 41(1) of the aforementioned Act refers to the spouse or an unmarried person with whom a child has been placed to be provided foster care.

47 See: Art. 1127 para. 3 of the Family and Guardianship Code, as well as Zajączkowska-Burtowy, 2021, p. 1116.

48 See: Art. 42 of the Act on Support for Families and the Foster Care System.

Institutional care is intended to complement the foster care system and is used as a secondary option when it is not possible to place a child in community-based foster care. This form of foster care is generally provided by entities run by local governments, either directly or through a contract with a non-public entity. This task has been entrusted to powiats, and only custodial and educational facilities of a specialist and therapeutic character are run by the voivodeship authorities. Pursuant to the provisions of Art. 93 of the Act on Support for Families and the System of Foster Care, institutional foster care is provided in the form of: a foster-care centre; a regional foster-care centre and an intervention pre-adoption centre.

Pursuant to the provisions of Art. 93 para. 4 of the aforementioned Act, a custodial and educational unit is meant to provide the child with round-the-clock care and upbringing apart from satisfying the child's fundamental needs, particularly emotional, developmental, health, living, social and religious needs; implement a plan of assistance for the child prepared in cooperation with a family assistant; enable the child to have contact with his or her parents and other persons close to the child, unless the court decides otherwise; take measures to return the child to the family; provide the child with access to education suitable to the child's age and developmental capabilities; and include the child in therapeutic measures and ensure the child avails the health care services to which the child is entitled.

Pursuant to Art. 101 para. 1 of the Act referred to above, such a unit is run as a custodial and educational unit type for socialisation, intervention, specialist-therapeutic or family activities. The type of custodial and educational institution is specified in its regulations.

This type of foster care facility includes those units that are not classified as intervention, specialist and rehabilitation or family type as mentioned in the Act.

The intervention-type custodial and educational unit is tasked with providing emergency care for a child during a crisis situation; in particular, the facility is obliged to accept a child in cases requiring immediate care for the child.

Pursuant to Art. 105 of the aforementioned Act, a custodial and educational facility of a specialist-therapeutic type cares for a child with individual needs, specifically, one a) who holds a certificate of disability or a certificate of a moderate or severe degree of disability; b) who requires the application of special educational methods and specialist therapy; and c) who requires compensating for developmental and educational delays.

The facility provides educational, social and therapeutic, corrective, compensatory, logopaedic, therapy sessions, compensating deficiencies in family upbringing and preparing for social life, and to disabled children providing appropriate rehabilitation and revalidation sessions as well.

The family-type foster care unit is meant to care for children of different ages, including adolescents and those becoming independent; enable siblings to be brought up and cared for together; and cooperate with a family foster care coordinator and a family assistant.

9.6. Pre-Adoption Intervention Centre

Children who require specialised care and cannot be placed in family-type foster care during the waiting period for adoption are placed in an intervention pre-adoption centre. No more than 20 children may be placed in an intervention pre-adoption centre at any one time, and the child's stay may not last longer than the child's first birthday.

10. Children Leaving Foster Care and Becoming Independent⁴⁹

When children in foster care leave upon reaching the age of majority or completing their education, they require appropriate support to enable them to function independently in society. The essence of the assistance for independence is that it creates the conditions for those who can benefit from it to meet their essential needs, as well as to acquire an education that will enable them to gain an advantage in the labour market. The scope of this assistance is not directed to meet a specific need, but to create the conditions that will allow the eligible persons to return to their environment and function there independently.

Aid for becoming independent is granted to a person leaving a foster family, family-type foster home, custodial and educational institution or a regional care and therapeutic institution upon attaining the age of majority, if placement in foster care was based on the decision of the guardianship court. A person becoming independent is also understood to be a person whose placement in family foster care ceased as a result of the death of the persons forming the foster family or the person running the family-type foster home during a period of six months prior to the person becoming an adult. The aid for becoming independent is conditional upon leaving one of the listed forms of foster care.

As assistance for those who become independent, aid is granted for continuing education, for becoming independent and for domestication. Such assistance is also provided for obtaining appropriate housing, employment, legal assistance and psychological support.

Aid for the continuation of education, for becoming independent and for domestication is granted to a person becoming independent who has been in foster care for a strictly specified period. The specified period is three years for a person leaving a related foster family and one year for a person leaving a non-professional foster family, professional foster family, family-type foster home, custodial and educational unit or regional care and therapeutic facility.

Aid for becoming independent and assistance for domestication are granted to an independent person who meets the income criterion entitling them to receive the same. When the monthly income of the person becoming independent exceeds the

49 For more on the subject of empowerment, see: Nitecki, 2022, p. 876.

above amount, the indicated forms of assistance may be granted if it is justified by their housing, income, property or personal circumstances.

Aid to continue education is granted when an independent person continues his or her education at school, at a teacher training institution, at a university or pursues relevant courses. The amount of such aid is no less than PLN 500 per month. The benefit is due from the month in which the application is submitted until the month in which it is completed or until the person reaches the age of 25. The aforementioned benefit is not due if the person who has become independent continues education at a secondary school or a university that provides free education and full board free of charge; changes school three times at the same level of education without justifiable reasons; and was placed in a penal institution.

11. Organisation of Entities Operating Within the Scope Discussed

The tasks of the state in the field of foster care are carried out by the organs of the judiciary and the executive powers, i.e. the public administration, including the government administration and the local government administration.

The tasks posed before the various organs of the state are carried out in accordance with their position in the organisational structures and their functions.

11.1. Organs of the Judiciary

The tasks within this area are carried out by common courts and administrative courts. The common courts are focused on issues of parental custody; therefore, they undertake all key decisions from the point of view of the parent and the child within the discussed field.⁵⁰ Common courts may take a number of different actions with regard to the natural parents of children, ranging from supporting them in their efforts to fulfil the tasks they face in the field of upbringing and caring for their children, through actions of a disciplinary nature addressed at natural parents having difficulties in the presented scope, to the most radical actions related to limiting or depriving them of their parental rights and placing the child in a community or institutional form of foster care. This court also decides on matters relating to adoption, whether domestic or foreign. Administrative courts⁵¹ control the legality of actions taken by public administration bodies, particularly bodies of local government units. These courts review resolutions adopted within this scope, which are acts of local law, as well as review administrative decisions issued in this area, especially those related to granting assistance to persons performing the function of foster care; they also review decisions that impose obligations on natural parents with respect to payment for staying in foster care.

50 Walencik-Ryba, 2019, p. 13.

51 See: the Act of 25 July 2002. Law on the system of administrative courts (Journal of Laws of 2022, item 2492).

11.2. Local Government Bodies

The tasks in the field of foster care are divided between government administration and local government administration bodies. In the first instance, these tasks are performed at the central level by the minister in charge of family affairs. The tasks of this body are related to the introduction of new arrangements in the discussed scope, as well as the preparation of new legal norms regulating these issues. On the contrary, the tasks of government administration functioning locally are performed by the voivode. The tasks of this body are focused on issues related to control and supervision of the activities of local government units. In this respect the voivode holds powers, using which they can eliminate faulty acts of local law from legal circulation, as well as impose certain penalties on entities for improper performance of the entrusted tasks in the sphere of foster care.⁵²

As already pointed out, foster care tasks are carried out by local government units. Following the provisions of the subsidiarity principle, these tasks are, as a rule, located at the level of powiats, as the territorial government unit that has at its disposal appropriate resources enabling it to perform the entrusted tasks properly. In the early stages, these tasks are performed by government voivodeships (running regional custodial and educational facilities – of a very specialised nature). The powiat (city with powiat rights) is the unit that is obliged to perform the tasks in the field of community care and institutional care. In community care, the powiat appoints the organiser of family care, which may be the powiat family support centre or another powiat unit, or another entity entrusted with such a task. Apart from community foster care, the powiat is responsible for the creation and operation of institutional foster care units, namely, custodial and educational facilities. Such a unit is obliged to create and run facilities according to the needs, ensure adequate staff, as well as create living conditions for the children staying in them such that they do not suffer any negative consequences from using these services.⁵³

11.3. Non-Public Entities Performing Foster Care Tasks

According to the existing legal regulations, the tasks posed before the public administration bodies, particularly powiats, are performed in cooperation with the local community, courts and their auxiliary bodies, the police, educational institutions, medical entities, as well as churches and religious associations and social organisations. Churches and religious associations and social organisations occupy a special position within the wide range of entities with which a powiat or voivodeship government cooperates. It should be emphasised that the activities of these entities are aimed at realising tasks that are service-oriented i.e. running specific entities (custodial and educational units) or other entities trying to offer families various forms of support in proper fulfilment of custodial and educational duties. Non-public entities may be entrusted with the tasks of a foster care organiser, in which case such an entity would

52 For more on the tasks of the government administration see: Nitecki, 2022, 938ff.

53 Nitecki, 2022, 928ff.

be obliged to perform tasks of an administrative nature, including signing certain agreements or even making decisions that would be subject to review procedure or court control.

12. Procedural Issues in Foster Care

The substantive law determines the prerequisites for placing a child in foster care, whereas the procedural law regulates the principles of placing a child in an indicated institution. Therefore, the procedural rules are of significance, as they constitute guarantees of compliance with the fundamental values present in the discussed scope, and in particular the wellbeing of the child.

Two types of procedures are mentioned in the discussed scope, namely, procedures before the family courts and procedures related to administrative decision-making. Although other procedures are also visible, they do not have any major bearing on the decisions taken.

12.1. Procedures Before Common Courts (Role of the Probation Officer and Social Welfare Bodies)

Foster care cases are recognised by the common courts on the basis of the general procedural regulations.⁵⁴ In this regard, no specific norms distinguish cases concerning restriction of parental custody of natural parents and establishment of foster care. The court of general jurisdiction makes the decision in this regard, and it is executed by the local government entities performing foster care tasks. In proceedings before common courts, the court makes its decision on the basis of the findings made by the probation officer and provided by the public administration bodies. It should be noted that the probation officers present their opinion before the court on the situation of the natural family and refer in it on whether the family performs the custodial and educational functions with respect to the child or children in a proper manner. The probation officers may suggest measures to be taken with regard to the natural family and thus to the child. In cases where a family assistant has been appointed for such families, they are entitled to pass their own assessment relating to the functioning of the natural family. Within the framework of these procedures, the role of the organiser of foster family care, at the stage of establishing foster care, is small. The situation changes once such custody is established, as such an organiser is obliged to provide the court with relevant information and report on how the foster families exercise their duties.

54 For more on this subject, see: Walencik-Ryba, 2019, p. 107.

12.2. Procedures Before Public Administration Bodies (Time Limits for Processing the Cases, Environmental Interviews, Participation of Experts – Opinion Teams)

Within the sphere of foster care, the public administration bodies carry out various procedures such as resolution procedures (related to the adoption of resolutions by local government bodies), procedures related to the acquisition of foster family status and procedures related to the adoption of administrative decisions. It should be emphasised that in the case of resolution procedures, no significant formalisation is noted. The drafts of such resolutions are adopted by the executive body of the powiat (powiat management board, or by the city council in the case of cities with powiat rights), and then the decision-making body (powiat council or city council in a city with powiat rights) adopts an appropriate resolution. Some of these resolutions are adopted as acts of local law and therefore require publication in the provincial official gazette. Resolutions that do not have the status of acts of local law are published in the manner prescribed for such acts. The second procedure is related to the acquisition of status of the foster family. In this respect, it is necessary to note the existence of two separate procedures, those aimed at placing the child in such a form of foster care, where actions are taken by a common court and procedures are aimed at acquiring the status of a foster family. In this case, candidates for this function are subject to verification by the organiser of family foster care. It should be emphasised that no administrative decisions are issued in this respect, and the decisions concerning fulfilment of formal requirements for performing the function in question are subject to review by the administrative court. Within the framework of this procedure, the employees of the organiser of foster care verify the conditions displayed by the candidates and assess them; hence, in this respect the very last resource is a visit to the place of residence aimed at assessing these conditions. The last procedure distinguished here is the one related to issuing administrative decisions. These decisions are issued within the following scope: granting financial assistance to families fulfilling the function of a foster family; demanding the return of unduly collected cash benefits; and determining the payment for the stay of a child in foster care and, for a person leaving foster care and becoming independent, within the scope and the decisions made by the supervisory body conducting supervision activities in community and institutional foster care. In the context of administrative procedures aimed at issuing an administrative decision, general rules for conducting such proceedings apply, where all regulations follow the same principles or deadlines for handling cases. It should be emphasised that simple cases should be decided within a month, and particularly complex cases within two months from the date of initiation of the proceedings or submission of a relevant application. As part of the procedure for issuing an administrative decision, no provisions exist for the institution to use an expert opinion and no obligations to conduct a prior environmental interview. Such a statement, however, does not imply that in specific cases such actions and activities will not be undertaken.

12.3. Control by the Administrative Court

Administrative courts in Poland are appointed to control administrative decisions and other legal forms of administrative action by means of which the public administration influences the legal situation of the addressee of its actions. In cases concerning foster care, administrative courts control resolutions of local government bodies, which are acts of local law, regulating the principles of payment by natural parents for the stay of the child in foster care or other provided for by relevant statutory delegations. Such control also applies to acts undertaken by the organiser of family foster care in the procedure related to selection of candidates for fulfilling the function of a foster family. A relatively large number of recognised cases within this scope are connected with the control of administrative decisions granting foster families the assistance provided for by law and issues relating to payment by natural parents for the stay of children in foster care.

13. The Ombudsman for Children and Their Powers

The institution of the Ombudsman for Children was introduced into the Polish legal system by the Act of 6 January 2000 on the Ombudsman for Children.⁵⁵ Pursuant to the provisions of Art. 1 para. 2 of this Act, the Ombudsman shall safeguard the rights of the child as set out in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other legal provisions, by observing the responsibilities, rights and duties of parents. In exercising their powers, they will be guided by the wellbeing of the child, considering the family as the natural environment for the child's development. They take measures to ensure the full and harmonious development of the child, respecting his or her dignity and subjectivity.

The Ombudsman works to protect the rights of the child, particularly, the right to life and health protection; the right to be brought up in a family; the right to decent social conditions; and the right to education.⁵⁶ Moreover, the Ombudsman takes action to protect the child from violence, cruelty, exploitation, demoralisation, neglect and other forms of ill-treatment. The legislator has obliged the Ombudsman to provide special care and assistance to disabled children. The Ombudsman promotes children's rights and methods of protecting them.

The Ombudsman's term of office lasts five years, counting from the date of taking the oath before the Parliament. They are appointed by the Parliament, with the consent of the Senate, following the proposal of the Speaker of the Parliament, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators. The same person cannot be the Ombudsman for more than two consecutive terms. The Ombudsman is independent of other state bodies in their activities and is accountable only to the Parliament under the terms set out in the law.

⁵⁵ Journal of Laws 2023, item 292.

⁵⁶ For more on this topic, see: Blicharz and Zacharko, 2021, p. 71.

The Ombudsman's powers are extensive and include, inter alia, the following. The Ombudsman may examine, even without notice, any case instantaneously; request public authorities, organisations or institutions to provide explanations, information or access to files and documents, including those containing personal data, for inspection at the Office of the Ombudsman for Children; report and participate in proceedings before the Constitutional Tribunal initiated on the basis of a motion of the Ombudsman or in cases of constitutional complaint, concerning the rights of the child; apply to the Supreme Court with motions to resolve differences in the interpretation of the law as regards the legal provisions concerning the rights of the child; file a cassation or cassation complaint against a final decision in the procedure and on the principles specified in separate regulations; request the initiation of proceedings in civil matters and participate in pending proceedings, in accordance with the rights vested in the public prosecutor; participate in pending proceedings in juvenile matters, in accordance with the rights vested in the public prosecutor; request the initiation of preliminary proceedings by an authorised prosecutor in criminal matters; request the initiation of administrative proceedings; file complaints to the administrative court, as well as participate in such proceedings, in accordance with the rights vested in the public prosecutor; request punishment in misdemeanour proceedings, in accordance with the procedure and principles set out in separate provisions; and order an investigation and the preparation of expert reports and opinions.

It is worth noting that the Ombudsman, guided by the wellbeing of the child and indications of the lack of possibility to provide the child with family foster care, issues an opinion in which they express their opinion on the legitimacy of creating a custodial and educational unit.

Under their operations, the Ombudsman cooperates with associations, civic movements, other voluntary associations and foundations working for the protection of children's rights. They are obliged to submit to the Parliament and the Senate, annually, no later than 31 March, information on their activities and comments on the state of observance of children's rights. Such information is placed in the public domain.

14. Adoption – Legal Conditions on the Part of the Child and the Adoptive Parents

In Poland, adoption issues are regulated by private law regulations as well as public law regulations. Private law regulations refer to norms contained in the Family and Guardianship Code Act, while the public law regulations refer to norms contained in the Act on supporting families and the foster care system, particularly Section V of this Act.

Adoption is the institution by means of which the adoption of a minor takes place. It should be emphasised that adoption is carried out for the benefit of only the minor and is carried out up to the date of application for adoption. Only a person with full legal capacity may adopt if his or her personal qualifications justify his or

her ability to fulfil the duties of an adopter and they hold a qualifying opinion, as well as a certificate of completion of training organised by the adoption centre. An additional requirement to be met is an adequate age difference between the adopter and the adopted person. As a rule, priority is given to domestic adoption; however, foreign adoption is not excluded. It may take place if this is the only way to provide the adoptee with a suitable substitute family environment.

It must be emphasised that adoption is effected by a decision of the guardianship court at the request of the adopter and, if the adoptee has reached the age of 13, his or her consent is required. The consent of the adoptee's parents is required for adoption, unless they have been deprived of parental custody or are unknown or there are insurmountable obstacles to establish communication with them. One of the consequences of adoption is that the adoptee receives the adopter's surname. It should be noted that adoption is not irreversible, since, for valid reasons, both the adoptee and the adopter may request for termination of the adoption relationship by the court. The termination of the adoption relationship is not permissible if the wellbeing of the minor child would suffer as a consequence.

After presenting the rules classified as private law, a few remarks are devoted to the rules classified as public law. Conducting the adoption procedure and the preparing persons declaring their readiness to adopt a child is the exclusive competence of the adoption centre, and it is therefore the entity playing a key role in this respect. The centre is guided in the performance of its tasks by the welfare of the child and respect for the child's rights. This is a reference to the analogous regulation imposing the same obligation on the family court. The adoption procedure is conducted by the provincial government or an entity commissioned by the provincial government to perform this task.

In performing the tasks it faces, the adoption centre cooperates with the local environment, particularly with other entities competent in the field of family support and the foster care system, organisational units of social assistance, courts and their auxiliary bodies, educational institutions, medical entities, as well as churches and religious associations and social organisations.

Information about the child justifying how the child qualifies for adoption is submitted to the adoption centre operating in the territory of the voivodship where the child resides, by the parents, medical entity, organiser of the family foster care, director of the custodial and educational institution, regional care and therapeutic institution or intervention pre-adoption centre and other institutions or persons. On receiving such information, the centre immediately applies to the organiser of the family foster care, the team for periodical assessment of the situation of a child placed in institutional foster care and the director of the family-type foster home for relevant information and opinion on the child and prepares information on the child's legal, family and health situation. Such information is called the "child's card". Within 30 days of the date on which the card is created, the adoption centre shall qualify the child for domestic adoption, draw up a document confirming the qualification of the child for domestic adoption and commence the search for a candidate for adopting

the child. If, after qualifying the child for domestic adoption, the adoption centre does not qualify the child for domestic adoption, it shall inform the organiser of family foster care, the director of the custodial and educational unit, the director of the regional care and therapy centre or the director of the intervention pre-adoption centre accordingly. If the search for the adoptive candidates from the area of the child's province of residence proves unsuccessful, candidates from the areas of other provinces can be considered.

The adoption centre responsible for qualifying a child for domestic adoption shall be obliged to analyse the situation of the child at least every three months – for children under three years of age – and at least every six months – for children over three years of age. The adoption centre maintaining the central data bank shall qualify the child for international adoption and prepare a document confirming the qualification of the child for international adoption. In qualifying a child for international adoption, the adoption centre running the central data bank may consult the minister for family affairs. This type of adoption is permissible if this is the only way to provide the child with a suitable foster family environment.

Candidates who qualify for adoption of a child will have to complete training and receive a positive qualifying opinion. If a child is qualified for adoption, the adoption centre will then make information about the child available to those candidates who have qualified for adopting a child and facilitate their contact with the child.

If readiness to adopt a child is reported by persons related or related by affinity to the child, the foster family or the head of the family-type foster home in which the child is placed and persons who have already adopted the minor's brother or sister, the adoption centre does not initiate the procedure of searching for candidates for the adoption of the child.

15. Summary, Summary of Best Practices

In conclusion, it must be emphasised that the main right of the child is the right to live in a natural family, where measures are taken for his or her wellbeing. This right is sometimes violated and exceeded in social life, owing to which responsibility for the care and upbringing of the child must be assumed by the state and the bodies acting on its behalf, such as foster care institutions, which may be in institutional or community forms. The aim of foster care is to provide the child with appropriate conditions for development during the period when the natural parents are not or cannot provide such care, and it is therefore intended to be temporary. Should the child's return to his or her natural family not be possible, steps should be taken to initiate the process of national or international adoption.

'Adoption is an instrument that can be used to provide a child with conditions similar to those found in a natural family. The child care system assumes providing a child with care and upbringing in a natural or adoptive family.

In situations where the child is at risk, the child is placed in community or institutional foster care. At the end of 2023, there were 58,210 children in community foster care, while 17,128 children were in institutional care, i.e. a total of 75,338 children were in care. Among them, 18,675 married couples and 17,303 single people served as foster families. It should be noted that 834 family orphanages existed, with such homes run by 707 married couples and 127 single people, and 1,318 institutional care facilities existed. Family foster care is dominated by related families, constituting 63.8% of all families, non-professional 30.4% and professional families only 5.8%. It should be noted that families that adopted only one child dominate and they constitute 72.3% of all families; 18.1% of all families adopted two children, 5.4% adopted three children, and 4.1% adopted four or more children. The age of people creating foster families is noteworthy, as people aged 51–70 dominate the list.⁵⁷

The childcare system assumes the provision of permanent care by natural or adoptive parents. Unfortunately, the system is not so effective that children, once taken into care in the form of foster care, stay there only until they are returned to their natural family or until they are provided with an adoptive family. A significant proportion of children remain in foster care, irrespective of its form, until they reach the age of majority and, in many cases, even longer, until they graduate from relevant schools and complete the process of becoming independent. In addition, the system is not efficient, foster families to provide care and upbringing for children who need it are scarce.⁵⁸ The shortcomings of the social infrastructure are not only caused by the omissions of the authorities in charge but are also linked to social changes and the lack of families willing to take on this task. This negative trend observed calls for a new approach to resolve these issues and for measures to be taken to overcome the difficulties encountered and lead to the provision of proper upbringing and care for children.

One of the ways in which these challenges can be overcome is to increase the financial resources allocated to foster families, so that performing this function would be attractive for those interested.

57 Central Statistical Office alert from 9 May 2024. Foster care in 2023.

58 See: Zaremba-Stanulewicz, 2023.

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