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**Constitutional right of a child deprived of parental custody
to care and assistance of public authorities**

SUMMARY

In accordance with article 72 section 2 of the Constitution of the Republic of Poland established on 2nd of April, 1997 - a child deprived of parental care has the right to care and assistance provided by public authorities. The truth is that it is an extraordinary situation because the constitution states that a child is to stay and be brought up by the child's own family. However, if a child is deprived of parental care, he/she has the right to be protected by public authorities. The scope of constitutional obligations arising from article 72 section 2 is wide, yet, it basically comes down to placing the child in a foster family. It may, however, also include the adoption of the child or the establishment of legal assistance.

Foster family care has a long-standing tradition, yet, in Poland it started developing in the second half of the interwar period. It can be stated that before that moment the institution of foster families was not supported. However, we can find certain solutions related to placing orphaned children in new families for upbringing in the Napoleonic Code and the legislation adopted in the Galician Autonomy. Yet, due to the policy of the imperialist countries foster family care could not develop.

Establishment of the March Constitution (1921) was extremely crucial, as, in accordance with article 103, children deprived of sufficient parental care and neglected by their parents were entitled to be cared about and helped by the state. All the details of that help were to be included in a special act which was prepared, but never implemented. Yet, on 16th August, 1923 the Social Welfare Act was passed which didn't assure children deprived of parental care any help from the state.

Minor care in 1919-1939 was offered especially by self-governments, institutions and social organizations with little state help. An experiment carried out in the city of Lodz can be used as an example, and thus, the municipal authorities passed a resolution stating that alien families were granted custody of such children. The experiment proved to be successful thanks to a precise selection of minders, an appropriate help from the centre, a meticulous control and well-planned internal regulations.



Foster family care turned out to be a controversial issue. The children were forced to hard work. Violence was commonly used as well. Furthermore, at that time a new constitutional system of the country was a bone of contention. As a result, on 23rd April, 1935 a new Constitution was established. It introduced an authoritarian presidential system and presented an adverse attitude towards child's care. The new constitution didn't have a separate chapter devoted to the civil rights and liberties; there was just fragmentary information placed in different chapters. The issue of the rights of the child was completely omitted, thus, not ensuring children any help or basic care.

In spite of all the obstacles, the first legal document regulating the problem of foster families was passed. The Ministry of Social Welfare issued a letter of 10th April, 1936 concerning domestic and foster family care.

All the initiatives were soon abandoned due to occupation activities. All the Nazi legislation was against the Polish nation. Polish children were taken by force from their families or other institutions and placed in German families for upbringing. Children who resembled the Aryan race were in danger of removal in particular. Consequently, after the end of the war almost 3 million of children and teenagers needed various forms of help and care. The country was forced to solve extremely difficult custody problems.

Right after the war foster families were in full bloom. At that time the organization of the state authorities was unstable. The so called Small Constitution passed in 1947 was a complicated issue as the scope of regulations was limited. It didn't handle the problem of the civil rights and liberties including the child's right to be cared for.

Soon, the Constitution of the Polish People's Republic passed on 22nd July, 1952 became a basic source of children's rights. The catalogue of rights, liberties and duties (Chapter 7) was formed on the basis of the political situation in Poland and in the world. Thus, the issue of children's rights to custody was reflected only indirectly.

In 1950-1955 foster families stopped developing and this form of custody suffered a huge crisis due to extremely low benefits for children provided with care.

In the 1960s the issue of foster families was raised again. An Act passed on 15th July, 1961 concerning the development of education and upbringing assured students and children deprived of parental care the right to be placed in a foster family. On the basis of a new Family and Tutelary Code the institution of a foster family became a basic form of children's custody.



Furthermore, local self-government authorities started to issue certain regulations independently which applied only in a particular area, an example of which is a well-known 'Warsaw experiment'.

The 1970s are called a renaissance of foster families. In 1971 The Council of Ministers passed an act concerning financial help for children placed in foster families. It was a turning point as the document substantially increased an amount of cash benefits. Higher and higher financial benefits turned out to be extremely crucial in forming new foster families.

The political system in Poland based on the Constitution passed in 1952 did not function properly. In 1980 a social and economic crisis was so high that a year later, on 13th March, a martial law was introduced, which finally led to the Round Table Talks. Some regulations concerning foster families can be found in the Act on the Education System passed in 1991.

A new constitution could not be established due to deep political instability. Thus, a temporary document was passed on 17th October, 1992 called the Small Constitution. However, it did not include regulations concerning custody of a child or civil rights and liberties.

A new Constitution established in 1997 had a huge impact on the development of foster care. Article 72 directly expresses the right of a child to be cared for which is a basis of current forms of foster care.

Then, there was a new political reform implemented, and foster family care had to be modernized. All the competence was then in the hands of social welfare. As a result of this change, new acts were passed in 2004, and finally on 9th June, 2011 the Act on Family Support and Foster Care was enacted.

A legal position of a person is the subject of a thorough regulation in the Constitution passed in 1997. Parental custody should serve for the child's sake. However, when the child's good is in danger, then the public authorities should be responsible for him/her. It means that the state can interfere in the sphere of parental care, which is allowed by the Polish Constitution, yet, only under certain circumstances and only on the basis of legally valid judicial decision. Thus, it is evident that according to the Polish Constitution foster family care depends on the court of law.

A child's right to be provided with foster care is subsidiary to the right to live with a natural family. The truth is that a foster child should be prepared to return to his/her natural

family, which is one of the most important principles of fostering. However, before it occurs, such a child is entitled to benefit from a range of constitutional and statutory rights such as protection against humiliating treatment, including corporal punishment; being raised with a feeling of dignity; health care; a guarantee of fulfilling religious needs and expressing own opinions; freedom of conscience, education, development of skills, interests and individualities. Moreover, each and every foster child has the right to be fully informed about his/her origin, and to be in contact with the biological family.

A child's right to foster care was well protected by constitutional norms and prescriptive acts. Owing to this fact, the legislator had to protect also biological parents of the child placed in a foster family. The Polish Constitution says that families being in a difficult financial and social situation, especially large or single-parent families, have the right to obtain special help from the state. It means that the state is obliged to adopt a pro-family policy and support natural families with their custody as they can get help from the state authorities and social organizations.

Not surprisingly, foster parents are given a lot of support as well. First of all, they are provided with financial benefits which are to cover the child's cost of living. Foster parents also have the right to bring up the child and represent him/her but not decide about the child. Natural family have the right to decide about most important things, for example – education, religion, a surgery, or a trip abroad. However, it needs to be stated that the foster parents are granted all the rights only after getting the status of legal guardians.

We cannot omit the fact that international resolutions have had a considerable impact on the formation of foster care, the most crucial of which is the Convention on the Rights of the Child.

Obviously, no forms of foster care will fully replace a natural family, yet, they are a great chance for the child to develop properly and enjoy a decent life. Undoubtedly, constitutional norms are a basis as far as foster care is concerned.