

Public interest – a family

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Abstract:

The article presents a family as both the public interest and constitutional objective value in the conditions of the Slovak Republic. From this point of view, it offers various innovations by applying public administration methods intended to support and protect the family. It is also about introducing a strengthening of the principle of subsidiarity, democratization and the instrument of the fight against corruption.

Keywords:

Family, public interest, constitution, subsidiarity, public administration.

Introduction

Our society faces a number of challenges that can be labelled as critical. One of the fundamental questions that arise is the future of a social security system built on the solidarity of the productive population with retirees. The assumption of the success of this model is sufficient human resources of the productive population. However, demographic developments show a declining natality and thus a reduction in the population of productive populations. This situation, objectivisable in most European countries, including Russia, is a fundamental reason to think about the status of the family in the modern Western society and the opportunities offered by the system of public power and administration to support of families. The hypothesis of my paper is the idea that the reproductive family, a family based on marriage of a man and a woman with children's potential, is a fundamental public interest of society, and in support of it, a number of public administration methods may be used that I will introduce to demonstrate this.

This issue will be represented using the method from the abstract and the general to the absolute specificities in the legislation innovation. In the basic framework of my paper, I remain on the level of the science of administrative law (public interest, method of economic

motivation), the constitutional anchoring of the issue, and very partially I will also touch on some private law relations.

Public interest and constitutional values

Family issues are more likely to be presented as a private law area with a focus on civil law, or specifically, as in the case of Slovak law, on family law alone. However, the fundamental question of how much family is a constitutional value and a public interest is a matter of examining rather by public law. However, the method of public law regulation is also present at the level of society's interest in the family. It is a method that is more characteristic of constitutional, criminal and administrative law as classically present in private law.¹

The concept inevitably related to administrative law is a term of public interest. It is a term which, in the Slovak legal order, belongs to the so-called an indefinite legal concept. However, its essential significance is that it is a legitimate reason for the limitation of human rights and freedoms, as will be further mentioned, and the fundamental essential duty of the public authorities. It is an obligation to always act in the public interest.

The uncertainty of this term is given by the fact that there is no law that would know the definition of public interest for all applicable cases. Thus, there is no legal norm that would have such a degree of abstraction that would make it lawfully assumed for all possible cases. Public interest is not such a concept itself. It is, for example, about the concept of public order or proper judgment. However, legal definitions of these concepts have already been recognized in the established case-law or in some other documents.²

Public interest is per se a declaration that there is an interest in society that must be superior, in certain, by a system (law) assumed situations, to individual interests. In the recent regime of socialism, we recognised the *terminus technicus*- society's interest in all the synonyms of this phrase. It is a concept which, to a certain extent, is identical as far as the content is concerned, with the concept of public interest. For example, as the socialist relict, it remained in Act on administrative procedure no. 71/1967 Coll. as amended,³ or in Act on

¹ MACHAJOVÁ, J., 2010. Všeobecné správne právo. EUROKODEX, s.r.o, Bratislava.

² Cf. e.g.: KOŠIČIAROVÁ, S., 2012. Princípy dobrej verejnej správy a Rada Európy. Bratislava. IURA EDITION

³ Act no. 71/1967 Coll. On Administrative Procedure, as amended, writes in § 3 par. 1 about the duty of administrative authorities to protect the interests of society and the state. This concept is perceived as an individual interest e.g. of the Ministry of the Interior of the Slovak Republic (as a de facto state), but also public

abortion no. 73/1986 Coll. as amended. It should be underlined that the socialist Czechoslovak Republic was not bound by the Charter of Fundamental Human Rights and therefore the interpretation of the notion of public interest (social interest) was determined much wider than can be seen today. It is surprising that *terminus technicus* has a social interest was de facto included in the Family Act as I will show later, and that is the legal regulation of 2005. The public interest today has its constitutional limits and limits that reflect the objective values, i.e. the values of natural law. These principles, whether in the sense of the views we find in the Nuremberg precedent or the decisions of the European constitutional courts, are not only created but only recognized by the constituent assembly.⁴

Therefore, the notion of objective value and public interest is very important for the perception of any legal institute. In particular, with respect to the subject of my paper that today, no modern constitution is value-neutral. On the contrary, it builds on a coherent system of values that the state respects and, through public power authorities, including public administration authorities, protects. By the fact that a certain value is explicitly expressed in the constitution, it is clearly defined as a constitutional value.⁵ Under conditions of the Slovak Republic, the account of such values is varied, it concerns the protection of the environment, protection of cultural values and, under Article 41 of the Constitution of the Slovak Republic this also includes marriage and family. This provision expressly states:

Marriage is a unique bond between man and woman. The Slovak Republic protects marriage and helps it good. Marriage, parenthood and family are protected by law.

Thus, according to the above cited Constitutional Court finding and its interpretation of the objective values of natural law, clearly and comprehensibly this is the case also in the family case. For example, the Polish Constitution in Art. 18 states:

Marriage as a bond between a woman and a man, family, maternity and parenthood is under the legal protection and protection of the Republic of Poland.

as it is recognized by professional writings, e.g. POTASCH, P., 2015. Zákon o správnom konaní. C.H.Beck, Bratislava s. 13

⁴Cf. Finding of the Constitutional Court of the SR no. PL.ÚS 12/01 clause 6 : „Unlike standard legal norms, the state cannot create objective values, but only recognize, respect them, or to be based on them or to emphasize their meaning.“

⁵Finding of the Constitutional Court of the SR no. PL. ÚS 12/01

Such legal regulation is of great importance, for example, for the potential reflections in society on surrogate maternity because it makes an objective constitutional value from maternity. In the case of the Slovak Constitution, par. 2 of the provision in question of Art. 41, it is rather about the protection of pregnancy as a special condition of a woman/mother in whom society has a particular interest.

This interest of the society, which is defined as "the protection of the Slovak Republic" and the like, is already clearly defined by its constitutional definition as public interest and constitutional value. If, in terms of its subsumption under the concept of value / principle it is probably not possible to lead a discussion in terms of its broader understanding as a public interest, it is necessary to look at the basic provision of Family Act no. 36/2005 Coll. On Family as amended. According to the basic provisions of this Act, Articles 1 – 2, the society is interested in protecting the family. Thus, within the meaning of this Act, the public interest (interest of society) is clearly identifiable as an interest in the family.

Public administration methods to support and protect the family

In my paper, I will present the protection of this public interest with regard to the methods of administrative law. These methods offer a number of possibilities and guidance for public administration authorities how to act. This is not a case of duplication, for example, in the case of a family, of private law regulations, but about the possibilities that the modern democratic system of power organisation can offer. Current democracies are based on a principle based on the Judeo-Christian tradition of subsidiarity. It should be emphasized that long before the emergence of modern ideological streams in the works of Christian philosophers, we find the requirement of some quality of the organization of public power. Francesco de Vittoria, in his contemporary work, significantly indicated the need for subsidiarity, of course, in the context of real historical contexts.⁶ Subsidiarity associated with Judeo-Christian roots in the organization of the state is also present in the work of Alexis de Tosqueville *Democracy in America*, through the Encyclical of Pope Pius XI *Quadragesimoannus* to the highest work of the Catholic social thinking - the Encyclical of John Paul II *CentessimusAnnus*. All these works focus attention on the solution as close as possible to the lowest units of society, that is, the individual and the family. Therefore, the

⁶ WAGNER,A., 2018. Francesco de Vittoria in. *Great christianjurists in spanischhistory*. Cambridge. UniversityPrintingHouse.

family must also be the object of examining not only from the civil law point of view but also from the aspect of organizing the administrative arrangement of states. Particular attention should be paid to the fact that a strong, multigenerational, family has a very important role as a social security unit. The Family Act already presupposes mutual maintenance obligations. Unfortunately, the science of administrative law is not focused today on finding optimal tax-administrative options to strengthen the social role of the family. It should be borne in mind that, from the point of view of subsidiarity, this space is the most efficient, the most natural and at the same time the cheapest for the state. The activity of the public administration aimed at supporting the family as a social unit is known for a long time; it is a method of economic motivation. In contrast to the older legal literature, today the methods get less space in the examination.⁷ And it is they that represent the way to look for innovations in addressing critical issues in society. The method of economic motivation is known from the practice of Western states. Professor Novak's work⁸ for example presents to us a system in the US that allowed taxpayers to benefit from tax deductions or depreciation in every household in which the dependent person was at least 65 years old. This provision supports families who have taken care of old parents and other relatives. Even the seniors are given satisfaction that they become indirectly the source of income for a multigenerational family. It is necessary not to lose sight of the decisive moment when children are led towards multigenerational responsibility. The same approach was to family foundations that were established to care for disabled family members and the like. Here we come to a very significant part of our reflection on the family as a public interest. And it is the ability to directly support the economy of the state and at the same time to promote responsibility of the whole society.

Direct support for the state's economy is motivated to work as a tool both on social security (tax concessions in relation to seniors) and hence on the reduction of direct state spending on retirees. Of course, a system based on mutual transgenerational family support is a significant curved society, on the one hand, in the field of employment (or business support) and demography.

The welfare state which claims to be able to take care of each individual in many cases causes:

- i) Loss of motivation to economic activity and therefore also of the dignity of a person so dependent on the state

⁷Cf.: MACHAJOVA, J., s. 167

⁸ NOVAK, M., 1999. Katolícke sociálne myšlení a liberálné inštitúcie, Česká křesťanská akademie Praha, s. 268

- ii) Loss of motivation to set up families as social security represents a strong state⁹
- iii) The emergence of corruption as the bureaucratic apparatus of a strong state is a great attraction exactly due to these very negative aspects of society.

On the other hand, family-issue related subsidiarity supports economic activity and human dignity fosters family formation and natality, and is also an important tool for narrowing the area of corruption, as even where there is no demand for supply.

The second specific part of the subject in the public interest in the family is the topic of economic and legal measures to protect the family. It is not right or correct if family protection is understood only within the fetishism of the fact that it is based on marriage of a man and a woman. However, such perception of the family is true and based on constitutional values, both the Slovak Republic and Poland. Families today face far more crisis due to economic reasons than due to creating a competitive model to marriage in some EU countries.

Public administration is just because the public interest has primary a duty to carry out family protection tasks in the case of, for example, credit traps and executions. The current legal environment is more focused on marriage (community property of spouses, etc.). The interest of the family as a whole, especially in the context of the minor children is not present in multiple relationships. For example, credit agreements whose default may have a direct and real impact on the economy and family budget. Or the form of execution by selling the property. And we are talking about the consequences in which other public interest has to be taken into account, and that is an interest in enforcing law.

However, the public administration has the potential to implement a comprehensive prevention program. Practically without limitation from the point of view of law, territorial self-government can act. This is not a purely abstract model of the method of persuasion and economic motivation in public administration. Territorial self-government in Slovakia, represented by the municipality and the self-governing region, has the possibility to establish legal entities of both commercial nature (“in-house solution”) and non-profit character. In particular, the Žilina self-governing region plans to set up a counselling centre for families in debts and executions in each town within its territorial jurisdiction until 2022. It is a concrete measure which in the broadest sense is an implementation of the public interest based on the constitutional value of the family and on the other hand, an example of the implementation of the organizational method of prevention and persuasion of public administration in practice.

⁹Cf.: BUCHANAN, P.J., 2012. Smrt' západu .Praha Citadela.

Another example of the same application of the same method is the information link between municipal authorities (from the point of view of subsidiarity as close as possible to the citizen) with natural energy monopolies (gas, electricity, heat distribution). If these companies record the existence of a family (logically with children) debt they submit information to a territorial self-government authority and they begin to implement social intervention, accompanying and advising on budgeting, repayment schedule proposals, and the like. This way, which in addition does not require a change in legislation, prevents the creation of a credit trap and consequent execution or personal bankruptcy.

Conclusion

The public interest in the protection and support of the family is a condition, by its character, of not only of the constitutional value but also of the natural reproduction of society itself. My goal was to present the family as both the constitutional value and public interest. An important part of the article is the presentation of options for applying public administration methods to support and protect the family, including *legeferenda* considerations that represent innovative proposals for the public administration system.

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