



Legal and Axiological Standards in the Functioning of Foster Care in Poland

SUMMARY

This paper discusses changes in the functioning of foster care since it was reformed in 1999. Its focus is to demonstrate changes in Polish law and evolution in pedagogical views as well as in administrative practice in the context legal standards of foster care set forth in international documents (Convention on the Rights of a Child, European Convention on Human Rights and many others) and in the constitutional principle of subsidiarity. Much attention was also devoted to provisions of the Act of 9 June 2011 on support for Families and Foster Care system as well as to new laws of the Family and Guardianship Code.

Of paramount importance is the right of children in care to return to their families (family reintegration), a right that derives from international standards. In this context evolution in pedagogy and the significance of social care were emphasized. The author highlights emotional problems of foster families which hinder efforts aimed at supporting children's parents.

→ **KEYWORDS** – **FOSTER CARE, FAMILY LAW, FOSTER FAMILY, CARE AND EDUCATIONAL FACILITIES, FAMILY REINTEGRATION**

STRESZCZENIE

Prawne i aksjologiczne standardy funkcjonowania pieczy zastępczej w Polsce

Artykuł omawia zmiany, jakie zaszły w funkcjonowaniu pieczy zastępczej, poczynając od rozpoczęcia jej reformowania w 1999 roku. Akcent położono na pokazanie zmian polskiego prawa i ewolucji pedagogicznej oraz administracyjnej praktyki, w kontekście standardów prawnych pieczy zastępczej wyznaczonych w międzynarodowych dokumentach (Konwencja o Prawach Dziecka, Europejska Konwencja Praw Człowieka i wiele innych) oraz w konstytucyjnej zasadzie pomocniczości. Szczególnie wiele uwagi poświęcono uregulowaniom Ustawy

z 9 czerwca 2011 roku o wspieraniu rodziny i systemie pieczy zastępczej oraz nowym przepisom Kodeksu rodzinnego i opiekuńczego.

Najistotniejsze znaczenie ma wynikające z międzynarodowych standardów prawo wychowanków rodzin zastępczych i placówek opiekuńczo-wychowawczych do powrotu do rodziny (reintegracja rodziny). Na tym tle pokazano przemiany w pedagogice i znaczenie pracy socjalnej. Autor zwraca uwagę na emocjonalne problemy rodzin zastępczych, które odmawiają działań wspierających rodziców wychowanków.

→ **SŁOWA KLUCZOWE** – PIECZA ZASTĘPCZA, PRAWO RODZINNE, RODZINA ZASTĘPCZA, PLACÓWKA OPIEKUŃCZO-WYCHOWAWCZA, REINTEGRACJA RODZINY

I. The concept of foster care

Regulations addressing foster care are contained in the Act on Support for Families and the Foster Care System of 9 June 2011.¹ Under the provisions of this Act, foster care can be exercised:

1. by families and by institutions;
2. every day of the week, 24 hours a day;
3. in order to facilitate a child's return to a family (reintegration), and when that proves impossible, to facilitate an attempt at the child's adoption;
4. without a pre-defined date for its conclusion, but in no case beyond the achieving of adulthood;
5. on the basis of a court decision or upon an application by the child or its parents;
6. within the framework of a local family support system and foster care system (local government administration, its agendas, family courts, health care facilities, educational institutions, trustees, non-governmental organizations, churches and other religious unions, and others).²

¹ When used without additional qualification, the phrase "the Act" refers to the Act of 9.06.2011 on Support for Families and the Foster Care System (OJ L 2011, No. 149, item 887 with amendments).

² For more see: M. Andrzejewski, *Prawo rodzinne i opiekuńcze*, Warszawa 2014, pp. 160-179.

To capture the unique attributes of foster care, it is helpful to compare it to adoption.³ These institutions are frequently conflated, even though they perform separate functions, a fact reflected in their legal construction. The objective of foster care is to care for a child as a “substitute” for parents who are not capable of performing their role during a given time. A court regularly assesses whether the child can return to its parents, or whether it is still not feasible to do so. The temporary nature of foster care is expressed in the assumption that placing the child outside the family is intended to lead to a reintegration of that family. For a certain period of time, it is supposed to make up for deficiencies in parental care, but it is not to lead to a permanent replacement of the parents. However, if, in spite of these efforts, it is not possible for the child to return to its parents, then it becomes necessary to establish a permanent surrogate family environment in which the child can remain until achieving adulthood. Adoption of a child, however, is associated with an unlimited time frame, as it becomes the child of the adoptive parents, the grandchild of their parents, and its children will be the grandchildren of the adoptive parents.

Placement in foster care does not affect the family law status of the child, who remains legally the child of its parents. An adopted child, however, is legally the child of its adoptive parents. They exercise parental authority over the child, they are under maintenance duties, and the child is their legal heir under statute. An adopted child bears the same surname as the adoptive parents' biological children, insofar as they have any. None of these consequences result from placement in a foster family, nor in a foster care facility. Those providing foster care never exercise parental authority over a child entrusted to them; at the most they may exercise legal custody. They can also share duties towards the child with its parents, insofar as the latter are entitled to some form of parental authority. The child is not an heir to individuals providing foster care, and does not receive maintenance payments from them (the child is supported by public funds), etc.

³ For more see: M. Andrzejewski, *Pieczka zastępcza*, in: *Prawo rodzinne i opiekuńcze*, ed. T. Smyczyński, System Prawa Prywatnego, ed. Z. Radwański, vol. 12, Warszawa 2011; E. Holewińska-Łapińska, *Przysposobienie*, in: *Prawo rodzinne i opiekuńcze*, op. cit.

II. The legal evolution of foster care

1. The contemporary construction of foster care is the result of changes which began with the political transformation of 1989. Human rights, including the rights of the child, became one of the pillars of the Polish legal system.⁴ The standards for the functioning of foster care set forth in international documents cataloguing those rights⁵ amount in particular to a duty to respect the child's right to family life, contacts with the loved ones, protection from violence, and also protection of the parents' primacy in raising their children. At the same time, they forbid interference by public institutions in family life in the absence of a pressing need (the principle of family autonomy vs. state influence). Potential state interference in family relations should be preceded by an attempt at providing support to the entire family without removal of the child. The strategic goal of placing a child in foster care should be the return of that child to its family (reintegration). To achieve this, it is necessary to provide support to parents and to respect the emotional bonds linking them with the child in foster care.⁶

One of the principles of the Polish state's legal order is the principle of subsidiarity,⁷ which requires the provision of support for people and groups (families) which are not capable on their own of dealing with their problems, in order to effect their independence (a dysfunctional family whose child has been placed in foster care should receive support facilitating the return of the child and continued joint functioning). In the light of this principle,

⁴ For more see: *Konwencja o Prawach Dziecka. Analiza i wykładnia*, ed. T. Smyczyński, Poznań 1999; *Prawa dziecka – konteksty prawne i pedagogiczne*, ed. M. Andrzejewski, Poznań 2012.

⁵ In particular: Universal Declaration of Human Rights and the Convention on the Rights of the Child (Art. 9, 20), European Convention for the Protection of Human Rights and Fundamental Freedoms together with the jurisprudence of the European Court of Human Rights in Strasbourg (discussed in: S. Łakoma, *Instytucja rodzin zastępczych w prawie administracyjnym*, Łódź 2014, pp. 97-117). See also: resolution of the Committee of Ministers of the Council of Europe No. (77)33 on the placement of children and that Committee's recommendation No. R (87)6 on foster families in: *Standardy prawne Rady Europy. Teksty i komentarze*, vol. 1, *Prawo rodzinne*, ed. M. Safjan, Warszawa 1994.

⁶ For more see: M. Andrzejewski, *Ochrona praw dziecka w rodzinie dysfunkcyjnej (dziecko – rodzina – państwo)*, Kraków 2003, pp. 193-211.

⁷ See in particular: C. Millon-Delsol, *Zasada pomocniczości*, Kraków 1995; Z. Zgud, *Zasada subsydiarności w prawie europejskim*, Kraków 1999.

placement of a child in foster care is seen as a means of materializing the right of the child to a family life (return to the family).⁸ Human rights and the principle of subsidiarity are the polar opposites of pedagogical practice based on the Marxist theoretical assumptions⁹ cultivated in Poland almost up to the end of the 20th century.

The subsidiarity principle is the philosophical foundation on which the Social Welfare Act (1990)¹⁰ was built, which regulated foster care in the period 1998-2011.

2. Alongside changes in the law on social welfare, the Family and Guardianship Code (FGC) was also modified. This is of particular importance, as the regulations contained in the Act on Support for Families and Foster Care must be viewed within the context of regulations concerning parental authority (Art. 87-113 FGC). Chronologically, the first change was to require family courts and social welfare authorities to cooperate in matters concerning the placement of children in foster care and their families (2000). At that time, courts were required to forward judgements ordering the placement of children in foster care on the basis of restricted parental authority to county social welfare authorities. These authorities were, in turn, required to provide information to the family court about the effects of support for the parents of a child placed in foster care (Art. 109 §4 FGC). If support interventions are unable to generate positive effects, and particularly if parents seem indifferent towards the child, then there are grounds to deprive them of parental authority (Art. 111 §1a FGC).¹¹ Unfortunately, the regulations cited above did not contribute to an improvement in the functioning of family courts and administration – examples of real cooperation were

⁸ For more on this subject see: M. Andrzejewski, *Domy na piasku. Domy dziecka. Od opieki nad dzieckiem do wspierania rodziny*, Poznań 2007.

⁹ On the subject of foster care based on those assumption see in: *Węzłowe problemy opieki i wychowania w domu dziecka*, ed. Z. Dąbrowski, Olsztyn 1997. This edition mostly repeats the theses expressed in the original from 1985.

¹⁰ OJ L 1990, 87 item 596, with amendments. The next important act on foster care was Social Welfare Act from 2004.

¹¹ For more see: T. Sokołowski, *Powrót dziecka do rodziny bądź fakultatywne pozbawienie władzy rodzicielskiej*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2003, No. 3.

few and far between, lost among a sea of reluctance and incapacity to work together.¹²

The next step was the introduction of regulations into the FGC addressing contacts with the child.¹³ Reintegration of the family is impossible if contact is not maintained between parents and their child in foster care. This is why a critical stance should be taken in respect of numerous examples of such contact being hindered by individuals and institutions exercising such care. Results from empirical research demonstrate the passivity and characterological weaknesses of many people forming foster families, particularly in the absence of kinship with the child. They fail during seminars and before family courts to hide their negative attitude towards the parents of the children in their charge, particularly in respect of their right to maintain contact with the child.¹⁴ In spite of this, they receive positive opinions and certifications from those organizing training courses, and the courts continue to award them custody of successive children... This is not to deny that the ineffective materialization of the right to contact with the child is also influenced by the fact that some parents of children placed in foster care are themselves passive and irresponsible, or are easily discouraged by failures, and are difficult to motivate.

In 2011, the FGC was amended to include a section titled "Foster care." The most important regulations adopted therein include:

- entrusting parents with restricted parental authority with the right to decide about important matters concerning the child, while those responsible for foster care are responsible for day-to-day care of the child and its education;
- permissibility of placing a child in foster care after exhausting all of the forms of assistance for the child's parents within the home environment;

¹² For more see: M. Arczewska, *Role społeczne sędziów rodzinnych*, Warszawa 2009; J. Hrynkiewicz, *Odrzuceni. Analiza procesu umieszczania dzieci w domach dziecka*, Warszawa 2006.

¹³ OJ L 2008, No. 220, item 1431 with amendments.

¹⁴ E. Holewińska-Łapińska, *Orzekanie o osobistej styczności z małoletnim osób innych niż rodzice*, in: *Prawo w działaniu. Sprawy cywilne*, No. 4, Warszawa 2008.

- the declaration that a child is placed in foster care until such conditions exist that facilitate its return to the family, or its placement in an adoptive family;
- permissibility of placing a child in institutional foster care if there is no family foster care available;
- the principle of not separating siblings, unless justified by the best interests of the child.¹⁵

3.1. This is the context in which the Act of 9 June 2011 on Support for Families and Foster Care made its appearance. It features a simple and logical construction. After a presentation of general principles, it addresses the issue of support in the local environment for families which are failing to properly perform the tasks associated with the educational function assigned to the family (section II). Section III contains regulations concerning the placement of a child in foster care. They are applied when support provided within the family environment does not produce the desired effect. The strategic objective of placing a child in foster care is to create the conditions necessary for that child's return to the family. If this is impossible, it then becomes necessary to consider placing the child in an adoptive family (section V). The Act also includes other regulations that address organizational and economic issues connected with a range of legal, psychological, pedagogical and social aspects of foster care undertakings.

3.2. The Act also contains the first regulations in the Polish law addressing support for families going through a crisis in the performance of its child-rearing function. It indicates pedagogical and social instruments that can be used to overcome family problems without placing a child outside its family. Only when it is impossible to overcome a crisis in spite of the provision of support is it justified (legally and ethically) to place a child outside of the family.¹⁶

Support for the family may involve an analysis of its situation and diagnosis of the causes of the crisis, development of parents' child-rearing skills, assistance with integration, fighting against marginalization and social degradation, etc. Actions taken in support of the family are done with its consent, and with

¹⁵ For more see: M. Andrzejewski, in: *Kodeks rodzinny i opiekuńczy. Komentarz lex*, eds. H. Dolecki, T. Sokołowski, Warszawa 2013, pp. 735-795.

¹⁶ More in: S. Łakoma, *Instytucja rodzin zastępczych w prawie administracyjnym*, op. cit., pp. 195-213.

regard to both its own resources and sources of external support. However, they can also be ordered by a court in a ruling to restrict parental authority (Art. 109 § 2(1) FGC).

Work with the family is organized by the local municipality, or by an entity entrusted with the task by the municipality (e.g. a public benefit institution). It consists in consultations, counselling, therapy, mediation, care and specialist services for families with children, legal aid, organization of meetings for exchanging experiences and preventing isolation, etc.

A family may have an assistant assigned to it.¹⁷ The assistant is under a duty to develop and implement a plan for working with the family to overcome its difficult situation, or at least to improve the situation through developing the skills necessary for maintaining a household as well as solving psychological and child-rearing problems experienced with children. It is also the assistant's task to help find work, as well as to assess the family's situation and to prepare opinions about the family for courts.

The family may receive support in the performance of child-rearing tasks from day care facilities. They are conducted in such forms as tutorial groups (clubs, community centres, study support clubs, dayrooms), specialist groups (organization of socio-therapeutic, therapeutic, corrective, compensatory and speech therapy activities, as well as pedagogical, psychological and social therapy), and also in the form of community fieldwork.

Another form of assistance is entrusting a child to a supporting family. This function can be performed by people from the child's closest environment. It is assigned by the local prefect after conducting a field interview.

3.3. The Act has incorporated foster care into a new administrative structure. In spite of its formal separation from the social welfare system, in practice the new structures are closely linked with the old ones. It should also be emphasized that the Social Welfare Act and the Act on Support for Families and Foster Care System are undergirded by the same axiological assumptions, namely, the idea of human rights, the principle of subsidiarity and the postulate of reintegration of the child into its family. For this reason, the rules for the application of teleological interpretation

¹⁷ For more on the subject see: I. Krasiejko, *Metodyka działania asystenta rodziny. Podejście skoncentrowane na rozwiązaniach w pracy socjalnej*, Katowice 2010.

to the provisions of both acts are identical. Taking the foregoing into consideration, the creation of the new structure exemplifies the unnecessary expansion of administration involved with the family, which should not be confused with an improvement in protection of the family.¹⁸

3.4. The Act adopts a division of the forms of foster care into familial (foster families and familial children's homes) and institutional. Preference is given to familial forms,¹⁹ whose pedagogical foundations refer to the family model. An important element of this idea is the maintenance of the emotional bond linking the child with its parents, the absence of which renders reintegration of the family impossible. For this reason, when reviewing cases involving the placement of a child in foster care, it is necessary to choose the form of care which in a given situation will provide the greatest chances for the child to return to its parents.

Among foster families, there is a distinction made between families formed by the child's kin (spouses or an unmarried person, who are either the ascendants or a sibling of the child, respectively), foster families not formed by the child's kin (composed of people from outside the family, or by people of secondary affinity), professional (trained) foster families, non-professional foster families, and supporting foster families. This last group is composed of families which take in a child when a foster family or family children's home is not able to exercise custody due to chance events, vacation travel, participation in training courses, etc. It can be a foster family (professional or non-professional) or a family operating a family children's home, as well as people trained in the performance of the function of a foster family, trained to operate a family foster home, or trained as an adoptive family.

Among professional foster families, a distinction is drawn between:

1. those performing the function of an emergency family,²⁰

¹⁸ M. Oziemkowski, *Uwagi do założeń projektu ustawy o wspieraniu rodziny i systemie pieczy zastępczej nad dzieckiem*, "Problemy Opiekuńczo-Wychowawcze" 2010, No. 2, pp. 17-23.

¹⁹ M. Andrzejewski, in: *Kodeks rodzinny i opiekuńczy. Komentarz lex*, op. cit., pp. 790-794.

²⁰ This type of professional foster family is chronologically and quantitatively first in Poland (around 600 such families). They are entrusted with caring for children in respect of whom the relevant public services (border guard service, police, social worker) have engaged in intervention. A stay with such a family may

2. specialist families, such as a) therapeutic (for children with health problems), b) resocializing (for children and youth with social maladaptation, in respect of whom a juvenile court has issued a verdict) and c) for juvenile mothers with children.

The Act contains regulations which aim at minimizing the risk of failure in foster parenting by placing emphasis on professional identification and acquisition of familial foster environments, among others by improving the quality of training, providing continual support, discreet oversight activities, and also stable and adequate financial support for children in their care. Unfortunately, one must concur with the opinion that the poor quality of training (including the ease with which one can acquire documents entitling the holder to perform the function of a foster family) as well as insufficient support for foster families are presently the weakest elements of the foster care system. In recent years the image presented in the media of such families has undergone a transformation – not so long ago they were lauded uncritically, while today they are portrayed against the backdrop of terrible failures (such as the dramatic events in Puck and Łęczycza). Bad practice has not been changed by good law designed to improve the importance of selection as a foster parent and its oversight.

3.5. In spite of numerous and often unjustified media attacks on institutional forms of foster care, the Act contains solutions which lay foundations for their modern functioning. When creating a county system for family support, it is necessary to make use of all forms of assistance that may prove useful, including care and educational facilities. What is crucial is that these places offer a comforting atmosphere and that they provide effective support to children and their families, with a view to their reintegration.

III. Legal and axiological standards, pedagogy and social work

Legal and philosophical standards for foster care have forced the introduction of changes in pedagogy and social work. Until the end of the last century, those working in care and educational

last from 4 to 8 months, or until the conclusion of judicial proceedings concerning the return of the child to its family, adoption or placement in a foster family. For more, see the monograph by: J. Basiaga, *Zawodowa miłość. O opiece nad dziećmi w pogotowjach rodzinnych*, Warszawa 2014.

facilities, as well as people making up foster families, were under no obligation to actively engage the children's parents. The majority of them were negatively disposed towards the parents, considering them responsible for harming the child. They displayed scepticism regarding their potential to change, and were unable to communicate and cooperate with them. Indeed, until recently students of child welfare and pedagogy were only instructed in engaging children, without heed to the fact that the children have parents, and most of the children desire to return to them. Students were not instructed in skills necessary for working with parents and other people close to the children. Short shrift was given to the importance of parents, in spite of the fact that the majority could have performed parental duties had they been given support in the form of therapy, psychological and pedagogical assistance, counselling, etc.

The venomous language employed (even to the present) by employees of academic institutions (but also journalists, educators and others), using the dismissive label of "pathological family" for families with child-rearing difficulties, has also hindered effective work. This is an unfair label to apply to many parents of children in foster care. A significant number of children come from families in which proper emotional bonds are present, but children have been removed from them due to poverty, general helplessness or mental illness of the parents, and for other reasons which do not provide grounds for applying such stigmatizing labels. In medicine, the word 'pathology' concerns tissue that should be removed. When applied in the area of pedagogy, it leads to rejection of the families of children in care (as supposedly pathological), and relieves us of the duty to support them.

An equally large amount of harm is caused by the use of the term "orphan" in describing children who have parents. Continual repetition of the word "orphan" in the minds of students can serve to "kill" the parents of children taken into care. In the minds of teachers lecturing about children placed in foster care, someone else had already "killed" the parents of those children a generation ago... In this manner, a semantic mistake leads to problems in establishing proper relationships with children who do not feel orphaned, and who desire to return to their parents; it also erects barriers to cooperation with the family of a child in care.

A critical perspective should also be taken towards the use of the term "biological parents" to label the parents of children

in care, while the term “parents” is used by foster families in reference to themselves. This is wrong. The position of the parents should not be deprecated by the use of an unnecessary adjective. Foster parents, however, are not the parents of the children in their care, and they should be referred to as foster parents. This is how they should refer to themselves as well.

Changes in university pedagogical education programmes, particularly in the area of child welfare, are not keeping up with the changes in the law detailed above. Over time, those engaged in such work have begun to extend their reflections beyond the walls of closed facilities, and inserting elements of social work into programme contents. This, in turn, has facilitated reflection encompassing both the reality of the child placed outside its family and the reality of the family, who – in the absence of their child – need to be engaged in social work. This perspective assumes respect for the bonds between parents and children, and inspires us to work for their reintegration.

In the 1990s, education in the area of social work was inaugurated at Polish universities (generally in faculties of sociology and pedagogy), as well as at several two-year colleges (of high quality). Since that time, the aforementioned process of the blending of pedagogy (particularly involving educational and developmental care) with social work has begun. This has created a chance to adapt models of support for children and families to Polish conditions, particularly models developed in Western Europe, which have long been based on the foundation of subsidiarity, protection of the rights of the child and the family, and the primacy of parents in the raising of the child.

In 1999, responsibility for foster care was transferred from the educational ministry to the social welfare sector.²¹ This has led to the presence in child educational and developmental facilities of social workers exerting impact on the parents of children in care. They have also been included in teams responsible for assessing the situation of the child. Social workers have begun coordinating support for the family in the parents’ living environment,

²¹ The Act of 24 July 1998 on amendments to some Acts determining the competences of public administration bodies – in conjunction with reform of the state structure (OJ L 1998, No. 106, item 668, came into force on 1 January 1999).

in order to prepare it for the child's return.²² The effects of their work have been the object of criticism.²³ The obvious weaknesses of the work conducted with parents of children in care and other aspects of the manner in which social welfare agencies function should, however, be viewed from the perspective of the low point at which social welfare and social work started in 1990. From World War II until the end of the 1980s, ideological considerations meant that social assistance was limited to support payments. Social work was not conducted at all. Little attention was paid to this area, and social work was considered unnecessary owing to the fact that, under socialism, social problems solve themselves. In this context, the achievements of the preceding twenty-plus years (an even shorter time in respect of foster care) should be evaluated accounting for "mitigating circumstances."²⁴

IV. Debate over the identity of foster care²⁵

The issue of how standards (ethical, legal, but also psychological and social) of foster care are perceived is illustrated by the debate raging in Poland over its identity. It erupted at the end of the 1990s, when the further functioning of foster care based on Makarenkian pedagogy was brought into question. Its proponents remained until the end of the previous century in both educational administration and at university faculties of pedagogy, as well as among employees of child care and educational

²² It is worth recalling that pursuant to the Regulation of the Minister of Education of 21.07.1994 on the types and rules of operation for public child educational and care facilities and resocialization facilities, which was in force until July 2000 (OJ L 1994, No. 41, item 156 with amendments), only care takers were employed in children's homes. If a children's home employed 50 caretakers, a pedagogue could be employed, and when employment reached 100, a psychologist. It was not possible for a social worker to be employed at all...

²³ See: J. Hryniewicz, *Odrzuceni*, op. cit.

²⁴ For a balanced view see: D. Trawkowska, *Studia niepowodzeń pracy socjalnej z rodziną w pomocy społecznej*, "Problemy Polityki Społecznej. Studia i Dyskusje" 2009, No. 11, pp. 221-242.

²⁵ For more see: M. Andrzejewski, *Rozważania o tożsamości zastępczego rodzicielstwa (i kilku drobniejszych sprawach)*, in: *Pomoc społeczna wobec rodzin. Interdyscyplinarne rozważania o publicznej trosce o dziecko i rodzinę*, ed. D. Trawkowska, Toruń 2011.

facilities. It was questioned by the numerous participants of annual meetings organized beginning in 1997 by the “Our Home” Association, who decided to reform foster care by stressing the importance of family bonds and respect of the right of children in care to return to their parents (reintegration of the family).²⁶ Legal reforms ensued in this vein, as previously discussed. However, the overly slow evolution of pedagogical practice has not managed to keep up with the changes in law, and positive changes in foster care are obstructed by the attitude of the bureaucratized local government administration.

Contemporary disputes about the identity of foster care also concern the sense of operating children’s homes and other child care and educational facilities. There are many calling for the elimination of institutional foster care. However, many supporters take the view that such facilities should be reformed in terms of their organization, size and methodology, but not eliminated, as they are vital in spite of their flaws. The latter view is the proper one.²⁷ Children’s homes and other facilities for groups of children and youth are the best, if not often the only form which can be applied. Some children are simply not at all capable of accepting even the slightest amount of adult authority, including that of their foster family or family children’s home. They display neither the will nor the capacity to cooperate within the family system.²⁸ Other children in care do not want to be placed in a foster family – which should be respected – owing to the ties with their parents, loyalty towards them, and the feeling of their familial identity. The situation is similar in the case of the dilemma faced when arranging foster care for siblings with strong bonds between them. It is of greater value to place them together in an institutional foster care setting rather than separately in multiple families.

The idea that familial forms are superior to institutional ones in every situation is erroneous, yet it enjoys broad support. The

²⁶ On the reform of foster care from the mid-1990s, the best writing can be found in “Problemy Opiekuńczo-Wychowawcze”, particularly in texts by Irena Obuchowska, Maria Kolankiewicz, Jan Wszolek, Stanisław Drzażdżewski, Tomasz Polkowski, Zofia Waleria Stelmaszuk, Tadeusz Perzanowski, Mirosław Kaczmarek, and the author.

²⁷ M. Andrzejewski, *O (nie)zamykaniu domów dziecka*, “Archiwum Kryminologii”, vol. XXIX-XXX, 2009, pp. 791-802.

²⁸ Ibidem.

idea that a child who must be placed outside its natural family should first be given to an adoptive family, then if that proves impossible placed with a foster family or perhaps a family children's home, and then, only if there is no other alternative, sent to a child care and educational facility, is a gross simplification. There are no rational arguments for grading the settings in which a children can be placed outside the family. Individual people need help, and in real situations such formulas should only be treated as suggestions. Counties should offer a wide range of support for children and families, and these should include both familial and institutional forms of foster care. In a given case, the setting which gives the best chance for reintegration with the child's family should be selected. Indeed, the best form of care for a child placed outside its family is what is best for the child in its particular situation.

Within the context of foster care standards, the strongest dispute concerns the attitude of caretakers, primarily of foster families towards the families of children in care. This attitude towards the parents of children in care is undisguised in the case of many foster families, directors of family children's homes, leaders of non-governmental organizations promoting foster care, journalists, and also of many... family court judges. That last group make decisions about taking children away from people whose parental failures can be easily corrected by social workers, guardians and other specialists. This aversion is expressed in the declaration of bringing help to children, but not to their families. One who declares this view negates the idea of foster parenting, which is supposed to perform an ancillary function in relation to the family of a child in care,²⁹ and leads in the wrong direction of constructing emotional relationships in foster families following the model of adoptive families.³⁰

²⁹ See e.g. M. Safjan, *Instytucja rodzin zastępczych. Problematyka prawno-organizacyjna*, Warszawa 1982, pp. 24-25, 204; Z.W. Stelmaszuk, *Kodeks etyczny rodzin zastępczych*, "Problemy Opiekuńczo-Wychowawcze" 2002, No. 2. A different view in: S. Badora, R. Gołębiowski, *O reformie rodzin zastępczych krytycznie*, "Problemy Opiekuńczo-Wychowawcze" 2000, No. 5, pp. 18-22.

³⁰ For criticism of parents of children in care, see: A.A. Olszewscy (Stowarzyszenie Misja Nadziei – www.misjanadziei); L. Dobrzyński, *Raport o problemach rodzicielstwa zastępczego w Polsce*, Warszawa 2006 (print), p. 16; idem, *O problemach rodzicielstwa zastępczego*, "Problemy Opiekuńczo-Wychowawcze" 2006; Koalicja na Rzecz Rodzinnej Opieki Zastępczej *Problemy rodzinnej opieki zastępczej w Polsce*.

Addressing all the important issues is beyond the scope of one paper. It was not possible to discuss the many problems analysed by regional social policy centres, which have recently financed an empirical study on the issue of foster care,³¹ nor the content of reports on the functioning of the Act.³² It is of significance that the regulations as adopted are the subject of observation and evaluation. The fact that, in spite of many changes, the foundations of foster care – its standards – have been kept is another source of satisfaction. There are many worrying issues associated with the functioning of foster care: excessive bureaucracy, the absence of determination in training and giving support for foster families, the superficiality in approaches to parents of children in care, uncritical submission to the adoption lobby, poor cooperation between courts and local government institutions supporting families. There will be a time to discuss these and other issues while observing the course of the evolution of foster care, which goes on...

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³¹ See e.g. in: *Diagnoza systemu pieczy zastępczej. Raport ROPS Województwo Wielkopolskie, Poznań November 2012* (<ois.rops.poznan.pl/index.php?strona=3>); *Adopcja w województwie opolskim jako element systemu wspierania rodziny i pieczy zastępczej – wybrane zagadnienia, Raport z badań OIS ROPS w Opolu, Opole 2013, <Chromeextension://encfpfilknmenlmjemepncnlbbjlabkc/http://ois.ropsopole.pl/download/Adopcja%20w%20woj.opolskim%20.pdf>.*

³² E.g. in: K. Napiórkowska, *Realizacja ustawy o wspieraniu rodziny i systemie pieczy zastępczej w świetle danych statystycznych z rok 2013*, "Problemy Opiekuńczo-Wychowawcze" 2014, No. 8, pp. 3-16.

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