

***Adoption of a Child by Homosexuals in Light
of the Best Interests of the Child Principle
in Accordance with its Understanding in Polish
Family Law. Subjective Interpretation of the Author***

ABSTRACT

RESEARCH OBJECTIVE: The purpose of this article is to present arguments against the admissibility of adoption of a child by a homosexual person in light of the best interests of the child principle in accordance with its understanding in Polish family law. It has to be emphasized that the article presents solely subjective author's interpretation of Polish legal provisions regulating the institution of adoption.

THE RESEARCH PROBLEM AND METHODS: Since Polish legislator has not explicitly accepted or prohibited the adoption of a child by a homosexual person, the question of the admissibility of adoption of a child by such a person is raised in light of the principles of family law in force in Poland. There has been applied the method of critical and comparative analysis as well as the analysis of the reference literature, rulings of the Supreme Court of the Republic of Poland and Polish reference legislation. Author concentrates only on Polish reference literature and rulings of the Supreme Court of the Republic of Poland. This article does not refer to literature and views presented by foreign researchers or decisions of foreign courts.

THE PROCESS OF ARGUMENTATION: After having initially defined the aim of the study, the author indicates the function and purpose of the adoption and its premises. Two basic premises of adoption are explained in detail – the premise of the best interests of the child and the appropriate personal qualifications of the adopter. The essential part of the argumentation is to find the answer to the question on whether adoption of a child by a homosexual person in light of Polish family law is admissible or not.

RESEARCH RESULTS: The result of this research is the statement of inadmissibility of adoption of a child by homosexuals in light of Polish family law.

CONCLUSIONS, INNOVATIONS AND RECOMMENDATIONS: The analysis confirmed the author's opinion that adoption of a child by a homosexual person/homosexuals appears to be in contradiction with the principle of the child's best interests, with the model of family favoured in Poland, with – guaranteed by the Polish Constitution – traditional understanding of marriage as a union between a woman and a man. However, in the absence of a clear legal provision in Polish law prohibiting the adoption of a child by a homosexual person, the existence of views different from the one presented by author should be allowed.

→ **KEYWORDS: ADOPTION, CHILD, HOMOSEXUAL, THE BEST INTERESTS OF THE CHILD, POLISH FAMILY LAW**

1. Introduction

From a comparative perspective, there is a lack of uniformity on the question of adoption of a child by homosexuals in legal systems in certain countries: some countries admit such adoptions (e.g. Netherlands, Denmark, Great Britain, Canada, Norway, Sweden); others do not (e.g. Hungary, Belarus, Lithuania, Monaco, Romania, Bolivia, Cuba, Peru, Venezuela).

Polish legislator has not explicitly accepted or prohibited the adoption of a child by a homosexual person. Thus the question of the admissibility of adoption of a child by such a person is raised in light of the principles of family law in force in Poland.

The guiding principle of Polish family law is the principle of the best interests of the child. This principle also permeates the institution of adoption

in all its stages. It is the foundation of this relationship since adoption is only permitted for the good of the child (Article 114 § 1 of the Family and Guardianship Code of 1964); this principle applies during adoption since parental responsibility must be exercised by the adopter as required by the best interests of the child (Article 95 § 3 of the Family and Guardianship Code of 1964); this principle is of decisive importance in solving adoption because this solution is not permissible if it is against the good of a minor child (Article 125 § 1 of the Family and Guardianship Code of 1964) (Ignatowicz & Nazar, 2010, p. 284).

According to the Polish Family and Guardianship Code of 1964 there are two basic premises for adoption – the premise of the best interests of the child and the appropriate personal qualifications of the adopter (Articles 114 § 1 and 114 § 1¹ of the Family and Guardianship Code of 1964).

When answering the question of the admissibility of adoption of a child by a homosexual person – in light of Polish family law – one should answer the question whether the adoption of a child by a homosexual person is in line with the principle of the best interests of the child – as it is understood in Polish family law, and whether homosexuals have – in light of the customary rules in force in Poland – appropriate personal qualifications justifying the adoption of a child.

2. The concept and legal nature of adoption in Polish family law

The institution of adoption is regulated by articles 114-127 of the Polish Family and Guardianship Code of 1964. The current shape of the institution of adoption functioning under Polish family law is also influenced by international documents which the Republic of Poland is Party to, namely: the UN Convention on the Rights of the Child of 1989, European Convention on the Adoption of Children of 1967 and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

Under Polish law, adoption is made through a judicial decision (Article 117 of the Family and Guardianship Code of 1964) which is constitutive with the power of *erga omnes* and *ex nunc* (Smyczyński, 2014, p. 268; Gromek, 2016, p. 678).

Adoption (Polish: przysposobienie) is a legal family relationship shaped so as to reflect the relationship existing between the parents and their natural child (Article 121 § 1 of the Family and Guardianship Code of 1964). This is the recognition of someone else's child as one's own child (Gromek, 2016, p. 677; Sokołowski, 2013, p. 193).

The Supreme Court of the Republic of Poland in resolution of 9th of June 1976 (III CZP 46/75, OSNCP 1976, Nr 9, poz. 184) emphasized that adoption 'leads to the emergence of a legal family relationship, which is a strict counterpart of material parental relation.' The same rights and obligations as existing between the child and his or her natural parents 'such as the marital status of a child, such as parental responsibility or maintenance obligations' arise between the child and adoptive parents (Pietrzykowski, 2015, p. 702-703). The legal relationship resulting from adoption is not identical but only similar to the natural parental relationship based on biological origin. Contrary to the natural parental relationship, there is the admissibility – except for one exception (Article 125' § 1 of the Family and Guardianship Code of 1964) – of solution of adoption

(Article 125 of the Family and Guardianship Code of 1964) and – in some cases (incomplete adoption, Article 124 of the Family and Guardianship Code of 1964), the effects of adoption apply only to the adopter (adoptive parents) and adopted child but they do not extend to other members of the family (Smyczyński, 2014, p. 266).

The Polish Family and Guardianship Code of 1964 distinguishes two types of adoption according to the number of persons willing to adopt a child. These are common and individual adoption. Due to the principle of the best interests of the child and confirmation that the best conditions for the development and education of a child are realized in a full family, common adoption is the principle in Polish family law. Individual adoption should be treated as exceptional and acceptable under the condition that it is compatible – in each case – with the child's best interests (Ciepła, 2009, p. 859; Haak, 1986, p. 32; Pietrzykowski, 2015, p. 720-721).

2.1. The function and purpose of the adoption

Adoption is a legal family relationship of non-property nature. It serves to protect the best interests of the child – regardless both of his and his relatives' property interests and the interests of the adopter (adoptive parents) and his/ her (their) family (Holewińska-Łapińska, 2011, p. 498).

The main function and purpose of the adoption is to provide the child with optimal conditions of development and education in a substitute family environment when he or she is deprived of parental care for various reasons (a child whose parents have died or gone missing, a child born out of wedlock, a child of a broken marriage) (Holewińska-Łapińska, 2011, p. 498; Dolecki & Sokołowski, 2013, p. 821). The adoption is meant to meet the natural human needs of the child, which is the need to grow and develop in normal conditions analogous to those existing in a properly functioning natural family (Pietrzykowski, 2015, p. 703; Smyczyński, 2014, p. 267; Panowicz-Lipska, 1999, p. 212).

2.2. The premises of adoption

The premises of adoption are not uniform. Some of them are explicitly stated in Polish Family and Guardianship Code of 1964, others can be interpreted from the overall provisions governing the institution of adoption. The most commonly cited division of premises of adoption is the division into: 1) premises concerning the person being adopted;

2) premises concerning the adopter; 3) premises concerning other persons (Pietrzykowski, 2015, p. 707; Smyczyński, 2014, p. 270-275; Gro-mek, 2016, p. 677-678; Ignatowicz & Nazar, 2010, p. 285; Goettel, 2010, p. 168-171).

Premises of adoption concerning the person being adopted include:

1. sole consideration for the well-being of the child (Article 114 § 1 of the Family and Guardianship Code of 1964);
2. being alive at the time of adoption (Article 117 § 2 of the Family and Guardianship Code of 1964);
3. minority (Article 114 § 1 of the Family and Guardianship Code of 1964);
4. consent / hearing of a child (Article 118 § 1 and 2 of the KRO, exception – Article 118 § 3 of the Family and Guardianship Code of 1964);
5. emotional bond between adopter and adoptee.

Premises of adoption concerning the adopter include:

1. full capacity for legal acts (Article 114¹ § 1 of the Family and Guardianship Code of 1964);
2. expression of the will to adopt (Article 117 § 1 of the Family and Guardianship Code of 1964);
3. appropriate personal qualifications (Article 114¹ § 1 of the Family and Guardianship Code of 1964);
4. appropriate age difference between adopter and adoptee (Article 114¹ § 2 Family and Guardianship Code of 1964);
5. being alive at the time of adoption (Article 117 § 2 KRO, exception – Article 117 § 3 of the Family and Guardianship Code of 1964);
6. qualification opinion and certificate of completion of the training organized by the adoption center (Article 114.1 § 1 of the Family and Guardianship Code of 1964);
7. emotional bond between adopter and adoptee.

Premises of adoption concerning other persons include:

1. consent of the child's parents (Articles 119, 119¹, 119² of the Family and Guardianship Code of 1964);
2. consent of the adopting spouse (Article 116 of the Family and Guardianship Code of 1964);
3. consent of the child's guardian (Article 120 of the Family and Guardianship Code of 1964).

From the perspective concerning the topic of the article two basic premises of adoption – it is ‘the best interests of the child’ and ‘the appropriate personal qualifications of the adopting person’ require deeper analysis.

3. The best interests of the adopted child

The premise of the best interests of the adopted child is the decisive criterion for the Family Court which adjudicates on domestic and foreign adoption (Article 114 of the Family and Guardianship Code of 1964).

The principle of the protection and provision of the best interests of the child is contained in numerous provisions of Polish national legislation and in the international regulations of which the Republic of Poland is a Party to. Particular attention should be paid to Article 3 of the UN Convention on the Rights of the Child of 1989 which contains a mandate to treat the best interests of the child as the overriding priority in all child-related activities undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. As a rule ‘there is an absolute preference for the best interests of the child in relation to the interests of others, including the interests of the state or the public interest’ (Bagan-Kurluta, 2009, p. 341).

The principle of the child’s best interests is also reflected in Article 8 of the European Convention on the Adoption of Children of 1967. According to this provision, the adoption shall not be granted if the competent authority is not satisfied that ‘the adoption will be in the interest of the child.’ In accordance with Article 8.2 of the European Convention ‘in each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.’

The Supreme Court of the Republic of Poland in resolution of 26th of April 1952 (SNP 798/51, OSN 1952, Nr 1, poz. 1) indicated that the welfare of minors in the social value scale is hierarchically superior and is subject to special protection in Polish legislation.

The admissibility of adoption in the context of the principle of the best interests of the child is conditioned by the possibility of creation a strong emotional bond between the adoptee and the adoptive parent reflecting a bond between the parents and their natural child (Pietrzykowski, 2015, p. 707; Haak, 1986, p. 13; Dolecki & Sokołowski, 2013, p. 821; Ciepła, 2009, p. 841).

There is no legal definition of ‘the best interests of the child’. The concept of the best interests of the child remains undefined in Polish science. Authors studying the issue indicate one of the necessary elements

that determines the action in accordance with the principle of the best interests of the child. It is to provide the child with 'proper psychophysical development through the creation of optimal developmental and educational conditions' (Bagan-Kurluta, 2009, p. 355).

According to Wanda Stojanowska the term 'the child's best interest' in the sense of family law 'means a complex of intangible and material values necessary to ensure the proper physical and spiritual development of the child and to properly prepare him or her for work according to his or her talents (...)' (Stojanowska, 1999, p. 98).

Henryk Haak, referring to Zbigniew Radwański, 'the child's best interest' describes as a child's situation understood in light of the moral values prevailing in Polish society. The authors point out that this is an ideal model that assumes that the child should grow up in a family (preferably natural), in an atmosphere of love, in conditions that meet his needs and guarantee his best development (Haak, 1996, p. 8).

Marian Balcerek emphasizes that the well-being of a child which constitutes the general clause of Polish family law refers – in all the child's matters – to moral values as described in Polish doctrine (Balcerek, 1986, p. 95-96).

Janina Maciaszkowa 'the child's best interest' understands as 'a number of rights, which are often in conflict with the interests of adults, such as the right to safe and joyful development, the right to love and care by the relatives, the right to satisfy the needs of the child that allow for the development of a harmonious personality of a child' (Bagan-Kurluta, 2009, p. 350).

According to Elżbieta Holewińska-Łapińska (Holewińska-Łapińska, 2011, p. 531) adoption consistent with the best interests of the child is an adoption which creates the possibility of a successful adapting of the child in the adoptive family. The author emphasizes that the adoptive family should teach the child the principles which are expected by the society from his members and by the state from his citizens. Among these principles, the author mentions among others, behavior consistent with a generally accepted moral pattern and respect for national traditions.

In the judgment of 30 September 1952 (C 1513/52, OSNCK 1954, Nr 1, poz. 5, PiZS 1953, Nr 5-6, poz. 814) the Supreme Court of the Republic of Poland underlined that a Family Court granting the adoption shall not confine itself to the proclamation of the will of the adopter, but should, first of all – in its decision – be guided by the best interests of the child and the social purpose of the adoption and should determine whether and to what extent the adopter guarantees that he (she/ they) duly fulfills the tasks and duties of raising a child.

In the judgment of 6th of September 1968 (I CR 249/68, OSNPG 1969, Nr 5, poz. 32) the Supreme Court of the Republic of Poland stated that the purpose of the adoption is not the interest and satisfaction of the emotional and family needs of adopters but exclusively the best interests of a minor child.

4. The appropriate personal qualifications of the adopter

According to Article 114¹ § 1 of the Polish Family and Guardianship Code of 1964 a child can only be adopted by a person who holds appropriate personal qualifications, also known as subject qualifications (Ignatowicz & Nazar, 2010, p. 287).

The legislator does not explain the notion of personal qualifications of the adopter. He merely points out that these are personal qualifications that justify the belief that the adopter duly fulfills his or her responsibilities towards an adopted child. According to Henryk Haak these qualifications are to guarantee that the adopter will duly take care of the spiritual and physical development of the adopted child and that he or she will ensure that the home-grown atmosphere of the home is created and the conditions for proper education and satisfaction of the child's reasonable needs are met (Haak, 1996, p. 18).

In the absence of the explanation of the concept of personal qualification of a adopter in the provisions of the Polish Family and Guardianship Code, reference should be made to the guidelines within the meaning of this concept in terms of non-code regulations, jurisprudence of the Supreme Court of the Republic of Poland and doctrinal views.

The Supreme Court of the Republic of Poland in its resolution of 9th of June 1976 (III CZP 46/75, OSNCP 1976, Nr 9, poz. 184) emphasized that due to the lasting effects of adoption it should be preceded by careful evidentiary proceedings leading to examine personal qualification of the adopting person, with particular regard to his or her moral profile, educational abilities and the atmosphere of his or her family home.

Elżbieta Holewińska-Łapińska and Henryk Dolecki emphasize the important role of real motivation of adopting person in the evaluation of his or her personal qualifications under Article 114¹ § 1 of the Polish Family and Guardianship Code. The authors point out the need to prove positive motivation of the adopter (Holewińska-Łapińska, 2011, p. 536-537; Dolecki & Sokołowski, 2013, p. 824).

According to Tomasz Sokołowski, adopting person cannot be a person who has believes that pose a threat to the health or life of the child,

for example the ones excluding potential hospital treatment, child operations, blood transfusions, transplants, etc. (Sokołowski, 2013, p. 197).

For the sake of the best interests of the adoptive child adopting person cannot be a person with a tendency to pedophilia.

As the premise of the adoption the legislator does not indicate a particular gender of the adopter when one person applies for adoption. The gender of the adopter should be considered from the perspective of the best interests of the child. Although practice indicates that adoption is more common among unmarried women than men, gender itself should not be a determining factor in favor of or against adoption. It is necessary to carefully examine the personal qualifications of a particular adopter and to verify that he or she justifies the conviction that he/ she will conscientiously fulfill his or her responsibilities towards the adoptee. The motivation of a man who is applying for adoption shall be carefully examined to exclude sexual basis of his motivation (Holewińska-Łapińska, 2011, p. 527).

5. Is adoption by a homosexual person admissible according to Polish family law?

In light of the above comments, the question arises as to whether a homosexual person can adopt a child in accordance with Polish family law. Polish legislator has not resolved the issue of the admissibility of adoption of a child by a homosexual person. Nor did he establish a clear prohibition on such adoption.

Due to the fact that in accordance with the Polish Family and Guardianship Code of 1964 a child can be adopted jointly only by the spouses (Article 115 § 1), Polish law excludes the admissibility of adoption of a child by people living in any other non-marital relationship. A child cannot be adopted by people living either in a concubinage or in a homosexual relationship. A similar statement has been presented by the Supreme Court of the Republic of Poland in its ruling of 30th March 1962 (orz. SN z 30.03.1962 r., OSNCP 1963, Nr 2, poz. 47) when the Court emphasized that joint adoption is admissible only when a child is adopted by spouses.

In its decision of 25th October 1983 the Supreme Court of the Republic of Poland expressed the view that 'the adoption adjudicated after marriage shall always be in accordance with the best interests of the child as it will lead to the creation of a normal family' (orz. SN z 25.10.1983 r., III CRN 234/83, OSNCP 1984, Nr 8, poz. 135, OSPiKA 1985, Nr 7, poz. 134, OSPiKA 1986, Nr 1, poz. 2, OSPiKA 1985, Nr 7, poz. 134, OSPiKA 1986,

Nr 1, poz. 2) which seems to create the most stable and harmonious family environment for a child.

This attitude is also confirmed by the model of a family preferred by Polish legislator. According to Article 1 § 1 of the Polish Family and Guardianship Code of 1964 marriage is a union between a woman and a man. Article 18 of the Constitution of the Republic of Poland of 1997 guarantees the protection and care of marriage, motherhood and parenthood. This provision also states that marriage is a union between a woman and a man. According to Elżbieta Holewińska-Łapińska (Holewińska-Łapińska, 2011, p. 528) this suggests that from analogous protection and care do not benefit same-sex relationships of similar durability and aims as marriages. The model of a family based on the marriage of a man and a woman is therefore preferred and constitutionally protected in Poland. The established provision can be interpreted as excluding legal protection and care of durable relationships of persons of the same sex (Holewińska-Łapińska, 2011, p. 528).

In light of the above comments, it seems incontrovertible to deny – in light of Polish law – the admissibility of adoption of a child by same-sex relationships. However, still the question arises as to whether an individual adoption of a child by a homosexual person is admissible in Poland.

When answering this question, one should answer the question whether the adoption of a child by a homosexual person is in line with the principle of the best interests of the child – as understood in Polish family law, and whether homosexuals have – in light of the customary rules in force in Poland – appropriate personal qualifications justifying the adoption of a child.

The adoption of a child by a homosexual person seems to be against the principle of the best interests of the child. According to Elżbieta Holewińska-Łapińska (Holewińska-Łapińska, 2011, p. 528) when purpose-oriented interpreting Article 18 of the Constitution of the Republic of Poland of 1997 one can even conclude in prohibition of the adoption of a child by a homosexual person. The author notes that in typical situations the contradiction with the best interests of the child is connected with the fear of the lack of preferred by Polish law and in Polish society model of a family and the pattern of the women – the mother and the man – the father (spouses of different sexes). It appears that the contradiction of adoption by a homosexual person with the best interests of a child is in particular related to the pressure a child will be exposed to in the environment (also in peer environment) if he or she is informed of the homosexual orientation of his or her adoptive parent. In Poland there is a very limited tolerance for people with

homosexual orientation who want to adopt a child. The author cites opinion polls conducted in Poland in 2008, when only 6% of respondents allowed the admissibility of adopting a child by homosexuals, while 90% of respondents rejected it (Holewińska-Łapińska, 2011, p. 528). Similar attitudes of Polish citizens have been presented in Center of Opinion Polls' reports of 2005, 2008, 2010 and 2013. In 2005 and 2008 only 6% of respondents allowed the admissibility of adopting a child by homosexuals, while 90% of respondents rejected it. In 2010 only 6% of respondents allowed the admissibility of adopting a child by homosexuals, while 89% of respondents rejected it. In 2013 only 8% of respondents allowed the admissibility of adopting a child by homosexuals, while 87% of respondents rejected it.

Katarzyna Bagan-Kurluta (Bagan-Kurluta, 2009, p. 408) points out three circumstances the proper implementation of which makes adoption beneficial for the best interests of the child. These are: family durability, the type of family pattern the child learns from home and the protection of the child from sexual risks. Undoubtedly, the best situation for a child is the situation of joint adoption of a child by spouses. In this way the social function of adoption is realized, which is to create the best conditions for normal child's development in the conditions which are the closest to those in natural family. In this way the child receives parents – father and mother and learns from them specific behaviors and beliefs. The fact who the parents of the child are 'affects how the child will be shaped and what adult he or she will become.' In the case of adoption of a child by a homosexual person, it is to be assumed that the way of shaping the family outlook is different from that shaped by a heterosexual person. There is therefore doubt about the shaping of pattern of the personality of the child by homosexual parent as different from the widely accepted in Poland. In the case of homosexuals living in partnerships, there is more doubt as to the fulfillment of the postulate of durability of family created by people living in such relationships (Bagan-Kurluta, 2009, p. 410).

Recalling the position of Elżbieta Holewińska-Łapińska (Holewińska-Łapińska, 2011, p. 531) it can be stated that raising a child in an environment socially unacceptable in majority (i.e. by a homosexual person) cannot be considered compatible with the best interests of the child. Such adoption will not meet the natural need of the child which is the need to grow and develop in normal conditions analogous to those existing in a properly functioning natural family (Dolecki & Sokołowski, 2013, p. 821), no matter whether such family consists of both mother and father or only of one of them and a child/ children provided that a parent is a heterosexual person. Moreover adoption by a homosexual person also exposes

a child to risk of non-acceptance and stigmatization, especially from his or her schoolmates and friends.

According to Polish law only a person with appropriate personal qualifications can adopt a child. Those qualifications shall provide a guarantee that the adopter will take care of a proper spiritual and physical development of the adoptee and that he or she will ensure the family atmosphere of the home and the appropriate conditions for child's education (Haak, 1996, p. 18). The UN Convention on the Rights of the Child of 1989 among premises of the adoption indicates – in its Article 20 – the need to preserve continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. When examining the personal qualification of an adopter the court should pay attention to his or her moral profile (uchw. SN z 09.06.1976 r., III CZP 46/75, OSNCP 1976, Nr 9, poz. 184). In view of the moral values and religious beliefs universally accepted in Poland (Polish are prevailingly Catholics), it is impossible to recognize the relevant qualification in case of a homosexual person. It is difficult to suppose that such person ensures proper spiritual development of the child and his cultural identity when he or she himself/herself is living in an identity conflict. Such person will not guarantee the need to preserve continuity in a child's upbringing in religious and cultural background which is in opposition to the admissibility of child's adoption by a homosexual person.

Katarzyna Bagan-Kurluta (Bagan-Kurluta, 2009, p. 415-416) lists the potential risks which can be connected with adoption by homosexuals. These are primarily: the instability of relationships and the frequent changes of adopting partners; sexual exploitation of the child; passing the child an improper picture of the family; the danger that the child will be homosexual in the future; the risk that the child will be at increased risk of contracting AIDS; disordered sexual identification of the child; psychological, behavioral and emotional problems of the child; risk of low self-esteem of the child; hyperactivity; problems with child's socialization.

Faced with potential threats, it is hard to recognize as overwhelming arguments of proponents of adoption by homosexuals who among arguments in favour of such adoption indicate: the need to provide a child with any parent than none; recognition of different family structures; ban on discrimination against homosexuals (Bagan-Kurluta, 2009, p. 416).

In favour of adoption of a child by homosexuals in Poland does not appeal the interest of a person which is secondary to the principle of the best interests of the child, and this is undoubtedly realized when the child is adopted by a heterosexual person, preferably by the spouses, when the child is learning the family pattern commonly acceptable in the

Republic of Poland, when the child is not exposed to the risk of rejection by the society as a result of upbringing and education by a person whose sexual orientation in our country is not considered equal – from the point of view of the best interests of the child – with heterosexual orientation.

6. Conclusions and recommendations

To conclude, it must be stated that in Polish family law both adoption by one homosexual person and by homosexuals living in partnership is – in the author's opinion – not admissible. It must be considered that such adoption does not comply with the principle of the best interest of the child in its meaning functioning in Polish family law. Likewise, homosexual persons do not have – in light of the customary rules accepted in Poland – personal (substantive) qualifications justifying the admissibility of adopting a child.

It is considered that adoption of a child by a homosexual person/homosexuals is contrary to the principle of the child's best interests, is contrary to the model of family favoured in Poland, is contrary to the guaranteed by the Polish Constitution traditional understanding of marriage as a union between a woman and a man.

However, in the absence of a clear legal provision in Polish law prohibiting the adoption of a child by a homosexual person, the existence of views different from the one presented above should be allowed.

At the end it should be emphasized that – no matter whose views on the question of adoption by homosexuals will be dominant in Polish legal doctrine – we should always bear in mind that the most important premise and condition of adoption is solely the best interests of the child. Interest and satisfaction of emotional and family needs of adopters (no matter if of hetero- or homosexual orientation) are not premises of adoption. They are solely the result of adoption, which can only be carried out for the benefit of the child's best interests that is understood by a number of child's rights which – according to Janina Maciaszkowa – are often in conflict with the interests of adults.

BIBLIOGRAPHY:

Legal acts:

Konstytucja Rzeczypospolitej Polskiej z 02.04.1997 r., Dz. U. Nr 78, poz. 483, z późn. zm. (The Constitution of the Republic of Poland of 1997).
Ustawa z dnia 25.02.1964 r. – Kodeks rodzinny i opiekuńczy, Dz. U. z 2017 r., poz. 682 (The Family and Guardianship Code of 1964).

International conventions:

Konwencja ONZ o prawach dziecka z 20.11.1989 r., Dz. U. z 1991 r., Nr 120, poz. 526 (The UN Convention on the Rights of the Child of 1989).
Europejska Konwencja o przysposobieniu dzieci z 24.04.1967 r., Dz. U. z 1999 r., Nr 99, poz. 1157 (European Convention on the Adoption of Children of 1967).
Konwencja haska o ochronie dzieci i współpracy w dziedzinie przysposobienia międzynarodowego z 29.05.1993 r., Dz. U. z 2000 r., Nr 39, poz. 449 (The Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993).

Decisions of the Supreme Court of the Republic of Poland:

Uchwała SN z 09.06.1976 r., III CZP 46/75, OSNCP 1976, Nr 9, poz. 184.
Uchwała SN z 26.04.1952 r., C. Prez. 798/51, OSN 1952, Nr 1, poz. 1.
Orzeczenie SN z 30.09.1952 r., C 1513/52, OSNCK 1954, Nr 1, poz. 5, PiZS 1953, Nr 5-6, poz. 814.
Wyrok SN z 06.09.1968 r., I CR 249/68, OSNPG 1969, Nr 5, poz. 32.
Uchwała SN z 09.06.1976 r., III CZP 46/75, OSNCP 1976, Nr 9, poz. 184.
Orzeczenie SN z 25.10.1983 r., III CRN 234/83, OSNCP 1984, Nr 8, poz. 135, OSPiKA 1985, Nr 7, poz. 134, OSPiKA 1986, Nr 1, poz. 2, OSPiKA 1985, Nr 7, poz. 134, OSPiKA 1986, Nr 1, poz. 2.
Orzeczenie SN z 30.03.1962 r., OSNCP 1963, Nr 2, poz. 47.
Uchwała SN z 09.06.1976 r., III CZP 46/75, OSNCP 1976, Nr 9, poz. 184.

Literature:

Bagan-Kurluta, K. (2009). *Przysposobienie międzynarodowe dzieci*. Białystok: Temida 2.
Balcererek, M. (1986). *Prawa dziecka*. Warszawa: PWN.
Ciepla, H. (2009). Przysposobienie. In K. Piasecki (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: LexisNexis, 838-923.
Dolecki, H. & Sokołowski, T. (2013). *Kodeks rodzinny i opiekuńczy. Komentarz Lex*. Warszawa: Wolters Kluwer Polska SA.
Goettel, M. (2010). *Prawo rodzinne w pytaniach i odpowiedziach*. Warszawa: LexisNexis.
Gromek, K. (2016). *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: Wydawnictwo C.H. Beck.
Haak, H. (1996). *Przysposobienie. Komentarz*. Toruń: TNOiK – „Dom Organizatora”.

- Holewińska-Łapińska, E. (2011). Przystosowanie. In T. Smoczyński (ed.), *Prawo rodzinne i opiekuńcze. System prawa prywatnego. Tom 12*. Warszawa: Wydawnictwo C.H. Beck.
- Ignatowicz, J. & Nazar, M. (2010). *Prawo rodzinne*. Warszawa: LexisNexis.
- Panowicz-Lipska, J. (1999). Przystosowanie dziecka. In T. Smoczyński (ed.), *Konwencja o Prawach Dziecka – analiza i wykładnia*. Poznań: Ars boni et aequi.
- Pietrzykowski, K. (ed.). (2015). *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: Wydawnictwo C.H. Beck.
- Smoczyński, T. (2014). *Prawo rodzinne i opiekuńcze*. Warszawa: Wydawnictwo C.H. Beck.
- Sokołowski, T. (2013). *Prawo rodzinne. Zarys wykładu*. Poznań: Ars boni et aequi.
- Stojanowska, W. (1999). Dobro dziecka jako instrument wykładni norm konwencji o prawach dziecka oraz prawa polskiego i jako dyrektywa jego stosowania. In T. Smoczyński (ed.), *Konwencja o Prawach Dziecka – analiza i wykładnia*. Poznań: Ars boni et aequi.

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