

Good and Bad Families: Discriminatory Family Policy of Polish Right-Wing Populists



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In Poland, the word 'family' is tossed around by Law and Justice (PiS) politicians all the time. It has become their trademark, and a buzzword woven into every single political activity – both in areas of economy and cultural worldview. For the PiS party, like for many other right-wing populists around the globe, the word 'family' is a surrogate of the words 'nation' or 'society'. A good, healthy one, which must be supported by the state. Clearly, it only applies to a particular model of the family, consistent with the vision and ideology of the ruling party.

This is the reason why the family policies of PiS should be seen rather as *shell-policies*, somewhat shiny from the outside, and yet, very empty on the inside. They are very limited, both objectively and subjectively. On the one hand, the Law and Justice party reduced family policies to handing out benefits, skipping all systemic reforms much needed to achieve the goals of a comprehensive social policy. On the other hand, PiS noticeably outlines the range of families it is willing to support. Among different family categories, the only valued are those corresponding to a conservative order, promoted by the catholic church, those that reconfirm that fertility is their supreme priority.

In this paradigm, there is no room for other types of families, thus, in other words, *non-traditional* families. They are commonly treated as non-matching elements and removed from the definition of a family with all social and economic consequences. Among this group there are rainbow families, which assume a special place, because they are established by LGBTQI+ people, who are officially discriminated against and attacked by the populist right wing in Poland. As a consequence, they are not only invisible for the Polish government, but also their rights and needs are intentionally neglected.

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This issue has been noticed by European institutions (e.g., in the *Baby Sofia* decision of the European Court of Justice (ECJ) or in the European Commission's proposal to harmonize the rules on recognizing parenthood across the European Union), which are trying to improve rainbow families' situation in Poland – at least when it concerns the freedom of movement. But the PiS government torpedoes European efforts. Of course, for the sake of their alleged 'pro-family' stance.

WISHFUL THINKING

The propaganda surrounding the ruling party's supposedly successful family policy never sleeps. "A modern state, a welfare state, a state based on concern for human

dignity, must above all take care of families”, said Prime Minister Mateusz Morawiecki while announcing one of the social programs, recalling that the opposition “*very often considers families, especially those with several children, as something unusual... or even pathological, [yet] it is families that make the greatest contribution to our society, creating the future of our nation*”¹. Thus – in the governmental propaganda – the axis of the divide is clear: PiS is with the families and the opposition against.

Moreover, as stated by Deputy Minister Kazimierz Kuberski in the ultra-conservative College of Social and Media Culture in Toruń, “*Family first! It may sound like a slogan, but for the Law and Justice government it is a motto we believe in. In 2015 we changed the name of the Ministry [of Social Policy - M.H.] adding a new first word – Family. From one side it is a symbolic gesture, but it shows our direction, our priorities. Family first because everything starts with a family*”². Then he listed pro-family programs introduced by his party’s government (Family 500+, Toddler+, and Mama 4+)³. Minister Marzena Małag proudly reminded that in one year the PiS government spent over PLN 85.5 billion (ca. EUR 18.25 billion) on pro-family programs.⁴

¹ <https://visegradpost.com/en/2021/08/21/poland-pis-reinforces-its-pro-family-policy/>

² Więctawski, T. and J. Rausz (2019) “Kuberski: Nasz główny cel to polityka rodzinna”, [in]: *Polish Press Agency*. Available [online]: <https://www.pap.pl/aktualnosci/news%2C410189%2Ckuberski-nasz-glowny-cel-polityka-prorodzinna.html> [in Polish]

³ Ministry of Family and Social Policy (2019) *Główny cel – polityka prorodzinna*. Available [online]: <https://www.gov.pl/web/rodzina/glowny-cel-polityka-prorodzinna> [in Polish]

⁴ Polish Press Agency (2022) *Minister Małag: W tym roku na politykę prorodziną przeznaczymy 858 mld zł*. Available [online]: <https://www.pap.pl/aktualnosci/news%2C1273379%2Cminister-malag-w-tym-roku-na-polityke-rodzinna-przeznaczymy-858-mld-zl> [in Polish]

The word ‘family’ is the key to understanding how PiS seized the power and to comprehend its blueprint that is supposed to ensure the now ruling party also wins the next elections⁵. Already in 2015, PiS knew well the fears and hopes of big groups of the society regarding the lack of participation and the overall economic success of the transition and ran a campaign that offered social spending unseen in Poland after 1989⁶. The axis of this campaign was the family, whereas the vital promise was the Family 500+ program⁷. In other words, the Law and Justice party stretched out its hand to families, especially large and underprivileged ones, far from big cities, and grabbed all power in the country in return.

The family minister became the key figure in the government. Never in a democratic Poland has any minister responsible for social affairs had such a strong position. The ministry (mass-) produced new programs, strategies, and ideas to prove that the family is the center of attention of the right-wing coalition. Among others, the government

⁵ Parliamentary elections will be held in Poland in late 2023. According to most of the polls, the democratic opposition has a real chance to win majority in both chambers of the parliament and form the next government. However, it can be expected that PiS will use all means available, including the state apparatus and state budget, to support its own campaign. What is more, it is anticipated that PiS will make several new campaign promises, in particular announcements of additional social spending.

⁶ Brzeziński, M., Satach, K., and J. Gromadzki (2022) “Wpływ programu „Rodzina 500+” na wyniki wyborów w Polsce”, a working paper, [in]: *Instytut Badań Strukturalnych*. Available [online]: <https://ibs.org.pl/publications/wpływ-programu-rodzina-500-na-wyniki-wyborow-w-polsce/> [in Polish]

⁷ Under the program, parents can receive a tax-free benefit of PLN 500 (ca. EUR 120) per month for all children until they reach the age of 18. The additional support is roughly 12% of the average gross wage in Poland in 2016. Find out more: European Commission (2018) *First Results of Poland’s Family 500 programme*. Available [online]: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1246&newsId=9104&furtherNews=yes>



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presented the *Demographic Strategy 2040*⁸, which assumes getting out of the trap of the low fertility rate and moving closer to a level that guarantees the replacement of generations. The government plans “to achieve this objective by means of long-term, multi-area measures removing the barriers which discourage the Poles from pursuing their family aspirations. Among the priority areas of intervention, there are the programs of the Polish Deal and new initiatives supporting flexibility and stability of work and

⁸ *Demographic Strategy 2040*. Available [online]: <https://www.gov.pl/web/demografia/strategia#:~:text=Strategia%20Demograficzna%202040%20to%20pierwszy,poziomu%20dzietno%C5%9Bci%20gwarantuj%C4%85cego%20zast%C4%99powalno%C5%9B%C4%87%20pokole%C5%84>. [in Polish]

improvement in the quality of health care⁹. As such, *Demographic Strategy 2040* has three main objectives: strengthening the family, removal of barriers for parents who want to have children, and improvement in the quality of policy management and implementation.

The strategy itself was criticized by the Committee on Demographic Studies of the Polish Academy of Science (KND PAN), with its members accusing its authors of ‘wishful thinking’ and ‘lack of factual knowledge’ about demographics¹⁰. They also pointed out errors in the document itself – for example, mixing scientific terminology with informal language and ideology¹¹.

In fact, the entire family policy of PiS has been under heavy criticism¹². Even though some experts stress that Family 500+ and other projects are important because they are the first extensive social initiatives in 30 years, important mechanisms for eliminating poverty among children¹³, and they contributed to higher consumption and saving rates (while debt levels have decreased¹⁴), most voices indicate that they did not play their declared role at all – namely, focusing on demographics.

⁹ Ibid.

¹⁰ Golata, E. (2022) “Głos Komitetu Nauk Demograficznych Polskiej Akademii Nauk w dyskusji o sytuacji demograficznej w Polsce”, [in: *Nauka*, Vol. 1(10)], pp. 187–197. Available [online]: <https://journals.pan.pl/Content/122343/PDF/N%23122-12-Prezydium%20KND%20PAN.pdf> [in Polish]

¹¹ Ibid.

¹² See, for example: <https://for.org.pl/en/publications/for-reports/report-family-500-program-evaluation-and-proposed-changes>

¹³ <https://notesfrompoland.com/2020/07/01/extreme-poverty-in-poland-fell-by-over-a-fifth-in-2019/>

¹⁴ European Commission (2018) *First Results of Poland's Family 500 programme*. Available [online]: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1246&newsId=9104&furtherNews=yes>

Demography is, indeed, a serious problem for Poland, where a very low birth rate is mixed with a failure to adopt a responsible migration policy. At current rates, according to Eurostat, Poland's population could have shrunk to 34.1 million by 2050 and to 27.65 million by 2100¹⁵. Regardless of the government's intentions, the number of births in 2020 was the lowest since 2003. This data clearly shows that the program's effects are weaker compared to pro-natalist interventions in other countries, at a relatively high cost¹⁶. And, as a matter of principle, reducing the family policy to demography is questionable, as the challenges go beyond population growth, and should be addressed by the state.

Law and Justice, just like any other populist party, focuses primarily on slogans and spending. They are unable to design long-term solutions that will change the system to support Polish families in a complex way. Meanwhile, limiting family programs to benefits will not solve essential social problems. Interconnected changes in childcare infrastructure, the tax system, employment, and social security laws, introduced together with sympathy for rapid changes in the society, are necessary to label an initiative 'a modern family policy'.

New programs with tacky names, with limited cash transfers only behind them, do not absolve the government from the responsibility to create full-scale reforms. Also, they have an additional disadvantage – they lose their

¹⁵ Szaltys, D. (ed.) (2014) *Population Projection 2014-2050*, Warsaw: GUS. Available [online]: https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5469/1/5/1/prognoza_ludnosci_na_lata____2014_-_2050.pdf [in Polish]

¹⁶ Bartnicki, S. and M. Alimowski (2022) "W poszukiwaniu demograficznych efektów rządowego programu 'Rodzina 500 Plus'", [in]: *Studia Socjologiczne*, Vol. 1(244), pp. 193-219. Available [online]: <https://yadda.icm.edu.pl/yadda/element/bwmeta1.element.desklight-b571d119-65bf-4af7-8b9a-b4978b1f70b5> [in Polish]



THE ENTIRE FAMILY POLICY OF PIS HAS BEEN UNDER HEAVY CRITICISM

value quickly. How much is PLN 500 from 2015 worth in 2023? Around PLN 350 (inflation in Poland reached 17.9% y/y in December 2022)¹⁷ – costs of living, in particular costs of early education services, are rising at a dizzying pace. Parents who dare to ask about the degradation of public services still hear one answer "but we gave you 500+ benefits"; in other words, "you took the cash, so you should not expect anything more from us...".

A DEEPER PROBLEM

The problem with PiS's family policies runs even deeper. It starts with the definition of 'the family'. According to catholic social teachings, "a basic structure of family is marriage understood as an unbreakable union between a man and a woman"¹⁸. The Church, therefore, condemns 'free relationships' as the "denial of the original plan of God"¹⁹ and thus does not tolerate children

¹⁷ Bartnik, N. (2022) "Inflacja dobrała się do 500+. Nie spodoba ci się, ile dostajesz naprawdę", [in]: INN: Poland. Available [online]: <https://innpoland.pl/186508,ile-jest-warte-500-plus-ile-zabiera-inflacja> [in Polish]

¹⁸ Can. 1055 §1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized (Code of Canon Law).

¹⁹ See, for example: Graczyk, K. (2004) "Życie w wolnym związku bez sakramentu", [in]: *Niedziela.pl*. Available [online]: <https://www.niedziela.pl/arttykul/29890/nd/Zycie-w-wolnym-zwiazku-bez-sakramentu> [in Polish]

born outside of marriage. Polish bishops actively and zealously fight against all non-traditional family choices²⁰.

Meanwhile, the Law and Justice party pursues family policy in this spirit, which has been confirmed by Jarosław Kaczyński, the party leader²¹. The official definition of the family he offers is that it consists of one man and one woman in a durable relationship, with children²². A broader definition was, however, presented, for example, in a 2021 draft law titled *Local Government for the Family*, which states that a family is “a community bound by kinship, affinity, adoption or marriage”²³. Needless to say, the main role such definitions play is the exclusion of certain types of families deemed unconventional as well as entire social groups. This exclusion is tailored to inflame public conflicts and build political campaigns on polarization.

The ruling party divides families into *good* and *bad ones*. Married couples with children belong to the former category, all others – to the latter. According to the Polish government, only traditional families are entitled to full state support. NKD PAN underlines that the already mentioned *Demographic Strategy*

2040 discriminates extra-matrimonial unions, ignores women’s needs and new trends in the area of family-making²⁴. Acknowledged demographer Professor Irena Kotowska said, “In a discussion about supporting families, we cannot ignore other forms of families, addressing solutions only to married couples”, adding that “statistics show that almost ¼ of children are born by an unmarried woman, and more and more women decide to marry for the first time after having their first baby”²⁵. At the same time, according to Statistics Poland (GUS), the number of marriages shrinks every year²⁶. Similarly, in the early 1990s, ca. 7% of children in Poland were born outside of marriage, whereas in 2019 – over 25%²⁷.

According to populists, women are divided into categories based not only on their marital status. Since Polish right-wing politicians believe that the woman’s place is in the home, they have dedicated special attention and funds to those women who fulfill their expectations.²⁸ This approach demonstrates

²⁰ See, for example: <https://www.euractiv.com/section/freedom-of-thought/news/catholic-church-battles-against-lgbt-in-visegrad-four-continues/>

²¹ Dziennik Gazeta Prawna (2019) *Kaczyński: Rodzina to kobieta, mężczyzna i dzieci. I dobrze, żeby te dzieci były, bo muszą być kolejne pokolenia*. Available [online]: <https://wiadomosci.dziennik.pl/polityka/artykuly/607659.kaczynski-rodzina-mezczyzna-kobieta-dzieci.html> [in Polish]

²² Another definition was given by PiS in a 2016 declaration from: “a durable union between a man and a woman open to transfer life”. See: Poptawska, E. (2016) “Definicja rodziny według postów PiS w ustawie o Dniu Praw Rodziny budzi wątpliwość opozycji”, [in]: wp.pl. Available [online]: <https://wiadomosci.wp.pl/definicja-rodziny-wedlug-poslow-pis-w-ustawie-o-dniu-praw-rodziny-budzi-watpliwosc-opozycji-6049725370475137a> [in Polish]

²³ *Local Government for the Family Act*. See: [http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-365-2021/\\$file/9-020-365-2021.pdf](http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-365-2021/$file/9-020-365-2021.pdf) [in Polish]

²⁴ Golata, E. (2022) “Głos Komitetu Nauk Demograficznych Polskiej Akademii Nauk w dyskusji o sytuacji demograficznej w Polsce”, [in]: *Nauka*, Vol. 1(10), pp. 187–197. Available [online]: <https://journals.pan.pl/Content/122343/PDF/N%2023122-12-Prezydium%20KND%20PAN.pdf> [in Polish]

²⁵ Theus, J. (2021) “Strategia Demograficzna PiS ignoruje potrzeby kobiet i dyskryminuje”, [in]: *OKO.press*. Available [online]: <https://oko.press/strategia-demograficzna-pis-dyskryminuje> [in Polish]

²⁶ Polskie Radio (2022) *Spada liczba nowych małżeństw, wzrasta liczba rozwodów*. Available [online]: <https://www.polskieradio.pl/196/3534/Artykul/3082832,spada-liczba-nowych-malzenstw-wzrasta-liczba-rozwodow#:~:text=ni%C5%BC%20rok%20wcze%C5%9Bniej,-W%20latach%2090...%2C%20na%20wsi%2082%25> [in Polish]

²⁷ GUS (2020) *Sytuacja społeczno-gospodarcza kraju w 2020 r.* Available [online]: <https://stat.gov.pl/obszary-tematyczne/inne-opracowania/informacje-o-sytuacji-spoeczno-gospodarczej/sytuacja-spoeczno-gospodarcza-kraju-w-2020-r-1,104.html> [in Polish]

²⁸ See, for example: Siemiończyk, G. (2017) “Program 500+ obniżył skłonność kobiet do pracy”, [in]: *Rzeczpospolita*. Available [online]: <https://www.rp.pl/rynek-pracy/art2354361-program-500-obnizyl-sklonnosc-kobiet-do-pracy> [in Polish]

unequal treatment, but it is not at all unusual for the ruling party.

It is also worth mentioning that PiS ignores the rights and the role of fathers, their participation and involvement in family life too. New pro-family programs, primarily *Family 500+*, have enabled tens of thousands of mainly younger women to stop working²⁹. The government believes that the fertility rate should be improved at the expense of professional activity of women, together with their economic independence, personal prosperity, and future financial security. It is estimated that approximately half a million Polish women between 25 and 49 years old cannot work because of care-taking obligations³⁰. This trend could be changed, but there is no political will within the ruling coalition.

Finally, the Law and Justice party neglects to include single parents in their family policies. Jarosław Kaczyński labels everything that in his opinion is not *“a normal, a constitutional family”* as ‘anti-culture’³¹. As previously stated, in Poland, already ¼ of all children are born outside of marriage. 2.5 million Poles raise their children alone. 19.4% of Polish families are single mothers with children (one of the highest number in Europe; it is higher only in the Baltic states and Slovakia); 2.8% - single fathers. Also, the

number of single parents who have never been married has grown significantly³². The government not only does not help single parents, but it also makes their situation worse – for example, in the flagship Polish Deal program, the possibility of filing a joint tax return by single parents together with their children (meaning that the single parent can use the tax-free allowance of PLN 30,000 twice) was eliminated – only to be later restored after protests of single parents and the opposition³³.

PiS does not (want to) see that the family model in Poland has changed, that Polish society has changed. This can be perfectly illustrated by Jarosław Kaczyński’s recent words that received wide coverage in autumn 2022, raising eyebrows in Poland and beyond. During a party rally in the Etk city, the party leader stated that not all pro-natalist programs can be fully successful because there is ‘cultural resistance’ to having children among some sections of the society. “[N]ecessary to say openly some bitter truths: if it continues to be the case that, by the age of 25, girls, young women, drink as much as their male peers, there won’t be children”, he added. “Remember that to develop alcoholism, a man must drink excessively on average for 20 years... but a woman only two,”³⁴ continued Kaczyński, causing applause in the audience. On the one hand, it exposes the worldview of the PiS leader, who reduce women to reproductive roles.

²⁹ Krajewski, K. and T. Zalega, (2020). The “Family 500+” program versus the economic activity of women in Poland, *Nierówności społeczne a wzrost gospodarczy*, 63(44-68)

³⁰ Iga, M. (2021) “Jak zwiększyć aktywność zawodową kobiet w Polsce?”, [in]: *Instytut Badań Strukturalnych*. Available [online]: <https://ibs.org.pl/publications/jak-zwiekszyz-aktywnosc-zawodowa-kobiet-w-polsce/> [in Polish]

³¹ See, for example: Papiernik, O. (2022) “Kaczyński ponownie poruszył temat rodziny. ‘Chcemy, by społeczeństwo było normalne’”, [in]: *Dziennik.pl*. Available [online]: <https://wiadomosci.dziennik.pl/polityka/artykuly/8536755,jaroslaw-kaczynski-rodzina-kultura-pis.html> [in Polish] Later, Jarosław Kaczyński he was explaining that he did not want to offend single parents.

³² TVN24 (2019) *Statystyczna polska rodzina. Jaka jest?*. Available [online]: <https://konkret24.tvn24.pl/polska/statystyczna-polska-rodzina-jaka-jest-ra968030> [in Polish] The data comes from the 2011 census. Currently, we are waiting for the new data, of the 2021 census, to be published.

³³ *Gazeta Prawna* (2022) *Polski Ład 2.0. Samotni rodzice odzyskują preferencję podatkową*. Available [online]: <https://podatki.gazetaprawna.pl/artykuly/8457496,samotni-rodzice-rozliczenie-polski-lad-2-0.html> [in Polish]

³⁴ <https://notesfrompoland.com/2022/11/06/alcohol-consumption-by-women-cause-of-polands-low-birth-rate-says-ruling-party-leader-kaczynski/>



THE RULING PARTY DIVIDES FAMILIES INTO GOOD AND BAD ONES

With these cruel and ignorant words he re-confirmed that, in his opinion, all women must fulfill their role as mothers. But, put more broadly, it proves total detachment from Polish women's reality.

Polish women stress that they do not have children not because they are heavy drinkers, but because of the government's failure to implement structural reforms. They complain that PiS, after seven years in power, has not done much to convince them to make a decision about having a child. They emphasize a lack of improvements in the areas of employment and taxation, crucial infrastructure, and access to affordable housing, among others. Moreover, they indicate that the government's anti-women agenda (symbolized by a nearly full abortion ban) made them scared of getting pregnant, even more in light of the stories of young pregnant women who lost their lives in hospitals³⁵.

RAINBOW FAMILIES

There is one category of families in Poland that has been discriminated against by the Law and Justice government with par-

ticular passion – namely, rainbow families. Throughout all the years of PiS being in power, it is a group that has been attacked violently.

Polish right-wing populists are well known for their homo- and transphobic behavior³⁶. The analysis of the issue goes far beyond the scope of this article, but the key attacks on the LGBTQI+ community may be briefly listed as follows:

- President Andrzej Duda's vetoes the Gender Accordance Act (2015).
- The education reform is implemented by PiS between 2015 and 2022 to "*protect children from moral corruption*" and attempts to eliminate sex education from schools.
- Support for the *Stop Pedophilia* civic initiative (2019), which aims at banning sex education and criminalizing the "*promotion of underage sexual activity*" under the pretext of banning the "*demoralization and sexualization of children*".
- Campaign against Warsaw's 'LGBT+ Declaration' (2019).
- Verbal attacks on LGBTQI organizations, paired with their financial discrimination and harassment of activists.
- Adoption of the so-called 'LGBT-free zones' by ca. 100 local and regional governments dominated by the right wing (2019-2020).
- An amendment to the Passport Act, which made it more difficult for same-sex parents to get passports for their children (2022)³⁷.

³⁵ <https://www.euronews.com/2022/01/26/polish-activists-condemn-abortion-law-after-death-of-another-pregnant-woman>

³⁶ Read more: Political Capital Institute and Projekt: Polska (2022) *A Comparison of the Anti-Gender and Anti-LGBTQI Mobilisation in Hungary and Poland*. Available [online]: https://www.politicalcapital.hu/pc-admin/source/bejegyzesek/FNF%202022_Anti-gender%20mobilisation%20in%20HU-PL/Research%20report%20HU%20BPL_Final_2022-06-30.pdf

³⁷ Ibid.



THE LAW AND JUSTICE PARTY NEGLECTS TO INCLUDE SINGLE PARENTS IN THEIR FAMILY POLICIES

The PiS government has been using anti-gender narratives to present themselves as ‘the only defender of Polish families’. As a result, LGBTQI+ people have been identified as a threat for the centuries-old tradition and durability of families in Poland. For Polish right-wing politicians and their allies, they symbolize biological and moral void as they – in principle – cannot have children and their lifestyle embodies individualism and liberalism.

Furthermore, the LGBTQI+ community is also attacked by the ruling party from a position of child protectors. *“This is an attack on the family, and an attack conducted in the worst possible way because it’s essentially an attack on children. We will say no to the attack on children. Polish parents have the right to raise their own children. We will not be intimidated. We will defend the Polish family”*³⁸, said Kaczyński during one of the party rallies. Many of his allies went even further, spreading the message that same-gender attraction and pedophilia are linked

³⁸ <https://notesfrompoland.com/2020/06/10/polish-president-pledges-to-defend-children-from-foreign-lgbt-ideology-ahead-of-election/>

phenomena³⁹. Such a narrative served the Law and Justice party well in mobilizing their voters in different election cycles in particular in the victorious 2019 general elections and 2020 presidential elections.

INVISIBLE CHILDREN

According to estimates, approximately 50,000 families in Poland are ‘rainbow families’⁴⁰. Yet, they have no rights. Poland does not legally recognize same-sex unions nor partnerships, neither in the form of marriage nor civil unions. All attempts to change it in the parliament have been unsuccessful so far⁴¹, even if the social support for full (marriages) and partial (civil unions) equality has grown and is currently relatively high. In 2019, 41–42% Poles were in favor of marriage equality, and 56–57% in favor of civil unions⁴². In 2021, in an analysis conducted with a different methodology, these numbers were 29% and 67%, respectively⁴³. Even the state-controlled institute has observed an increase in the support for marriage equality (from 29% in 2019 to 34% in 2021)⁴⁴.

³⁹ <https://www.reuters.com/article/us-poland-lgbt-ed-ucation-trfn-idUSKCN21X2ZA>

⁴⁰ <https://www.ipsos.com/en/lgbt-pride-2021-global-survey-points-generation-gap-around-gender-identity-and-sexual-attraction>

⁴¹ While Poland does not have a specific law on cohabitation, there are some provisions in various legal acts or highest courts’ rulings that recognize relations between unmarried partners and grant them specific rights and obligations, e.g., the penal code uses a term ‘the closest person’, the *Patients’ Rights Act* uses a term ‘next of kin’ interpreted as ‘person in a durable partnership’.

⁴² Ambroziak, A. (2019) “Rekordowe poparcie dla związków partnerskich i równości małżeńskiej [SONDAŻ OKO.press]”, [in]: *OKO.press*. Available [online]: <https://oko.press/rekordowe-poparcie-dla-zwiazkow-partnerskich-i-rownosci-malzenskiej-sondaz> [in Polish]

⁴³ Ibid.

⁴⁴ CBOS (2021) *Stosunek Polaków do osób homoseksualnych*. Available [online]: https://www.cbos.pl/SPISKOM.POL/2021/K_121_21.PDF [in Polish]



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PASSION – NAMELY,
RAINBOW FAMILIES

Article 18 of the Polish Constitution states that *“marriage as a union of a man and a woman, family, motherhood[,] and parenthood is under the protection and care of the Republic of Poland”*⁴⁵. As a consequence, opponents of marriage equality have argued that this means marriage is defined as being exclusively between a man and a woman. However, in 2022, Poland’s Highest Administrative Court (NSA) ruled that it is not the case. *“Article 18 of the Constitution cannot in itself constitute an obstacle to transcribing a foreign marriage certificate if the institution of marriage as a union of per-*

*sons of the same sex was provided for in the domestic [legal] order”, declared NSA. “The provision of the constitution in question does not prohibit the statutory regulation of same-sex unions”, it continued, concluding that “at present the Polish legislature has not decided to introduce such solutions”*⁴⁶.

The lack of any legal recognition makes the situation of LGBTQI+ people even more difficult than it is due to permanent hateful attacks by the government and its allies. It complicates everyday life of rainbow families (in hospitals or in relations with tax offices) and can lead to tragedies in some cases⁴⁷.

The situation gets even more complicated when children appear in the picture. And in spite of the fact that they may seem invisible to the naked eye, rainbow families with children *do exist* in Poland. It is a very difficult task to approximate the number of children growing up in them (no official data is available), but some estimates report about 150,000 children being members of less traditional families⁴⁸. The 2012 report ‘Social Situation of LGBT People’ published by Lambda Warszawa and KPH⁴⁹ indicated that out of 11,000 people interviewed, 5.5% declared that they raise children, half of them

⁴⁶ <https://notesfrompoland.com/2022/11/03/polish-top-court-issues-ruling-on-same-sex-marriage/>

⁴⁷ Michalski, B. (2022, November 3). Przetomowy wyrok w sprawie małżeństw jedнопłciowych? Niekoniecznie, *Gazeta Prawna*. Available [online]: <https://serwisy.gazeta-prawna.pl/orzeczenia/artykuly/8580483.lgbt-wyrok-malzenstwa-pary-jednopłciowe-konstytucja-nsa.html> [in Polish]

⁴⁸ Gruszczyński, A. (2020, July 10). Homofobiczne obietnice Andrzeja Dudy uderzają w konkretne rodziny, które coraz częściej myślą o emigracji, *Wysokie Obcasy*. Available [online]: <https://www.wysokieobcasy.pl/wysokie-obcasy/7.163229.26117067.homofobiczne-obietnice-andrzeja-dudy-uderzaja-w-konkretne-rodziny.html?disableRedirects=true> [in Polish]

⁴⁵ See: The Constitution of the Republic of Poland. Available [online]: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

⁴⁹ The Lambda Warszawa and the Campaign Against Homophobia (KPH) are the most influential Polish LGBTQI+ organizations.

– in same-sex relationships (a similar report from 2007 said it was 5.4%)⁵⁰. According to the ‘Families by Choice’ report, 9% of interviewed non-heterosexual people have children (12% women, 5% men)⁵¹.

Rainbow families with children operate in a very hostile legal environment. There is no joint adoption, no second-parent adoption, no automatic co-parent recognition. Moreover, the Law and Justice party demonizes such families by employing fear-mongering strategies, announcing further deterioration of their position vis-à-vis the state. When President Andrzej Duda was seeking reelection in 2020, he announced that he would submit legislation for a constitutional amendment banning the adoption of children by couples in a same-sex relationship⁵². He described such adoption as ‘experimentation’ on and ‘enslavement’ of children⁵³. Hard-right Minister of Justice Zbigniew Ziobro announced in the same year a draft law that would ban adoption by same-sex couples and place strict scrutiny over single applicants, to ensure they are not actually in a same-sex relationship⁵⁴. Such adoption is not legal in Poland anyway, and these proposals should be interpreted only as a measure aimed to polarize the society.

⁵⁰ Abramowicz, M. (2007). *Sytuacja społeczna osób biseksualnych i homoseksualnych w Polsce*, Warszawa: KPH.

⁵¹ Mizielińska, J., Abramowicz, M., Stasińska, A. (2014). *Rodziny z wyboru w Polsce*, Instytut Psychologii PAN. Available [online]: http://rodzinyzwyboru.pl/wp-content/uploads/2021/10/Raport_Rodziny-z-wyboru-w-Polsce.-Zycie-rodzinne-osob-nieheteroseksualnych.pdf [in Polish]

⁵² <https://notesfrompoland.com/2020/07/04/polish-president-proposes-constitutional-ban-on-same-sex-adoption-calling-it-enslavement/>

⁵³ Ibid.

⁵⁴ <https://www.thepinknews.com/2020/07/21/poland-law-justice-party-european-union-same-sex-marriage-minister-zbigniew-ziobro/>



ACCORDING TO ESTIMATES, APPROXIMATELY 50,000 FAMILIES IN POLAND ARE ‘RAINBOW FAMILIES’

Since PiS came to power in 2015, rainbow families started to emigrate more frequently, looking for basic rights and freedom⁵⁵. In Poland, even the problem of second-parent adoption cannot get regulated. Currently, a second parent in a same-sex relationship has no rights – for instance, in case of death of a biological parent, even if they raised a child together for years. Polish rainbow families thus have to seek survival strategies – in the case of lesbian mothers, the non-biological mother may choose to marry the gay father to create a legal link with the child⁵⁶.

A PARENT IN ONE COUNTRY, A PARENT IN EVERY COUNTRY

On the European level, the criticism of the situation created by the Polish authorities for rainbow families goes beyond regular declarations and appeals of the European Parliament. The obstacles that these type of families (with or without children) face

⁵⁵ Gruszczynski, A. (2020) “Homofobiczne obietnice Andrzeja Dudy uderzają w konkretne rodziny, które coraz częściej myślą o emigracji”, [in]: *Wysokie Obcasy*. Available [online]: <https://www.wysokieobcasy.pl/wysokie-obcasy/7,163229,26117067,homofobiczne-obietnice-andrzeja-dudy-uderzaja-w-konkretne-rodziny.html?disableRedirects=true> [in Polish]

⁵⁶ Ibid.



RAINBOW FAMILIES WITH CHILDREN OPERATE IN A VERY HOSTILE LEGAL EN- VIRONMENT

when they attempt to exercise their free movement rights – one of the fundamental freedoms – within the EU have been spotlighted numerous times. In the case of Poland (and five other member states⁵⁷), these obstacles consist of a failure to recognize same-sex couples (whether married, registered, or unregistered) as couples, and to acknowledge that both members of the couple are the legal parents of their child (or children) in the member state from which they are moving or returning. Often, when a border with Poland is crossed, the couple ceases to be legally identified as a couple, becoming instead two unrelated individuals, and their child or children go from having two legal parents to only one legal parent or no legal parents⁵⁸. This phenomenon results in widespread discrimination.

The European Union cannot legislate in order to require all member states to offer legal recognition to the familial ties among the members of rainbow families in their own territory in situations which have no link with EU law. The link between particular family situations and EU law is sometimes demonstrated by the Court of Justice of the

European Union (CJEU), whose role is to ensure EU law is interpreted and applied to the same extent in every EU country and to guarantee that countries and EU institutions abide by EU law.

In 2022, the CJEU decided in a landmark case concerning Poland that it will help provide a general framework for removing obstacles to freedom of movement for rainbow families⁵⁹. Poland refused to recognize the birth certificate of Sofia, a child of two women, a Polish and an Irish citizen, born in Spain, depriving her of access to citizenship and identity documents. For over two years, Sofia remained without any documentary proof of any nationality, and, therefore, at risk of statelessness⁶⁰.

On June 24, the CJEU issued a reasoned order establishing that when an EU country has recognized two persons of the same sex as parents of a child, then the EU country of which that child is a national, should issue identity documents to that child with both parents on them, and all EU countries should protect the right to freedom of movement of the child and their family⁶¹. This is a confirmation of a previous landmark judgment, that of *Baby Sara*⁶². Poland has been told that it must now provide Sofia with identity documents and guarantee her and her parents the right to move and reside freely in the country.

Lawyers and advocacy groups hope that the decision of the CJEU will convince the NSA in Poland to issue an ID with both mothers' names. However, in 2019, the NSA ruled

⁵⁷ Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia.

⁵⁸ See, for example: <https://www.euronews.com/travel/2021/06/11/this-is-how-lgbtq-people-are-excluded-from-freedom-of-movement-in-the-eu>

⁵⁹ <https://www.ilga-europe.org/news/rainbow-families-have-the-right-to-move-and-reside-freely-eu-court-reiterates/>

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² <https://www.ilga-europe.org/news/bulgarian-court-rules-baby-sara-must-be-issued-birth-certificate/>



SINCE PIS CAME TO POWER IN 2015, RAINBOW FAMILIES STARTED TO EMI-GRATE MORE FRE-QUENTLY, LOOKING FOR BASIC RIGHTS AND FREEDOM

that a same-sex couple whose son had been born in the United Kingdom could not transcribe his birth certificate into the Polish civil registry. The judges found that doing so would constitute “a threat to the Polish legal order”⁶³.

After the *Baby Sofia* decision, the Polish government even intended to change the law on birth certificates. It planned to add a new chapter on special certificates for children with same-sex parents. It was supposed to be the first time when Polish law would recognize children in rainbow families and was valued by some LGBTQI+ organizations, even if it was described as discriminatory by the Polish Ombudsman (as a means of creating a separate category of children of same-sex parents⁶⁴). But the government

⁶³ <https://notesfrompoland.com/2019/12/03/same-sex-couple-cannot-register-as-parents-of-uk-born-child-rules-top-polish-court/>

⁶⁴ Ferfecki, W. (2022) “Polskie prawo jednak nie dostrzeże dzieci z tęczowych rodzin”, [in]: *Rzeczpospolita*. Available [online]: <https://www.rp.pl/polityka/art37507101-polskie-prawo-jednak-nie-dostrzeze-dzieci-z-teczowych-rodzin> [in Polish]

THE ‘FAMILY’ CATEGORY IN THE ILGA EUROPE’S REPORT ON POLAND:

- × Marriage equality
- × Registered partnership (similar rights to marriage)
- × Registered partnership (limited rights)
- × Cohabitation
- × No constitutional limitation on marriage
- × Joint adoption
- × Second-parent adoption
- × Automatic co-parent recognition
- × Medically assisted insemination (couples)
- × Medically assisted insemination (singles)
- × Recognition of trans parenthood

withdrew from this change in late 2022. The ultraconservative think tank *Ordo Iuris* claimed it had influenced the minister of justice’s decision as – in their opinion – the new chapter could help introducing in Poland marriage equality and same-sex adoption⁶⁵. The *Ordo Iuris* was also very proud that it led the government to adopt a new Passport Act, which made it more difficult for children of same-sex parents to receive a Polish passport⁶⁶.

Meanwhile, more actions in favor of rainbow families can be expected from the European Commission. President Ursula von der Leyen stated, noticing the problems in many member states, in her 2020 State

⁶⁵ *Ibid.*

⁶⁶ Flis, D. (2022) “Urzędy będą mogły odmawiać paszportów dzieciom jedнопłciowych par. Na życzenie *Ordo Iuris*”, [in]: *OKO.press*. Available [online]: <https://oko.press/paszporty-dzieci-jednopłciowe-pary-lgbt-ordo-iuris> [in Polish]

of the Union speech that “If you are parent in one country, you are parent in every country”⁶⁷. The Commission adopted a proposal to harmonize the rules on recognizing parenthood across the EU⁶⁸. According to the Commission, “[t]he proposal is focused on the best interests and the rights of the child. It will provide legal clarity for all types of families, who find themselves in a cross-border situation within the EU, be it because they move from one [m]ember [s]tate to another to travel or reside, or because they have family members or property in another [m]ember [s]tate”⁶⁹. The non-recognition of parenthood puts at risk the fundamental rights of children, including their right to an identity, non-discrimination, and a private and family life.

Such a declaration could not be without reaction from the Polish government. Justice minister Zbigniew Ziobro announced Warsaw will block the proposals to ensure that the rights of same-sex parents and their children are legally recognized in all of the bloc’s member states. “The Ministry of Justice was ready to support this document if the solutions characterized by the ideology of LGBT communities and so-called ‘rainbow families,’ i.e. same-sex unions, were eliminated from it. In light of

⁶⁷ <https://www.ilga-europe.org/blog/if-you-are-parent-in-one-country-you-are-parent-in-every-country-but-still-today-a-child-can-be-stateless-in-the-eu-just-because-it-has-two-mothers/>

⁶⁸ The main elements of the proposal include: designation of the jurisdiction, designation of the applicable law, rules for recognition of parenthood, creation of a European Certificate of Parenthood. The proposal was identified as a key action in the EU Strategy on the rights of the child and the EU LGBTIQ Equality Strategy. The European Parliament welcomed the Commission’s initiative in its Resolution on the protection of the rights of the child in civil, administrative, and family law proceedings and in its Resolution on LGBTIQ rights in the EU.

⁶⁹ European Commission (2022). Equality package: Commission proposes new rules for the recognition of parenthood between Member States. Available [online]: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7509



THE NON-RECOGNITION OF PARENTHOOD PUTS AT RISK THE FUNDAMENTAL RIGHTS OF CHILDREN, INCLUDING THEIR RIGHT TO AN IDENTITY, NON-DISCRIMINATION, AND A PRIVATE AND FAMILY LIFE

family law, these are inconsistent with the Polish Constitution, which explicitly states that a marriage is a union between a man and a woman”, a statement on the governmental website reads⁷⁰. The ministry warns that the Commission will give rise to an immense threat to maintaining the traditional family model in our cultural system.

IMMATURITY OF THE RULERS

Politicians often talk about the mythical ‘maturity of the society’⁷¹. They keep repeating that Polish people are not ready to

⁷⁰ <https://www.gov.pl/web/justice/veto-on-plans-to-legalise-adoption-by-same-sex-couples-and-same-sex-marriages2>

⁷¹ See: Rosa, M. (2022) “Living in a LGBT-Free Zone”, [in]: M. Hodun (ed.) *Free Voices*. Brussels: ELF. Available [online]: https://liberalforum.eu/wp-content/uploads/2022/02/free-voices_www.pdf

accept rainbow families⁷². Even though this argument appears always when somebody publicly calls for equal rights, it should not be treated too seriously. The Polish political class is more conservative than Polish society, and it can be proven by data.

The 'We Are Family' report created by the Mitość Nie Wyklucza (*Love Does Not Exclude*) indicates that the majority of respondents agreed that rainbow families should be guaranteed security and legal support⁷³ – 87% said that the right to start a family is universal and 86% that the foundations of a family are love, care, and respect, not who creates it. The majority of Poles define as 'a family' a situation when a biological parent raises their biological child(ren) with a same-sex partner, or when same-sex couples raise their adopted child(ren). 76% believe that children of same-sex parents should be protected from harassment.

Interestingly, the authors of the report quote data published by CBOS since 1994, which allowed them to draw compelling comparisons. In 2021, 16% of Poles agreed with the right for adoption for same-sex couples. It may not look like much, but in 2019 it was only 9% (since 1994 it has always been around 10%). The authors do not deny that the majority of Poles are against adoption by same-sex couples, but at the same time, they show that such attitudes are often a consequence of a lack of knowledge and fear for the safety of children. In other words, many Poles do not know that such

families already exist (1/4 does not know if such families exist in Poland, and 1/5 believes they do not exist⁷⁴) and they are afraid that systemic homophobia – a fear often accelerated by right-wing politicians – will make the life of such children difficult. Such ignorant social attitudes can, however, be changed by means of education and consequently fighting against stereotypes and hate speech in public life.

The Polish right-wing lives in a bubble, restricted by their ideological limitations and a perspective of the closest elections. Rather than improving the situation of all Polish families they decided to pull the wool over voters' eyes with elaborated taglines and narrowly targeting all of their projects to their own electorate. The PiS version of a family policy aims to divide and bribe. And even those who belong to the family categories endorsed by PiS will benefit fully from the system only if they follow the preferred ideological model. And if a family is one of those appointed as the 'enemy of the nation', it will not be authorized to enjoy any of the advantages sponsored by all tax-payers. Even worse, it will be subject to political attacks from the government and the public administration – a phenomenon that concerns less conventional couples, single parents, and children of all ages.

⁷⁴ Ibid.

⁷² Ibid.

⁷³ Mitość Nie Wyklucza (2021) *Jesteśmy rodziną Co myślą Polacy i Polki o rodzinach osób LGBT+?*. Available [online]: https://mnw.org.pl/app/uploads/2021/12/Jeste%20%20my-Rodzin%C4%85-Co-my%C5%9B%C4%85-Polacy-i-Polki-o-rodzinach-os%C3%B3b-LGBT-Raport-z-bada%C5%84-Mi%C5%82o%C5%9B%C4%87-Nie-Wyklucza_2021.pdf#xd_co_f=MmUzODc1NDEtZjFhNi00Y2I0LTkMDEtYjA0ZTcwYjNjMDZh~ [in Polish]



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