

**Marta Michalczuk-Wlizło<sup>1</sup>**

## **Admissibility of Institutionalizing Same-Sex Unions in Poland. Selected Problems**

**Keywords:** same-sex unions, non-heteronormative unions, Art. 18 of the Polish Constitution, Catholic Church

**Słowa kluczowe:** związki jednopłciowe, związki osób nieheteronormatywnych, art. 18 Konstytucji RP, Kościół Katolicki

### **Abstract**

The issue of institutionalizing non-heteronormative unions arouses great controversy in Poland and has not yet been legally regulated in any form. The issue of institutionalizing same-sex unions is multifaceted and has an interdisciplinary character. The aim of the article is to analyze selected premises, both legal and ideological, related to the admissibility of institutionalizing the form of relationships of non-heteronormative people.

### **Streszczenie**

## **Dopuszczalność instytucjonalizacji związków jednopłciowych w Polsce. Wybrane problemy**

Problematyka prawnego usankcjonowania związków osób nieheteronormatywnych wzbudza w Polsce duże kontrowersje i dotychczas nie została uregulowana w jakiegokol-

---

<sup>1</sup> ORCID ID: 0000-0002-2107-881477, PhD, Department of Political Systems and Human Rights, Faculty of Political Science and Journalism, Maria Curie-Skłodowska University in Lublin. E-mail: michalczukm@poczta.onet.pl.

wiek formie. Zagadnienie instytucjonalizacji związków jednopłciowych jest wielopłaszczyznowe i ma interdyscyplinarny charakter. Celem artykułu jest analiza wybranych przesłanek, zarówno prawnych jak i ideologicznych, odnoszących się do możliwości instytucjonalizacji formy pożycia osób nieheteronormatywnych.

✱

The issue of institutionalizing non-heteronormative unions arouses great controversy in Poland and has not yet been legally regulated in any form. The main problems faced by people living in stable homosexual relationships are joint taxation, the right to inheritance, establishing joint ownership or access to information about a partner's health. Surveys show that the ongoing dispute over the status of same-sex unions oscillates around two main aspects: legal aspect, understood as legalizing same-sex relationships in the light of the Constitution of April 2, 1997 and non-legal dimension, determined by ideological norms. The issue of institutionalizing same-sex unions is multifaceted and has an interdisciplinary character. The aim of the article is to analyze selected premises, both legal and ideological, related to the admissibility of institutionalizing the form of relationships of non-heteronormative people.

It seems that the lack of institutionalization of same-sex relationships is mainly due to prejudice, the lack of reliable knowledge about human sexual identity<sup>2</sup> and the negative attitude to homosexual unions expressed by the Catholic Church<sup>3</sup>. The opponents perceive legalization of same-sex marriages as a threat to the heteronormative family, conservative values, and Christian principles.

---

<sup>2</sup> J. Stusiński, *Historia seksuologii. Zwiastuny myśli seksuologicznej*, "Przegląd Seksuologiczny" 2016, No. 48, pp. 20–22; Z. Lew-Starowicz, M. Lew-Starowicz, S. Dulko, *Homoseksualizm*, [in:] *Homoseksualizm – perspektywa interdyscyplinarna*, eds. K. Slany, B. Kowalska, M. Śmietana, Kraków 2008, p. 41.

<sup>3</sup> C.M. Warner, *Confessions of an Interest Group. The Catholic Church and Political Parties in Europe*, New Jersey 2000.

## I. Scopes of Exegesis of the Norm of the Article 18 of the Polish Constitution

As far as institutionalization of same-sex unions is concerned, the most important provision of the Polish Constitution is Article 18 which states: “Marriage as a union of a woman and a man, family, motherhood and parenthood are under the care and protection of the Republic of Poland”<sup>4</sup>.

The views of the supporters of the ban on the institutionalization of non-heteronormative unions seem to suggest that the Art. 18 of the Polish Constitution contains a definition of marriage<sup>5</sup> or specifies it<sup>6</sup>. According to the legislator, marriage as a union of a woman and a man is reserved only as a form of union of persons of different sexes. According to this exegesis, it is the only constitutionally permissible form of emotional and economic coexistence of two people, and the legislator cannot create any alternative forms of institutionalized relationship<sup>7</sup> as the institution of marriage is, by its very nature, only a union between a woman and a man<sup>8</sup>. This attitude emphasizes that one of the most important functions of marriage is to ensure biological succession of generations<sup>9</sup>. Furthermore, a statement can be found in the literature on the subject claiming that the institutionalization of same-sex relationships would result in extension of the constitutional norm<sup>10</sup>. The opponents of institutionalization non-heteronormative unions reject the arguments of discrimination against persons living in permanent same-sex relationships, claiming that no norm of universally binding law prohibits these persons from entering heterosexual marriages and, furthermore, for the validity of a legal act such as en-

<sup>4</sup> The Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483).

<sup>5</sup> P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warsaw 2008, p. 54.

<sup>6</sup> T. Smoczyński, *Prawo rodzinne i stosunki rodzinno prawne*, [in:] *System prawa prywatnego*, vol. 11, *Prawo rodzinne i opiekuńcze*, ed. T. Smoczyński, Warsaw 2009, p. 46.

<sup>7</sup> B. Banaszkiwicz, *Małżeństwo jako związek kobiety i mężczyzny. O niektórych implikacjach art. 18 Konstytucji RP*, “Kwartalnik Prawa Prywatnego” 2013, No. 3, p. 591.

<sup>8</sup> T. Smoczyński, *Małżeństwo — konkubinat — związek partnerski*, [in:] *Związki partnerskie. Debata na temat projektowanych zmian prawnych*, ed. M. Andrzejewski, Toruń 2013, p. 71; R. Sobański, *Związki partnerskie*, “Forum Iuridicum” 2003, No. 2, pp. 226–227.

<sup>9</sup> B. Banaszkiwicz, *Problem konstytucyjnej oceny instytucjonalizacji związków homoseksualnych*, “Kwartalnik Prawa Prywatnego” 2004, No. 2, pp. 384–385.

<sup>10</sup> D. Dudek, *Opinia w sprawie projektu ustawy o związkach partnerskich*, “Przegląd Sejmowy” 2012, No. 4, p. 178.

tering into marriage certain conditions must be fulfilled, such as; appropriate age, lack of kinship or just a different sex of the contracting parties<sup>11</sup>. The state's obligation to provide special protection for the institution of marriage implies the prohibition to take any actions which would weaken or diminish the significance or solemnity of marriage, and the legislator should not establish any norms which would induce people to refrain from getting married<sup>12</sup>.

Marriage as a union of a woman and a man is an already existing concept, which means that the Polish legislator did not create the concept, but adopted the already applied meaning, shaped in the course of historical development and the tradition of this legal institution<sup>13</sup>. The supporters of this interpretation of the norm of the Article 18 of the Constitution also point to *ratio legis* and refer to the work of the Constitutional Committee of the National Assembly which members overwhelmingly sought to exclude same-sex couples from contracting marriage<sup>14</sup>. Considering the importance of the Art. 18 of the Constitution, one cannot ignore the circumstances of its adoption. In 1997, no European country recognized same-sex marriage. Furthermore, as indicated by M. Wyrzykowski, the final wording of Art. 18 resulted from a compromise made as a consent to the binding wording in exchange for the neutrality of the church in the constitutional referendum<sup>15</sup>, and the adopted content of the norm was to constitute a barrier against potential sanctioning of permanent same-sex marriage.

The moderate position allows for institutionalization of same-sex unions other than marriage. The view rejects the existence of an absolute prohibition to legally regulate forms of permanent non-heteronormative marriage, however, it points to the limited freedom of the legislator in introducing them

---

<sup>11</sup> A. Mączyński, *Konstytucyjne i międzynarodowe uwarunkowania instytucjonalizacji związków homoseksualnych*, [in:] *Związki partnerskie. Debata na temat projektowanych zmian prawnych*, ed. M. Andrzejewski, Toruń 2013, pp. 95–96.

<sup>12</sup> Judgment of the Constitutional Tribunal dated April 12, 2011, file ref. No. SK 62/08.

<sup>13</sup> M. Szydło, *Instytucjonalizacja związków partnerskich w świetle art. 18 i 32 Konstytucji RP*, "Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu" 2017, No. 4 (56), p. 15.

<sup>14</sup> Transcripts of the 76–79 meetings of the Constitutional Committee of the National Assembly on September 17–18, 1996 and October 1–2, 1996.

<sup>15</sup> M. Wyrzykowski, *Publiczne a prywatne w wykładni konstytucyjnej na przykładzie art. 18 Konstytucji RP*, [in:] *Interes publiczny a interes prywatny w prawie*, ed. T. Giaro, Warsaw 2011, p. 217.

into the legal system. This view states that in the light of Art. 18 of the Polish Constitution, it would be unacceptable to recognize unions of homosexual persons as marriage and to grant them the same or similar rights<sup>16</sup>. The norm in question does not, in essence, prohibit formalization of same-sex partnerships, but opposes their being covered by guarantees, rights and obligations which are identical to those of married couples<sup>17</sup>.

According to the supporters of institutionalization of same-sex unions in a form of marriage, the Constitution of the Republic of Poland does not oppose establishing legal forms of marriage for non-heteronormative persons by the legislator. This most liberal position assumes that the Art. 18 of the Constitution of the Republic of Poland, as a programme norm, imposes obligation on the state to provide special protection for marriage between a woman and a man, but it does not prohibit creation of other forms of partnership of people of the same or different sex. The norm ordering marriage to be covered by state protection means only that other forms of permanent cohabitation of two people, regardless of their personal substrate, cannot have a better legal status<sup>18</sup>. The fact that the Constitution does not protect the forms of same-sex unions cannot be understood as a prohibition on regulating them<sup>19</sup>. The justification for such argumentation is seen in the lack of a literally formulated prohibition on establishing institutions other than marriage which define a relationship of two people<sup>20</sup>, as well as in the rejection of the view that a legal definition of marriage was formulated in the article in question. It is difficult to disagree with this statement that the phrase “marriage as a union of a woman and a man” is far from the requirements of the statutory definition, because it does not provide a precise explanation of the term, but only

---

<sup>16</sup> M. Nazar, *Konkubinat a małżeństwo – wybrane zagadnienia*, [in:] *Księga jubileuszowa prof. dr hab. Tadeusza Smyczyńskiego*, eds. M. Andrzejewski, L. Kociucki, M. Łączkowska, A. Schulz, Toruń 2008, p. 232.

<sup>17</sup> M. Nazar, *Niektóre zagadnienia małżeństwa i rodziny w świetle unormowań Konstytucji RP z dnia 2 kwietnia 1997 r.*, “Rejent” 1997, No. 5, p. 109.

<sup>18</sup> J. Pawliczak, *Zarejestrowany związek partnerski a małżeństwo*, Warsaw 2014, p. 352.

<sup>19</sup> R. Piotrowski, *Opinia w sprawie projektu ustawy o związkach partnerskich*, “Przegląd Sejmowy” 2012, No. 4, p. 187.

<sup>20</sup> J. Pawliczak, op.cit, p. 350; M. Wyrzykowski, *Publiczne a prywatne...*, pp. 215–217; E. Łętowska, J. Woleński, *Instytucjonalizacja związków partnerskich a konstytucja RP z 1997*, “Państwo i Prawo” 2013, No. 6, p. 16.

indicates a different sex identity of the contracting parties<sup>21</sup>. In the justification supporting the landmark judgment, ref. No. no. IV Sa/Wa 2618/18, the Provincial Administrative Court in Warsaw stated: “Pursuant to Art. 18 of the Polish Constitution, marriage as a union of a woman and a man, family, motherhood and parenthood remain under the care and protection of the Republic of Poland. In the opinion of the Court, one can agree (...) that the above constitutional principle implies not so much the constitutional understanding of the institution of marriage, but the guarantee of granting special care and state protection to the institution of marriage, but only on the assumption that it is a relationship between a man and a woman”<sup>22</sup>. In the further part of the justification, the Court indicated that the content of the Article 18 of the Polish Constitution “...does not prohibit (...) the legislator from institutionalizing the status of same-sex unions by virtue of ordinary laws”<sup>23</sup>.

In addition, the supporters of the liberal stance deny the constitutive nature of the procreative function of marriage as the spouses are not obliged to have children and the fact of not having children is not subject to state sanctions.

The position in favor of introducing same-sex marriages into the legal system perceives marriage from the point of view of human rights, and strengthens its arguments by quoting the Art. 32 of the Polish Constitution, prohibiting discrimination and establishing equality before the law. Limiting marriage to a union of a woman and a man leads to the unacceptable creation of various legal norms for legal entities which should be classified in the same category and privileges due to non-heteronormativity. Identifying homosexuality as a criterion for different treatment has been criticized by the Polish Sexological Society which emphasizes that homosexual orientation is one of the variants of human sexual development and “does not determine the level of emotional, intellectual, social or moral development”<sup>24</sup>. The admissibility of contracting homosexual marriage would be the implementation of the right

<sup>21</sup> A. Jezusek, *Możliwość instytucjonalizacji związków osób tej samej płci w świetle art. 18 Konstytucji RP*, “Przegląd Sejmowy” 2015, No. 4, p. 70.

<sup>22</sup> Judgment of the Provincial Administrative Court in Warsaw of January 8, 2019, file reference No. IV Sa/Wa 2618/18, <http://orzeczenia.nsa.gov.pl/doc/45CB17F5A4> (15.10.2020).

<sup>23</sup> Ibidem.

<sup>24</sup> Position of the Polish Sexology Society on the health of people of homosexual orientation, <https://pts-seksuologia.pl/sites/strona/59/stanowiskopts-na-temat-zdrowia-osob-o-orientacji-homoseksualnej> (10.10.2020).

to decide about one's personal life, laid down in the Art. 47 of the Polish Constitution, the norm of which is directed at a universal addressee by using the term "everyone"<sup>25</sup>. Limiting the right resulting from the regulation in question to heterosexual persons would limit the constitutional norms.

## II. Doctrinal Arguments of the Catholic Church

The position of Polish Catholic Church undoubtedly exerts a great influence on the public debate. According to the data published at the beginning of 2020 by the Institute of Statistics of the Catholic Church (Instytut Statystyki Kościoła Katolickiego) in "Annuario Statisticum Ecclesia in Polonia AD 2020", about 92% of Poles (over 32 million people) declare belonging to the Catholic Church and 38.2% of them regularly participate in the mass<sup>26</sup>. The ecclesiastic stance concerning the admissibility of same-sex relationships is unambiguous. The hierarchs legitimizing their opposition cite mainly doctrinal and theological arguments which basically have remained unchanged since the beginning of the Church. They argue that even in the Scripture, a homosexual intercourse is condemned as a serious depravity and called "sodomy"<sup>27</sup>, also sexual activity between persons of the same sex is considered a sin<sup>28</sup>. On the other hand, homosexual men and women should be treated with dignity and compassion, and Catholics should not discriminate against them<sup>29</sup>.

<sup>25</sup> Art. 47 of the Constitution of the Republic of Poland, op.cit.

<sup>26</sup> *Kościół katolicki w Polsce w liczbach. Znamy najnowsze dane ISKK*, <https://polskieradio24.pl/5/1222/Artykul/2432120,Kosciol-katolicki-w-Polsce-w-liczbach-Znamy-najnowsze-dane-ISKK> (26.09.2020).

<sup>27</sup> Genesis 1: 24–27; 1 Corinthians 6:10, <https://www.biblegateway.com/passage/19.09.2020>.

<sup>28</sup> *Powołanie do życia w małżeństwie Powołanie do życia w małżeństwie i rodzinie*, [in:] *II Polski Synod Plenarny (1991–1999). Dokumenty*, Poznań 2001, p. 46; Position of the Polish Bishops' Conference on LGBT+ of 28 August 2020, [https://opoka.org.pl/biblioteka/W/WE/kep/stanowisko-lgbt\\_28082020.html](https://opoka.org.pl/biblioteka/W/WE/kep/stanowisko-lgbt_28082020.html) (14.09.2020).

<sup>29</sup> John Paul II, *Encyclical Evangelium vitae*, 1995, [http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html) (19.09.2020); Congregation for the Doctrine of the Faith., *Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons*, 1986, [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19861001\\_homosexual-persons\\_pl.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_pl.html) (22.09.2020).

By educating the faithful to respect each human being, the Church doctrine states that this requirement must never lead to the approval of homosexual acts or the legalization of non-normative unions<sup>30</sup> which “violate natural law, and their official establishment does not protect social order or health”<sup>31</sup>.

Legal regulations are to support and protect heterosexual marriage as the equalization of homosexual and heterosexual unions would mean a loss of basic values which belong to the common heritage of humanity, and the Catholic Church usurps the right to protect these values for the good of the entire human community. The Congregation for the Doctrine of the Faith directly addressed politicians and parliamentarians, being aware of their causal role in decision-making and law-making processes<sup>32</sup>. Cardinal Stanisław Dziwisz, presenting the position of the Church, emphasized that “in legislating on significant moral matters, parliamentarians should be guided by a well-formed conscience, and not by party compulsion. We demand that those who create the law in our homeland should be guided by the good of man, and not by his weaknesses or by the principle of choosing the lesser evil. The lesser evil will always be evil”<sup>33</sup>. Catholic politicians are bound to oppose the institutionalization of civil partnerships of non-heteronormative persons, whereas Catholic parliamentarians are obliged to express their opposition clearly and openly. Casting a vote for a law permitting legalization of homosexual relationships is a seriously immoral act and the attitude of moral relativism among representatives of public life makes it impossible to distinguish good from evil<sup>34</sup>.

Every ideology must forcefully express the certainty that marriage exists between two persons of different sexes and those who try to blur the differ-

---

<sup>30</sup> *Kardynał Dziwisz krytycznie o tęczowej kampanii LGBT i katolików otwartych*, [www.pch24.pl/kardynał-dziwisz-krytycznie-o-teczowej-kampanii-lgbt-i-katolików-otwartych,45870,i.html#ixzz6cdT8HnTn](http://www.pch24.pl/kardynał-dziwisz-krytycznie-o-teczowej-kampanii-lgbt-i-katolików-otwartych,45870,i.html#ixzz6cdT8HnTn) (27.09.2020).

<sup>31</sup> *Kard. Dziwisz: związki homoseksualne naruszają prawo naturalne*, [www.pch24.pl/kard—dziwisz--związki-homoseksualne-naruszają-prawonaturalne,5700,i.html#ixzz6cdYj0RFQ](http://www.pch24.pl/kard—dziwisz--związki-homoseksualne-naruszają-prawonaturalne,5700,i.html#ixzz6cdYj0RFQ) (21.09.2020).

<sup>32</sup> Congregation for the Doctrine of Faith, *Remarks concerning legal recognition of partnerships between homosexual people*, 2003, [www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_pl.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_pl.html) (8.09.2020).

<sup>33</sup> *Kard. Dziwisz: związki homoseksualne naruszają...*

<sup>34</sup> *Kard. Dziwisz: niepokój i relatywizm moralny w próbach legislacji związków partnerskich*, <https://ekai.pl/kard-dziwisz-niepokoi-relatywizm-moralny-w-probach-legislacji-zwiazkow-partnerskich> (19.09.2020).



ences between a woman and a man are a threat to the modern world<sup>35</sup>. In the opinion of the Church, legalizing homosexual relationships would result in negation of fundamental moral values<sup>36</sup> and devaluation of the institution of marriage<sup>36</sup>, as well as divergence of moral and legal norms<sup>37</sup>. Only heterosexual marriages are capable of procreation, and disregarding the aspect of having children in the sacrament of marriage would reduce uniting in matrimony to obtaining a certificate of recognition of the will of two people to live together<sup>38</sup>. Entitling homosexual persons to enter into civil marriage would entail the adoption of the individualistic concept of marriage perceived solely as a manifestation of prohibiting discrimination against representatives of sexual minorities. The contemporary Catholic doctrine differentiates between the public character of marriage and the private sphere which includes unions of non-heteronormative persons<sup>39</sup>. The Church rejects the argument of discrimination against homosexuals, arguing that in the Polish legal system natural persons may conclude various agreements which define the rights and obligations of the parties toward each other, such as: a joint ownership agreement or notarized power of attorney<sup>40</sup>.

### III. Discussion

The great majority of Polish society wants to maintain the current *status quo* as far as the legal regulation of forms of homosexual way of life is concerned,

---

<sup>35</sup> *Abp Jędraszewski: związki homoseksualne są szyderstwem z Boga*, <https://ekai.pl/abp-jedraszewski-zwiazki-homoseksualne-sa-szyderstwem-z-boga> (19.09.2020).

<sup>36</sup> *Kościół o związkach homoseksualnych*, [www.gosc.pl/doc/883074.Kosciol-o-zwiazkach-homoseksualnych](http://www.gosc.pl/doc/883074.Kosciol-o-zwiazkach-homoseksualnych) (19.09.2020).

<sup>37</sup> *Abp Hoser o ofensywie ideologii*, [www.ekai.pl/abp-hoser-o-ofensywie-ideologii](http://www.ekai.pl/abp-hoser-o-ofensywie-ideologii) (19.09.2020).

<sup>38</sup> *Conseil Famille et Société*, [www.eglise.catholique.fr/conference-des-vevues-de-france/textes-et-declarations/366187-elargir-le-mariage-aux-personnes-dememe-sexe-ouvrons-le-debat-note-du-conseil-famille-et-societe](http://www.eglise.catholique.fr/conference-des-vevues-de-france/textes-et-declarations/366187-elargir-le-mariage-aux-personnes-dememe-sexe-ouvrons-le-debat-note-du-conseil-famille-et-societe) (19.09.2020).

<sup>39</sup> Pontifical Council for Families, *Family, Marriage and “de facto” unions*, 2000, [http://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_20001109\\_de-facto-unions\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001109_de-facto-unions_en.html) (19.09.2020).

<sup>40</sup> K. Kowalczyk, *Kościół rzymskokatolicki w Polsce jako podmiot oddziałujący na system polityczny. Casus ustawy o związkach partnerskich*, “Colloquium Wydziału Nauk Humanistycznych i Społecznych AMW” 2015, No. 4 (20), p. 73.

and the social approval of institutionalization of same-sex relationships decreases the more the particular form resembles traditional marriage. The 2019 poll conducted by the Public Opinion Research Center (CBOS) shows that 60% of the respondents have a negative opinion of legitimizing same-sex partnerships while 66% do not accept the possibility of contracting non-heteronormative marriage<sup>41</sup>. It seems that such an attitude of tolerance toward homosexuals can be described as passive, because we accept the fact of someone's being different<sup>42</sup>, but at the same time we deny the possibility of granting representatives of sexual minorities the same rights as those enjoyed by heteronormative persons<sup>43</sup>. The supporters of legal sanctioning of homosexual unions argue that the effect of such social attitudes, and, above all, the decisions of the legislator, is discrimination and the fact that permanent relationships are not covered by legal protection for some citizens, even though the majority of the society is aware that people living in homosexual relationships are denied a number of rights associated with the institution of marriage<sup>44</sup>. The opponents, on the other hand, argue that currently nothing obliges the state to legally recognize same-sex marriages, and legal sanctioning of same-sex unions would cause the "schizophrenia" of the Polish legal system, which, on the one hand, protects the good of the natural relationship between a man and a woman (marriage), but on the other hand it would simultaneously support and protect the disturbed and unnatural sexual relations threatening the traditional family and institutionalize them as a "quasi-marriage"<sup>45</sup> as the opponents of legalization claim.

Article 18 of the Polish Constitution has been in force in an unchanged form for 23 years. It seems that as a programme norm it is flexible enough to

---

<sup>41</sup> CBOS Statement No. 90/2019, Warsaw 2019, pp. 5–7.

<sup>42</sup> The research conducted in 2019 by CBOS shows that more than every third respondent (36%) has a homosexual person in their environment – based on the CBOS Communication No. 90/2019.

<sup>43</sup> P. Szukalski, *Zachowania homoseksualne i postawy wobec homoseksualizmu. Analiza porównawcza Polski i krajów wysoko rozwiniętych*, [in:] *Homoseksualizm w perspektywie interdyscyplinarnej*, eds. K. Slany, B. Kowalska, M. Śmietany, Kraków 2008, pp. 101–103.

<sup>44</sup> *Postawy wobec równości małżeńskiej w Polsce. Raport z badań Stowarzyszenia Miłość nie Wyklucza*, Warsaw 2015, pp. 5–8.

<sup>45</sup> *Wyrok WSA o homomałżeństwach rażąco sprzeczny z polską konstytucją!*, <https://wpolityce.pl/polityka/433489-wyrok-wsa-o-homomalzenstwach-razaco-sprzecny-z-konstytucja> (19.09.2020).

leave the ruling party a lot of freedom, and the possibility of institutionalizing permanent unions of non-heteronormative persons requires not so much an amendment to the Constitution as a political will to find a solution.

## Literature

- Banaszkiewicz B., *Małżeństwo jako związek kobiety i mężczyzny. O niektórych implikacjach art. 18 Konstytucji RP*, "Kwartalnik Prawa Prywatnego" 2013, No. 3.
- Banaszkiewicz B., *Problem konstytucyjnej oceny instytucjonalizacji związków homoseksualnych*, "Kwartalnik Prawa Prywatnego" 2004, No. 2.
- Dudek D., *Opinia w sprawie projektu ustawy o związkach partnerskich*, "Przegląd Sejmowy" 2012, No. 4.
- Jezusek A., *Możliwość instytucjonalizacji związków osób tej samej płci w świetle art. 18 Konstytucji RP*, "Przegląd Sejmowy" 2015, No. 4.
- John Paul II, *Encyclical Evangelium vitae*, 1995, [http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html).
- Kowalczyk K., *Kościół rzymskokatolicki w Polsce jako podmiot oddziałujący na system polityczny. Casus ustawy o związkach partnerskich*, "Colloquium Wydziału Nauk Humanistycznych i Społecznych AMW" 2015, No. 4 (20).
- Lew-Starowicz Z, Lew-Starowicz M., Dulko S, *Homoseksualizm*, [in:] *Homoseksualizm w perspektywie interdyscyplinarnej*, eds. K. Slany, B. Kowalskiej, M. Śmietany, Kraków 2008.
- Łętowska E., Woleński J., *Instytucjonalizacja związków partnerskich a konstytucja RP z 1997*, "Państwo i Prawo" 2013, No. 6.
- Mączyński A., *Konstytucyjne i międzynarodowe uwarunkowania instytucjonalizacji związków homoseksualnych*, [in:] *Związki partnerskie. Debata na temat projektowanych zmian prawnych*, ed. M. Andrzejewski, Toruń 2013.
- Nazar M., *Konkubinat a małżeństwo – wybrane zagadnienia*, [in:] *Księga jubileuszowa prof. dr hab. Tadeusza Smyczyńskiego*, eds. M. Andrzejewski, L. Kociucki, M. Łączkowska, A. Schulz, Toruń 2008.
- Nazar M., *Niektóre zagadnienia małżeństwa i rodziny w świetle unormowań Konstytucji RP z dnia 2 kwietnia 1997 r.*, "Rejent" 1997, No. 5.
- Pawliczak J., *Zarejestrowany związek partnerski a małżeństwo*, Warsaw 2014.
- Piotrowski R., *Opinia w sprawie projektu ustawy o związkach partnerskich*, "Przegląd Sejmowy" 2012, No. 4.
- Smyczyński T., *Małżeństwo — konkubinat — związek partnerski*, [in:] *Związki partnerskie. Debata na temat projektowanych zmian prawnych*, ed. M. Andrzejewski, Toruń 2013.

- Smyczyński T., *Prawo rodzinne i stosunki rodzinno prawne*, [in:] *System prawa prywatnego*, vol. 11, *Prawo rodzinne i opiekuńcze*, ed. T. Smyczyński, Warsaw 2009.
- Sobański R., *Związki partnerskie*, "Forum Iuridicum" 2003, No. 2.
- Stusiński J., *Historia seksuologii. Zwiastuny myśli seksuologicznej*, "Przegląd Seksuologiczny" 2016.
- Szukalski P., *Zachowania homoseksualne i postawy wobec homoseksualizmu. Analiza porównawcza Polski i krajów wysoko rozwiniętych*, [in:] *Homoseksualizm w perspektywie interdyscyplinarnej*, eds. K. Slany, B. Kowalska, M. Śmietany, Kraków 2008.
- Szydło M., *Instytucjonalizacja związków partnerskich w świetle art. 18 i 32 Konstytucji RP*, "Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu" 2017, No. 4 (56).
- Warner C.M., *Confessions of an Interest Group. The Catholic Church and Political Parties in Europe*, New Jersey 2000.
- Winczorek P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warsaw 2008.
- Wyrzykowski M., *Publiczne a prywatne w wykładni konstytucyjnej na przykładzie art. 18 Konstytucji RP*, [in:] *Interes publiczny a interes prywatny w prawie*, ed. T. Giaro, Warsaw 2011.