

CHAPTER 7

CONSTITUTIONAL FOUNDATIONS OF FAMILY POLICY



PAWEŁ SOBCZYK

Abstract

Family policy comprises ‘the totality of legal norms, actions, and measures launched by the state in order to create appropriate conditions for the family to come into being, to develop correctly, and to fulfil all socially important functions’. Owing to the hierarchical structure of modern legal systems, a special part of family law should be attributed to the Constitution as a fundamental law, normalising the foundations of the state system and the legal status of its citizens, enacted in a special procedure. Given their level of generality, the norms contained in the Constitution as the fundamental law of the state require clarification and elaboration in lower-level Acts, most often in ordinary laws and executive Acts issued by executive authorities. This chapter aims, first, to determine if and what the constitutional basis of family policy is in the Central European countries of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovakia, Slovenia, and Hungary. Second, the chapter undertakes a decoding of the constitutional provisions on the protection of the family, marriage, children, and the mother before and after childbirth in these countries to find common solutions for Central European constitutionalism in family policy. Third, an analysis of the constitutional provisions of the above-mentioned countries seeks to determine an optimal model from the perspective of the implementation of family policy and its fundamental goal of stabilising and supporting family life by meeting the needs of families, and (perhaps) to establish a model for a ‘constitutional family policy’ for Central Europe.

Keywords: Child, constitution, demography, family, family policy

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1. Introduction – family policy

‘Family policy is the totality of legal norms, actions and measures activated by the state in order to create appropriate living conditions for the family: its formation, its proper functioning and its fulfilment of all important social roles’.¹ The aim of family policy is to stabilise and support family life by meeting the needs of families. It is important given that these needs affect a large proportion of the population.²

The concept of ‘family policy’ is not new. It is assumed to have been used as early as the 1940s within European discussions on social policy in relation to families and children. Later, the term came to be associated with the term ‘government action in favour of children and their families, especially such state policy aimed at influencing the situation of families, with children, or of individuals in their family roles’.³ The rationale behind family policy is society’s ‘need’ for children ‘to be healthy, well-educated and, in the future, to be productive workers, citizens and parents’.⁴

Family policy is based first and foremost on legislation, through which the state seeks to create appropriate living conditions for families. In this way, through its law-making activity, the state can stimulate and support demographic processes and influence the families’ quality of life, especially that of families with many children because they are under its protection and care and, on in some modern European Constitutions, even ‘special’.

Owing to the hierarchical structure of modern legal systems, a special part in family policy should be attributed to the Constitution as a fundamental law, normalising the foundations of the state system and the legal status of its citizens and enacted in a special procedure.⁵ As Hans Kelsen wrote, ‘The constitution is the

1 Kamerman, 1994.

2 Zimmerman, 1995. Similarly, in the Polish literature on the subject, family policy is defined by Kurzynowski as ‘the totality of legal norms, actions and measures launched by the state in order to create appropriate conditions for the family to come into being, to develop correctly and to fulfil all socially important functions. The objectives of family policy can be defined as the creation of general conditions for the formation, development and satisfaction of the living and cultural needs of the family, optimal conditions for the education and upbringing of the young generation and equality of their start in life and at work – equality of life chances’. Kurzynowski 1991.

3 Balcerzak-Paradowska, 2004.

4 Kemeran, 1994.

5 A very interesting compendium on the history and contemporary concept of constitution is contained in a study: ‘The author begins his reflections with an analysis of the etymology and meanings of the term “constitution”. The word is derived from *constituere*, a Latin verb meaning to construct; to establish; to resolve, to place, which – as we can guess – refers to the foundations of a state’s system of government. So the constitution means a regulation, order or decree being a result of such establishment. The meanings of this term are subsequently discussed. Then, the author reviews various definitions of the constitution, starting with 18th c. definitions and ending with 20th c. ones, on the basis of mostly German, Anglo-Saxon, French and Polish literature. Subsequently, the author formulates his own definition of the constitution. He arrives at the conclusion that this is the basic law regulating the foundations of a state’s system of government and the legal status of its citizens, which law is passed according to a special procedure’. Malajny, 2018, pp. 3–22.

principle that determines the creation of laws, the general norms which the organs of the state, in particular the courts and state officials, are tasked with enforcing. This rule for the creation of legal norms which, above all, shape the state system, this definition of the organs and procedures of the legislature – is the actual, original and narrower conception of the constitution'.⁶

The Polish 'Constitutional Tribunal considers that one of the features of the Constitution, as a fundamental law, is its character of a normative act, i.e. an act entirely constructed of provisions that may constitute the foundation for the construction of legal norms. Although, as already mentioned, the degree of precision and concreteness of individual provisions of the Constitution varies, this does not change the fact that the possibility of extracting specific legal content from each of them should be presumed'.⁷

A hierarchically ordered legal system is based not only on the assumption of concretisation of the Constitution by laws but also on the assumption of elimination from this system of norms contrary to the Constitution. This elimination is carried out based on the rules of exegesis adopted in the legal system. Among these rules, the conflict rule *lex superior derogat legi inferiori* plays a special role. However, it should be emphasised that the application of this rule gives rise to several theoretical and practical difficulties.⁸

Given their level of generality, the norms contained in the Constitution as the fundamental law of the state require clarification and elaboration in lower-level Acts, most often in ordinary laws and executive Acts issued by executive authorities. In some cases, the system legislator explicitly indicates that a specific matter requires regulation in an Act of subconstitutional rank, thereby obliging the legislator to be active in the area of legislation. Hence, it is difficult to overestimate the significance of constitutional guarantees, not only in relation to family policy.

With the above in mind, this chapter aims, first, to determine if and what the constitutional basis of family policy is in the Central European countries of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovakia, Slovenia, and Hungary. Second, it undertakes a decoding of the constitutional provisions on the protection of the family, marriage, children, and the mother before and after childbirth in these countries to find common solutions for Central European constitutionalism in family policy. Third, an analysis of the constitutional provisions of the above-mentioned countries seeks to determine an optimal model from the perspective of the implementation of family policy and its fundamental goal of stabilising and supporting family life by meeting the needs of families, and (perhaps) to establish a model for a 'constitutional family policy' for Central Europe.

6 Kelsen, 1923.

7 Order of the Constitutional Tribunal of 22 March 2000, ref. no. P 12/98, OTK ZU 2000, No. 2 item 67.

8 Wronkowska, 2001.

2. Constitutional guarantees for family policy in Central European states – an overview

2.1. Constitution of the Republic of Croatia of 22 December 1990

The 1990 Constitution of the Republic of Croatia⁹ was the first new Constitution in the countries of Central and Eastern Europe. It was enacted after the political transformation that began in Poland in 1989 and that contributed to the transformation of the political, social, and economic systems in the countries in this part of Europe. This Constitution refers to Western European solutions,¹⁰ both in terms of the state system (the principle of the separation of powers and other related principles) and the regulation of the status of the individual in the state.¹¹

Title II of the Constitution of Croatia ('Basic Provisions') begins with Art. 1, which lists the four guiding ideas of the political system in the country: the republican form of government, unitarism, democracy, and the welfare state.¹² This article states, 'The Republic of Croatia is a unitary and indivisible democratic and social state'. The following footnote is a clear reference to the German doctrine of the social legal state, that is, the protection and support of citizens, including the family.¹³

Of relevance to the family issues at hand are two articles that form a subtitle on economic, social, and cultural rights.¹⁴ Art. 55 reads, 'Each employee shall be entitled to remuneration enabling him/her to ensure a free and decent life for himself/herself and his/her family'. This is the realisation of inviolable dignity, from which other rights, including social rights, follow.¹⁵ Wages in themselves are protected as a lever to secure the basic needs of the family.¹⁶ In turn, Art. 51 states, 'Everyone shall participate in the defrayment of public expenses, in accordance with their economic capacity. The tax system shall be based upon the principles of equality and equity'.¹⁷ This provision provides for social justice and proportional equal participation in public expenses, which are then redistributed as support for families and children, among others.¹⁸

As can be seen from the provisions cited above, the Croatian legislator has only indirectly addressed the issue of family protection through a general statement that

9 The consolidated text of the Constitution of the Republic of Croatia as of 15 January 2014. Edited and translated by the Constitutional Court of the Republic of Croatia. Consolidated text, Official Gazette Nos. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.

10 Poniatowski, 2022, pp. 13–35.

11 Garlicka and Garlicki, 2007.

12 Karp and Grzybowski, 2007, pp. 18–22.

13 Rodin, 1998, pp. 111–118.

14 Graovac, 2021, pp. 37–76.

15 Graovac, 2022, pp. 37–72.

16 Josipović, 2016.

17 Składowski, 2013, pp. 65–104.

18 Garlicka and Garlicki, 2007.

Croatia is a ‘social state’. Guarantees regarding the provision of wages to employees that enable them to live with dignity ‘for himself/herself and his/her family’, to which a fair tax system is also supposed to contribute, are also only indirectly addressed.¹⁹ The conglomerate of welfare state provisions indicates that the state is responsible for the family and, through selected instruments, can stimulate family policy, in particular, towards improving fertility rates.²⁰

2.2. Constitution of Romania of 21 November 1991

Romania’s Constitution was adopted on 21 November 1991²¹, less than a year and a half after the start of constitutional work, spurred on by the presidential and parliamentary elections of 30 May 1990. This Constitution was adopted in a referendum on 8 December 1991.

Among the general principles indicated in the Romanian Constitution, the following is of particular relevance to this chapter: ‘Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed’. According to Ros, ‘The concept of the welfare state is a result of the proximity between political power and civil society. The conception about legal state — proper for an industrial emancipated society — requires a balance between state intervention in the social and economic life, and liberal democratic principles and also, the state assumes the fact that has the obligation to ensure a decent life for its citizen’.²²

In the extremely comprehensive ‘Title II – Fundamental rights, freedoms, and duties’, there is no provision that directly refers to family policy. Nevertheless, as in other Constitutions of Central European States, the Romanian legislature has affirmed a number of freedoms and rights that relate to matters of marriage, family, maternity, and the protection and care of children and young people.²³ It follows from Art. 26 that (1) ‘The public authorities shall respect and protect the intimate, family and private life, (2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals’. What emerges from this footnote is not just the concept of family life but the notion of individual and family self-determination in accordance with the constitutionally prescribed framework.²⁴

19 Karp and Grzybowski, 2007, p. 18–22.

20 Puljiz, 2000, pp. 61–79.

21 See: www.cdep.ro, Monitorul Oficial al României part I, no. 767 of 31 X 2003. English text of the Romanian Constitution, available at: <https://www.cdep.ro/pls/dic/site2015.page?id=371&idl=2&par1=2> (Accessed: 25 April 2024).

22 Ros, 2011, pp. 16–28.

23 Zlatescu, 2013.

24 Varga, 2022, pp. 221–240.

Art. 29(6) on freedom of conscience enshrines the guarantee that '[p]arents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them'. It is clear from this text that the Romanian Constitution upholds freedom of conscience while guaranteeing the right of parents or legal tutors to educate their children in accordance with their own convictions.²⁵

In turn, Art. 34(3), dedicated to the 'Right to protection of health', indicates that '[t]he organization of the medical care and social security system in case of sickness, accidents, *maternity* [emphasis added by the author] and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law'. The Constitution also refers to the protection of health, with an emphasis on maternity, which provides a high level of protection for pregnant women.²⁶

Among the guarantees concerning the status of the individual, the Romanian legislator refers directly to the family. Art. 48, in particular, entitled 'Family', is devoted to these issues: '(1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children. (2) The terms for entering into marriage dissolution and nullity of marriage shall be established by law. Religious wedding may be celebrated only after the civil marriage. (3) Children born out of wedlock are equal before the law with those born in wedlock'. This regulation of the Constitution constitutes the ideological foundation for the institution of the family in Romania. In retrospect, the strong position of the family should be viewed positively due to the civilisational and cultural changes affecting legislation.²⁷

The legal framework on family policy is complemented by a provision protecting children. In the comprehensive Article 49 of the Constitution, entitled 'Protection of children and young people', the Romanian legislator has included the following specific guarantees:

- (1) Children and young people shall enjoy special protection and assistance in the pursuit of their rights.
- (2) The State shall grant allowances for children and benefits for the care of ill or disabled children. Other forms of social protection for children and young people shall be established by law.
- (3) The exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development are prohibited.
- (4) Minors under the age of fifteen may not be employed for any paid labour.
- (5) The public authorities are bound to contribute to secure the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country.

²⁵ Simion and Criste, 2017, pp. 263–272.

²⁶ Șaramet, 2020, pp. 29–40.

²⁷ Varga, 2022, pp. 221–240.

This regulation, on the one hand, broadly protects children and young people and, on the other, provides for their activation and the provision of conditions for their participation in the public life of the country.²⁸

It is important to note that in the Romanian Constitution, as in the Constitution of the Republic of Poland, the issue of the status of the individual (freedoms, rights, and citizenship) is placed before the solutions concerning systemic issues. Title II of the Romanian Constitution includes: Common provisions (Chapter I), Fundamental rights and freedoms (Chapter II), Fundamental duties (Chapter III), and Advocate of the People (Chapter IV).²⁹ Such an arrangement confirms the hierarchy of constitutionally protected values as the guarantees concerning the status of the individual have been placed before provisions concerning the organisation and exercise of power in the state.

2.3. Constitution of the Republic of Slovenia of 23 December 1991

On 23 December 1991, the Slovenian Assembly adopted the Constitution of the Republic of Slovenia, which, as the supreme legal act of the new state, laid the foundations of state power and the position of individuals in the country.³⁰ It should be mentioned that Slovenia became a sovereign state on 25 June 1991 when the Assembly of the Republic of Slovenia adopted the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia.³¹

The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons in its territory irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the treaties in force. The Italian and Hungarian national communities in the Republic of Slovenia and their members are guaranteed all rights deriving from the Constitution of the Republic of Slovenia and the treaties in force.³²

Art. 2 of the Constitution, found among the ‘General provisions’, lays down that ‘Slovenia is a state governed by the rule of law and a social state’, which undoubtedly has indirect implications for the state’s family policy.³³ As Mavčič points out, ‘The principle of the rule of law (the principle of legality) means that all State bodies must act on the basis of the constitution and statutes. Any self-interest which is imposed on the principle of expedience is, as a rule, excluded. The principle of the rule of law or the principle of legality is closely bound with the legislative function of a

28 Teaca, 2017, pp. 160–174.

29 Zlatescu, 2013.

30 See: www.dz-rs.si, <http://biblioteka.sejm.gov.pl/konstytucje-swiata-slowenia/>. English text of the Constitution, available at: <https://tinyurl.com/y23yx3u8>. Text published in ‘Uradni List Republike Slovenije’ 1991 R. I No. 1–4 of 25 July 1991.

31 See: Republika Slovenija, n.d.

32 Mavčič, 2009, pp. 14–19.

33 Kraljić, 2021, pp. 255–286.

contemporary State. Because a statute is the most direct reflection of sovereignty, the activity of the administration and the judiciary must be subordinated to a statute; within this scope, the principle of legality and the rule of law are reflected'.³⁴

The detailed regulations on the status of the individual are formulated in chapter (part) two of the Constitution, entitled 'Human rights and fundamental freedoms'. Within the provisions of this chapter, four articles attract particular attention from a family policy perspective. The first of these (Art. 53. 'Marriage and the family') states that marriage is based on the equality of spouses:

Marriages shall be solemnised before an empowered state authority. Marriage and the legal relations within it and the family, as well as those within an extramarital union, shall be regulated by law. The state shall protect the family, motherhood, fatherhood, children, and young people and shall create the necessary conditions for such protection.

This provision indicates the object and subjects of protection. The Slovenian Constitution is part of a trend observed in Central European countries to protect the family, motherhood, fatherhood, and children as the basis of the demographic system of the state.³⁵

In contrast, Art. 54 guarantees the fundamental rights of parents and formulates their duties:

Parents have the right and duty to maintain, educate, and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. Children born out of wedlock have the same rights as children born within it.

Both the right and the duty to provide education and care for children derive from this regulation. Characteristic of the Slovenian Constitution is the indication of the possibility to terminate parental rights, which is a sign of a certain modernism.³⁶

Central to the considerations at hand are the guarantees on the freedom to decide whether to bear children: 'Everyone shall be free to decide whether to bear children'. This freedom is related to the state's obligation to 'guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children'. The above guarantees are found in Art. 54 of the Slovenian Constitution. The Slovenian legislature formulates relatively detailed – for the constitutional level – guarantees of children's rights.³⁷ Indeed, Art. 56 of the Constitution states,

34 Mavčič, 2009, p. 21.

35 Mavčič, 2008, pp. 271–299.

36 Kraljić, 2022, pp. 217–251.

37 Ibid.

Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity. Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse. Such protection shall be regulated by law. Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Their position shall be regulated by law.

This indicates that children are protected across the economic, social, cultural, physical, and psychological dimensions. Children who do not have parents remain under special protection – the Constitution refers here to a separate law, which sets out the state’s obligations towards this group of children.³⁸

It should be pointed out that the Slovenian Constitution regulates family policy issues on an ongoing basis. It provides a certain core that refers to special laws, thus ensuring the flexibility of this policy.³⁹

2.4. Constitution of the Slovak Republic of 1 September 1992

The Constitution of the Slovak Republic⁴⁰ was adopted by the Parliament on 1 September 1992 and entered into force one month later. Earlier, on 17 July 1992, the Slovak National Council adopted the Declaration of Sovereignty of the Slovak Republic as the basis of the sovereign state of the Slovak people.⁴¹

In the Constitution of Slovakia, as in several other basic laws of Central European states, issues concerning the status of the individual are regulated in the chapter preceding the institutional regulations devoted to the most important organs of the state.⁴² This legislative solution is an expression of the importance that the legislature attaches to the freedoms, rights, and duties of the human being and the citizen.⁴³

The general norm prescribing the protection of human life is formulated in Art. 15 of the Slovak Constitution:

38 Pavlovic, 2001, pp. 130–151.

39 Malačič, 2005, pp. 11–18.

40 ‘Zbierka zákonov Slovenskej republiky’: no. 244 of 1998. English text: <https://www.ustavnysud.sk/en/ustava-slovenskej-republiky>. In Slovak, ‘Ústava Slovenskej republiky’.

41 Cibulka, 1995, pp. 95–115.

42 As noted by Skotnicki, ‘The Constitution of the Slovak Republic refers in its content to the legacy of Czechoslovak constitutionalism, both of the interwar period and of the socialist state, as well as to the regulations that were adopted after November 1989. This is evident both in the construction of the supreme organs of the state and their mutual relations (this applies in particular to the Parliament and the president), as well as in the inclusion of many citizens’ social rights in the Basic Law. The act is also very clearly modelled on the Czechoslovak Charter of Fundamental Rights and Freedoms of 9 January 1991, a number of whose provisions it transposes verbatim’. Skotnicki, 2003, p. 19.

43 Chmielewski, 2011, pp. 26–36; Cacko, 2012.

(1) Everyone has the right to life. Human life is worthy of protection already before birth. (2) No one may be deprived of life. (3) Capital punishment is not permitted. (4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law.

At first glance, it would seem that the Slovak Constitution broadly guarantees the right to life. However, the constitutional framework is only a guideline for the statutory regulations and the moral-ethical discourse that takes place in Slovakia between the pro-life and pro-choice communities.⁴⁴ This is also confirmed by the position of the Constitutional Court, which indicates that,

The task of the Constitutional Court in this proceeding is neither to answer the philosophical, moral, or ethical question about the beginning of the human life, nor to answer the question about rightness or morality of abortions, nor to answer the question about optimal legal regulation of abortions in the Slovak Republic. The task of the Constitutional Court is to answer the question, what are the constitutional limits which the Constitution imposes on the legislator in the abortion issues.

On the other hand, in Art. 38, the Slovak legislature formulates specific rules on health protection:

(1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work, as well as to special working conditions. (2) Minors and persons with impaired health are entitled to special protection in labour relations and to assistance in professional training. (3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

The Slovak state is obliged by law to provide citizens with free healthcare and hygiene assistance, based on health insurance.⁴⁵ Moreover, special protection should be given to women, minors, and persons with a deteriorated state of health. Three factors have influenced this shape of the existing regulations: tradition, doctrine, and economics.⁴⁶

Crucial from the perspective of family policy, however, are the provisions contained in Art 41 of the Constitution.⁴⁷ The general guarantees are enshrined in the first paragraph: '(1) Marriage is a unique union between a man and a woman. The Slovak Republic comprehensively protects and cherishes marriage for its own good'. The subsequent paragraphs of this article elaborate on its provisions. Attention should be drawn, in particular, to the content of Article 41(2), 'Special care, protection in

44 Laclavíková and Švecová, 2019, pp. 131–141.

45 Garayová, 2022, pp. 253–291.

46 Zvolenská, 2014, pp. 88–101.

47 Garayová, 2021, pp. 221–254.

labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy’, and the obligation of the State formulated in paragraph 5 of this provision, ‘Parents caring for children are entitled to assistance from the state’. For the sake of completeness, it should be highlighted that the Slovak legislature has equalised the rights of children born in and out of wedlock (Article 41(3): ‘Children born in and out of wedlock enjoy equal rights’) and guarantees the right of parents to care for and raise their children (Art. 41(4)) ‘Child care and upbringing are the rights of parents; children have the right to parental care and upbringing. Parents’ rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law’⁴⁸. The provision of Art. 41 is a buckle linking the aspects of marriage and the protection of the youngest members of society as the clearest starting point for the creation of migration policies. However, Slovakia is a country with heated debates on worldviews, evidenced by the fact that a referendum on the traditional family took place in 2015 but was declared invalid due to insufficient turnout (21.41%). In addition, there may be legal changes in the future that will affect the shape of constitutional provisions and pro-family and migration policies.⁴⁹

The ‘Common provisions for chapters one and two’ include, among other provisions, the following:

Article 51 (1) The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions. (2) The conditions and scope of limitations of the basic rights and freedoms during war, under the state of war, martial state and state of emergency shall be laid down by the constitutional law.

This provision imposes a certain safety clause for the assertion of selected rights.⁵⁰

As an aside, it is important to note the position of the Slovak Constitutional Court on how a legal norm concerning fundamental rights and freedoms in the Slovak Republic should be interpreted. Upon the settlement of a case related to the right to property, the Constitutional Court stated that,

the interpretation of a legal provision cannot limit, or possibly prohibit, the actual exercise of a fundamental right. A gap in a legal regulation cannot result in a violation of a given right guaranteed by the Constitution of the Slovak Republic. In such a case, it is necessary to make an interpretation that not only does not violate this right, but, on the contrary, guarantees it.⁵¹

48 Lanczová and Laclavíková, 2018, pp. 205–228.

49 Krosiak, 2015, pp. 149–167.

50 Chmielewski, 2009, pp. 35–48.

51 Breichová Lapčáková and Chmielewski, 2017.

2.5. Constitution of the Czech Republic of 16 December 1992

The Constitution of the Czech Republic⁵² of 16 December 1992 replaced the Constitution of the Czechoslovak Republic on the territory of the Czech Republic. The Basic Law, in force since 1 January 1993, stipulates, *inter alia*, that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law based on respect for human and civil rights and freedoms.⁵³ Divided into eight chapters, the Constitution regulates matters of the state system and, above all, the political system, including the legislative, executive, and judicial powers.⁵⁴

Following the example of French constitutional solutions, the 1992 Constitution of the Czech Republic does not address issues directly related to the status of the individual. Instead, these issues are addressed by the Resolution of the Presidium of the Czech National Council of 16 December 1992 on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.⁵⁵ Art. 32 of the Charter is devoted to the family, as follows:

(1) Motherhood and the family are under the protection of the law. Special protection shall be provided for children and adolescents. (2) A pregnant woman shall be guaranteed special care, protection of the employment relationship and proper working conditions. (3) Children born within and outside marriage shall have equal rights. (4) The care and upbringing of children is the right of parents; children have the right to parental upbringing and care. The rights of parents may be restricted, and minor children may be separated from their parents against their will only by a court decision based on the law. (5) Parents who have custody of their children shall be entitled to state support. (6) The details shall be determined by law.” The provision comprehensively addresses family policy through the multi-faceted protection of motherhood, children, and parents.⁵⁶

52 Text in Czech, available at: <https://www.hrad.cz/cs/ceska-republika/ustava-cr> ‘Sbírka zákonů České republiky’, no. 1/1993. In Czech ‘Ústava České republiky’.

53 Kruk, 2018, pp. 47–62.

54 Witkowski and Jirásková, 2014, pp. 15–27.

55 The text of the resolution and the text of the Charter were promulgated in ‘Sbírka zákonů České republiky’ 1993 No. 1 of 28 December 1992, pp. 17–23. It is worth recalling the text of the preamble to the Charter: ‘The Federal Assembly, on the basis of the drafts of the Czech National Council and the Slovak National Council, recognising the inviolability of the inherent rights of man, the rights of the citizen and the primacy of the law, referring to the universally accepted values of mankind and to the democratic and self-governing traditions of our peoples, remembering the bitter experience of the times when human rights and fundamental freedoms were suppressed in our homeland, Nourishing the hope that these rights will be guaranteed by the joint efforts of all free peoples, Recognizing the rights of the Czech and Slovak peoples to self-determination, Conscious of their share of responsibility towards future generations for the fate of all life on earth, Expressing the will that the Czech and Slovak Federal Republic shall enter with dignity among the States whose values it respects, have adopted this Charter of Fundamental Rights and Freedoms’.

56 Králíčková, 2021, pp. 77–110.

As can be seen from the above, the Czech legislator did not explicitly address the issue of family policy but, nevertheless, confirmed that maternity and the family are under the protection of the law. A pregnant woman is guaranteed special care,⁵⁷ protection of the employment relationship, and proper working conditions.⁵⁸

It should be noted that, in accordance with Art. 41 (1) of the Charter, the rights referred to in Arts. 26, 27 (4), 28 to 31, 32 (1) and (3), 33, and 35 of the Charter may be asserted only within the limits of the laws that implement these provisions. At the same time, '(2) Whenever the Charter refers to a law, it shall be understood to mean a law of the Federal Assembly, insofar as it does not follow from the constitutional division of legislative powers that it is for the laws of the National Councils to regulate'.⁵⁹

2.6. Constitution of the Republic of Poland of 2 April 1997

As mentioned in the above discussion on the Constitution of Croatia, the political changes in Central Europe began first in Poland with the amendment of the Constitution of the Polish People's Republic of 1952 in April and December 1989 and the partially free parliamentary elections that took place on 4 June 1989. Unfortunately, numerous political disputes, the twice-shortened terms of office of the Sejm and the Senate, and the lack of clear systemic foundations for the adoption of the new Constitution meant that the new Polish Constitution was only adopted on 2 April 1997 by the National Assembly, adopted in a referendum on 25 May 1997, and entered into force on 17 October 1997.

After a long and sometimes stormy discussion at the Constitutional Committee of the National Assembly and the National Assembly, it was possible to work out a consensus on not only the basic systemic solutions concerning the organisation and manner of exercising power in the state but also the status of the individual.

There are no solutions in the Polish Constitution that directly refer to family policy.⁶⁰ Nevertheless, both the first chapter, entitled 'Republic', and the second chapter, 'Freedoms, rights and duties of man and citizen', include provisions indirectly referring to this subject.

It follows from Art. 18 of the Constitution of the Republic of Poland that '[m]arriage as a union between a man and a woman, family, maternity and parenthood are under the protection and guardianship of the Republic of Poland'. When formulating the above norm, the legislator was undoubtedly guided by the awareness of the value of marriage and family and their importance for the existence and functioning of the nation.⁸ In the light of the axiology adopted in the Constitution in force in Poland, the family and marriage are values that occupy a particularly high rank in the hierarchy of constitutional values.⁹

57 Králíčková, 2022, pp. 73–104.

58 Králíčková, 2021 pp. 85–98.

59 Zemánek, 2007, pp. 418–435.

60 Andrzejewski, 2021, pp. 151–190.

Specific principles are formulated in Chapter Two of the Polish Basic Law among the provisions regulating human and civil freedoms and rights. It follows, *inter alia*, that the status of marriage, family, maternity, and parenthood is based on the following provisions: Art. 33(1) – the principle of equality between women and men in family life; Art. 47 – the right to the legal protection of private life, family life, honour, and reputation and to decide on one’s own personal life; Art. 48(1) – the right of parents to bring up their children in accordance with their own convictions; Art. 48 – the right of children to an upbringing that takes into account their level of maturity and their freedom of conscience, religion, and belief; Art. 53(3) – the right of parents to ensure that their children are brought up and receive moral and religious instruction in accordance with the parents’ convictions; Arts. 64(1) and (2) – right of inheritance; Art. 65(3) – the prohibition of the employment of children under the age of 16; Art. 68(3) – the right of children and pregnant women to special health care; Art. 68(5) – the promotion by public authorities of the development of physical culture, especially among children and young people; Art. 70(3) – the freedom of parents to choose for their children schools other than public ones; Art. 71(1) sentence 1 – the state’s taking into account, in its social and economic policies, of the welfare of the family; Art. 71(1), sentence 2 – the right of a family in a difficult material and social situation, particularly one with many children and one-parent families, to special assistance from the public authorities; and Art. 71(2) – the right of the mother to special assistance from the public authorities before and after the birth of her child.⁶¹

Of the above provisions, the guarantees enshrined in Art. 71 are of key importance for family policy in the state:

The state, in its social and economic policy, takes into account the good of families. Families in a difficult financial and social situation, especially those with many children and single-parent families, have the right to special assistance from the public authorities. The mother, before and after the birth of her child, has the right to special assistance from the public authorities.

According to the Polish Constitutional Tribunal, Arts. 71(1) and (2) of the Constitution of the Republic of Poland, indicated above in its title, orders the organs of public authority to ‘pursue such social and economic policy which takes into account the good of the family and grants families in a difficult material and social situation the right to special assistance from public authorities’.¹³ In accordance with its place in the scheme of the Fundamental Law, this provision focuses on social aspects, in other words, (1) the state’s obligations towards the family and (2) the assistance provided to a mother in connection with the birth of a child (2).

In the interpretation of the Constitutional Tribunal, the constitutional legislator, ‘by ordering general concern for the well-being of every family, has determined that families in difficulty benefit from “specific” assistance – that is, beyond the scope of

61 Syryt, 2023, pp. 975–1010.

“ordinary” consideration of their needs’.⁶² Assistance to families in difficult material and social situations, especially those with many children and single-parent families, should go beyond the usual assistance provided to those supporting children or other individuals.⁶³ The interpretation of the terms ‘family welfare’ and ‘special assistance’ plays an important role in the implementation process. What is the good of the family must be decided by the legislator, taking into account not only the political convictions of the majority but also the requirements that the Constitution sets in this regard. According to the Constitutional Court, ‘special assistance’ ‘undoubtedly has a concrete dimension and it is possible to determine whether the legislator has equipped the public authorities with the legal means to provide it’.⁶⁴ In paragraph 2 of the Constitutional article in question, the legislator stated that the mother has the right to special assistance from the public authorities, the scope of which shall be determined by law, before and after the birth of the child.

The constitutional norm contained in Art. 71(1) of the Constitution of the Republic of Poland of 2 April 1997 complements the general principle formulated in Art. 18 and constitutes the direct context of the title obligation of public authorities expressed in Art. 71(2).⁶⁵ This norm orders the state to ‘pursue such a social and economic policy which takes into account the good of the family and grants families in a difficult material and social situation the right to special assistance from the public authorities’. In this respect, the constitutional injunction for the state to take into account the good of the family in its social and economic policy has the character of a programmatic norm, which is primarily addressed to the public authorities. The beneficiaries of the assistance provided by the state are the family members as it is they who primarily have the capacity to be the subject of constitutional law. Material assistance provided by public authorities may not concern only a part of families on the basis of criteria that are incompatible with Art. 71(1) of the Constitution of the Republic of Poland. An example of such incompatibility is the repealed regulations concerning the single parent allowance, in which,

aid was not provided at all for families with many children, and on the other hand it was provided not only for families that are single-parent families, since the criterion of single parenting and maintenance of a child was detached from the findings as to whether in a particular situation the obligation to raise the child rests with one person or both parents.

In the Court’s view, the repealed rules for granting the allowance contributed to unequal treatment of children, differentiated on the basis of criteria not provided for by the legislator in Art. 71(1) of the Constitution.

62 Judgment of 8 May 2001, ref. P 15/00, OTK ZU 2001, No. 4, item 83; Sobczyk, 2008, p. 389.

63 Judgment of 15 November 2005, ref. P 03/05, OTK ZU 2005, No. 10A, item 115.

64 Judgment of 8 May 2001, ref. P 15/00, OTK ZU 2001, No. 4, item 83.

65 Borysiak, 2016, p. 1634.

Art. 71(2) is linked to the principle of maternity protection, which is formulated in Art. 18 of the Constitution.⁶⁶ The central point of reference of this constitutional guarantee is the birth of a child as the provision refers to the mother ‘before and after the birth of the child’. Thus, the provision applies to pregnant women and women in the first period after childbirth.⁶⁷ The obligation of public authorities to provide assistance is not clarified at constitutional level in terms of either the forms or the scope of that assistance. The legislator only indicated that it was to be ‘special’ aid, which means that the aid may go beyond the scope of simply taking into account the family’s needs.⁶⁸ It is the task of the ordinary legislator to specify the forms and scope of assistance, depending on the material and social situation of the mother.⁶⁹

Similarly, in Art. 68(3) of the Constitution of the Republic of Poland, the legislator formulated the public authorities’ obligation to provide special healthcare to children, pregnant women, people with disabilities, and older adults. As noted by the Constitutional Tribunal, ‘specific health care ex definitione goes beyond the sphere of ordinary, universal health care, and should therefore be intensified, more intensive or more specialised, i.e. adapted to the specificity of the needs characteristic of a given group of entities’.⁷⁰

This provision constitutes an exception to the principle of equality in citizens’ access to healthcare services financed from public funds, referred to in Art. 68(2) of the Constitution. Nevertheless, above-standard, privileged healthcare for pregnant women and children is understandable: in the opinion of the Constitutional Tribunal, these individuals have an increased demand for healthcare services for obvious reasons.⁷¹ As in the case of Art. 71(2) of the Constitution, the constitution-maker did not indicate the forms and methods of providing special healthcare but limited itself to defining it as ‘special healthcare’, taking into account preferences in terms of the possibility of using healthcare services.

2.7. Constitution of the Republic of Serbia of 30 September 2006

The Constitution of the Republic of Serbia was adopted by the National Assembly in Belgrade on 30 September 2006 and approved in a republican referendum on 28–29 October 2006.⁷² It is evident from the very first article of this Constitution that the ‘Republic of Serbia is a state of Serbian people and all citizens

66 Smyczyński, 2022, p. 190.

67 Garlicki and Derlatka, 2016, pp. 775–776.

68 Andrzejewski, 2022, pp. 147–185.

69 Garlicki and Derlatka, 2016, p. 776.

70 Judgment of 22 July 2008 ref. K 24/07, Dz.U. 2008 no 138 item 874.

71 Judgment of 22 July 2008 ref. K 24/07, Dz.U. 2008 no 138 item 874.

72 The Constitution of the Republic of Serbia was promulgated in the Official Gazette of the Republic of Serbia ‘Službeni glasnik RS’, No. 98 of 10 November 2006. Text in both Serbian and English languages: <http://www.parlament.rs/national-assembly/important-documents.531.html>. Text in Serbian, Polish, and English: <https://biblioteka.sejm.gov.pl/konstytucje-swiata-serbia/>. (Accessed: 25 April 2024).

who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values'. This article points to the framework of the state, that is, the democratic rule of law, respect for the dignity of the individual, and the protection of the vulnerable.⁷³

Among the freedoms and human rights enshrined in the Constitution of Serbia, the Right to life is confirmed, with Art. 24 stating, 'Human life is inviolable. There shall be no death penalty in the Republic of Serbia. Cloning of human beings shall be prohibited'. The protection of life and the integrity of human life through the prohibition of human cloning is clearly indicated.⁷⁴

The right to marry and the equality of spouses is also affirmed at the constitutional level. Art. 62 lays down that,

Everyone shall have the right to decide freely on entering or dissolving a marriage. Marriage shall be entered into based on the free consent of man and woman before the state body. Contracting, duration or dissolution of marriage shall be based on the equality of man and woman. Marriage, marital and family relations shall be regulated by the law. Extramarital community shall be equal with marriage, in accordance with the law.

The right to marriage and family is treated as a universal right endorsed by the state authority. Compared to other countries in the region, the provision is characterised by its level of detail and clear definition of marital rights and obligations.⁷⁵

A corollary of the above guarantees is the 'Freedom to procreate' referred to in Art. 63: 'Everyone shall have the freedom to decide whether they shall procreate or not. The Republic of Serbia shall encourage the parents to decide to have children and assist them in this matter'. The freedom to procreate enshrined in the Constitution of Serbia is unique in contemporary Constitutions, not only of the Central European States but *in genere*. Therefore, special attention should be paid to this provision in the context of this chapter. In this article, the Serbian legislator guaranteed, as a first step, the freedom of decisions regarding procreation, and then obliged the state authorities (literally, the Republic of Serbia) to encourage ('shall encourage') parents to decide to have a child and to 'assist them in this matter'.⁷⁶

The rights of the child and the rights and duties of parents have also been guaranteed at the constitutional level in Serbia. Interestingly, the rights of the child were enshrined by the system legislator first, with the rights of parents in second place.⁷⁷ Art. 64 – 'Rights of the child', reads,

73 Bujwid-Kurek, 2011, pp. 93–115.

74 Popović, 2021, pp. 87–110.

75 Kovaček Stanić, 2021, pp. 191–220.

76 Jancić, 2021.

77 Šahović and Savić, 2016.

A child shall enjoy human rights suitable to their age and mental maturity. Every child shall have the right to personal name, entry in the registry of births, the right to learn about its ancestry, and the right to preserve its own identity. A child shall be protected from psychological, physical, economic and any other form of exploitation or abuse. A child born out of wedlock shall have the same rights as a child born in wedlock. Rights of the child and their protection shall be regulated by the law.

This exercise indicates the position of the child in Serbia's legal system and the scope of protection, which is precisely delimited.⁷⁸

With regard to parents, the Serbian legislature mentions not only their rights but also their duties. This is evident from both the title of the Art. 65, 'Rights and duties of parents', and its content:

Parents shall have the right and duty to support, provide upbringing and education to their children in which they shall be equal. All or individual rights may be revoked from one or both parents only by the ruling of the court if this is in the best interests of the child, in accordance with the law.

The provision outlines the equality of parents in participating in the upbringing of the child and indicates that only the court may limit or revoke parental rights, as long as this is in the best interests of the child.⁷⁹

Complementing the above guarantees is the constitutional-level provision of 'special protection' for the family, mother, single parent, and child in Art. 66:

Families, mothers, single parents, and any child in the Republic of Serbia shall enjoy *special protection* [emphasis added by the author] in the Republic of Serbia in accordance with the law. Mothers shall be given special support and protection before and after childbirth. Special protection shall be provided for children without parental care and mentally or physically handicapped children. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals.

It should be noted that this is another regulation characteristic of Serbia. The state specifically protects single mothers and women in the postpartum period. Moreover, the Constitution explicitly mentions the support of unaccompanied children and persons with physical and mental disabilities.⁸⁰

The guarantees enshrined in the Serbian Constitution are the most comprehensive in terms of family protection, as well as being consistent and multifaceted. Indeed, the state protects marriage, the couple, the family, the mother before and

78 Cvejić-Jančić, 2008, pp. 145–166.

79 Šahović and Savić, 2016.

80 Kovaček Stanić, 2022, pp. 187–216.

after childbirth, and children. Although the legislator does not explicitly refer to the issue of family policy, the proposed guarantees aimed at protecting marriage and the family indirectly fit into the concept of the demographic development of the country. The wording of Art. 63 of the Constitution, which implies the state's obligation to encourage and assist parents in their decision to have a child, and Art. 66 of the Constitution, which implies, *inter alia*, that '[m]others shall be given special support and protection before and after childbirth', should be considered crucial in this regard.⁸¹

2.8. Constitution of Hungary of 25 April 2011

The Hungarian Constitution was adopted by the National Assembly on 18 April 2011, signed by the President of the Republic on 25 April 2011, and came into force on 1 January 2012.⁸² Since then, the Constitution has been amended several times.⁸³

The Hungarian Constitution begins with the exhortation 'God bless the Hungarians', followed by the 'National Avowal' and the 'Foundation'⁸⁴. Among these foundations, the Hungarian legislature includes Art. L) which reads,

(1) Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman; the father shall be a man. (2) Hungary shall support the commitment to children. (3) The protection of families shall be regulated by a cardinal Act.

This article states the indisputable and fundamental role of the traditional family in the Hungarian state.⁸⁵

The Hungarian solutions in force are, therefore, a development of earlier constitutional provisions in this regard. In addition to the protection of marriage, as a union between a man and a woman, and the family, the Hungarian legislature indicates that the mother of a child can only be a woman, and the father can only be a man. Furthermore, Art. L) guarantees that 'Hungary shall support the commitment to children'.⁸⁶ Of all the provisions analysed in this chapter, this is the broadest reference to family policy, which should be understood to mean that the Hungarian

81 Golić and Logarusić, 2023, pp. 34–56.

82 The Hungarian Constitution was published in the official publication organ 'Magyar Közlöny', No. 43/2011. English text version: <https://njt.hu/jogszabaly/en/2011-4301-02-00> (Accessed: 25 April 2024).

83 Varga, 2021, pp. 245–278.

84 Csink and Fröhlich, 2012, pp. 12–25.

85 Bielecki, 2020, p. 24.

86 Constitution of Hungary.

state will support both parents to create the conditions for the birth of children and support children after birth.⁸⁷

The issues concerning the status of the individual are located immediately after the 'Foundation' and before the constitutional part of the Hungarian Basic Law. As in other constitutions of Central European states where this solution has been adopted, this clearly indicates the position of the individual in the state. Among 'Freedom and Responsibility', several provisions should be highlighted that indirectly refer to family policy.

The guarantees of human dignity deserve special recognition, not least from the point of view of the deliberations carried out. Article II of the Hungarian Constitution states that '[h]uman dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception'. What distinguishes the Hungarian guarantees from those of other Constitutions is the protection of human life from the moment of conception, in the context of human dignity ('the life of the foetus shall be protected from the moment of conception').⁸⁸

Important guarantees in the field of child protection, although not explicitly related to family policy, derive from Art. XVI, which reads,

(1) Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country. (2) Parents shall have the right to choose the upbringing to be given to their children. (3) Parents shall be obliged to take care of their minor children. This obligation shall include the provision of schooling for their children. (4) Adult children shall be obliged to take care of their parents if they are in need.

The provision is a guarantee for the care and development of children in a Christian spirit. The protection here is twofold: first, on the part of the parents, and second, on the part of state institutions.⁸⁹ An elaboration of the guarantee for the protection of children is provided for by Art. XVIII, which states, '(1) The employment of children shall be prohibited, except in those cases specified in an Act where there is no risk to their physical, mental or moral development. (2) By means of separate measures, Hungary shall ensure the protection of young people and parents at work'.

The solutions adopted in Art. XIX should be regarded as similar to the constitutional guarantees in other countries in terms of social support for families:

87 Sápi, 2021, pp. 111–150.

88 Deli and Kukorelli, 2015, pp. 337–347, pp. 341–343.

89 Murray, Swadener, and Smith, 2019.

(1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act. (2) Hungary shall implement social security for those persons referred to in paragraph (1) and for others in need through a system of social institutions and measures. (3) The nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary's activity. (4) Hungary shall contribute to ensuring a life of dignity for the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women.

This provision broadly refers to social issues, indicating that the Hungarian state is committed to such issues. The Constitution obliges those in power to protect older adults, sick people, and individuals with disabilities through institutionalised tools, underlining the commitment to Hungary's Catholic tradition and cultural heritage.⁹⁰

The wording of Art. XX of the Constitution stipulates interesting constitutional guarantees. While the content of the first paragraph is relatively common in modern Constitutions – (1) Everyone shall have the right to physical and mental health – paragraph (2) represents a significant *novelty*:

(2) Hungary shall promote the effective implementation of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment.⁹¹

In conclusion, it must be stated that the Hungarian legislature has unequivocally opted for the legal protection of human life from the moment of conception, which is unique in modern Constitutions.⁹² These guarantees have been – rightly – linked to human dignity. In addition, it should be noted that the other provisions of the Constitution on the protection of marriage, family, and children – which generally match the guarantees in this regard contained in the basic laws of other states – are considerably more detailed, thus obliging the ordinary legislature to take specific measures for their implementation. This limits the scope of the interpretations of the legislator and the constitutional court.⁹³

90 Szilágyi, 2021, pp. 197–219.

91 Julesz, 2018.

92 Barzó, 2022, pp. 105–146.

93 Trócsányi, 2017, pp. 23–52.

3. Summary

This chapter's analysis of the constitutional guarantees on family policy in Croatia, the Czech Republic, Poland, Romania, Serbia, Slovenia, Slovakia, and Hungary allow various conclusions to be drawn. The object and essence of any modern Constitution is to define the foundations of the state system, understood as the political, social, and economic system. The title 'family policy' of the state is not considered by the doctrine as a usual constitutional matter and is not formulated as a constitutional principle. As can be seen from this chapter's analysis, the constitutional basis of family policy can be decoded from various constitutional provisions, and its subject matter can be regarded as a component co-creating the political, social, and economic systems indicated above.⁹⁴

In the Constitutions analysed, both among the provisions concerning the foundations of the political system and, above all, among the guarantees concerning the status of the individual, there are provisions relating indirectly to family policy. As such, the legislation in the basic laws created after the political and socio-economic changes of the 1990s refer to these issues.⁹⁵

Fundamental constitutional significance is held by the guarantees, formulated in most of the Constitutions analysed herein, concerning the protection of marriage, family, and (much less frequently) maternity and paternity. Such guarantees have the character of programmatic norms, the development and implementation of which is the task of both state and local self-government authorities.

A characteristic feature of the Constitutions of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovenia, Slovakia, and Hungary is the special position of guarantees concerning the status of the individual in the systematics of these normative acts. Most often, directly after the basic decisions concerning the constitutional principles, the Constitutions contain provisions concerning the freedoms, rights, and duties of a human being and citizen. Only then are the provisions concerning the organisation and legislative, executive, and judiciary functioning of the authorities presented. This legislative technique unequivocally indicates the hierarchy of constitutional matters in the general systematics of fundamental laws. The importance of such a solution is difficult to overestimate, especially in the context of jurisprudence and the relationship between the individual and the state.

The catalogues of human and civil freedoms, and rights and obligations, are usually based on fundamental universal values (principles) such as human dignity, freedom, and equality. In this way, the legislators of the Central European states refer to international regulations for the protection of human rights, both at the universal level (Universal Declaration of Human Rights, International Covenants on Rights) and at the regional level (European Convention for the Protection of Human Rights and Fundamental Freedoms). Particularly important guarantees – not only

94 See: Sobczyk, 2022, pp. 293–339.

95 See: Barzó, 2021, pp. 287–322.

from the point of view of family policy issues – are enshrined in the Hungarian Constitution of 25 April 2011. The Hungarian constitutional legislator decided that ‘[h]uman dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception’. A characteristic feature of this provision and unique in the world is the protection of human life from the moment of conception in the context of human dignity (‘the life of the foetus shall be protected from the moment of conception’).

Crucial to family policy – understood primarily in terms of birth rate – are the constitutional provisions concerning support for the family and, especially, for the mother and child. The solutions of the Serbian Constitution of 30 September 2006 should be regarded as exemplary in this respect, not least because of their high level of detail. Art. 24 stipulates, ‘Human life is inviolable...’. However, of vital and exemplary importance for family policy is the wording of Art. 63: ‘Everyone shall have the freedom to decide whether they shall procreate or not. The Republic of Serbia shall encourage the parents to decide to have children and assist them in this matter’. The Serbian Constitution guarantees, in the first instance, the freedom to decide on procreation and obliges the Republic of Serbia to encourage (‘shall encourage’) parents to decide to have children and ‘assist them in this matter’. It is clear from this provision that the legislator attaches great importance to the issue of population growth. The remaining provisions on the protection of marriage, family, and children, which are extremely detailed for the nature of the Constitution as the basic law of the state, are contained, in particular, in Art. 66:

Families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection in the Republic of Serbia in accordance with the law. Mothers shall be given special support and protection before and after childbirth. Special protection shall be provided for children without parental care and mentally or physically handicapped children. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals.

Although similar approaches have been found in other Constitutions of Central European states (e.g. the 1997 Constitution of the Republic of Poland), they are not as detailed and multifaceted as that of Serbia.⁹⁶

This chapter’s analysis of the constitutional foundations of family policy allows for one more remark. Pro-family and pro-natalist issues have received the most attention from the legislators of the two most recent Constitutions, that is, the Serbian Constitution of 2006 and the Hungarian Constitution of 2011. In addition to worldview and political considerations, there may be several reasons for this, among which the demographic problems that affected Western Europe specifically at the turn of the 20th century and the emerging symptoms of a demographic crisis in the

⁹⁶ See: Lenkovic, 2021, pp. 9–36.

countries of central Europe at the beginning of the 21st century seem to be primary. In these states, the problems that so-called negative birth rates entail for the state were realised sooner than in others. Of course, one should be aware that constitutional guarantees will not solve the problem of ‘more coffins than cradles’ in Europe; however, they should be a strong impetus for the ordinary legislator – in accordance with the hierarchical structure of the system of sources of law – to provide all forms of support for parents, families, and children through the public authorities. Ultimately, it is up to the ordinary legislature to develop constitutional safeguards, as even the best constitutional solutions may not be sufficient if they are passive.

De lege ferenda constitutionalis, it should be postulated to the legislators in Croatia, the Czech Republic, Poland, Romania, Slovenia, and Slovakia that, as part of the constitutional amendment procedures, they should extend, specify, or, if necessary, introduce family policy guarantees into the Constitutions, following the example of the Serbian and Hungarian guarantees. In turn, *de lege ferenda*, it should be postulated that, regardless of the degree of detail in the programmatic norms concerning the obligation of public authorities to respect, protect, and care for marriage, the family, and children, legislators should, within the available methods and forms, provide at the statutory level the best possible guarantees and support in this sensitive aspect for each state. It is no coincidence that several Constitutions refer to ‘special’ protection and care for the mother, family, or child. The constitutional legislator, thus, unequivocally indicates that these are not to be standard or average measures, but special, above-average measures to which the legislative, executive, and judicial organs, and the organs of local self-government are obliged.

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