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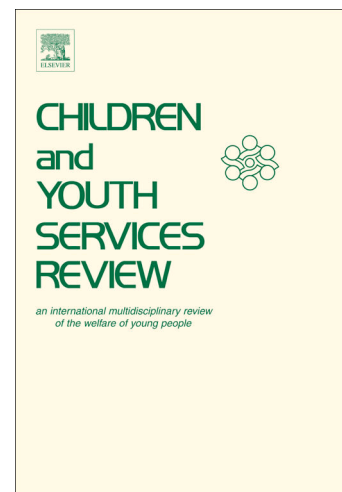
Going back to the drawing board: The picture of family support in European constitutions

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Going back to the drawing board: The picture of family support in European constitutions

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Highlights

- Value system of a society is often shaped by its constitution, affecting how society perceives family
- Modern constitutional provisions on family implicitly lean towards traditional family forms
- The notion of Family Support is rarely expressly mentioned in constitutions of European countries
- Family Support is seen as a part of supervision authority or general duty of states to assist families
- More inclusive constitutional provisions with a constructive, rights-based approach are needed

Abstract: This paper aims to explore the extent in which contemporary constitutional concepts of the family influence the recognition of the importance and the implementation of family support in European context. The authors start from the premise that constitutions lay the foundation for national legislation and policy, at the same time indicating a state's recognition of internationally agreed standards in a given field. Considering family support as a human right, the authors reflect on the meaning of constitutional protection *vis a vis* policies and practices of providing support to children and families and look into family related constitutional provisions of various European countries. Building upon the work of the European Family Support Network – COST Action 18123, the key elements of constitutional protection of families are identified, having a direct effect on the conceptualization and delivery of family support. In conclusion, considering the place and significance afforded to family support in national constitutions, the paper offers a classification of constitutions in that respect and evaluates the implications of constitutional regulation on family support policies.

Keywords: Constitution, Family, Family protection, Family support, Family policy, Europe

1. Introduction

Being a basic social unit and a natural part of any society, the family is expected to be regulated by law and guaranteed with a certain degree of legal protection. Special protection of the family represents an international standard proclaimed in the most important documents of the United Nations (UN), Council of Europe (CoE) and the European Union (EU). The UN human rights covenants stipulate that the family enjoys special protection of society and the state (ICCPR 1966, Art. 23, para 1) and that “the widest possible protection and assistance should be accorded to the family, particularly for its establishment and while it is responsible for the care and education of dependent children” (ICESCR, 1966, Art. 10, para. 1). In its Preamble, the UN Convention on the Rights of the Child (UNCRC, 1989) recognises that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”. Therefore, under the auspices of the world’s largest international organisation, strengthening family-centred policies and programmes is seen as a part of an integrated, comprehensive approach to human rights and development (Human Rights Council, 2014). This is also supported by the CoE human rights standards. The European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950), within the right to respect for private and family life (Art. 8), provides families and their members with the protection from arbitrary interference by public authorities, but also sets the ground for positive obligations of the states to adopt measures allowing this right to be fulfilled (CoE/ECtHR, 2022). The positive obligations approach, developed through the case law of the European Court of Human Rights (ECtHR), is especially recognised in terms of protecting the integrity of family life relationships (Kilkelly, 2010). Going further, the EU Charter of Fundamental Rights also proclaims the right to found a family and provides the basis for legal, economic and social protection of the family, including reconciliation of family and professional life (Art. 9 and 33).

At the national level, human rights are considered constitutional matter (*materia constitutionis*), thereby constitutions include provisions on human rights which mirror the major international human rights treaties. Regardless of the type of system towards the place of ratified international treaties in the hierarchy of legal norms,¹ human rights guarantees recognised in treaties are entrenched into national constitutional systems. This is done either by explicitly mentioning these human rights guarantees in the constitutional texts or by direct application of treaties by national (constitutional) courts (Jakab, 2013). Rights of the child as proclaimed by

¹ Some constitutions expressly afford a superior hierarchical status to treaties, placing them above domestic laws, while others envisage that treaties have the same force as laws passed by the parliament or remain silent on the issue, which is then resolved by constitutional courts (Mendez 2013, p. 19-21).

UNCRC and the right to respect for private and family life of the ECHR are typical examples of such practices.

Constitutions represent basic laws, leading the national hierarchy of legal norms, as well as representing the common understanding of what is to be upheld as “supreme law of the land” in a given country. In that sense, it could be expected of a constitution to determine, in more or less explicit terms, the notion of family, its position and the support awarded to it in the society governed by that constitution.

Depending on the scope of family related provisions, constitutions create normative platforms for conducting a broad-based pro-family policy (Pastuszko, 2022, p. 162) which refers to a range of national regulations and policies supporting families’ living standards, functions and relations (Churchill et al., 2021). These also include various resources and services provided to support and assist families to secure the care and enhance the wellbeing of their members. Moreover, family support as a unique child protection perspective, involves a set of activities and access to practice that encourages positive informal social networks through integrated programmes which combine the statutory, voluntary and private agencies and services (Dolan et al., 2020). In this way, family support becomes a crucial part of a family protection picture, deeply rooted in the legal understanding and regulation of family.

Going backwards, this raises the question to what extent is family support recognised in constitutions as supreme national laws and how this affects the conceptualisation and delivery of family support in national systems? Also, are the contemporary constitutional concepts of the family and its protection sufficient to push and enhance the state support to families or something is missing from the basic legal drawing board in this contemporary time?

Most European countries have written constitutions, usually codified in a single legal instrument which is sometimes referred to as a formal constitution. On the other hand, in some cases (such as the UK and San Marino), the constitution is not codified (Sartori, 1962, p. 855; Dorsen et al., 2010, p. 55-63), i.e. not contained in a single document, but constitutional matter is located in several sources, including charters, laws and even customary law (Parpworth 2008, p. 13). The UK is specific in one more aspect - its doctrine of parliamentary sovereignty, meaning that no source of law can stand hierarchically above an act of Parliament, not even international treaties (Barber 2011). That was the reason why ECHR, when ratified, was practically introduced into the British legal system through a law - the Human Rights Act. This law represents a part of the UK's uncodified constitution, belonging to the group of constitutional acts.

Modern European constitutions were predominantly adopted after the Second World War, but were quite frequently amended or replaced by new texts. For instance, Eastern European countries have all changed their constitutional orders since the 1990s, after the fall of the Iron Curtain and radical changes to their political regimes. Interestingly, during the last 15 years, some constitutions have been amended exactly to include changes relating to family. For example, in the Armenia Constitution (1995), major changes in terms of protection of family, child rights, social protection were brought by revisions in 2015. Before that, protection and support to family, motherhood and childhood was listed as one of the main goals of the State in the economic, social and cultural fields (Art. 46, revised in 2005). Now this is regulated through several new provisions and an explicit one on the special protection of family, while the main objectives of state mention

promotion of the birth rate and the having of many children as well as creation of favourable conditions for the development of the individuality of children. Similarly, 2008 amendments to the Albanian Constitution (1998) added provisions on family and child rights. In fact, European constitutional traditions are more prone to constitutional changes and constitutions are relatively easily amended (most belong to the group of so-called flexible constitutions). This means that significant changes in society more often than not lead to constitutional amendments.

On the other hand, one has to bear in mind that constitutions are living instruments and that their generally worded provisions can sometimes accommodate social developments which once, when the constitutions have been adopted, have not even been envisaged. As an illustrative example to that end we see that some European countries amended their constitutions to explicitly recognise same-sex marriages, while others did not have to do that, but only introduced them through ordinary legislation. Contrary to that, in some countries, constitutional texts were perceived as the last defence against introducing same-sex partnerships or marriages, while in some, constitutional texts were preventively amended to hinder such developments (Mos 2020).

2. Methodology

This study uses the comparative legal method to explore the extent in which contemporary constitutional concepts of the family influence the recognition of the importance and the implementation of family support in the European context. Addressing the gap existing in contemporary literature, the authors explore constitutional texts of 46 European countries looking for constitutional concepts of the family in view of protection tendencies, as well as barriers to supporting family support. All countries in Europe are covered, except San Marino and the UK as countries not having a codified constitution. The analysis primarily covers constitutional provisions directly targeting the notion of family and family support, even though the authors are well aware that other, more general constitutional guarantees also influence the family (e.g. prohibition of discrimination, right to life and personal dignity etc.). Besides child rights guarantees, which are inseparable from the concept of family support, the analysis also covers other norms which create constitutional basis for policies and practices of family support. Particular attention is paid to the manner in which constitutions recognize existing family forms and changes thereof, including key elements of constitutional protection of families. Finally, by using the exegetical method, the paper offers a classification of constitutions *vis-a-vis* their perception of family support, and evaluates the implications on family support policies.

3. Constitutional perception of family

What counts as family becomes a natural question when talking about the notions of family protection and family support in any legal system. Having in mind that many European states provide constitutional guarantees concerning protection of families, it is a question that touches on both the interpretation level and the implementation reach of existing norms. Therefore, who are

we exactly protecting as family and to whom we guarantee support when such need arises simply precedes any other issue in this regard.

Expectedly, European constitutions offer somewhat well known, quite general definitions of the family. Some refer to family as a “basic”, “primary”, “natural” or “fundamental” group or unit of a society², while some even perceive family as a “moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law”³. However, a closer look at various constitutional texts offers some more indicative clues in this regard.

In most cases, constitutional perception of the family still seems to be closely related to the constitutional right to marry. Such a conclusion could easily be drawn from several constitutional texts where the right to marry and the right to found a family are often regarded as some kind of “partner rights”, jointly guaranteed within the constitutional vision of the family. For example, the Constitution of Cyprus (1960) provides that any person of nubile age “is free to marry and to found a family” in accordance with the law relating to marriage (Art. 22). Similarly, the Armenian Constitution provides guarantees “a man and a woman of marriageable age shall have the right to marry each other and form a family...” (Art. 35, para. 1), while the Constitution of Moldova (1994) states that a family shall be founded on a freely consented marriage between a husband and wife (Art. 48, para 2). Georgia's constitution (1995) also connects marriage, as a union of woman and man, with a purpose of founding a family (Art. 30, para. 1). The Italian Constitution (1947) even defines family as “a natural society *founded* on marriage” (Art. 29, para 1).

Predominantly, constitutions recognising the right to found a family with the right to marry relate to a definition of marriage as a union of a woman and a man.⁴ Alongside such constitutional definition of marriage, also noticed is a trend of entrenching such understanding via constitutional amendments. For example, the Constitution of Georgia amendments of 2018 added that the purpose of a marriage is the founding of a family (Art. 30, para 1); 2020 amendments to the Hungarian Constitution (2011) emphasised that “mother shall be a woman, the father shall be a man” (Art. L, para 1), while the Constitution of Russian Federation (1993) was amended in 2020 only to provide protection to marriage “as a union of a male and a female” (Art. 72 para. 1 item g). Such legal understanding of marriage aims to support the traditional forms of the family.

There are, however, constitutions not specifying heterosexual nature of marriage by using the gender-neutral term “spouses” which potentially provides for more flexibility within the constitutional concept of marriage and family.⁵ An exception is also represented with the Constitution of Ireland acknowledging that marriage may be contracted by two persons without distinction as to their sex (Art. 41, para 4), thereby allowing not only a wider understanding of marriage, but also creating space for non-traditional family forms.

² See, for example, Art. 13, para 2. of the Constitution of Andorra (1993); Art. 16 of the Armenian Constitution; Art. 41, para. 1 of the Constitution of Ireland (1937); Art. 67, para 1 of the Constitution of Portugal (1976).

³ See Art. 41, para. 1 of the Constitution of Ireland.

⁴ See, additionally, Art. 18 of the Constitution of Poland (1997); Art. 32, para 2 of the Belarus Constitution (1994); Art. 46, para 1-2 of the Constitution of Bulgaria (1991); Art. 38, para 3 and 5 of the Lithuanian Constitution (1992); Art. 51, para 1 of the Constitution of Ukraine (1996).

⁵ See Art. 36, para 1 of the Constitution of Portugal.

The number of constitutional texts recognising the right to found a family alongside the right to marry should not surprise, considering that provisions of major international documents also often acknowledge these rights jointly.⁶ Therefore, it is obvious that family, as a basic unit of society, is certainly protected through and combined with the institution of marriage.⁷ However, empirical data do not support such narrow consideration of a family. In fact, the reality shows a decrease in marriage rates in most European countries (Eurostat, 2020; Abela et al., 2021). Interestingly, the lowest crude marriage rates relate to some of the countries having a constitutional concept of the family primarily based on marriage (e.g. Italy with 1.6 marriages per 1000 persons and Portugal with 1.8 marriages per 1000 persons) (Eurostat, 2020). At the same time, even the countries with the highest crude marriage rate (e.g. Lithuania with 5,5 marriages per 1000 persons), also face the highest crude divorce rates (Lithuania 2.7 divorces per 1000 persons). According to Eurostat, the crude marriage rate in the EU has declined by more than 50% in relative terms (from 8.0 per 1000 persons in 1964 to 3.2 in 2020) while the crude divorce rate has essentially doubled, increasing from 0.8 per 1000 persons in 1964 to 1.6 in 2020 (Eurostat, 2020). Having these trends in mind, it must be noticed that the above-mentioned constitutional provisions imply a very conservative and restrictive viewpoint that does not correspond to contemporary changes and reality regarding modern families that are not solely based on marriage.

Statistics are also illustrative in terms of a rise in births outside marriage with the proportion almost doubling in the last few decades and estimated at 41,9% in 2020 (Eurostat, 2020). Particularly striking are data showing that in some European countries (e.g. Bulgaria, Portugal, Estonia) extramarital births even outnumber births inside marriage (Ibid). Related to this, additional elements should be considered as a broader basis for constitutional understanding of family. Namely, some constitutions recognise other forms of partnerships such as cohabitation or extramarital union (e.g. Croatia, North Macedonia, Serbia, Slovenia). Constitutions also provide guarantees of the equality of children born out of wedlock (e.g. Andorra, Italy, Serbia, Spain), as well as parental rights in terms of family life, notwithstanding the marital status of the parents (e.g. Bulgaria, Czech Republic, Moldova, Ireland). Besides marriage as the basis to found a family, the Constitution of Hungary explicitly recognises that family ties are also based on the relationship between parents and children (Art. L, para 1). The Constitution of Switzerland (1999) provides an even wider understanding of family as a “community of adults and children” (Art 42, para 1c). One might say that such a definition embraces the existence of intergenerational family relations, that could be based on blood ties as well as foster care or adoption.

With a greater diversity and flexibility of family forms existing in contemporary societies (Putnina, 2020), constitutional provisions shaping the notion of family must not be interpreted restrictively. Still, the interpretation of similar constitutional norms varies among jurisdictions, particularly in terms of understanding family forms. For instance, the German Constitutional Court insists on the historical understanding of marriage as a heterosexual union, while its Spanish counterpart calls for interpretation of constitutional norms “according to the current values of society” in view of upholding same-sex marriage legislation (Jones & Merino-Blanco, 2008, p.

⁶ See, for example, Art. 16, para 1 of the Universal Declaration of Human Rights, Art. 23, para 2 of the ICCPR, Art. 12 of the ECHR and Art. 9 of the EU Charter of Fundamental Rights.

⁷ The provisions on the right to marry are explicitly contained in 20 of the 46 analysed constitutions, while the right to found a family is connected to the right to marry or marriage in general in 19 constitutions. Some of the constitutions only contain explicit provisions on civil marriage (e.g. Belgium, Luxembourg and Turkey).

36). On the other hand, when it comes to the perception of family, the German Constitutional Court adopts a broad understanding of family ties, in line with the jurisprudence of ECtHR (Ibid, p. 25). Therefore, although some constitutions still consider marriage as a prerequisite to family, thereby making marriage the primary basis for its formation, constitutional texts themselves do not prevent alternatives to marriage to be recognised and to be given protection in national laws. These alternatives are then considered a new mark for the formation of a family that comes under the shield of the constitutional guarantee of the family protection.

Protection of the family naturally emerges from the constitutional right to found a family. This legal principle means that a family always enjoys the protection of the state and society, notwithstanding its origin. Although one might think that the notion of family protection implies state interventions that are solely of a coercive nature, such protection actually includes obligations of states to safeguard families and refrain from interventions that would lead to family separation, but to uphold the family unity and strengthen its functions. These actions of the state, as an important part of family protection, include various kinds of family support, adapted to families' needs and capabilities, consequently meeting the ECtHR positive obligation standard.

4. Constitutional “support” to family support

When considering constitutional provisions which set an obligation to the state to provide family support and define family support policies, the authors have in mind a wide concept of family support as defined by Devaney and others. This concept is multi-dimensional and multi-level and refers to “social policies, services and activities which, separately and collectively, support and enhance family roles, relationships and welfare”. It “incorporates multiple types, approaches and levels of support and services which contribute to enhanced resources, capabilities and welfare” of the family (Devaney et al., 2022).

In view of protection of children, most constitutions contain provisions on child rights while states whose constitutions do not are, in any case, signatories to UNCRC. In general, European legal systems are in line with the UNCRC and the constitutional provisions often mirror its main principles. The Spanish Constitution even explicitly states that “children shall enjoy the protection provided for in the international agreements safeguarding their rights” (Sec. 39, para. 4). The principle of best interests of the child and its primacy in consideration also appears in a number of constitutions (e.g. Albania, Armenia, Belgium, Ireland, Norway).

Among general guarantees to children, constitutions ensure equality of children regardless of parentage (e.g. Andorra, Italy, Slovakia, Spain), the right to express views (e.g. Armenia, Belgium, Poland) and to be heard, as well as the right to protection of their personal integrity (e.g. Norway). The Swiss Constitution obliges the authorities to “take account of the special need of children and young people to receive encouragement and protection” (Art. 67, para. 1.), while the Finnish stipulates that “children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development” (Sec. 6, para. 3). Special protection of children against psychological, physical, economic and any other abuse or exploitation is guaranteed in the constitutions of Montenegro, Serbia and Slovenia. The Polish Constitution contains a right of everyone to “demand of public

authorities that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense” (Art. 72, para 1), and a similar provision can also be found in the Turkish and the Ukrainian constitutions.

In many constitutions there are provisions aiming to preserve the child within its family. In most, there is a guaranteed right to parental care or a prohibition to separate children from their parents, except in cases of failure to fulfil parental duties and always in accordance with the law and/or by judicial order, when parental rights can be limited or revoked (e.g. Armenia, Belarus, Czech Republic, Germany, Poland, Portugal, Serbia, Slovakia, Slovenia, Turkey). However, even though many constitutions explicitly recognise the rights and duties of parents to care for their children, this is rarely followed with the constitutional recognition of state support in this regard. Exceptions relate to the Slovak Constitution explicitly recognising that “parents caring for children are entitled to assistance from the State” (Art. 41, para 5). Similar norms are founded in the constitutions of the Czech Republic (Art. 32, para. 5) and Bulgaria (Art. 47, para. 1).

Besides special protection awarded to children, either alongside the family, or in separate norms, constitutions also contain more specific provisions on kinds or beneficiaries of support. In that vein, state authorities are to create conditions, or provide measures and facilities to enable children development, by securing “economic and social safety as well as the necessary standard of health, for the child preferably within its own family” (Norway⁸, similar in Belgian Constitution) or assistance to parents in raising and upbringing of children (e.g. Bulgaria, Czech Republic). Besides those, the French Constitution (1958) also guarantees children (as well as mothers) rest and leisure.⁹

The Portuguese Constitution guarantees children the right to protection by society and the state “especially from all forms of abandonment, discrimination and oppression and from the abusive exercise of authority in the family or any other institution” (Art. 69, para. 1).

A great number of constitutions target children without parental care (e.g. Armenia, Azerbaijan, Bulgaria, Croatia, Latvia, Moldova, North Macedonia, Poland, Serbia, Slovenia, the Ukraine) or socially neglected children and children neglected by parents (e.g. Croatia, Germany). These children have the right to special care, education and welfare (e.g. Croatia), while some constitutions oblige the states to promote charitable activities towards assisting children without parental care (e.g. Moldova) or children in general (e.g. the Ukraine). The Irish Constitution, seeing the state as “guardian of the common good”, obliges it to regulate by law means to “endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child” (Art. 42a, para 2, item 1). Another group of children to be targeted with specific support are children with disabilities or illnesses (e.g. Croatia, Latvia, Moldova, Romania, Serbia).

Finally, a notable amendment of the Hungarian Constitution (in 2020) regarding children and their position in the family stipulates that the state 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 the country (Art. XVI(1)). A question could be posed as who may possibly violate this right, what

⁸ Art. 104, para. 3.

⁹ Preamble to the Constitution of 27 October 1946, which is an integral part of the French Constitution.

would be the reaction of the State in that case and how does this state guarantee contribute to family support?

Protection of children in European constitutions is often accompanied with norms on the protection of parenting. While some constitutions protect parents (mothers and fathers) equally (e.g. Azerbaijan, Czech Republic, Slovakia or Portugal),¹⁰ most constitutions provide for special measures of support to mothers only (e.g. Croatia, Germany, Ireland,¹¹ Spain, Ukraine) or mothers and single parents (e.g. Serbia). As previously mentioned, in some countries parents who are raising children have the right to assistance from the state (e.g. Bulgaria, Czech Republic, Slovakia). Where support is constitutionally guaranteed to mothers, it is done to them solely or alongside children (e.g. Moldova, North Macedonia).

Most of the specific measures targeting mothers are in the field of labour rights and these mainly revolve around childbirth, by providing special protection to pregnant women and new mothers (e.g. Albania, Poland, Serbia, Poland, Portugal, the Ukraine¹²) as well as special protection and support before and after childbirth (e.g. Serbia). Mothers are guaranteed with special care, protection in labour relations, and suitable or alleviated work conditions (e.g. Bulgaria, Czech Republic, Italy,¹³ Lithuania, Slovakia), prohibition of dismissal from employment for reasons of maternity (Armenia), as well as the right to paid leave in case of pregnancy and childbirth (e.g. Bulgaria, Romania). The Armenian Constitution also mentions parental leave for childbirth and adoption (the latter supposedly also targeting fathers), while the Portuguese directs the legislation to determine an “adequate period of leave from work” for both parents “in accordance with the interests of the child and the needs of the family unit” (Art. 68, para 4).

The Bulgarian Constitution guarantees women free obstetric care and other social assistance, while the Swiss obliges the state to establish a maternity insurance scheme, which are both explicit and concrete obligations for the state. Similarly, the Serbian Constitution provides free public healthcare to women during pregnancy and maternal leave, as well as to single parents with children under the age of seven.

Lastly, in some counties, the generally guaranteed rights to social protection or social welfare, explicitly target families, mothers and/or parents. These include more specific measures, which are, naturally, further elaborated in national legislation. Regardless of constitutional provisions and how explicit they are in listing these measures, social rights also create positive obligations on the part of the state and require state action in order to ensure their fulfilment. It

¹⁰ The Portuguese constitution recognises that both mothers and fathers perform “their irreplaceable role in relation to children” (Art. 68 para 1).

¹¹ A very interesting rationale behind such a solution is found in the Irish Constitution (Art. 41 para. 2 item 1): “[...] by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”

¹² Interestingly, the Ukrainian Constitution states that the “equality of the rights of women and men is ensured by [...] creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, including the provision of paid leaves and other privileges to pregnant women and mothers” (Art. 24, para. 3).

¹³ The Italian Constitution justifies this by the fact that “working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child” (Art. 37, para. 1).

needs to be noted here that all European states are parties to the ICESCR and most to the European Social Charter, therefore guarantees therein are an integral part of their legal orders. Specific measures (or at least fields of protection) targeting families or individual family members in constitutions predominantly include: guarantees of an adequate standard of living, housing and decent accommodation, social security and health protection.

In some constitutions, financial allowances are tied to standards such as the human dignity guarantee (e.g. Belgium), basic subsistence (e.g. Finland) or decent standard of living (e.g. Moldova) in relation to an individual, but also to his or her family. Some constitutions list the components of these standards, such as food, clothing, shelter (e.g. Moldova or the Ukraine), medical care, and the necessary social services. The criterion in other constitutions is based on special circumstances related to the family, such as maternity or having many children or bringing up children in general (e.g. Russian Federation), need of care, loss of breadwinner or provider (e.g. Armenia or Finland), widowhood or orphanage (e.g. Hungary or Switzerland). In relation to housing, the Portuguese Constitution guarantees a right of everyone and their family "to have an adequately sized dwelling that provides them with hygienic and comfortable conditions and preserves personal and family privacy" (Art. 65, para. 1). It also obliges the state to undertake a policy that works towards the establishment of a rental system which is compatible with family incomes and access to individual housing.

A unique example is the Constitution of Azerbaijan guaranteeing the right to social security, with the obligation of the family to "initially render assistance to family members in need" (Art. 38, para. 2).

5. Discussion

Research shows that constitutional texts rarely define family, even though family is often recognized as the natural unit of society guaranteed with protection. Constitutional provisions on family implicitly lean towards traditional family concepts based on marriage and/or child-parent relationships, sometimes offering limited opportunities to alternative family forms. This affects determination of target groups and further might lead to the lack of adequate protection in practice.

Primarily, it should be noticed that there are constitutional texts of several countries (e.g. Austria, the Netherlands), which do not contain specific norms on family. Some constitutions mention families only in the context of child education or citizenship (e.g. Denmark, Lichtenstein). Further on, in a number of constitutions protection of family is based exclusively on the guarantee of the right to respect for private and family life (e.g. Belgium, Bosnia and Herzegovina, Cyprus, Romania), which is to be interpreted in line with ECtHR case law on Art. 8 of ECHR.

When analysing constitutional texts, in view of their attitude towards family support, relevant provisions can be found within several categories. There are explicit provisions on support to or protection of the family; child rights and protection of children in relation to family; protection of parents; as well as norms on social protection and social welfare targeting families.

Analysis of the norms which specifically stipulate support to or protection of the family reveals that three groups of constitutions can be identified. The first are the ones with only general

norms proclaiming that the family enjoys protection or special protection or assistance (e.g. Germany, Montenegro), or particular care and protection by the state (e.g. North Macedonia). In some of the constitutions from this group, family is protected alongside related legal institutes, such as motherhood and/or fatherhood (e.g. Belarus, Slovenia), marriage (e.g. Albania, Germany), children (e.g. Belarus, Estonia, Montenegro) and young people (e.g. Slovenia), which points towards the notion of the family as understood in these legal systems.

The second group of constitutions goes further, mentioning more specific forms of support, or at least identifying spheres in which support is provided. The Portuguese Constitution represents one of the most comprehensive examples explicitly obliging the state to “draw up and implement a global and integrated family policy”.¹⁴ Towards that end, but in a more general sense, the Turkish Constitution obliges the state to “establish the necessary organisation to protect peace and welfare of the family” (Art. 41, para. 2). The same constitution also contains a very specific obligation of the state to “ensure the instruction of family planning and its practice” (Ibid). Other, piecemeal measures cover: economic measures and benefits (e.g. Moldova), including a minimum guaranteed income (as introduced by 2019 amendments to the Greek Constitution (1975)) or a combination of economic and social measures (e.g. Poland).¹⁵ A very concrete measure is found in the Swiss Constitution which allows the state to “operate a federal family allowances compensation fund” (Art. 116, para. 2).

The third group of constitutions, which in part overlaps with the first two, concentrate special protection and support on specific families or family members. For instance, large families (or those with many children) explicitly enjoy special protection and assistance (e.g. Italy, Poland), or such protection is explicitly granted to widows and orphans (e.g. Greece, Switzerland), families in difficult material and social circumstances as well as single-parent families (e.g. Poland, Serbia), families which care for needy members (e.g. Armenia) or members with disabilities e.g. (e.g. Portugal).

¹⁴ According to Art. 67 of the Portuguese Constitution, the State shall: promote the social and economic independence of family units; guarantee access to a national network of crèches and other social facilities designed to support the family; guarantee the right to family planning; regulate taxes and social benefits in line with family costs; drawing up and implementing a global and integrated family policy; promoting reconciliation of professional and family life, etc.

¹⁵ Art. 71, para. 1 of the Polish Constitution specifies that the State’s social and economic policy shall “take into account the good of the family”.

No provisions on family or FS	Only general FP proclamations	Addressing some FS spheres / forms
Austria Denmark Liechtenstein The Netherlands	Albania Andorra Azerbaijan Belarus Bosnia and Herzegovina Cyprus Estonia France Germany Iceland Luxembourg Malta Monaco Montenegro North Macedonia Slovenia Spain Sweden Turkey	Armenia Belgium Finland Georgia Greece Hungary Moldova Poland Portugal Russian Federation Serbia Slovakia Switzerland Ukraine

6. Conclusion

Because of their general nature and role in the legal system, constitutional norms usually require elaboration by legislation. When their direct application is needed, in absence of legislative elaboration, constitutional norms require a greater extent of interpretation (Loughlin, 2015, p. 3). This is how decades (or even centuries) old texts can be adapted to modern circumstances. With this in mind, when searching for constitutional provisions enabling family support, one needs to look beyond explicit guarantees and locate enabling norms and legal formulations. In that vein should researchers, as well as policy makers, interpret the fact that none of the European constitutions contain a definition of the general notion of family protection (or support, to that end).

One could suppose that the notion of “protection” relates to some form of legal protection, while “support” is to indicate concrete measures of assistance. Unfortunately, constitutional texts do not give rise to such a supposition. The terms “protection” and “support” are often found alongside each other, in the same constitutional provisions. Also, many constitutional texts provide for “special protection”, without delineating between “ordinary” and that “special” type of protection. Nevertheless, the special character of protection stems from the status of family as a cornerstone of society or, in the words of the Constitution of Ireland, the protection of the family undoubtedly has the importance of securing “the necessary basis of social order [...] indispensable to the welfare of the Nation and the State” (Art. 41, para 2).

In view of the constitutional concept of family protection, the notion of family support is rarely expressly mentioned and not explicitly recognised as a right to family support, but more often as a part of the supervision authority or the general duty of states to provide assistance to families. In fact, we might say that family support is under covered with the (special) protection of the family guarantee. Related to this, three groups of constitutions are noted - the ones providing only general proclamations of family protection, other recognising some spheres or forms of family support, and the ones having a selective approach by targeting specific families and family members. Most often, provisions on family support are actually dispersed in constitutional texts and relate to specific fields, e.g. child rights, parenthood, social protection, employment benefits, healthcare, education, housing etc. All this shows that, in most cases, constitutions do not ascertain a comprehensive system of family support, but provide contours which inevitably have to be filled out by ordinary legislation and policy.

Law is one of the instruments for initiating transformation and adjustment in society. Legal norms often represent a flywheel for changes in the way society perceives the importance and role of the family. However, the predominant constitutional concept of family and the protection afforded to it does not necessarily lead to hindrance of family support development. Countries with elaborate schemes of family support defined by legislation are a living example of that. Still, in certain countries constitutions drive the development of lower level national regulations and policies, preventing changes that might reflect the reality. It should not be forgotten that the value system of the society is often supported and shaped by the constitution. The constitution represents a basic drawing board for a national legal system that we refer to as a supreme law. There lies the importance of seeing family support on that drawing board, with more comprehensive provisions enabling a constructive and proactive rights-based approach.

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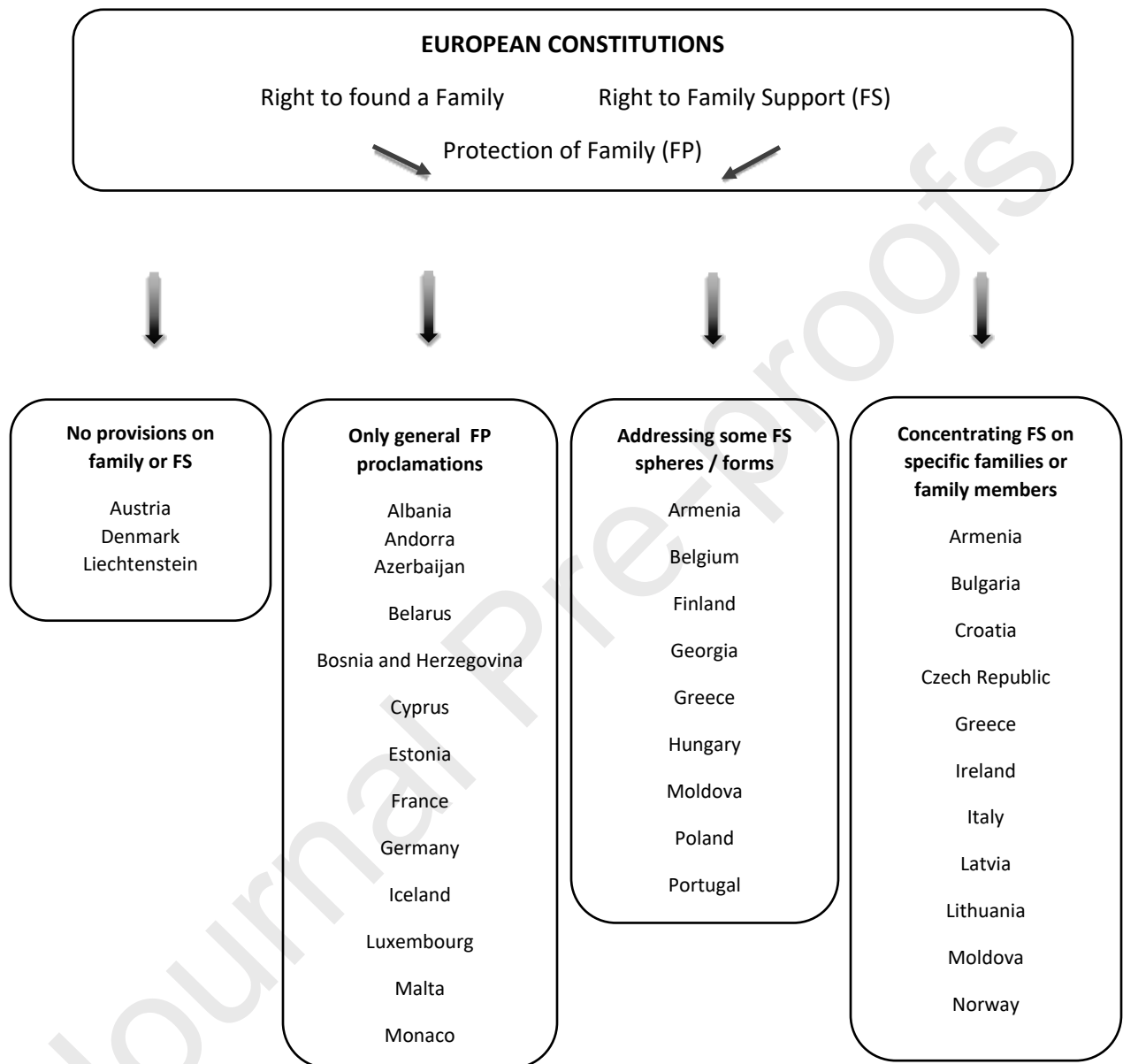
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Table 1. Groups of constitutions according to stipulation of support to or protection of the family

AUTHORS' STATEMENT

We hereby confirm that both authors have been involved in all stages of research and writing of the article “Going back to the drawing board: The picture of family support in European constitutions”, including the requested revision of the manuscript.

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Declaration of interest

- The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.
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