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DROIT POLONAIS
CONTEMPORAIN

NOTES CRITIQUES * NOTES

Seweryn Szer, *Prawo rodzinne* [Family Law], Warszawa 1966, PWN, 342 pages.

The book by professor Szer is the first systematic elaboration of the Family and Guardian Code of February 25th 1964 (Journal of Law 1964, No. 9, item 59)¹ which came into force on February 1st 1965, superseding the Family Code of June 27th 1950 (Journal of Law 1950, No. 34, item 308).

The importance of the book is enhanced by the fact that this is the work of one of the most prominent experts in family law who participated in works on codification of this branch of law.

Professor Szer is the author of the well known and valuable textbook on family law set on the ground of the former code of 1950. The textbook appeared in three successively extended and improved editions (1952, 1954, 1957) and through years it was of great help not only for students but also for teachers of family law as well as in judicial practice.

Prawo rodzinne [Family Law] is a new work based on a new code. It reflects, however, the long experience of the author and has the same qualities due to which the previous textbook by professor Szer has gained well deserved popularity. Difficult problems are presented in comprehensible way, the stress is laid on social implications and social role of family law; the whole text is rich with juristical and comparative details.

The fact that the new textbook by professor Szer refers to his former work is quite understandable and justified since the code of 1964 in principle does not radically change the Polish family law, it rather extends the code of 1950, and introduces certain modifications in legal regulations of individual institutions. The main disadvantage of the family code of 1950 was that formulation of its provisions was too laconic. During almost 15 years when the said code was in force the decisions of the Supreme Court extended many of its enactments and completed many gaps. The new family and guardian code is considerably more extensive than the former one (it includes 184 articles while the code of 1950 comprises only 93 articles) and most of the new provisions are normative forms of results already obtained by the judicial decisions. Most significant changes concern financial relations of spouses (statutory community of salaries, possibility of establishing — in form of an agreement— financial separation between husband and wife), and adoption (introduction of *adoptio plena*).

The book by professor Szer gives an excellent picture of the evolution of Polish family law. The evolution was mainly a result of the judicial activity and the final effect is to be found in the code of 1964. The work consists of four chapters. The first one deals with general problems, and the remaining three treat on marriage, relations between parents and children and guardianship, respectively. Numerous decisions of the Supreme Court are extensively discussed as well as the various theoretical views which the author presents thoroughly though critically.

¹ The French translation of the Family and Guardian Code appeared in the "Droit Polonais Contemporain", 1965, No. 4, pp. 77 - 94.

According to modern trends in the legal science the author pays particular attention to problems of comparative law and gives information on principles of regulating individual institutions in family law of European socialist countries and certain other countries as well. Such information is of importance for an experienced jurist. It seems, however, that the information is too detailed from the point of view of a student, hence satisfying the didactic tasks required from a textbook may render some difficulties.

The book by professor Szer arouses reflections and in some points provokes discussion. Two problems seem to be particularly questionable. First — the author represents the opinion that family law is a field separated from civil law. This thesis which is not unanimously accepted by Polish legal scholars leads to the difficult question, i.e., on what basis and to what extent the principles of civil law are applicable to the family law. The answer given by professor Szer is not quite convincing and rather weakens the thesis he accepts. Secondly, the problem of connection between social and economic relations on the one hand, and the legal and moral norms on the other, presented in the book, is in some points oversimplified. The author seems not to appreciate the fact that certain moral norms concerning family life, which receive full consideration and observance in the socialist society, have been shaped gradually in former social structures.

The problems are certainly difficult and complex since there is the question of methodological and to some extent, philosophical nature. The fact that the work by professor Szer makes thinking on such problems is one more evidence of its high values.

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