



# ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, 1<sup>st</sup> August 2018

## Commission on the Status of Women

*Dear Madam or Sir, Member of the Commission on the Status of Women,*

The *Ordo Iuris* Institute for Legal Culture welcomes the opportunity to assist the Commission on the Status of Women in its annual programme of work in order to identify emerging trends and patterns of injustice and discriminatory practices against women for purposes of policy formulation and development of strategies.

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. The *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

The *Ordo Iuris* Institute is among the organizations that are consulted by the Polish Government within the legislative process. Third party interventions (including *amici curiae* briefs) by *Ordo Iuris* Institute have been accepted by Polish courts of all levels, including the Supreme Court of the Republic of Poland. The Institute has been also permitted by the President of the European Court of Human Rights to deliver third party interventions and allowed by the President of the European Committee of Social Rights to submit observations. The *Ordo Iuris* Institute submitted its opinions to the Venice Commission, the Secretary General of the Council of Europe, Commissioner for Human Rights, the Committee on Political Affairs and Democracy of the PACE and constitutional courts of numerous countries. The experts of the Institute are consulted and allowed to deliver interventions in matters of democracy and the rule of law i.a. by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and by the Department of State of the United States of America. Moreover, *Ordo Iuris* Institute has ECOSOC consultative status with the United Nations.

We hope the Commission on the Status of Women will find our intervention supportive.

## INTRODUCTION

This petition presents the phenomenon of discrimination against mothers both in social perception and in insufficient legal solutions. Due to the nature of this phenomenon, the petition does not contain specific cases of individual women, but only an analysis of discrimination conducted on the basis of regulations in force in Poland and social researches. Discrimination of mothers who have decided to discontinue their paid work and devote themselves to personally raising their children is marginalized. Therefore, the aim of this petition is to draw particular attention to this problem.

## SOCIAL PERCEPTION OF MATERNITY

In Polish society there are still negative stereotypes in relation to women who decides temporarily or permanently to devote themselves to take care of their children.<sup>1</sup> Despite the fact, that they constitute a significant social group, they remain invisible to the State institution and the existing legal solutions. Legal provisions mostly reinforce discrimination and social exclusion of mothers who committed themselves only take care of their children.

According to CBOS survey from 2013<sup>2</sup>, 44% of respondents believe that working women enjoy grater social respect than housewives who only deal with housekeeping and taking care of children. Only 5% of respondents express the opposite opinion. Moreover, work performed by housewife in the home meets a number of requirements of professional activity and according to economists, it should be included in the GDP of each country.<sup>3</sup>

The lack of due appreciation of the care and educational work carried out by women at home by the society and discriminatory law means that women after childbirth struggle with making decision that fully matches their aspiration - namely, to stay at home. The work they perform does not enjoy due social

---

<sup>1</sup> See recording from the Forum of Rights and Freedoms, Women's Rights Panel, June 9, 2018 < <https://www.facebook.com/ordoiuris/videos/vb.1407603489492838/2041398009446713/?type=2&theater> > [last accessed: 01.08.2018].

<sup>2</sup> See Social Opinion Research Center (CBOS), Communiqué from survey *Kobieta pracująca*, Warsaw, March 2013, < [https://www.cbos.pl/SPISKOM.POL/2013/K\\_028\\_13.PDF](https://www.cbos.pl/SPISKOM.POL/2013/K_028_13.PDF) > [last accessed: 01.08.2018].

<sup>3</sup> This is also what the economist and Nobel Prize winner Joseph Stiglitz proposes in Stiglitz J., Sen A., Fitoussi J-P, *Biłqd pomiaru. Dlaczego PKB nie wystarcza?*, PTE, 2014, s. IX i . 10 i n. and see also : Mankiw, M. Taylor, *Makroekonomia*, PWE, Warsaw 2009, p. 45; Samuelson P., Nordhaus W., Rebis, *Ekonomia*, Warsaw 2012, p. 407.



prestige (terms like “maternity leave”, “hausfrau”, “sitting at home” etc.). In addition, often such a decision to stay at home binds to serious economic hardship.

Very often women indicate that when they are asked about the occupation they do, they are embarrassed by answering, fearing the reactions of others. They do so, however, they are aware of the injustice of negative attitude towards them in society.<sup>4</sup> They also perceive discriminatory nature of law, in particular as regards pension benefits and the lack of financial support dedicated directly to families.<sup>5</sup> Awareness that a woman after having a child, often against her will, will have to return to paid work and thus give her child to a nursery or kindergarten, strikes women’s sense of security and strengthens the negative attitudes in society. Convictions that being a mother is the occupation that is not very prestigious, and the fulfilment and benefits for society can only be achieved by professional activity.

In the practical term, the lack of proper appreciation of the role of women as mothers results as was indicated in the study of the Supreme Audit Office<sup>6</sup>, that 68% of respondents pointed out that they can not count in their workplace on solutions facilitating their reconciliation of professional duties with childcare.

## FORMS OF CARE OF A CHILD

The Polish system of family policy still does not take into account the real needs of mothers and their preferences in the field of childcare.<sup>7</sup> The survey from 2011 shows that 85% of Polish mothers of children aged 4-36 months would most likely entrust the care of a child to a close family and friends, and at the same time more than half of the respondents (52%) would not want to send their child to a nursery.<sup>8</sup> Moreover, only 13.8% of Poles support the State funding for childcare only in a nursery form.<sup>9</sup> However, institutional child care is preferred solution in Polish legislation and strongly subsidized

---

<sup>4</sup> See Goś-Wójcicka K., *Kobiety pracujące w domu o sobie. Analiza wywiadów pogłębionych na temat nieodpłatnej pracy domowej*, Łódź, 2011.

<sup>5</sup> Ibid., p. 63, 67 and 69.

<sup>6</sup> The Supreme Audit Office, *Koordinacja polityki prorodzinnej w Polsce*, Warsaw 2015, p. 56, <<https://www.nik.gov.pl/plik/id,9100,vp,11306.pdf>> [last accessed: 01.08.2018].

<sup>7</sup> See The Act of 4 February 2011 on child care of children up to 3 years old (Journal of Laws of 2018, item 603 as amended).

<sup>8</sup> The survey of the MillwardBrown SMG / KRC on behalf of Nutricia, *The attitudes of mothers of young children towards the development and forms of care for young children*, conducted on a sample of 734 mothers of children aged 4-36 months. The study was conducted between May 30 and June 24, 2011.

<sup>9</sup> The survey conducted by IPSOS in February 2017 on behalf of the *Ordo Iuris* Institute.

by the State (e.g. the "Maluch " program<sup>10</sup>). Other forms of child care are barely noticed by the State (day care institution, children's clubs or nanny) or completely ignored (personal care for a child under 3, help of grandparents or other family members). Such an approach, favoring only institutional care, contributes significantly to the discrimination of parents wishing to permanently or temporarily discontinue their paid work in order to take care of their children on their own. First of all, it interferes with their possibility of taking a free choice on the model of childcare and choice of their path of life. Secondly, it sends a message to the public that the effort they put into childcare is not a job and does not deserve the support of the State.

At the same time, the best interest of a child is ignored. Children develop at different rates and have different emotional needs. Numerous studies show that prolonged stay in a nursery or kindergarten affects negatively the health of children.<sup>11</sup> Unfortunately, Poland in terms of time spent by children in nursery on a weekly scale ranks among the top EU countries (more hours in nursery children spend only in Portugal).<sup>12</sup>

A big problem for Polish women who want to reconcile work with the care of young children is a small access to flexible forms of work - especially for part-time or tele-working. Only 10% of mothers work in Poland on a part-time basis, while the EU average in this regard amounts to 31.7%<sup>13</sup>, and research indicates that this is the form of work mostly preferred by European mothers<sup>14</sup>.

---

<sup>10</sup> The Ministry of Family, Labor and Social Policy, the ministerial development program for childcare institutions under age of 3 "MALUCH PLUS", < <https://www.mpips.gov.pl/wsparcie-dla-rodzin-z-dziecmi/opieka-nad-dzieckiem-w-wieku-do-lat-trzech/resortowy-program-maluch-plus/>> [last accessed: 01.08.2018].

<sup>11</sup> See e.g.: . Moullin, J. Waldfogel, E. Washbrook, *Baby Bonds. Parenting, attachment and a secure base for children*, March 2014, Sutton Trust, <<http://www.suttontrust.com/wp-content/uploads/2014/03/baby-bonds-final.pdf>> [last accessed: 01.08.2018]; Fenton B., *Day nursery may harm under-3s, say child experts*, < <http://www.telegraph.co.uk/news/uknews/1532012/Day-nursery-may-harm-under-3s-say-child-experts.html> >, [last accessed:01.08.2018]; Groeneveld M., van IJzendoorn M.H., *Stress, cortisol and well-being of caregivers and children in homebased child care: a case for differential susceptibility*, [in:] *Child Care health and Development*, December 2010, p. 78.; Geoffroy M.C., Côté S.M., Parent S., *Daycare attendance, stress, and mental health*, [in:] *Canadian journal of psychiatry*, 2006; 51(9), p. 614.; Loeb S., Bridges M., Bassok D., Fuller B., Rumberger R., *How much is too much? The influence of preschool centers on children's social and cognitive development*, NBER Working Paper No. 1181226, December 2005, p.1-3 <<http://www.nber.org/papers/w11812.pdf>>, [last accessed: 01.08.2018].

<sup>12</sup> In Poland children spend an average 39.1 hours weekly in nursery. Report of Eurydice and Eurostat, *Kluczowe dane dotyczące wczesnej edukacji i opieki w Europie*, Brussels 2014, p. 64.

<sup>13</sup> The survey of Eurostat, *Part-time employment as percentage of the total employment, by sex and age*, of 5<sup>th</sup> July 2018.

<sup>14</sup> The research of the Mouvement Mondial de Meres Survey of Mothers in Europe, 2011, p.14 < [http://www.mmmeurope.org/ficdoc/2011-MMM\\_BROCHURE\\_What\\_Matters\\_Mothers\\_Europe.pdf](http://www.mmmeurope.org/ficdoc/2011-MMM_BROCHURE_What_Matters_Mothers_Europe.pdf) >, [last accessed: 01.08.2018]. These studies were conducted on a group of 11,187 mothers from France, Spain, Germany, Hungary, Great Britain, Italy, the Netherlands, Sweden, Slovakia and Finland, of which 52% belonged to the 26-40 age group, 36% to the 41-55 age group. The research was carried out using the so-called "Snowball" method.



## TAXATION

In the Polish legal system<sup>15</sup>, there are two types of preferential treatment of parents in the area of personal income tax. One of them - a pro-family relief - applies to a significant part of parents, regardless of their financial status, if they have more than one child (in case of having one child, the income criterion applies<sup>16</sup>). The amount of tax deductions as a part of child relief depends on the number of children and ranges from 1 112.04 PLN with one child up to 2 700 PLN for every fourth and subsequent child.

At the same time, the Polish tax system has a second solution, which raises a number of doubts, which is the possibility of jointly settling income tax with a child by single parents independently of their income. In accordance with the Act<sup>17</sup>, a single parent is a parent or legal guardian who is a maiden, bachelor, widow, widower, divorcee or person in respect of whom a separation has been ordered or a married person, if the spouse has been deprived of parental rights or is imprisoned. It does not matter what the actual life status of a person who carries a child is - it does not have to be a lonely person and often such a person *de facto* obtains a much higher income than the income earned in large families.

## PENSION ENTITLEMENT

The solutions currently in force in Poland regarding retirement security for women deciding to give up their paid work while taking care of children are one of the manifestations of legal discrimination against women. Although, the personally performed childcare fulfills all the requirements of work (beyond payment) and contributes to a large extent to social well-being, it is ignored by the Polish legislator. Women deciding for childcare at home can only count on social protection in a minimal scope. As a consequence, it is a group of people particularly vulnerable to social exclusion and poverty.

In accordance with the applicable provisions of the Act on the social security system<sup>18</sup>, social security for people who raise children and do not take up paid work during this period depends on their previous professional status:

---

<sup>15</sup> The Act of 27 July 1991 *on personal income tax* (Journal of Laws of 2018, item 200 as amended); hereinafter: "the Act".

<sup>16</sup> Article 27 f par. 2 clause 1 of the Act.

<sup>17</sup> Article 6 par. 4 of the Act.

<sup>18</sup> The Act of 13 October 1998 *on the social security system* (Journal of Laws of 2017, item 1778 as amended).

- a) Person who has worked for at least 6 months as part of an employment relationship is entitled to parental leave. The same right have: person who carried out non-agricultural business activities, a cooperating person and contractor, provided that they were subject to compulsory insurance for 6 months immediately before the beginning of childcare. The State finances both retirement and pension contributions from the base amounting to 60% of the projected average monthly salary.<sup>19</sup>
- b) The State covers only pension insurance for people who do not meet the above conditions, and the basis for the contribution is 75% of the minimum wage. It should be added that this solution applies not only to people who have not taken up paid work, but also those who were employed on a fixed-term employment contract and due to its expiration lost the right to parental leave.<sup>20</sup>

The status of work performed by mothers within raising children is diminished in the Polish social insurance system in comparison with paid work. This leads to a paradoxical situation in which a carer in a nursery or kindergarten receives for his / her work proper remuneration from the State whereas a mother who performs work of a very similar nature may have difficulties even with establishing the right to retirement.

Thus, the currently proposed draft of the bill by the government to introduce a minimum pension for all women who raised at least four children in the amount of one thousand zlotys should be assessed positively.<sup>21</sup> Certainly, it will improve the social perception of mothers and large families. However, it should be emphasized that this is a proposal that only partially solves the problem of discrimination against mothers in Polish society.

## SUMMARY

The vast majority of women bringing up children prefer part-time employment. Mothers who decide to take care of a child feel discriminated in the social and legal sphere. They are perceived as inactive persons, which is manifested, inter alia, in wordings, both in the field of informal and legal language. Polish law provides poor benefits for women devoted to raising children, despite the fact

---

<sup>19</sup> Article 18 par. 5 b of the *Act on the social security system*.

<sup>20</sup> Article 18b of the *Act on the social security system*.

<sup>21</sup> See the interview Head of the Social Committee of the Council of Ministers Ms. Beata Szydło in *Gość Niedzielny*, No. 30, July 29, 2018.

that the Constitution of the Republic of Poland requires to surround motherhood with protection by the State (Article 18 and Article 71 par. 2 of the Constitution). Non-discriminatory and at the same time friendly woman-mother policy should be based primarily on leaving them freedom to choose a model of childcare and on the widespread and simple financial support, compensating for the costs of indirect taxes paid in raising and supporting children.<sup>22</sup>

**In connection with the above, the *Ordo Iuris* Institute requests the Commission on the Status of Women for taking into account within policy formulation and development of strategies the problem of discrimination against mothers that decided to discontinue their paid work and devote themselves to personal raising of their children.**



Director of *Ordo Iuris*

International Law Centre

---

<sup>22</sup> These are conclusions from the Report of the *Ordo Iuris* Institute, *Jakiej polityki rodzinnej potrzebuje Polska?* ed. PhD Tymoteusz Zych, Karolina Dobrowolska, Olaf Szczypiński, Warsaw 2015, <[http://demografia.ordoiuris.pl/Jakiej\\_polityki\\_rodzinnej\\_potrzebuje\\_Polska.pdf](http://demografia.ordoiuris.pl/Jakiej_polityki_rodzinnej_potrzebuje_Polska.pdf)> [last Accesssem: 01.08.2018].