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POPULIST “MATERNITY ACT”

Abstract

The act on parental supplementary benefit passed on 31 January 2019 guarantees, as it is commonly believed, a pension for mothers who have raised at least four children and due to that fact have not undertaken employment or have given it up. A thorough analysis of the provisions of the act, however, presents the parental supplementary benefit in a completely different light. All circumstances that accompanied the adoption of the act, the way its assumptions were presented, the time when work on it was ongoing and the real motives of its introduction indicate that it was passed for purely populist reasons in the pre-election period. And all of that was done to win the support of the largest possible number of people. This article presents the results of a thorough analysis of that issue, which enable to draw such daring conclusions.

Słowa kluczowe: ustawa matczyna, emerytura matczyna, rodzicielskie świadczenie uzupełniające, populizm, czas przedwyborczy, program socjalny, 500+, niż demograficzny

Keywords: maternity act, maternity pension, parental supplementary benefit, populism, pre-election period, social programme, 500+, population decline

ASJC: 3308, JEL: K31

1. Introduction

At the beginning of 2019 the Sejm passed an act on parental supplementary benefit (the Act of 31 January 2019 on parental supplementary benefit, Dz.U. 2019, item 303). It is widely believed to guarantee retirement pension for mothers who have raised at least four children and therefore have not undertaken employment or have given it up. In this way, in the eyes of the general public, work for a family with four children has been recognised according to the law as equal to professional work, after which, with reaching appropriate retirement age, a long-time employee is entitled to earned retirement pension. However, a detailed analysis of the provisions of the act presents the parental supplementary benefit in a completely different way (see more: Gurdek 2020, pp. 75–90). The whole of circumstances that accompanied passing of the act, the way its assumptions were presented, the time when work on it was ongoing and the

real motives of its introduction indicate that it was passed for purely populist reasons in the pre-election period. And that all was done to win the support of the largest possible number of people. This article presents the results of a thorough analysis of that issue, which enable to draw such daring conclusions.

2. Official justification for the introduction of parental supplementary benefit

The act passed on 31 January 2019, commonly referred to as “maternity act”, introduced family supplementary benefit whose aim, in accordance with Art. 1 § 2 of the act, is to provide necessary livelihood for the people who have given up employment or other gainful activity or who have not undertaken any due to child-rearing. What follows from the grounds for the draft bill is that it was practical delivery of Prime Minister Mateusz Morawiecki in the part dealing with the recognition of the people who brought up at least four children and because of long-term child-rearing have not acquired the right to the old-age pension equal to the amount of at least the lowest pension. Drafted regulations were to appreciate the child-raising effort of parents in large families, stipulating ensuring particular funds after their reaching appropriate retirement age.¹

Publicising that idea, what went onto the airwaves was general information on “pension” planned by the Prime Minister, which was granted on account of raising children, and it won supporters immediately.

3. The construction of parental supplementary benefit in details

Unfortunately, the society relished the idea itself and did not pay attention to the details of that solution. And it is not only about the number of children who one should raise in order to be granted the benefit, but above all it is about a common conviction that it is enough to get guaranteed “pension”. Unfortunately, that conviction was the result of being unfamiliar with extremely important details concerning the execution of that benefit. Because in this case an old saying that the devil is in the detail proved to be absolutely true.

So, the parental supplementary benefit in question was designed in such a way that it is neither retirement pension nor even retirement pension supplement in legal terms. It is a special non-contributory pecuniary benefit which is granted on the basis of an administrative decision given by the president of the Social Insurance Institution (ZUS) or the Agricultural Social Insurance Fund (KRUS) at the request of the person concerned. Yet, what is most important, it is of a discretionary nature, so it is not guaranteed, as

¹ From the grounds for the draft bill on parental supplementary benefit (print 3157): <http://orka.sejm.gov.pl/Druki8ka.nsf/0/237B34859F4C13C0C125838B0039739D/%24File/3157.pdf>, p. 22 (access: 21 November 2019).

the majority of the society commonly believes. According to Art. 3 § 1 of the act, it may (therefore, it does not have to) be granted to:

- 1) a mother who has given birth and raised or has raised at least four children;
- 2) a father who has raised at least four children in case of their mother’s death or mother’s abandoning her children or in case of long-lasting cessation of child-rearing by the mother.

What indicates the justified character of the benefit are also the provisions of Art. 3 § 3 of the act, under which it may be (and therefore, again, it does not have to be) granted to a mother at the age of 60 or to a father at the age of 65. However, the most important is what follows from the second part of the sentence being § 3. So, that benefit may be granted in the case when a person applying for it does not have income providing necessary livelihood. As it can be seen, it is a *sine qua non* condition of granting that benefit. Nevertheless, the problem is that the notion of “income providing necessary livelihood” is underspecified, ambiguous, judgmental. So, it offers vast interpretation opportunities. Every application for the benefit is examined individually because—as it can be seen—in case of the parental supplementary benefit, contrary to other benefits paid by the Social Insurance Institution (ZUS), there are no stringent and uniform criteria. What is also significant is the fact that according to the act, the Social Insurance Institution (ZUS) takes into consideration only the income earned by the person who applied for the benefit when making the decision. Thereby, e.g. a high pension or a husband’s salary will not deprive a woman of the parental supplementary benefit. So, maternity benefit may be also given to mothers whose husbands have a high pension, e.g. a mining one (Kacprzak 2019; PAP 2019).

Additionally, interpretation doubts are raised by many other notions that are used in the act. And so, for instance, what is unclear is the definition of “raising” included in Art. 2 § 9 of the act, according to which it means taking personal care of children consisting in permanent, direct and continuous performing of general duties that rest with parents within their rights towards children in order to take care of them and their property. Unfortunately, the definition does not determine upon the lapse of what time it can be acknowledged that somebody has raised children. How many years should children be taken care of or to which moment in their life?

Moreover, there were additional premises subject to assessment that were taken into consideration during the examination of an application. Namely, in accordance with Art. 3 § 5 of the act, the body may (and therefore, it does not have to) refuse to grant the benefit:

- 1) to a person who has been deprived of parental authority or whose parental authority has been limited by the court by placing a child or children in foster care;
- 2) in case of long-lasting cessation of child-rearing.

Therefore, once again, the body carries out an assessment of the above-mentioned circumstances and in a discretionary way decides on granting or refusing to grant the benefit. It is only in one case when the legislator has decided to explicitly deprive the applicant of the right to be given the benefit, which is expressed in Art. 3 § 6 of the act.

In fact, what follows from the provision is that a person who is in preliminary custody or who serves a sentence of imprisonment is not entitled to the benefit. This exclusion, though, does concern people serving a sentence of imprisonment in the form of electronic tagging. Undoubtedly, this solution was introduced because of the fact that the benefit is to provide a person who does not have income guaranteeing necessary means of subsistence with livelihood. An imprisoned person, however, does not need such livelihood because being in prison or criminal detention, they are the state budget's dependants. If that benefit was a pension in the strict sense of the word, then nobody could be deprived of it.

Finally, the parental supplementary benefit, contrary to pension, which—if one has acquired the right to it—is given unconditionally in perpetuity, is granted only for the time of not having income that guarantees necessary livelihood. Therefore, it is of a character of social assistance benefits, thus, as any other kind of assistance, it may be withdrawn as long as the beneficiary's financial situation changes.

4. Conclusions

At the time of the maternity act coming into force, the payees of the benefit were women (and few men) who were already people of retirement age. On the other hand, as far as the impact of the act on the future is concerned, it is dubious. Nowadays, when the model of family has changed from the traditional large extended family with the leading role of a woman to the small planned one with a working mother, it is hard to assume that these women, when they already get to know the details, will be tempted by the “maternity pension” and give up employment in return for undertaking the effort of raising at least four children. No reasonable person will intentionally take such risk, firstly, because of the fact that the benefit is of a minimum amount, secondly, it is of a discretionary nature, thirdly, it may be abolished long before a woman reaches retirement age. In fact, the act does not guarantee that the people who have taken the decision on having four children at the time of it being in force will acquire the right to receive the benefit at the time of reaching retirement age. Therefore, deciding on such a solution is a big unknown deferred in time for several dozen years. Rational women, even if they raise four children, often—despite such numerous offspring—also work, which poses a real challenge to them. They are merely, and even not always, on child-raising leave.

It can be assumed then that the solutions adopted by “maternity act” will be used particularly by the people who, irrespectively of the act being passed or not, would not pursue employment anyway. It first of all concerns all the people who have been dependent on social assistance for generations and who are not too eager to work anyway. What is more, they are usually people who have numerous offspring thanks to whom they already have quite an “income” from the social assistance on a current basis. For them, thus, it will be an additional bonus for the anyway presupposed professional inactivity.

A thorough analysis of the provisions of maternity act thus reveals a picture of the parental supplementary benefit that is different from the one that was presented in the media. In reality, that benefit will meet its aim mainly in relation to the ones who already live off public money right now anyway. By introducing that act, however, the government allegedly wanted to honour all the people who had undertaken the effort of raising at least four children without any exception. Yet, it turns out that in practice it does not look like that. Another widely publicised social programme showed the ruling party in a very good light. However, the construction of that benefit is food for thought. One can assume that it was intentionally presented in such a way as to win favour with the society. What justifies this conclusion is a simple observation that the party in power always announces or introduces its programmes in the pre-election periods. And so, “500 plus” programme was a flagship election motto of Law and Justice political party (PiS) in the campaign conducted in 2015 and it undoubtedly contributed to the success during the parliamentary election. Needless to say, the party kept its promises after taking over power, which strengthened its credibility. The programme, though, is very costly. The idea of granting “maternity pension” appeared in the face of another oncoming parliamentary election. It was essentially based on the proposal put forward by Gosiewski and Ołdakowski, which suggested changes should be made in the pension scheme, which changes were ultimately supposed to encourage women to have numerous offspring and support the effect of “500 +” programme. Nevertheless, that solution did not satisfy the government because introducing such changes would entail considerable financial burden. Each person who met the criteria would have the reduced contribution period by five years and in that way it would be easier for them to get the pension. However, although the solution proposed by the Prime Minister seems much better for the society at the first glance, in reality it is much cheaper and after getting to know its details, it turns out to be “window dressing”, which most of the society taking part in the parliamentary election did not notice. It certainly translated into the success of the party, at least partially, in the next election.

The benefit presented as a guaranteed “pension” portrayed the government as a promoter of large families, which was perceived as a method of fighting against the negative birth rate (although—as I have mentioned—it was not discussed directly in the grounds for the act). The act, though, first of all honoured the people who had not earned their pension in the past on account of raising numerous offspring. And it appears that is how the drafter really reckoned it. Calculating a potential number of beneficiaries as approximately 85 thousand people (which was possible to do knowing the data on the birth rates from the period of 20–30 years before) an expensive solution, but still possible for the state budget to cope with, was introduced, which was showed in a completely different light and with a definitely wider circle of beneficiaries. Nevertheless, it was realised that publicising that form of helping the parents of numerous offspring as honouring the effort put in raising them would meet with social applause.

Interestingly enough, though, making a thorough analysis of the minutes from the session of the Committee of Social Policy and Family, which dealt with the draft bill of

the act twice during the legislative procedure works, it can be noticed that during the works on the act in closed rooms the government attempted to justify the adoption of changes provided by the maternity act differently, as if it wanted to protect itself in official documentation for the future, when the society open their eyes and know the truth about the “maternity pension”. While the aim of introducing the changes stipulated in Art. 1 § 2 of the act, the grounds for the act and its publicity in the media indicated the will to appreciate the raising effort of parents in large families and providing them with specified livelihood in return after their reaching retirement age (which was also perceived as an encouragement to start large families), in reality the government explained the necessity to introduce the changes in a completely different way. Well, Undersecretary of State in the Ministry of Family, Labour and Social Policy Marcin Zieleniecki during the 173rd session of the Committee of Social Policy and Family taking place on 30 of January 2019 explained the need to introduce maternity pension by the necessity to get rid of the injustice present in the old pension system and not by the introduction of a solution encouraging future mothers to have more children. He explained the point was that before 1999 the state had not financed pension insurance contribution of the people raising children. Therefore, at present as many as 85 thousand people, mothers and fathers, were not entitled to the pension in the amount of the lowest retirement pension. M. Zieleniecki pointed out that in the current pension scheme the support of the people who had given up employment consisted in financing the pension insurance contribution of the people who raised a child during a period of up to four years for one child from the state budget. In case of large families in which children were born at appropriate intervals it could be a period of 20–24 years or even longer, during which pension insurance contribution was financed.

It was there, in the minister’s opinion, where that discrimination consisting in unequal treatment of people on account of their belonging to different pension schemes—the old one and the new one² was manifested, which should be eliminated thanks to that act. The minister did not talk about it directly, but it is a very important remark—that injustice on account of belonging to different pension schemes—the old one and the new one concerned only those women who were on child-raising leave rearing children. As it is only such women’s pension insurance contribution that the state pays for. On that assumption, then, in reality “maternity pension” should be provided only for the women who are already mothers and grandmothers and who had worked in their youth, but due to raising numerous offspring they were on child-raising leave for many years, which was then treated as a non-contributory period and thus they did not earn a pension of the amount of the lowest pension.

However, the provisions of the act stipulate that the supplementary benefit may be granted to every person who has not earned a pension of the amount of the lowest benefit.

² Undersecretary of State in the Ministry of Family, Labour and Social Policy Marcin Zieleniecki pointed it out during the 173rd session of the Committee of Social Policy and Family on 30 of January 2019, Bulletin no 3976/VIII, <http://orka.sejm.gov.pl/Zapisy8.nsf/wgskrntr/PSR-173> (access: 20 November 2019).

It may be also granted to a person who has never worked. It is explicitly referred to in Art. 1 § 2 of the act, according to which, the aim of the benefit is providing necessary livelihood for the people who have given up employment or other gainful activity or who have not undertaken any on account of raising children. Therefore, the act in that respect went one step further than it was necessary only for eliminating injustice present in the old pension scheme. It was also sold in the media as a nod towards all the people who had undertaken the effort of raising numerous offspring, regardless of whether they had worked earlier or not. Art. 1 of the act was worded in such a way that when combined with the grounds for the draft bill indicating the government honouring the people who raised at least four children and on account of long-lasting taking care of their offspring had not earned a pension equal to the amount of at least the lowest pension, it provoked an erroneous idea of that benefit in the society. What is more, commonly referring to it as “maternity pension” confirmed their conviction even more. It all allows to recognise “maternity act” as a populist trick in the pre-election period. Indeed, the truth is that in the present pension scheme a working mother of four children, even if she decides to be on child-raising leave for many years, will not be a payee of the benefit. During the whole period her pension insurance contribution will be financed from the state budget, thanks to which she will certainly manage to earn a pension of the lowest amount. Therefore, she will not benefit from the adopted maternity act at all. Thus, she will not be honoured in any way for the effort put into raising four children, the effort being even bigger when it is taken into consideration that she has done it and worked professionally. And that is this assumption that inspired the introduction of that act. Therefore, she will feel not only deceived but also aggrieved by the state that promotes professional inactivity and appreciates only the women who have been merely engaged in raising children.

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