



ORDO IURIS

INSTYTUT NA RZECZ KULTURY PRAWNEJ

Submission to the Report on Protection of the family and the contribution of families in realizing the right to an adequate standard of living

Ordo Iuris Institute for Legal Culture is an independent legal organization established as a foundation in Poland. The Institute gathers academics and legal practitioners who promote a legal culture based on the respect for human dignity, human rights and freedoms. *Ordo Iuris* pursues its objectives by means of research and other academic activities, as well as advocacy and litigation.

Ordo Iuris participates in the national legislative consultation procedure, and sends its amici curiae briefs in judicial proceedings including Polish Supreme Court as well as European Court of Human Rights (*Koch v. Poland* case - appl. no 15005/11) and European Social Committee.

Ordo Iuris Institute would like to draw the Council's attention to the important contribution of family in realizing the right to an adequate standard of living for their members, particularly through their role in poverty eradication and in achieving sustainable development. We particularly emphasize obligations of state in terms of the protection of the family and guarantees of its autonomy, with a special regard to fulfillment of these obligations by Poland.

1. Right of children to be brought up by a mother and a father

Family is the natural and fundamental group unit of society and the natural environment for the growth and well-being of children. Family preserves cultural identity, traditions, morals, heritage and the system of society values for the next generations¹.

For the full and harmonious development of their personality, children have right to be brought up in the family with a mother and a father². They should grow up and develop in the natural environment that ensures them atmosphere of happiness, love and understanding, which can only be achieved by contact with parents³. Moreover, children have the right to spend time with their mother, father, siblings and other family members, including grandparents. Mother and father are first and main educators of their children and have prior right to choose the kind of education that shall be given to them⁴.

¹ See *The Universal Declaration of Human Rights*, Article 16 (3); *International Covenant on Civil and Political Rights*, Article 23 (1); *Convention on the Rights of the Child*, Preamble.

² See *International Covenant on Civil and Political Rights*, Article 23 (2).

³ See *Convention on the Rights of the Child*, Preamble.

⁴ See *Convention on the Rights of the Child*, Article 3, Article 5; *The Universal Declaration of Human Rights*, Article 26 (3).

State authorities are obliged to protect and support bonds between children and their parents. Authorities should respect the principle of subsidiarity, which entails autonomy of the family and non-interference in its life. We should emphasize that family is not only a natural guarantee of child's security and optimal environment of its development, but also a basic society unit which protects its autonomy. It should be pointed out that children who grow up in non-family environment are significantly more vulnerable to violence and have lower development chances⁵.

2. Discrimination of mothers who perform care over children

We want to draw the attention to the fact that work performed by parents performing care over their children, particularly by women, is very often underappreciated. Mothers performing care over children are discriminated in multiple dimensions. Their work is treated as a of lower value than paid jobs. Apart from widespread prejudice, discrimination of this group is reflected in legislative provisions⁶.

These problems are visible in most European countries, including Poland, which still fails to recognize basic needs of women who would like to be fully engaged in both their maternity and their professional career and of those who want to cease professional employment during the first years of child's life. Current legislation, instead of supporting families, discriminates mothers who have decided to devote part of their time for children. According to the data provided by Polish Supreme Audit Office (Najwyższa Izba Kontroli - NIK), 68 % of Polish parents do not have access to measures facilitating the family and care responsibilities⁷. Flexible forms of employment are hardly accessible. Legislative measures which were adopted up to date do not encourage the working women to have children. Basic guarantees regarding social security of women who renounce to their paid job in order to raise their children have been introduced only in 2013. However, the system in its current form is highly complicated and provides parents only with rather symbolic benefits. Furthermore, a distinction between potential beneficiaries has been made. According to the 2013 statute, persons who haven't been performing paid work during entire 6 months directly before the leave or who have been employed on a fixed term contract which was terminated before the leave, are entitled to obtain solely a reduced state funding of their social insurance. Mothers of large families, who have been performing childcare duties directly before the next birth, are particularly discriminated by these provisions. Moreover, women who took child care leave earlier than 2013 are deprived of all financial amenities introduced by the aforementioned amendment.

The regulation described above is a flagrant, but not only, example of the lack of recognition in Polish social security system of the value of the work of the mothers who perform childcare over their own children. Only collective care facilities are funded with public funds, while other forms of childcare,

⁵ See F. Pliego Carrasco, *Tipos de familia y bienestar de niños y adultos*, Mexico 2013.

⁶ See *Convention on the Elimination of All Forms of Discrimination against Women*, Preamble.

⁷ Najwyższa Izba Kontroli, *Koordinacja polityki prorodzinnej w Polsce*, Warszawa 2015, s. 56.

including care performed over small children by their parents, are discouraged⁸. This situation, apart from its social dimension, leads to negative perception of the work performed by mothers in the society.

3. Importance of a large family for the society

Large family bears crucial importance for the society. Today not only developed countries, but also a number of developing economies suffer from demographic crisis. While its negative impact on economy is already severe, it is expected to increase in the next decades. Parents of large families carry both financial and time burdens related to the process of upbringing their children. At the same time, entire society benefits from their efforts. When children grow up, they pay taxes and finance pension-system, whose beneficiaries are also childless people. International GDP growth projections show that countries with low fertility rates are expected to suffer serious economic difficulties within next decades.

The right to family means that the state should make appropriate effort to support families, particularly large families, and reduce undue tax burden⁹. Only in that way the rights of the children, including survival, protection and development could be comprehensively fulfilled.

The vast majority of Polish citizens indicate that the main reason of not having children is their bad economic situation¹⁰. In this context, it should be stressed that financial situation of parents in large families has unquestionable impact, not only on their family's economic safety and standard of living, but also for the future wealth of entire society.

4. Conclusions

Family, based on marital bond between a man and a woman, is an optimal environment for child's growth and development. The state should respect its autonomy and ensure its protection, including financial support. Large families are of particular value for the future of the society and should have central position in system of state aid. At the same time, state authorities should end discrimination of women performing non-paid childcare work, which is currently underappreciated in multiple dimensions.

⁸ In 2014 average monthly state subsidy for childcare in nursery ranged between 1000 and 1300 zł per child in various Polish municipalities, while minimum salary amounted to 1237,20 zł. Childcare performed by parents and family members should receive support equal to childcare in collective facilities.

⁹ *Convention on the Rights of the Child*, Article 4.

¹⁰ According to the survey conducted by Warsaw Enterprise Institute, bad material conditions and the fear of their further deterioration is the main reason for deciding not to have children (Warsaw Enterprise Institute, *Badanie postaw i przekonań Polaków dotyczących posiadania dzieci i polityki prorodzinnej*, Warszawa 2015, s. 24); A survey conducted in 2015 by The Office of the President leads to the similar conclusions (*Badania Kancelarii Prezydenta Rzeczypospolitej Polskiej 2015* [in:] Kancelaria Prezydenta Rzeczypospolitej Polskiej, *Pracodawcy przyjaźni rodzinie*, Warszawa 2015, s. 15).