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A FEW REMARKS ON LEGAL ASPECTS REGARDING THE SO-CALLED “MATERNITY PENSION”

KILKA UWAG NA TEMAT ASPEKTÓW PRAWNYCH DOTYCZĄCYCH TZW. „EMERYTURY MATCZYNEJ”

Summary: Contrary to the popular belief, the supplementary parental benefit called the “maternity pension” introduced by the Law of 31 January 2019 is not a retirement benefit in the literal sense, financed from the Social Insurance Fund. What is more, it is not a guaranteed benefit for those who raised four or more children, but a discretionary provision benefit financed from the state budget. Unfortunately, at first, a significant part of the society was impressed by the very idea of granting a “benefit” to people who instead of work brought up a large group of children, and did not go into the details of this program, which, as it turned out later, are crucial. This study aims to provide a detailed analysis of the provisions of the Law on supplementary parental benefit, so as to show in detail its true structure. In addition, it will also present the effects of the maternal law and indicate other solutions that could be introduced so that the assumption of honouring the effort put into the education of numerous offspring is fully implemented for all on equal terms.

Keywords: supplementary parental benefit, maternity pension, retirement benefit “Mama 4+”, supplementary parental benefit “Mama 4+”, multi-child family, Large Family Card

Streszczenie: Wbrew powszechnemu mniemaniu wprowadzone ustawą z dnia 31 stycznia 2019 r. rodzicielskie świadczenie uzupełniające zwane „emeryturą matczyną” nie jest emeryturą w dosłownym tego słowa znaczeniu, finansowaną z Funduszu Ubezpieczeń Społecznych. Co więcej, nie jest ono świadczeniem gwarantowanym, przysługującym tym osobom, które wychowały czworo lub więcej dzieci, lecz uznaniowym świadczeniem zaopatrzeniowym, finansowanym z budżetu państwa. Niestety, początkowo znaczna część społeczeństwa zachłystnęła się samą ideą przyznania „emerytury” osobom zajmującym się zamiast pracy zawodowej wychowywaniem licznej gromadki dzieci, i nie wnikała w szczegóły tego programu, które, jak

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się później okazało, są kluczowe. Niniejsze opracowanie ma na celu poddanie szczegółowej analizie przepisów ustawy o rodzicielskim świadczeniu uzupełniającym, tak by w szczególności ukazać jego prawdziwą konstrukcję. Ponadto przedstawione w nim zostaną również skutki, jakie wywołała ustawa matczyna oraz wskazane zostaną inne rozwiązania, które można byłoby wprowadzić, tak by założenie o uhonorowaniu trudu włożonego w wychowanie liczного potomstwa zostało w pełni zrealizowane dla wszystkich, na równych zasadach.

Słowa kluczowe: rodzicielskie świadczenie uzupełniające, emerytura matczyna, emerytura „Mama 4+”, dodatek rodzicielski „Mama 4+”, rodzina wielodzietna, Karta Dużej Rodziny

INTRODUCTION

A supplementary parental benefit introduced by the Law of 31 January 2019¹ was – as follows from the justification for the bill² – to be an expression of honour for people who raised at least four children and did not earn a retirement benefit in the amount corresponding to at least the amount of the lowest retirement pension for the long-term care of their offspring. For these reasons, it is also commonly referred to as “maternity pension” or “4+ benefit”³.

Contrary to the popular belief, this benefit is not a guaranteed retirement benefit for people raising four children, financed from the Social Insurance Fund, but a discretionary provision benefit, financed from the state budget. Unfortunately, at the time of the announcement of its introduction, most of the society was convinced that to receive it, it was enough to show that due to the upbringing of four children, the caregiver (mainly the mother) quit the job or did not take it at all, so he/she did not earn even the lowest retirement pension. This view was largely due to the way the benefit was presented by the media in the pre-election period⁴. There is no doubt that the proper publicity of this program showed the government in a positive light as one that appreciates the effort put into raising many children. Thanks to this, it could certainly count on the voters' greater favour.

Unfortunately, at first a significant part of the society was impressed by the idea of granting a “benefit” to people who instead of work brought up a large group of

¹ Law of 31 January 2019 on supplementary parental benefit, Journal of Laws 303; hereinafter referred to as the Law.

² From the justification of the draft law on parental supplementary benefit (print 3157), <http://orka.sejm.gov.pl/Druki8ka.nsf/0/237B34859F4C13C0C125838B0039739D/%24File/3157.pdf>, p. 22 [access: 10.12.2019].

³ Less often they are referred to as the “Mama 4+” benefit, although this phrase is appropriate.

⁴ This problem was subjected to a thorough analysis in the study Populist “maternal law”, which is a written study of my part of the paper on *Retirement “mother 4 +” - demography or populism?* prepared jointly with Dr. O. Kucharski for the International Scientific Conference Warsaw 14-15 September 2019, “Law and Populism”, which will be published in 2020, in a publication containing papers presented during this Conference.

children and did not go into the details of this program. It cannot be denied that no one has previously helped those who, due to the long-term raising of their offspring, remained without the livelihood at the retirement age. That is why the society largely considered it a great tribute towards them, thanks to which the government gained new groups of supporters.

However, this does not mean that the disadvantages of this solution were not pointed out. It was mainly accused of being directed to people raising at least four children, not three which already qualified a family – pursuant to the Law on the Large Family Card⁵ – to large families⁶. It was also raised against it that it was harmful to people who combined the effort of raising children with work, thanks to which they earned a retirement pension, although unfortunately often only the lowest⁷. The adopted solution honours the educational effort only of those who were professionally inactive. Despite these negative assessments, however, no attention was paid to the details of the structure of the benefit. It was only with time, when applications for granting it commenced, that the public began to see the real picture of this benefit.

The purpose of this study is to provide an in-depth analysis of the provisions of the Law on Parental Supplementary Benefit, so as to show its true content in detail. In addition, it will also present the effects of the maternal law and indicate other solutions that could be introduced so that the assumption of honouring the effort put into the education of numerous offspring is fully implemented for all on equal terms.

LEGAL STRUCTURE OF THE BENEFIT

The adoption of the law on supplementary parental benefit did not involve any changes to the pension scheme. That is why this benefit, despite being referred to as a ‘maternity pension’, is neither a special kind of pension nor even an addition to the pension in the literal sense of the word⁸. This is a special non-contributory cash benefit, which is granted on the basis of an administrative decision issued at the request of the person concerned by the president of ZUS or – if the applicant has had periods of agricultural work – by the president of KRUS. Its purpose is – according

⁵ Law of 5 December 2014 on the Large Family Card, Journal of Laws of 2019, item 1390.

⁶ See more on this subject M. Gurdek, *The origin of adopting of the so-called maternal law*, a paper prepared for the International Scientific Conference on “Current problems of legislation in the countries of Central and Eastern Europe”, Zakopane, 17-18 October 2019, which will be published in 2020 in the monograph that follows this even

⁷ M. Pokora-Kalinowska, *Dodatek do emerytury dla wszystkich, którzy wychowali czwórkę dzieci?*, <https://www.farmer.pl/finanse/kredyty-ubezpieczenia/dodatek-do-emerytury-dla-wszystkich-ktorzy-wychowali-czworke-dzieci,83647.html> [access: 8.12.2019].

⁸ Although it was presented in the media in this way - see for example, *Od stycznia 2019 nowy rodzaj emerytury. Kto może na nie liczyć?*, <https://serwisy.gazetaprawna.pl/emerytury-i-renty/artykuly/1315773,emerytury-matczyne-dla-kogo-kryterium-dochodowe-wysokosc.html> [access: 15.12.2019], as well as M. Pokora-Kalinowska, *Dodatek do emerytury dla wszystkich, którzy...*

to art. 1 section 2 of the Law – providing necessary means of subsistence for persons who gave up employment or other gainful activity or did not take them because of raising at least four children. But, most importantly, contrary to the popular belief, it is not a guaranteed benefit, but it is discretionary. It is therefore not enough to raise four or more children to receive it after reaching the retirement age.

According to art. 3 section 1 of the Law, it may (and therefore does not have to) be awarded to:

- 1) the mother who gave birth and raised, or raised at least four children;
- 2) the father who raised at least four children in the event of the death of the mother of the children or the abandonment of children by the mother or in the event of prolonged cessation of raising children by the mother.

The benefit may (and therefore does not have to) be granted to persons, after the age of 16, residing in the territory of the Republic of Poland and having a personal or economic interest centre (centre of life interests), referred to in art. 3 section 1a point 1 of the Law of 26 July 1991 on personal income tax, within the territory of the Republic of Poland for a period of at least 10 years, if these persons:

- 1) are citizens of the Republic of Poland or
- 2) have the right of residence or the right of permanent residence on the territory of the Republic of Poland as citizens of European Union Member States, European Free Trade Association (EFTA) Member States – parties to the agreement on the European Economic Area or the Swiss Confederation, or
- 3) are foreigners legally residing in the territory of the Republic of Poland.

The discretionary nature of this benefit is also indicated by the content of art. 3 section 3 of the Law, according to which it may (and therefore does not have to) be granted to the mother after reaching the age of 60 or to the father after reaching the age of 65. Most important, however, is what results from the second part of the sentence constituting section 3. This benefit can be awarded (but not necessarily) if the claimant does not have income to provide the necessary means of maintenance. It is therefore a *sine qua non* condition for the award of this benefit, the fulfilment of which does not, however, guarantee that award. In addition, the matter is complicated by the fact that the notion of “income providing necessary means of maintenance” is vague, ambiguous, evaluative. It causes a large range of interpretative options. Although the legislator in art. 2 point 2 of the Law has indicated the catalogue of income that ZUS / KRUS will take into account as those which, despite the lack of retirement or disability pensions, ensure maintenance, however, their amount remains to be assessed as to ensure that they provide the necessary means of maintenance. These revenues included, inter alia, income obtained, e.g. from a farm, room rental, diets obtained in connection with social and civil duties, coal allowances, veterans’ allowance, etc.

Each application for the benefit is considered individually, because – as you can see – with the supplementary parental benefit, unlike with other benefits paid by

ZUS or KRUS, there are no strict and uniform criteria. It is important, however, that pursuant to the Law, the President of ZUS / KRUS, when deciding whether to grant the benefit, considers only the income obtained by the person who is applying for the benefit. Thus, e.g. a high retirement pension or a husband's remuneration will not deprive a woman of the supplementary parental benefit. Thus, mothers whose husbands have a high retirement benefits, e.g. a mining one, may also receive maternity benefits⁹.

In accordance with art. 7 section 1 of the Law, the amount of parental supplementary benefit cannot be higher than the lowest old-age retirement benefit, which is currently PLN 1,100 gross. However, this benefit is subject to an annual adjustment based on and on the date specified for the adjustment of old-age and disability pensions being prerogative by virtue of statutory retirement benefit provisions (Article 7 (6) of the Law). The full amount will be given to those who, when raising children, did not work at all or worked too shortly to receive any retirement benefit. On the other hand, people who worked and receive a retirement or disability pension, however, due to the long-term care of children, the low amount of collected contributions resulted in the low amount of the benefit, or the insurance period was too short and did not allow it to be increased to the guaranteed (minimum) amounts, they will not be entitled to full supplementary benefit in the amount of the minimum pension. In their case, it will only be an additional payment to this amount (Article 7 (2) of the Law)¹⁰.

In addition to the ambiguous concept of "income ensuring the necessary means of subsistence", interpretation doubts are also evoked by many other terms used by the law. For example, the definition of "upbringing" in Art. 2 section 9 of the Law is unclear, according to which it means exercising personal care over children, consisting in constant, direct and continuous performance of all the obligations incumbent on parents under their rights towards children in order to properly care for them and their property. Unfortunately, this definition does not state the lapse of what period can be considered that someone raised children? How many years should this care be performed, or up to what point in the child's life? Therefore, this circumstance will also be assessed by the authority at its discretion. The same applies to long-term cessation of upbringing.

In addition, the Law also provides for additional premises considered when examining the application. Namely, according to art. 3 section 5 of the Law, the authority may (and thus again does not have to), but refuse to grant the benefit:

⁹ I. Kacprzak, *Mama 4+ z emeryturą*, <https://www.rp.pl/Spoleczenstwo/190609640-Mama-4-z-emerytura.html> [access: 3.12.2019]; zob. także *Wiemy, gdzie mieszka najczęściej "matek 4 plus"*, <https://businessinsider.com.pl/twoje-pieniadze/emerytury/mama-4-plus-ile-osob-dostaje-emeryture-dla-matek/epybt8g> [access: 4.12.2019].

¹⁰ J. Śliwińska, *Matki czworga dzieci nie dostaną pieniędzy z automatu. Decyzja ZUS będzie uznaniowa*, <https://serwis.gazetaprawna.pl/emerytury-i-renty/artykuly/1340389,matczyne-emerytury-zus-odmowi-przyznania-specjalnego-swiadczenia.html> [access: 15.12.2019].

1) a person who has been deprived of parental authority by the court or whose parental authority has been restricted by the court by placing a child or children in foster care;

2) in the case of long-term cessation of raising children.

Once again the authority discretionarily decides whether to grant this benefit. Even if it determines that the circumstances referred to in this provision have occurred, it still does not have to, and only can, refuse to grant the benefit. Moreover, while the circumstances set out in the first point are simple to determine and objective, because they result from an appropriate court decision, those from the second point are subject to a completely free assessment by the authority. No provision of the Law indicates when we are dealing with long-term cessation of raising children.

In only two cases, the legislator decided to categorically deprive the applicant of the right to be granted a benefit. First, in art. 3 section 4 of the Law it was indicated that the benefit is payable provided that the applicant resides in the territory of the Republic of Poland during its collection. So, *a contrario*, a person who, despite meeting all other necessary conditions, does not meet the one referred to in Art. 3 section 4 of the Law is not entitled to it. Secondly, Art. 3 section 6 of the Law says that the benefit is not payable to a person who is temporarily arrested or serving a prison sentence. However, this exclusion does not apply to persons serving a prison sentence in the electronic supervision system (Article 3 (7) of the Law). This solution was certainly introduced because the benefit is to provide a person who has no income with the necessary means of subsistence, livelihood. Persons deprived of liberty do not need such funds, because while being in prison or in custody, they remain dependent on the state budget. If this benefit were a retirement benefit in the literal sense of the word, then no one could be deprived of it.

The last very important feature of this benefit is that, unlike the old-age pension, which – if you have acquired rights to it – is obtained unconditionally for life, this benefit is granted for an indefinite period, but only for the time of not having income to provide the necessary means of subsistence. It therefore has the character of social assistance benefits. Therefore, pursuant to art. 6 section 2 of the Law, a person who has been granted the right to a benefit is obliged to inform the competent authority about any changes affecting the right to a benefit or the amount of benefit paid and to submit the required evidence. If the circumstances giving rise to the benefit cease to exist, the right to the benefit – in accordance with art. 7 section 7 of the Law – ceases. The institution for old-age and disability pensions states, by decision, that the right to the benefit ceases and suspends its payment.

APPEALS

The supplementary parental benefit is also characterized by a system of appeals, which has been regulated in two ways. According to art. 5 section 4 of the Law on a decision granting the right to a benefit and a decision refusing to grant the right to a benefit, a party shall have the right to submit to the authority which issued the decision a request for re-examination of the case on the principles regarding the decision issued in the first instance by the minister. The provisions of the Law of 14 June 1960 the Code of Administrative Procedure¹¹ concerning appeals against decisions and of the Law of 30 August 2002 Law on proceedings before administrative courts¹² concerning complaints shall apply this application. Thus, the final decision of the president of ZUS or KRUS can be appealed to the provincial administrative court, which in principle may order a re-examination of the case but cannot independently change the decision issued by the president of ZUS or KRUS. The role of this court is only to check whether the proceedings have been properly carried out. In this case, it is not possible to appeal to common courts, as in the case of other retirement decisions, and therefore no one will verify these decisions in terms of substance.

However, in accordance with art. 11 section 2 of the Law the decision of the disability pension institution issued regarding the re-determination of the amount of the benefit, cessation of the right to benefit, payment of the benefit and reimbursement of unduly collected benefit may already be appealed to the competent court within the time limit and on the terms set out in the provisions of the Law of 17 November 1964 Code of Civil Procedure¹³.

SUPPLEMENTARY PARENTAL BENEFIT IN FIGURES

With the entry into force, the Law on Supplementary Parental Benefit has practically applied to those who are already mothers and grandmothers, and who in the distant past did not work at all or worked too shortly. It was initially estimated that as many as 86,000 persons would benefit from the new regulations, including 65 thousand who did not have the right to an old-age or disability pension, and 20.8 thousand persons receiving a benefit lower than the level of the lowest retirement pension¹⁴. The available data shows that by the second half of October 2019, nearly 60,000 ap-

¹¹ The Law of 14 June 1960 Code of Administrative Procedure, Journal of Laws of 2018, item 2096, as later amended.

¹² The Law of 30 August 2002 Law on proceedings before administrative courts, Journal of Laws of 2019, item 2325.

¹³ The Law of 17 November 1964 Code of Civil Procedure, Journal of Laws of 2019, item 1460, with later amendments.

¹⁴ *Informator. Rodzicielskie świadczenie uzupełniające Mama 4+*, PDF file, Ministry of Family, Ministry of Family, Labor and Social Policy, <https://www.gov.pl/web/rodzina/informator-o-programie> [access: 3.12.2019].

plications had been submitted, of which approx. 56 thousand already considered, 50,6 thousand of which positively¹⁵. The largest group of beneficiaries are women aged 60-69, of whom 1,604 mothers raise nine or more children¹⁶. In total, 5.2 thousand refusals were issued, of which as many as 3.3 thousand refusals were issued because of too high income achieved by the applicants. Over 1,000 people applied for the benefit, although they had not raised the required number of four children in their lives. ZUS also issued 156 refusals because of long breaks in raising children¹⁷.

Only approx. 19 thousand persons receive a benefit in the amount of the minimum pension, i.e. PLN 1,100 gross, another 31 thousand women on average PLN 350 and PLN 284 (men) – as a supplementary benefit¹⁸.

So far, the most decisions have been issued:

- ZUS branch in Gdańsk – nearly 3,200 people,
- ZUS branch in Rybnik – 2236 people,
- ZUS branch in Rzeszów – 2184 people¹⁹.

The Gdańsk branch of ZUS also has the most people with the highest benefit rate, so 1,100 zlotys – that is 1336 people – are mothers who have never worked. According to Beata Kopczyńska, ZUS spokeswoman in Rybnik, “the high result of the Rybnik ZUS is not surprising, which (...) is the largest among six branches of the Śląskie Province – it covers Pszczyna, Tychy, Mikołów, Jastrzębie Zdrój, Rybnik, and Wodzisław. A significant part includes typically mining areas in which several dozens of mines operated since the 1970s”²⁰. That is why such a large number of decisions result from the specificity of the region and mining tradition, in which only the husband – father worked professionally, while the wife raised numerous offspring and took care of the house. The fewest decisions were issued in:

- 1st branch of the Social Insurance Institution (ZUS) in Warsaw (151),
- 1st branch of the Social Insurance Institution in Łódź (124)²¹.

SUPPLEMENTARY PARENTAL BENEFIT AND ‘RETIREMENT BENEFIT PLUS’

The collection of the supplementary parental benefit, although it is not a retirement benefit, and thus the persons entitled to it are not the retired, but it entitles

¹⁵ P. Orlikowski, *Mama 4 plus. ZUS podaje dane, ile osób korzysta z matczynych emerytur*, <https://www.money.pl/emerytury/mama-4-plus-zus-podaje-dane-ile-osob-korzysta-z-matczynych-emerytur-6436044241864833a.html> [access: 14.12.2019].

¹⁶ P. Krupa, *Emerytura „Mama 4 Plus” – warunki, ile wynosi? Od kiedy i dla kogo?*, <https://www.czerwona-skarbonka.pl/emerytura-mama-4-plus-warunki-ile-wynosi-od-kiedy-i-dla-kogo/> [access: 4.12.2019].

¹⁷ I. Kacprzak, *Mama 4+ z emeryturą...*

¹⁸ Ibidem.

¹⁹ *Wiemy, gdzie mieszka najwięcej „matek 4 plus”...*

²⁰ I. Kacprzak, *Mama 4+ z emeryturą...*

²¹ Ibidem.

them to receive the so-called 13th retirement benefit. According to art. 2 section 2 point 16 of the Law of 4 April 2019 on a one-off cash benefit for the retired and pensioners²², whose applications for the parental benefit “Mama 4+” had been considered positively by 30 April 2019 at the latest, also received the “Retirement Benefit Plus” in 2019. The available data shows that this was the case in over 44,000 cases²³. The granting of this additional one-off benefit also to the beneficiaries of the parental supplementary benefit may also be misleading as to its nature. From the very title of the Law it can be concluded that this so-called 13th retirement benefit should be payable to the retired and pensioners, therefore the “Mama 4+” parental benefit can be received just as a normal retirement benefit.

EFFECTS OF ADOPTING THE LAW ON SUPPLEMENTARY PARENTAL BENEFIT

Unfortunately, the effects of adopting the law are not optimistic. To a large extent it results from the fact that, the purpose of introducing the benefit specified in art. 1 section 2 of the Law is quite different from how the idea was presented to the public²⁴. According to the content of art. 1 section 2 of the Law, the purpose of the benefit is to provide the necessary means of subsistence to persons who gave up employment or other gainful activities or did not take them because of raising children. However, the explanatory memorandum to the draft bill states that “The draft bill is intended to honour and appreciate the period of raising children”²⁵. And it is not the same.

The very idea of honouring people who raised numerous offspring and appreciating this difficult, unpaid work deserves recognition, especially at a time when the state is struggling with the demographic decline. Only that if it was the purpose of the law, it should have been done in relation to all persons on equal terms. Providing benefits only to those who, due to taking care of their children, have not earned a retirement benefit, is simply – in the light of these assumptions – unfair and violates the constitutional principle of equality. The adoption of such a solution shows that the state only appreciates the effort of those mothers (fathers) who were economically inactive while raising children but remains quite indifferent to those who combined this effort with work. It is as if the latter are worse and do not deserve recognition, but in reality it is different. For they have laboured a lot more than

²² Law of 4 April 2019 on a one-off cash benefit for the retired and pensioners, Journal of Laws of 2019, item 743.

²³ P. Żebrowski, *Trzynasta emerytura także dla 44 tys. osób ze świadczeniem “Mama 4 plus”*, <https://www.prawo.pl/kadry/trzynasta-emerytura-dla-ponad-44-tys-osob-ze-swiadczeniem-mama-4,410786.html> [access: 14.12.2019].

²⁴ More on this see M. Gurdek, *Populist „maternal law”...*

²⁵ From the explanatory statement to the draft law on supplementary parental benefit...

those who have devoted themselves only to raising children. Therefore, one can get the impression that the state values more those who have worked less in their lives. And yet those who not only contributed to the demographic growth and were able to provide their families with livelihood at that time, earning a retirement benefit for the future, should be appreciated even more.

So, if the state only wanted to provide assistance to those who were in the retirement age without a livelihood, it should not justify adopting this act by wanting to honour and appreciate the period of raising children. And this has been done many times - not only in the justification of the bill, but also in the media. In an interview conducted in October 2018 by Radio ZET, Deputy Minister of Family, Labour and Social Policy Bartosz Marczuk said: "This is a breakthrough when it comes to appreciating the motherhood and appreciating numerous offspring. No one has done more for the retirement system than mothers who gave birth to four or more children". He added "that this law includes retroactively all the women who have ever had four or more children"²⁶. And this is not entirely true. First, it does not include those women who have earned at least the lowest retirement. And secondly, it does not guarantee the granting of the benefits to all the remaining ones.

Therefore, if the bill provider really honours the effort put into taking care of at least four children, he should grant benefits to all parents of four (and preferably three) children in the form of e.g. a family allowance paid after reaching the retirement age of PLN 250 for each raised child, including working parents and now receiving a retirement benefit regardless of its amount. Therefore, with the structure of the supplementary parental benefit in which it was adopted, one had to refer to the desire to help people who had not managed to reconcile their parenting responsibilities with work and treat this benefit as another social assistance benefit. Unfortunately, due to the pre-election time when the law was adopted, it was definitely better "sold" as an expression of honour for the parents of numerous offspring, than as a discretionary social assistance benefit granted to those who did not cope with the challenge they had faced years ago.

Unfortunately, the benefit introduced by law, despite the good intentions that guided it, promotes professional inactivity. Only those who have not worked and dealt with raising children are awarded. Such people will therefore not be interested in legal work, expanding the grey area. Therefore, "Mama 4+ Retirement Pension" is another benefit that deactivates the society professionally. Thus, the question arises whether in Poland honest work will still be profitable, as well as making the effort to obtain a higher specialized education? What is more, it violates the principle of social justice – it is harmful to working mothers, whose effort put into raising four children has not been honoured in any way.

²⁶ B. Marczuk in an interview conducted by Radio ZET, *Matczyne emerytury od 2019 r. "Ustawa obejmuje wstecz wszystkie panie, które kiedykolwiek urodziły czworo lub więcej dzieci"*, <https://serwisy.gazetaprawna.pl/emerytury-i-renty/artykuly/1324150,dla-kogo-matczyzna-emerytura.html> [access: 15.12.2019].

It is also harmful to fathers who are entitled to receive it only if the mother has died or has abandoned children or has ceased raising them for a long time. And this means that fathers are treated unequally and discriminated against mothers. This solution violates the rule of equality towards the law specified in art. 32 of the Polish Constitution²⁷, and also expressed in art. 33 section 1 of the Polish Constitution, the principle of gender equality, according to which a woman and a man in the Republic of Poland have equal rights in family, political, social and economic life²⁸. In a situation where a man took care of the home and the upbringing of children, and the woman worked professionally for the whole family, the man can no longer count on the state aid at the retirement age. Therefore, the introduced solution forces a return to the model in which a woman takes care of home and a man works, as if in the Polish society there have been no changes for several decades²⁹.

This benefit is also harmful due to its discretionary nature. It is the authority that assesses the applicant's financial situation and determines whether he has income to provide the necessary means of subsistence. In addition, it burdens the state budget and will not be compensated in any way, e.g. by fulfilling the contribution obligation. It also generates additional costs in the form of the 13th retirement benefit due to its beneficiaries, although it is not a retirement benefit.

The introduced benefit rewards those women who currently fulfil the conditions, i.e. those who raised children at least 20-30 years ago. Therefore, it does not influence the improvement of the number of children in Poland. Theoretically, it could have such an effect in the future if women, encouraged by the promise of future benefits, would now decide to have four children, even if it involved leaving the job, as if they were unable to reconcile it with parental responsibilities. Unfortunately, in the light of the provisions of the Law, the decision taken at present does not guarantee the receipt of the benefit at the retirement age. Therefore, the regulation postpones the "award" by 30-40 years, which is very uncertain considering the changing legal status and economic condition of the country. The effects in 30-40 years can be dramatic for those who now consciously quit their jobs. In this situation, the victims may also feel those women who are not working anyway, but only take care of the home and fewer children. Those in the hope that they will receive the benefit at the retirement age may decide to have another (previously unplanned) child in order to meet the statutory four criteria.

²⁷ The Constitution of the Republic of Poland of 2 April 1997, Journal Of Laws No. 78, item 483 as amended.

²⁸ K. Piwowarska, *Dyskryminacja na tle zakresu podmiotowego rodzicielskiego świadczenia uzupełniającego?*, n.ius, 28.02.2019, System Informacji Prawnej Legalis, <https://sip.lexis.pl/document-full.seam?documentId=nzuxk4zogi3damrrhe3domi> [access: 13.12.2019].

²⁹ J. Parafianowicz, *Mama 4 plus: matczyna emerytura za pracę przy dzieciach*, <https://www.rp.pl/Praca-emerytury-renty/302039996-Mama-4-plus-matczyna-emerytura-za-prace-przy-dzieciach.html> [access: 15.12.2019].

There is also no doubt that the introduction of such a solution also promotes clumsiness and suppresses the sense of responsibility of children for parents, sensitivity to human needs (especially when it comes to loved ones), willingness to help and support (at least in the family circle), not to say that contributes to people's heartlessness towards other people. It is obvious that persons to whom the Law is addressed should not be left alone when they have no means of subsistence at the retirement age. However, it should be remembered that these people have at least four children who have a maintenance obligation, and they should be the first to help parents, not the state. Granting a 'maternity pension' may cause children to feel free from any obligation to help, because after all, the parent receives a 'pension'. Since the benefit is PLN 1,100 gross, net is PLN 934.6³⁰. Therefore, each of the children could support a parent financially in the amount of approx. PLN 235 per month, which is not such a big expense for the effort put into their upbringing. The state should only be included if the maintenance is ineffective. However, there are families who live their entire lives at the expense of others – social assistance, benefits, allowances, alimony fund. In addition, making a decision years ago to maintain a family of at least six people from only one salary was tantamount to accepting the future maintenance of parents from only one retirement benefit. It is known that this is always lower than the last salary, but it is impossible not to notice that since a family of six lived on one salary (although probably with considerable support from social assistance), two retirement benefits should be enough for one retired person. They have been used to modest lives for years. Of course, this logical conclusion does not free children from the obligation to help their parents. In the event of the death of the person who was entitled to an old-age pension, the latter has the right to receive a significant part of the retirement benefit worked out by the deceased – that is, he would not be left without a livelihood.

Nowadays, however, this argument is already somewhat misplaced, because at present the inactive mother of four and more children receives under the "500 plus" program at least PLN 2,000, which is like a second salary. It is not a salary for working with children, but it is a considerable injection of money, replacing a second salary. Therefore, more and more often women with numerous offspring give up work, treating "500 plus" as income from their work for the family. In 30-40 years, it will be much more difficult for such people to survive from one pension, because thanks to this benefit they were in a much better financial situation during the joint household with their children and they got used to living at a higher level.

³⁰ ZUS Emerytura 2019: WALORYZACJA Podwyżka rent i emerytur Stawki Brutto i netto 22.12.2019, <https://gk24.pl/zus-emerytura-2019-waloryzacja-podwyzka-rent-i-emerytur-stawki-brutto-i-netto-22122019/ar/c3-13507979> [access: 22.12.2019].

SUPPLEMENTARY PARENTAL BENEFIT IN PUBLIC PERCEPTION

From the very beginning, as soon as the draft law on the supplementary parental benefit was presented, despite the general positive reception of the idea of appreciating the effort of parents raising at least four children, part of the society also noticed the adverse effects of this regulation. Over time, however, the number of people who criticize the law increases. Here is how some Internet users comment on the effects of its adoption on social forums: »It will happen that the one who quit school at the age of 18 and, if you will pardon the expression, made babies, will look with satisfaction and contempt at a woman who slept three or four hours, combining raising children with work, study and caring for relationship with partner / husband«. »Unfortunately, the actual recipient is the largest beneficiary 500+, i.e. people who have been specializing in collecting social benefits for years«. »Sick changes«. »The state brings up parasites unfortunately. People should first throw something into this «sack» and then have their hand out. Children from pathology will not go to work, because on the example of their parents they will see that it is possible to live with MOPS«. »Massacre and great injustice«³¹.

What is more, over time, the society began to pay attention not only to the negative effects of this regulation, which were becoming more openly discussed, but also to the real truth about this benefit. The law, adopted quickly, in the pre-election period, aimed at providing financial assistance to people who, devoting themselves to raising at least four children, did not earn a retirement benefit, with each successive month meets with increasingly negative opinions. The more the society calmly analyses its assumptions, the more aware it is of the structure of this benefit, and that it was all typically pro-electoral activity. One of the readers of *Gazeta Prawna* referring to the article by J. Śliwińska, *Matki czworga dzieci nie dostaną pieniędzy z automatu. Decyzja ZUS będzie uznaniowa*, wrote the following: "A very interesting article. Importantly, it corrects the previous hypocrisy about the so-called retirement benefits for the birth of 4 children"³². Another, referring to this entry, added: "yes, it corrects hypocrisy ... it's interesting that after the election and not before"³³.

³¹ J. Parafianowicz, *Mama 4 plus: matczyzna emerytura za pracę przy dzieciach...*

³² A user's comment (nick: prawnik – Szczecin) to the article by J. Śliwińska, *Matki czworga dzieci nie dostaną pieniędzy z automatu. Decyzja ZUS będzie uznaniowa*, <https://serwisy.gazetaprawna.pl/emerytury-i-renty/artykuly/1340389,matczyne-emerytury-zus-odmowi-przyznania-specjalnego-swiadczenia.html> [access: 16.12.2019].

³³ A user's comment (nick: mnj) to the article by J. Śliwińska, *Matki czworga dzieci nie dostaną pieniędzy z automatu. Decyzja ZUS będzie uznaniowa*, <https://serwisy.gazetaprawna.pl/emerytury-i-renty/artykuly/1-340389,matczyne-emerytury-zus-odmowi-przyznania-specjalnego-swiadczenia.html> [access: 16.12.2019].

CONCLUSION

As you can see to obtain the so-called maternity retirement benefit it is not enough to raise four children. There are many other conditions that must be met, some of which are assessed. Moreover, the Law stipulates in many places that the authority “may grant” a benefit, not “grants”, which means that it is not guaranteed but discretionary. Even worse, it evokes a sense of injustice and has many adverse effects. There is no doubt, however, that raising even one child is a difficult and responsible job, and each subsequent one becomes even more of a challenge. However, everyone should decide responsibly on choosing such a way of life that they are able to go and bear the costs of this trip. Therefore, they should also consciously decide on the number of children they are able to maintain and ensure their livelihood also at the retirement age. Everyone makes, after all, their own life and should be responsible for the consequences of their choices, and not someone else – e.g. the state, of course, except for random cases, which could not be foreseen. In these cases social assistance should come to the fore, and not *a priori* exempt from taking actions aimed at meeting the undertaken tasks.

Finally, I would like to make one more reflection. One should fully agree with J. Parafianowicz, according to whom “for reliable work with children, the effort put into giving birth and raising, the mothers should be given - not beggarly benefits, from which they do not have enough for basic needs, but a decent benefit for old age, and before that 500+ for every child, pure gold layette and a medal for courage. Because only people who do not have children, or who are raising them with the support of the staff of carers, housekeepers and tutors can proclaim that home and work are mutually exclusive concepts”³⁴.

Therefore, if the state, struggling with the demographic decline, wanted to honour the effort put into bringing up such a large number of children, which already provides positive birth rate, it should introduce a completely different solution, fair for everyone.

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³⁴ J. Parafianowicz, *Matczyne emerytury niesprawiedliwe dla pracujących mam*, <https://serwisemerytalny.rp.pl/matczyne-emerytury-niesprawiedliwe-dla-pracujacych-mam/> [access: 16.12.2019].

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