FAMILY CARING CAPITAL AS THE LATEST INSTRUMENT OF NATIONAL FAMILY POLICY

RODZINNY KAPITAŁ OPIEKUŃCZY JAKO NAJNOWSZY INSTRUMENT POLITYKI RODZINNEJ PAŃSTWA

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Abstract: On 17 November 2021, the Law on the Family Caring Capital was passed. It introduced, alongside existing family-friendly programmes such as "Family 500+" and " The Good Start", a new programme in the form of the Family Caring Capital. The article defined the concept of family policy. Current demographic problems were discussed. The assumptions and objectives of the Family Caring Capital Programme were analysed. An attempt has also been made to answer the question as to what extent it will fulfil the hopes placed in it regarding an increase in childbirths in Poland.

Keywords: family-friendly politics, Family Caring Capital, demography

Streszczenie: 17 listopada 2021 r. została uchwalona ustawa o rodzinnym kapitale opiekuńczym, która wprowadziła kolejny prorodzinny program w postaci Rodzinnego Kapitału Opiekuńczego. W artykule zdefiniowano pojęcie polityki rodzinnej, omówiono aktualne problemy demograficzne i poddano analizie założenia i cele programu Rodzinny Kapitał Opiekuńczy. Postarano się także odpowiedzieć na pytanie, na ile spełni pokładane w nim nadzieje dotyczące wzrostu dzietności w Polsce.

Słowa kluczowe: polityka prorodzinna, Rodzinny Kapitał Opiekuńczy, demografia

Introduction

The family is a natural and irreplaceable environment from the moment of human birth. Both children and adults develop and meet their needs within the family. The family is the foundation of any society (Szczudlińska-Kanoś, 2019, p. 13; Kocik, 2006, p. 3). "Family policy" is the government's actions for children and their families, the aim of which is, inter alia, their financial support (Tkaczyk, 2003, p. 119; Kamerman, 1994, p. 12). Family policy is a part of state social policy (Skawińska, 2012, p. 130; Kroszel, 1995, p. 6). The quarter century of transformation and system reforms has not, on the whole, been a favourable period for family policy (Rymsza, 2016, p. 67). It is also worth noting that family policy has in recent years become an important issue of public debate in Poland (Sobociński, 2016, p. 31).

The demographic changes in Poland, which began in the 1990s and which have led to permanent changes in the age structure of the population, are based on changes in the family model (Pawlus, 2016, p. 7). The current demographic situation of the country is very difficult. The decline in the fertility rate below replacement level, which has been ongoing for almost 30 years, has led to a situation where Poland will be one of the most depopulated and ageing countries in Europe in the coming years. The average age of the population in Poland in 2070 will be 52.1 years, only lower than the average age in Italy, which will be 52.6 years. According to UN estimates, the population in Poland in 2100 may drop even to 23 million people. Eurostat forecasts indicate that Poland's

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population will shrink by almost a million people over the next decade, a trend that will continue into the following decades. There will be a steady increase in the number of senior citizens (19,6% in 2015, 21,9% in 2019), with a slight increase in births (the fertility rate has increased from 1.29 in 2015 to 1.42 in 2019). (Explanatory Memorandum, p.2). It is worth pointing out that 356 540 children will be born in 2020, compared to 701 553 in 1980 (CSO, 2021, p. 250). This means that over a period of 40 years, the number of newborn children per year has halved. Among the factors which have contributed to the lower fertility rate in Poland the following have been mentioned: changes in the economic functions of the state and the family, including the removal of the state from the role of an employer and an entity guaranteeing access to social support services, increased responsibility of households for their economic situation at a time when it was becoming increasingly difficult to generate income, and changes in the conditions for participation in the labour market, due to economic reforms as well as globalisation and the high risk of unemployment (Grodzka, 2016, p. 79; Kotowska, Jóźwiak, Matysiak, Baranowska, 2008).

In addition to those indicated above, there are also those that affect the shape of the modern family, regardless of the economic situation of the those mentioned Among development of educational opportunities for women and their professional activation and the conflict of gender roles in family relationships resulting from the equal status of men and women in professional work (Grodzka, 2016, p. 79; Firlit-Fesnak, 2007, p. 189). There is no doubt that one of the most important factors influencing fertility is the element of financial security, since the appearance of each child in the family means, on the one hand, increased expenses for their upkeep and, on the other hand, often a limitation, especially during the first 2-3 years of the child's life, of one parent's earning capacity (Russel, 2016, p. 114).

Demographic changes associated with a significant increase in the percentage of older people in society will have a significant impact in many areas – public finances, the pension system, the labour market and social security, education, increased spending on health services and care for the elderly. For this reason, an active family policy should mitigate adverse demographic trends and include a range of financial, institutional, and legal measures. Effective implementation of this policy requires coordinated

and long-term measures (Explanatory Memorandum, p. 3). As M. Wojciuk correctly pointed out, family policy, due to the challenges it faces, is one of the most important state policies (Wojciuk, 2020, p. 109). Current demographic problems can only be solved by increasing fertility. According to the proposed Demographic Strategy 2040, presented by the Government Representative for Demographic Policy, there are directions for actions aimed at increasing fertility through financial security for families, support in meeting the housing needs of families, and the development of forms of childcare (Strategia Demograficzna 2040, p. 76-99).

On 17 November 2021, the Law on the Family Caring Capital was passed (Journal of Laws. 2021, item 2270c). It introduced, alongside existing family-friendly programmes such as "Family 500+" and "The Good Start", a new programme in the form of the Family Caring Capital (Rodzinny Kapitał Opiekuńczy, RKO).

Methodology of research

The study uses a formal dogmatic method to interpret the content of the Family Caring Capital Act, an analysis of documents related to the legislative process of the Act in question and an analysis of statistical data from the CSO. The paper also reviews academic publications on family-friendly Policy.

Discussion and outcomes

Objective of the programme

The Family Caring Capital Act aims to implement the above-described objectives by introducing new support targeted at families with children. The Family Caring Capital programme is aimed at families with dependent children and is primarily intended to partially cover the expenses associated with caring for a second and subsequent child between the ages between 12 and 36 months, in principle. The purpose of introducing this benefit is to mitigate unfavourable demographic trends. As indicated above, it is estimated that Poland's population will shrink by almost a million people over the next decade, and this trend will continue over the following decades. In order to counteract the above-mentioned unfavourable phenomenon, the Family Caring Capital was introduced as another solution that will reduce the financial burden of raising children on families and thus encourage parents to decide to have more children. Providing care for a very young child, whether in the form of home care by a parent or an institution such as a nursery, or in

the form of individual care such as the services of a babysitter, is associated with a heavy financial burden on caretakers. As a result, families often face economic barriers related to the size of their income when deciding to have further offspring. The law as passed is intended to significantly reduce the current economic constraints on the financing of childcare between the age of 12 and 36 months, particularly among young people deciding to have another offspring. This is, in principle, the period between the end of support in the form of maternity allowance and the beginning of support in the form of the right to pre-school care - this gap in parental support from the state will be filled by the Family Caring Capital (Explanatory Memorandum, p. 4-5).

In addition, it should be pointed out that the Family Caring Capital is intended as an additional support instrument to facilitate the balancing of parenthood and work. Additional resources to be used for covering the costs of childcare for the second child are to constitute an impulse for preventing the migration outflow from the labour market of a large group of people of working age, i.e. parents (especially mothers) not taking up employment or taking employment leave due to the need to care for small children; due to a limited access to childcare institutions for children aged up to 3 years (nursery, children's club, day care), and lack of possibility of independent financing by the family of another form of care (babysitter) (Explanatory Memorandum, p. 5).

According to the data presented by the Polish government, in the years 2023-2025, there will be about 400 thousand per year of children entitled to Family Caring Capital, then in the years 2030-2032 this number will fall to about 373 thousand, thus it will be lower by 6.75% (Office of Parliamentary Analyses, p. 6).

At the same time, it should be noted that the new benefit, by providing funding for childcare services for children aged between 12 and 36 months, will increase demand for such services and consequently contribute to the development of a broad network of childcare institutions for children up to three years of age. Additionally, family care capital is another factor leading to poverty reduction for families with dependent children. Already today, largely thanks to the introduction of the "Family 500+" programme in 2016, the risk of poverty among children has been largely minimised. Family Caring Capital is intended to be a tool to reinforce this trend (Explanatory Memorandum, p. 5).

Authorised persons

The right to Family Caring Capital is granted to polish citizens and to foreigners who, who have the right to legal residence on the territory of the Republic of Poland and the right to access the Polish labour market, provided they fulfil the condition of living with children on the territory of the Republic of Poland (Article 2 of the Act on Family Caring Capital).

At the same time, the Act, as a rule, determines the right to family care capital based on residing on the territory of the Republic of Poland for the period during which the benefit is to be paid (Article 2, paragraph 2 of the Family Caring Capital Act). Such a solution is aimed at eliminating potential cases in which the life interests of a given person and their family would be in another country, while the person would still be unduly entitled to receive Family Caring Capital in Poland. An analogous solution has been in operation for more than 5 years regarding the right to parental benefit, and its aim is to limit the above-mentioned cases to a minimum.

The substance of the regulations introduced by the Act is to ensure the right to Family Caring Capital to a mothers or fathers who bring up a second and a subsequent child aged 12-36 months, to make it easier for them to bear increased expenses related to providing care for this child (Article 4 paragraph 2 of the Act on Family Caring Capital).

In addition, persons who have fostered a child and have applied to the Guardianship Court for adoption are also entitled to Family Caring Capital. In the case of persons who have fostered a child and have applied to the Guardianship Court for adoption, the Family Caring Capital is available after the lapse of 12 months from the date on which the child has been fostered and from the date on which the application for adoption has been submitted to the Guardianship Court, for the period of 24 consecutive months, but no longer than until the child reaches the age of 7 (compulsory education) or until the child reaches the age of 10 in the case of a child with regard to whom a decision on the postponement of compulsory education has been made (Article 4, paragraph 5 of the Act on Family Caring Capital).

If the executor of the programme – the Social Insurance Institution (ZUS) has doubts as to who is actually taking care of the child, it may request the head of the social welfare centre, with jurisdiction over the place of residence of the person applying for the benefit or the person claiming the benefit, to conduct a community-based family interview in order to clarify the doubts (Article 26, paragraph 2 of the Family Caring

Capital Act). On the other hand, if the parents do not live together and, according to a court order, the child lives with both parents (alternating custody), then family care capital is granted to each parent in the amount of half of the capital to which they are entitled (Article 5 paragraph, 6 of the Family Caring Capital Act).

The amount of Family Caring Capital and the conditions for acquiring it

The Family Caring Capital is granted to the persons referred to above for the second and subsequent child in the family, as a rule aged 12-36 months, in the amount of up to PLN 12,000 per child. The benefit will be paid, as a rule, between the 12th and 36th month of the child's life, in monthly parts/ instalments (Art. 5 paragraph 1 and paragraph 4 of the Family Caring Capital Act).

It is worth pointing out, that the mother or father does not lose the right to the capital despite the death of their first child, unless the death occurred before the child was born or the child was taken into foster care in respect to which the person who took them into care has applied to the Guardianship Court to initiate adoption proceedings (Article 4 paragraph 3 of the Family Caring Capital Act).

The Family Caring Capital is paid out in monthly instalments, with the understanding that the applicants for the Family Caring Capital (parents or persons who have adopted a child and have applied to the Guardianship Court for adoption) may indicate themselves whether they wish to receive the capital in the amount of PLN 500 for a period of 24 months or in the amount of PLN 1000 for a period of 12 months. The Act also gives parents/recipients the possibility to modify once the amount of Family Capital to be paid selected in the application (Article 5 of the Family Caring Capital Act).

It should be emphasised that the Act provides that the Family Caring Capital is granted regardless of the income achieved by the family (no income criterion) and that the benefit is not subject to personal income tax. These regulations reflect the indirect aim of the whole regulation, which is the need to support mainly families with two or more children. Families with one dependent child are mostly able to bear the economic burden of caring for this child and extending the benefit also to these families would impose an excessive burden on the state budget due to the number of potential beneficiaries (Explanatory Memorandum, p. 11).

In view of the fact that the Family Caring Capital is granted for the second and subsequent

child in a family, it was necessary to define the terms child, first child and family in the Act.

According to the Act, a child means one's own child, the child of a spouse, the child of the other parent with whom the parent is raising in common, and a child adopted for upbringing in respect of whom a person has applied to the Guardianship Court to initiate adoption proceedings (Article 3, paragraph 1 of the Family Caring Benefit Act). The first child means the oldest child in the family regardless of age. For children born on the same day, month and year who are the eldest children in the family (e.g., where there are twins in the family), the first child means one of those children indicated by the person entitled to the Family Caring Capital (Article 3, paragraph 2 of the Family Caring Benefit Act).

The concept of family is defined analogously to the Act on Family Benefits (Journal of Laws 2003, no. 228, item 2255 as amended), the Act on Assistance to Persons Entitled to Alimony (Journal of Laws 2007, no. 192, item 1378 as amended) and by 2019 in the Act on State Aid in Raising Children (Journal of Laws 2016, item 195 as amended). A family shall mean respectively the following persons: a) spouses, b) parents of children raising a child together, c) a person raising a child alone, which shall be understood as a single person, a widow, a widower, a person remaining in separation pronounced by a valid court sentence, a divorced person, unless he or she is raising at least one child together with the child's parent, d) a person who has taken a child into care and has applied to the Guardianship Court for adoption. The following persons are not recognised as family members: a) a child who is under the care of a legal guardian, b) a child who is placed in foster custody or who was placed in foster custody on the day the child reached adulthood, c) a child with regard to whom a parent is totally deprived of parental authority or was totally deprived of parental authority on the day the child reached adulthood (Article 3 paragraph 4 of the Act on Family Caring Capital).

It should be noted that, in the light of the aforementioned definition of the family, spouses and parents raising at least one child together in an informal relationship may also include in the composition of their family their children from previous relationships, irrespective of the age of those children.

Family Caring Capital does not apply if: a) the child was placed in foster care; b) the family member is entitled abroad to a benefit of a similar nature to the capital for the child, except where the

rules on the coordination of social security schemes or bilateral international agreements on social security provide otherwise; c) the child's parent has been deprived of parental authority over the child (Article 6 of the Family Caring Capital Act).

When a child is placed in foster care (either family-based or institutional), the child's parents or guardians do not bear the costs related to the child's upkeep or these costs are significantly reduced. It is therefore justified that there is no entitlement to benefit for those periods in which the economic burden of providing for the child rests on another entity. The same shall also apply where a parent is deprived of parental custody of a child. The benefit shall also not be provided if the member of the family is entitled abroad to a benefit of a similar nature to family maintenance capital for the child (Explanatory memorandum, pp. 12-13).

If there are situations where the family will waste the granted family welfare capital or will spend it contrary to its purpose, analogically to the solutions functioning in the "Family 500+" programme, the benefit will be transferred in whole or in part in kind or in the form of payment for services (Article 7 of the Family Caring Capital Act). This solution is intended to limit the cases in which the family welfare capital will be used by parents for purposes that do not comply with the Act, in particular when the amount of the benefit will be used by them to meet their own needs and not those of the child. It should be emphasised that the introduction of capital payments does not have to be permanent and may be withdrawn (Explanatory memorandum, p. 13).

Furthermore, an important solution, particularly from the point of view of less affluent families, is the exclusion of family care capital from the catalogue of incomes determining entitlement to benefits of a social nature. This means that family care capital does not affect entitlement to social security benefits, family benefits, alimony fund benefits or housing allowances.

The entity carrying out the tasks of the family welfare capital and the procedure for granting and paying the family welfare capital

The implementation of the family caring capital, i.e., the administration of proceedings for granting this benefit and its payment, is the responsibility of the Social Insurance Institution (Article 8 of the Act on Family Caring Capital). It should be pointed out that entrusting ZUS with the above task is intended to optimise the process of granting and handling benefits. ZUS is the institution that, from

1 July 2021, took over from municipalities the implementation of the government "Good Start" programme and from the beginning of 2022 took over the implementation of the child-rearing benefit from the "Family 500+" programme. This institution has extensive experience implementing other benefits for citizens with universal coverage (Polish Tourism Voucher, solidarity allowance) and adequately prepared IT systems, and in the state of the COVID-19 epidemic it implemented many aid programmes under subsequent anti-crisis shields with universal coverage (Explanatory Memorandum, pp. 13-14).

The family welfare capital and the costs of its handling by ZUS are financed from the state budget. Determination of entitlement to family welfare capital and its payment take place at the request of the mother or father, respectively (Article 12 paragraph 1 of the Family Caring Capital Act). The application must be accompanied by documents/statements confirming requirements for entitlement to family care capital are met, e.g., a court decision on alternate custody (if established). The law introduced a complete digitalisation of the process of applying for and granting the above-mentioned benefit. The Family Caring Capital application and appendices to the application may only be submitted in electronic form, using the same ICT systems as applications for the 'Good Start' benefit and the child-rearing benefit (Article 15 of the Family Caring Capital Act).

At the same time, it should be emphasised that ZUS is obliged to ensure, in its headquarters, branch office or other designated organisational unit, access to technical means enabling the submission of an application for family care capital, the filing of other correspondence concerning this benefit and receiving of decisions, information, resolutions, notices, summonses, certificates and other letters, as well as to provide assistance in filing and receiving of these documents (Article 15, paragraph 3 of the Family Caring Capital Act). The introduction of the abovementioned solution, concerning exclusively the electronic way of submitting applications for family welfare capital, is a response to the naturally occurring changes in the behaviour of applicants. A steady significant increase in the number of applications submitted electronically has been observed for a long time – for example, in the case of the analogous "Good start" benefit, over the last 3 calls for applications, the percentage of those submitted electronically increased from 48% in 2018 to 72% in 2020

(2.28 million out of 3.19 million) and continues to grow (Explanatory Memorandum, p. 15).

The Act provides that the granting of family care capital by ZUS does not require the issuing of a decision. In such a case, ZUS provides the applicant with information about the granting of family welfare capital on their information profile created on PUE ZUS. Failure to receive the information does not stop the payment of the granted benefit. In order to ensure the right to appeal, the requirement to issue administrative decisions will remain with regard to refusal, revocation, change of the right to family welfare capital and in cases of unduly received benefits (Article 17 of the Family Caring Capital Act). This solution is modelled on the already proven solution functioning in the "Good start" programme and the "Family 500+" programme.

The payment of the family caring capital is made in a cashless form to the bank account number indicated by the person in the application. The introduction of such a solution is aimed at limiting the administrative costs on the part of ZUS related to the payment of the above-mentioned benefit. It should be emphasised that this regulation replicates the solution operating from 1 July 2021 in the "Good Start" programme.

It is worth noting that the Act provides analogously, as it does in the area of other family benefits, that the family caring capital is free from enforcements (respective amendments to the Code of Civil Procedure and the Act on Enforcement Proceedings in Administration) as well as exempt from personal income tax (respective amendments to the Act of 26 July 1991 on Personal Income Tax). It is assumed that approximately 400,000 children will be entitled to family welfare capital (Explanatory Memorandum, p. 24).

The person who has unduly received capital shall be obliged to return it. The following shall be regarded as unduly collected capital: 1) the capital paid on the basis of false statements or documents or in other cases of deliberate misleading by the person receiving such capital; 2) the capital paid despite the lack of right to such capital; 3) the capital paid to a person other than the person entitled to such capital for reasons beyond the control of the authority that granted such capital (Article 34 of the Family Caring Capital Act).

Expenditures from the state budget related to the payment of the Family Caring Capital will mean an increase in budget expenditures by approx. PLN 2.6-3.2 billion annually. Additionally, expenditures from the Labour Fund will amount to PLN 250 million annually. It is worth noting that

these expenditures are of a fixed nature (legally determined) and will be difficult to resign from even in the situation of a significant deterioration of the economic situation and consequently lower revenues to the state budget (Office of Parliamentary Analyses, p. 6).

It should be noted that a significant shortcoming of the introduced solutions is the lack of an indexation of the amounts paid within the family care capital. This solution is beneficial for the state budget, as the real financial burden related to the new benefit will decrease due to inflation. At the same time, the lack of valorisation may be a factor which will cause the new benefit not to play a significant role in stimulating procreative decisions (Office of Parliamentary Analyses, pp. 5-6).

Conclusions

The family is often referred to as the basic social unit. Its primary purpose as a social institution is to replenish society so that it continues, preserving its continuity (Taranowicz, 2016, p. 154). One of the most important public policies is family policy, that is, a set of state activities aimed at helping families. It is rightly emphasised in the literature that family policy cannot be treated as a field for incidental, emergency actions, but rather as a long-term, systemic support aimed at all families raising offspring (Durasiewicz, 2017, p. 16).

The Family Caring Capital is another familyrelated programme alongside the "Family 500+" and "Good Start" programmes. The family welfare capital is aimed at families with dependent children and is primarily intended to partially cover the expenses associated with caring for a second and subsequent child between the ages of, in principle, 12 and 36 months. The introduction of a new family policy instrument should be assessed positively. It is another manifestation of an attempt to build a comprehensive system of family support which has been implemented for 7 years by the current government. It will undoubtedly make it possible to relieve at least some of the financial burden on families bringing up second and subsequent children. However, will the programme translate into an increase in the birth rate? This is doubtful, as can be seen from the "failure" of the Family 500+ programme, which undoubtedly provided support for families with children, especially the poorest ones, but nevertheless failed to meet its main objective – an increase in the fertility rate.

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