



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Poland
Title:	Family 500 plus program: discrimination of children of unmarried parents and families where both parents are working
Date:	01 August 2018
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Update of news report:	Poland - Gender quotas and parliamentary candidates (PDF 82 kB)
<u>Context</u>	
Issue at stake:	The City Council in Nysa adopted a resolution which provided for a privilege in receiving so-called 'care vouchers', among others to children from married families and families in which only one parent works
Ground of discrimination:	Possible discrimination on the ground of personal status and indirect sex discrimination
Source:	Local policy
Field:	Access to goods, social security, family, employment
Applicable law:	Resolution No XXV/381/16 of the City Council in Nysa of 12 October 2016 on the provision of care vouchers for children, issued on the basis of the law of 8 March 1990 on territorial self-government (consolidated text: JoL 2016, Item 446 with amendments); and Law of 28 November 2003 on family benefits (consolidated text: JoL 2016, Item 1518, with amendments)

Content

Policy development: On 27 February 2018 the District Administrative Court in Opole (case no II SA/Op 67/17) decided that the above-mentioned resolution was unlawful and therefore not valid. The procedure was initiated by two women living in Nysa (supported by the Commissionaire for Human Rights) against the provisions of the resolution which grant priority in receiving the voucher to natural or adoptive parents raising children together in a marital relationship, and granting preferential treatment to families in which only one parent (as opposed to both) is professionally active. A cassation claim against this ruling was lodged by the conservative organization 'Ordo Iuris' Foundation (Institute for Legal Culture) at the Supreme Administrative Court (NSA). The case is pending.

Key points of analysis: During the procedure the City Council argued in favour of all priority rules stating that there are not enough funds for everybody. The claimant and the Commissionaire argued that some of the resolution's provisions violate the constitutional right to equal treatment (Article 32 of the Constitution). They also claimed that those provisions violate the prohibition of discrimination against children born and

raised outside marriage (provided for in the UN Convention on the Rights of the Child). In their opinion the category of privileged subjects was determined according to criteria which are irrelevant to the purpose and general wording of the Law on family benefits, as well as to the values, rules or constitutional norms that condition the admissibility of differential treatment of similar subjects. The Court in its ruling recognised those arguments and, in addition, explicitly noted that it does not question the possibility of granting priority in the access to the benefit (for example granting priority to the families who are the most in need of support). Nevertheless, the conditions of such priority may not be of discriminatory nature. On the contrary, according to the cassation claim put forward by Ordo Iuris, the City Council was entitled to determine the criteria for privileged treatment, which it deemed to be in accordance with Polish constitutional values, encouraging the achievement of a stable standard of living within the 'constitutionally preferred family model, based on marriage'.

Internet link source:

<http://orzeczenia.nsa.gov.pl/doc/D145493A0C>,
<https://www.rpo.gov.pl/pl/content/rpo-za-utrzymaniem-wyroku-o-niewaznosci-%E2%80%9Ebonu-wychowawczego%E2%80%9D-500-z-nysy>,
<https://www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20RPO%20na%20skarg%C4%99%20kasacyjn%C4%85%20ws.%20bonu%20z%20Nysy.pdf>
<https://www.ordoiuris.pl/rodzina-i-malzenstwo/opinia-w-sprawie-uchwaly-rady-miejskiej-w-nysie-w-sprawie-wprowadzenia-bonu>, all accessed 15 June 2018.