

ARTICLE

INTERNATIONAL LEGAL AND INTRASTATE MECHANISMS FOR MATERNITY PROTECTION IN THE RUSSIAN FEDERATION

Elmira N. Malmir*, Mohammadreza Malmir, Gennady I. Kurdyukov

Department of International and European Law, Kazan Federal University, RUSSIA

ABSTRACT

The article gives the reflection on the term «maternity». As the result on conducting short scientific research it was discovered that there is no any definition for this term in the international legislation. Far more full explanation for this term is given not only in Russia dictionaries. This term is widely used by different branches of law of Russian legislation and it is represented at legal doctrine. Norms on the protection of maternity and childhood are contained in more than 30 international statutory and regulatory enactments. The article lists the most important articles where the protection of the institute «maternity» runs like a golden thread. From our point of view C103 - Maternity Protection Convention (Revised), 1952 (No. 103) [1], ratified by Russia in 1956, is pivotal at this aspect. By no means is unimportant part on the issues on protection of «maternity» institute given to the Convention on the Elimination of all forms of Discrimination against women (CEDAW) [2]. Ministry of Labour and Social Protection of the Russian Federation made the eighth report on the realization of this Convention's statements. Great attention in the article is given to the critical remarks and comments of Committee on the Elimination of Discrimination against women [3] Ministry of Labour and Social Protection forms the response on new measures for the realization of CEDAW statements. This article provides not only the list of laws and regulations, regulating the protection of the institute «maternity», also the latest and newest information about upcoming changes in Russian legislation in the sphere of maternity's protection and planned parenthood.

INTRODUCTION

Russia by all means may be proud of not only natural potentials, vast territories, but also traditions and values, which are protected by the nation. Russians create families on the base of mutual understanding, love and care, with due respect to the status of mother. Not the least role here is given to the Conception on demography policy, aimed at the enlargement of population's life expectancy, reducing the level of mortality, rise in births, regulation of inter migration, maintenance and consolidation of population's health and improvement of demographic situation in the country on this base. The government develops large-scale projects on the protection of the institute of «maternity», such as «maternal certificate», «maternity capital – federal subsidies for multiple-child families», monthly allowances payment in the period of pregnancy and after child's birth. The projects which are to be realized and to be planned are aimed at the maintenance of the institute of family and traditional values that may serve as the example for many other countries.

At this regard the investigation of the institute of maternity, international legal and intrastate mechanisms for protection of the institute of maternity and traditional values seem to be actual. This aim formulates the following tasks:

- I. Determining the definition of «maternity»;
- II. Finding general conventions, ratified by Russia, directly or indirectly aimed for the protection of the institute of maternity;
- III. Studying and detecting of general intrastate mechanisms for the protection of the institute of maternity

METHODS

Methodology of the article is based on the principles and categories of dialectics; induction and deduction. Information on the latest novelties in the Russian legislation, concerning the protection and maintenance of the institute of family and maternity was gathered. The Convention on the Elimination of All Forms of Discrimination against Women, Conventions 103 and 156, Beijing Declaration (September 1995); also the dissertation of N.N. Shapovalova «International legal standards on protection of women rights and their implementation in European countries», article of E.V. Sichenko «Realization of Convention 103 «Maternity Protection Convention» provisions in labour legislation of Russia», the books by Nicola Jones «Gender and Social Protection in the Developing World: Beyond Mothers and Safety Nets» and by Rebecca Holmes and Nicola Jones «Gender and Social Protection in the Developing World: Beyond Mothers and Safety Nets Decree on the Prohibition of Abortions» (27 June 1936) were considered. Great attention was given to the eighth periodical report of the Russian Federation concerning the execution of the Convention on the Elimination of all forms of Discrimination against women (CEDAW) and to the comments of the Committee on the Elimination of Discrimination against women, posted on the website of the Ministry of labour and social protection of the Russian Federation.

*Corresponding Author
Email:
ERZalyalova@kpfu.ru

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RESULTS

The definition «maternity» has wide range of interpretations in different spheres of scientific knowledge and practical activity of the person.

The definition for the term «maternity» in the dictionary of social sciences «Glossary.ru» is given in the following way: maternity is the key biological function of female organism, directed on continuation of human kind: bearing, giving a birth and feeding of a child. In the dictionary of D.N. Ushakov the maternity has received social content, and it is determined as sibling connection between the mother and children [5]. The dictionary of S.I. Ojegov and N.Yu. Shvedova determines the maternity as special condition of women – mother (predominantly during pregnancy) [6]. Cambridge dictionary determines the maternity as the «state of being a mother» [7].

In the international legislation there is no any explanation of the term maternity. However, there was found the explanation for the allied term «reproductive health» in Beijing Action for Equality, Development and Peace of the fourth world conference on 15 September 1995. «Reproductive health is a state of complete physical, well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant» [8].

In Russian legislation the term «maternity» is used by different branches of law. Generally, the term «maternity» is mentioned in 223 statutory acts.

If we consider the existing approaches and definitions of the term «maternity», it may be concluded that «maternity» in social plan is the institute protected and guarded by the government via establishment of legal guarantees. It is difficult social phenomenon which means stable, psycho emotional and family relation of blood between child and woman who brought up him or her. It is realized and appeared during the processes of pregnancy, childbirth, feeding and (or) childcare conducted by woman up to adulthood [9].

For the legal purposes with taking into consideration abovementioned statements it is necessary to give the following definition for the term «maternity»: maternity is complex social phenomenon. The content of it is revealed at three aspects:

- I. Constitutional legal state, provided by the conditions on realization of reproductive rights of women (maternity preservation), stipulated in the norms of constitutional law, and resources for the protection of its lawful rights and interests (maternity protection);
- II. Legal norms, regulating homogeneous social interactions;
- III. Legal rights of women, including reproductive warrants.

Norms on the maternity and childhood protection are included into more than 30 international legal documents (conventions, recommendations of international organizations, bilateral intergovernmental agreements).

From the beginning of XX century series of special international – legal acts, directed on considered institute's protection, have been developed and accepted. Particularly, the following acts should be considered:

- I. The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter - CEDAW), adopted in 1979 by the UN General Assembly [2]
- II. C156 - Workers with Family Responsibilities Convention, 1981 (No. 156) Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983)
- III. C103 - Maternity Protection Convention (Revised), 1952 (No. 103) - Convention concerning Maternity Protection (Revised 1952) (Entry into force: 07 Sep 1955) [1]
- IV. C 183 – Maternity Protection Convention, 2000 (No. 183) - Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Entry into force: 07 Feb 2002) [11]

Russia has ratified first three above mentioned conventions. E.V. Sichenko in the article «Realization of Convention 103 «Maternity Protection Convention» provisions in labour legislation of Russia» has considered general differences between Convention 103 and Convention 183. She says that the

peculiarity on new approach is maximum supporting of equality between man and women in labour relations». According to art. 6 of the Convention 103 the dismissal of woman who is in maternity leave, is illegal, regardless of dismissal's reason. The article 8 of the Convention 183 admits the dismissal of women during her pregnancy or absence from work because of the vacation on reasons, which are not connected with the pregnancy or childbirth and consequences of it or infant feeding. In such a manner for realization of equal relation to women International Labour Organization in the new convention narrows the protection from dismissal, provided for women [12].

In modern society the measures, directed on women protection, are the matters of dispute, as far as they may cause the difficulties for women in some work places. Hereby, it has negative impact on the gender segregation of labour market. In the case of maternity protection these measures are necessary for the protection of productive role of women.

Hereby, The Ministry of labour and social protection of the Russian Federation made the eighth periodical report on the execution of CEDAW in the session of the Committee on the Elimination of the Discrimination against Women (hereinafter – CEDAW Committee).

The Ministry of labour and social protection at the report CEDAW/ C/ RUS/7, consisting of 65 pages of the text and appendixes, represented the detailed information about clause-by-clause execution of CEDAW provisions, latest changes in Russian legislation, progress received in the sphere of improvement of women's states and about difficulties which appear repeatedly during non-admission of discrimination in relation to women.

CEDAW Committee at their 1335 and 1336 sessions dated by 27 October 2015 (see - CEDAW/C/SR.1335 and 1336) have considered the reports and brought final indictments concerning the eighth periodical report of the Russian Federation. These indictments are in the document CEDAW/C/ RUS/Q/8 [13], and the answers of the Russian Federation are in the document CEDAW/C/RUS/Q/8/Add.1.

In the document on 15 pages the Committee pointed the recommendations and remarks according to following categories: Parliament, Convention apprehension, elective protocols and general recommendations of the Committee: definition of discrimination in relation to women and discriminating laws; access to justice and legal mechanisms of appeal; national mechanism on improvement of women's conditions, civil society and non-governmental organizations; stereotypes and destructive practice; violence against women; harmful practice and violence against women in North Caucasus; human trafficking and prostitution exploitation; participation at political and social life; women, peace and security; education; employment; health; country women; destitute groups of women; marital and family relations; information collection [13].

The Committee made approximately 62 remarks to the address of Russia. We appoint some of them in our article, as: taking necessary legislative measures for the liquidation the concept «property» of the father in issues relating to children in North Caucasus, and also providing equal parental rights for women at all cases; considering women's status at de facto unions and the status of children came into the world as the results of these unions; accepting necessary legislative measures for providing protection of these economic rights, including termination of relations in accordance with General recommendations of the Committee No 29 (2013) about economic consequences of marriage, marital relations and its termination; considering the definition of the term «property» of spouses, including pension rights and other allowances, related with work, and also future incomes, or accepting other instruments such as periodical payments after the divorce; conducting gender estimation of all measures, stipulated in New-family policy and including the principle of gender equality into national social policy [13].

After this detailed analysis of the realization of CEDAW let's consider C 156 - Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.

According to C 156 one of the aims of government's policy in the sphere of labour is creating conditions which will admit to exercise the rights on conducting fee-paid work, without any discrimination, combining professional and family values harmonically. All necessary measures corresponding to national conditions and possibilities should be taken for ascertainment of real equality of possibilities for laboring men and women in order they may execute their rights for free choice of work. Professional arrangements, retraining and advanced training of women, provided by the law «About the employment» in the period of maternity leave for up to three years may be also provided for child's father.

National legislation of the Russia Federation is based on constitutional principles and international legal norms. These norms and principles are concretized in some federal legal acts (including codified laws), subordinated acts, acts accepted on the level of constituent territories of the Russian Federation (including the Republic of Tatarstan). It is useful to highlight in this regard that coordination of maternity and motherhood issues are relegated to joint jurisdiction of the Russian Federation and its constituent territories (art. 72 of the Constitution of the Russian Federation; art. II of the Federal Treaty of the Russian Federation) [15].

It is necessary to highlight following legal acts on a federal level:

- Constitution of the Russian Federation [16]
- Labour code of the Russian Federation dated by 30 December 2001 No 197 – FL (with changes and additions from 24, 25 July 2002, 30 June 2003, 27 April, 22 August, 29 December 2004, 27 November 2017) [17];
- Family code of the Russian Federation dated by 29 December 1995 No 223- FL (with changes and add. Dated by 15 November 1997; 27 June 1998; 2 January 2000; 22 August, 28 December 2004, 1 May 2017, 14 November 2017) [18];
- Decree of the President of the Russian Federation dated by 30 May 1994 «About the extent of compensatory payments for certain categories of citizens», acts from 2001 [19].

Constitution of the Russian Federation is the key law of our government and the base for the development of different branches of domestic affairs.

Governmental protection of the family, maternity, childhood and fatherhood is provided in accordance with p.2, art. 7 of the Constitution of the Russian Federation. P. 1 art. 38 of the Constitution of the Russian Federation claims that maternity and childhood are under the protection of the government [16]. These constitutional bases of the protection of maternity and childhood serve as the base for taking measures on the maternity and childhood interests' protection by the government legally represented by its competent authority.

Governmental mechanism for the maternity protection includes complex of measures, different by content, mission, terms and extent. All of them guarantee the realization of constitutional responsibility of the government on maternity protection. The term «protection» is applied to such definitions as «maternity», «childhood», and «family». At constitutional level it is widely interpreted. While the Constitution of the Russian Federation uses the term «protection», it means activity, oriented on the liquidation and countermeasure to illegal acts; prevention of irregularities, and also compensation for harm. Protection is complex system of measures, applied for providing free and proper realization of law which includes different measures and events.

Governmental mechanism for maternity protection is interpreted as the system of measures, aimed at maternity encouragement, guaranteeing of mothers and children interests, arrangement of the most significant opportunities, providing full-fledged evolution of the child.

At 28 November 2017 the President Vladimir Putin suggested to bring into action monthly payments from 2018 for young families at birth of a first child before the child's a year and a half birthday. He claimed about it on the session of Coordination Council on the realization of National strategy of actions on behalf of children 2012-2017.

Government support is provided for mothers in Russia by different types. Those mothers who have registered their early pregnancy at medical institution receive one-time allowance on the sum 613, 14 rub. (here and after the information for 2017). Those women who are in maternity leave receive infant birth and maternity allowance. It is rated on the basis of average wages of the women [20].

After childbirth one-off payment on the sum 16 350 rub. 33 kop. (sixteen thousand three hundred fifty rubles thirty three kopeck) is paid. In case of two or three children birth it is paid for every child. Paid leave on the sum 10 523 (ten thousand five hundred twenty three) rubles is provided for child care before the child's a year and a half birthday monthly in 2018 (further it will be increased). Payment amount is 40 per cent from average earnings. Allowance is given for non-working mothers. Its minimum size on first child care is 2 908 rub. 62 kop. (two thousand nine hundred eight rubles sixty two kopeck) per month, for the second and others children it is given 5 812 rub. 24 kop. (five thousand eight hundred twelve rubles twenty four kopeck). Also mother on child care leave has the right for monthly compensatory payment on the sum 50 rubles. This norm is determined by the Decree of the President of the Russian Federation dated by 30 May 1994 «About compensatory payment for certain categories of citizens». It acts from 2001 [19]. This compensatory payment is provided only after application recorded on the job, military service, or if this application is given to the social protection agency at the place of residence. It is paid before third – year attaining by a child.

Furthermore, the program for supporting families with children acts starting from 2007. It is called maternity (family) capital. The extent of simultaneous state subsidy is four hundred fifty three thousand twenty six rubles. The program is in effect until 31 December 2018. At 28 November 2017 the President of the Russian Federation Vladimir Putin suggested to prolong it until 2021 and to force into application additional possibilities for using maternity capital.

DISCUSSION

Issues of maternity protection and care are particularly highlighted in the Decree of the President of the Russian Federation dated by 8 March 2017 No 410 – r «About confirmation of National strategy of actions on behalf of women for 2017-2022 years» [21]. Among tasks in the sphere of maternity protection there are: providing medical-social support for pregnant women, who suffers from difficult life situation; rendering assistance for women in the situation of reproductive choice, including social maintenance, providing social-medical, social – psychological, social-legal, social – domestic and other social services; development of the system of reproductive health protection considering peculiarities of women’s health state, including using of assisted reproductive technologies (including in vitro fertilization).

Among results expected there are: level of maternal mortality decrease to the level of economically developed countries, further decrease of abortions’ amount; improvement of medical conditions for pregnant women and during childbirth.

SUMMARY

As part of the study there were given not only generally accepted definitions for the term «maternity», but also this term was interpreted from the legal point of view. It has been found that in Russian legislation the term «maternity» is used by different branches of law and it is provided in more than 200 statutory acts while in international documents there is no any definition or common use of the term «maternity».

On international level Russia has ratified three conventions which directly or indirectly concern the institute of maternity. They are: the Convention on the Elimination of All Forms of Discrimination against Women (1979), C 156 - Workers with Family Responsibilities Convention (1981), C103 - Maternity Protection Convention (Revised, 1952).

Much attention was paid to the eighth periodical report of Russia, represented on the session of CEDAW Committee. Article’s authors highlighted the recommendations of the Committee, and also the responses of Russia.

On intrastate level among general laws, regulating the institute of maternity, there were pointed the following statutory acts: Constitution of the Russian Federation, Labour code of the Russian Federation (2001), Family Code of the Russian Federation (1995), Decree of the President of the Russian Federation (1994).

Constitution of the Russian Federation is the key law of the legislation of the Russian Federation. Maternity protection is one of the pivotal task of the Constitution of the Russian Federation, which is stipulated in p.2., art.7 of the Constitution.

Noteworthy is the new program of allowances payment for mothers (children), suggested by the President Vladimir Putin on 28 November 2017 on the session of Coordination Council on the realization of National strategy of actions on behalf of children 2012-2017. Among payment of allowances for pregnant women, who are registered on medical institutions on early terms of pregnancy, and to mothers for childcare during maternity leave, and also maternal capital and maternal certificate, it was suggested to pay one-time allowance for childbirth on the sum 16 350 rubles 33 kop., and also 10 523 rubles monthly in 2018 for the birth of the first child.

CONCLUSION

All policy conducted by government for family consolidation, providing maternity and childhood interests contributes to forming of healthy nation and consolidation of family values. Any state is interested in forming full-fledged and healthy personality, which brings positive results for society and country. Currently, the activity of Russian government is aimed at increasing of families’ financial state, rendering additional social support for certain categories of citizens, creating significant opportunities for childbirth, that give positive results.

CONFLICT OF INTEREST

There is no conflict of interest.

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