

Legal Bulletin

Ban on corporal punishments and possibility to remove a child from parents by a social worker

A ban on corporal punishments of children, a possibility to remove a child from parents by a social worker when a parent is intoxicated and a possibility to issue an order to leave a dwelling at the stage of the prosecution procedure – are envisaged by a draft amendment to the act on counteracting the family violence. The draft, elaborated in coordination with non-governmental organizations has been adopted by the government.

“Corporal punishments of children shall not be tolerated” – said the Prime Minister after a meeting with the representatives of non-governmental organizations. In Mr Tusk’s opinion, this draft is a “key to the initiation of a campaign against violence, especially against spanking children”.

In addition, the draft envisages access to cost-free forensic examination performed by a general practitioner – without a prosecutor’s decision. Also, there has been introduced a possibility to isolate a family violence perpetrator from members of this family – upon a prosecutor’s request. The draft envisages a possibility to order a violence perpetrator to leave a dwelling at the stage of the prosecution procedure.

Moreover, the amendment draft envisages, inter alia, a possibility to remove a child from parents by a social worker when a parent is under the influence of alcohol or drugs. Pursuant to the draft, a social worker has a right to place a child in a foster family or in a special education centre open 24 hours a day. He/she is also obliged to notify the Family Court no later than within 24 hours. While removing a child from parents, a social worker is to be accompanied by policemen or health-care professionals.

Once the act is adopted, its implementation shall be monitored. Interdisciplinary teams shall be created at various administration levels.

The President has signed

- an act depriving the PRL security services officers of pension privileges.

The President has signed an act depriving the PRL security services officers and WRON members of their pension privileges. Payment of retirement pensions under the new principles would start as from 1 January 2010.

An amendment to the act on retirement pensions for professional soldiers and their families assumes the calculation of retirement pensions for former PRL security services officers not as at present – according to an index amounting to 2,6% of an assessment basis for each year of service in the years 1944-1990 – but 0,7% (as for a non-contributory period, in case of a contributory period the index amounts to 1,3%). Also those SB officers who, in 1990, were positively verified and employed at the Office for State Protection shall be deprived of privileges for the years of working for PRL security services. On the other hand, privileges would be retained by those SB officers who helped the democratic opposition, however, they would need to prove it.

The reduction of pensions shall cover the officers of these PRL security services which are mentioned in the vetting act. These are civil

The draft imposes on violence perpetrators an obligation to participate in correctional and educational activities without a need to ask for consent. It means that in case of e.g. a violence perpetrator who abuses alcohol, the withdrawal treatment and participation in a therapy shall be a condition for the suspension of a punishment.

Assumptions of a reform of retirement pensions for uniformed services officers

Persons entitled to receive a retirement pension are to be the officers who are 55 years old and have served for at least 25 years – as it results from preliminary assumptions to a draft act on retirement pensions and old-age pensions for uniformed services officers. Currently, they are entitled to receive a retirement pension after 15 years. The draft, prepared by the Ministry of Interior and Administration, assumes later retirement in case of officers of nine uniformed services. The reform is to cover the officers of police, border guard, fire brigade, ABW (Internal Security Agency), CBA (Central Investigation Bureau), Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service and BOR (Government Protection Bureau), employed after 1 January 1999. The current conditions – pursuant to a preliminary proposal – shall cover the officers employed before 1 January 1999 and born before 31 December 1967.

In case of the officers born after 1 January 1968 and employed before 1 January 1999, a transitional period is proposed. These policemen may select either a new system or an old one. Should they not select the new pension system, they are allowed to continue their service according to the old principles.

The officers, who are 55 years old (both men and women) and have served at least 25 years, shall be entitled to receive a full retirement pension. Then this retirement pension would amount to 80% of an average remuneration.

In addition, MSWiA envisages an opportunity to retire earlier – before the retirement age is reached and after serving as a uniformed services officer for at least

and military special services from July 1944 to July 1990.

- an act on the National School of the Judiciary and Prosecution Service

President Lech Kaczyński has signed an act on the National School of the Judiciary and Prosecution Service (KSSiP). On 23 January, by votes from the PO, PSL and Left-wing clubs the Sejm overrode the President's veto of this act.

KSSiP is to replace the currently existing National Training Centre for the Officials of the Common Courts of Law and the Public Prosecutor's Office; the school is to improve professional skills of judiciary and prosecution officials and to conduct the general, judge's and legal counsel's apprenticeship.

In addition, the act regulates the principles of the judiciary and prosecution system after a judgment by the Constitutional Tribunal where the unconstitutional nature of the associate judge's institution has been stated. The associate judge's apprenticeship is to be replaced by an apprenticeship as a court referendary or assistant to judge under the new model of the judge's apprenticeship.

- an amendment introducing eligibility instead of conscription
President Lech Kaczyński signed an amendment to the act on the general defense obligation which introduces a system of military eligibility instead of conscription. It guarantees that the military status is reserve – without a necessity to serve in the army.

25 years. Then the retirement pension could not exceed 75% of an average remuneration.

Protest against hanging billboards on residential buildings

“My home, my window, my property” – this is a motto of a discussion on hanging large-format billboards on residential buildings. The debate has been organized by the International Helsinki Federation for Human Rights. The Foundation has taken up this issue in relation with an action brought before the court by an inhabitant of the Warsaw district Ochota, Małgorzata Fałęcka, whose private apartment’s windows had been covered by a huge billboard. At court, she demands the protection of her personal rights, including the right to privacy, inviolability of home as well as leisure.

The problem relates to the more and more common practice of covering the facades of residential buildings with enormous billboards.

The European law expert, Dr Przemysław Miłośzewicz explained that the right to respect for property was guaranteed not only by national regulations but also by the European Convention on Human Rights.

As he added, the regulations gave everybody the right „to respect their own home”. This right may be limited only due to the state security, public security or national economic welfare. “It refers to a situation where we are dealing with both public and social interests and private interests of an individual” – said Mr Miłośzewicz.

Notaries to confirm the inheritance acquisition

It shall be possible to carry out procedures related to the confirmation of the inheritance acquisition at a notary’s office within one day. On 1 March, the online Inheritance Confirmation Register is going to be launched. Currently, to receive a document confirming a right to an inheritance (required in order to be in charge of the inherited property), it is necessary to go to court and submit an appropriate application. A decision on matters of this type is usually issued after several months. As from 1 March, also a notary is authorized to confirm the inheritance acquisition and shall make an entry in the online register.