

RIGHT TO FAMILY BENEFITS FOR REFUGEES FROM UKRAINE

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Abstract. Russia's incursion into Ukraine on 24 February 2022 has forced bordering countries to host refugees fleeing from the conflict. Since the start of the war, approximately 9.75 million refugees, predominately women and children, have crossed the Polish-Ukrainian border. The situation remains challenging for those affected. The article aims to present a legal analysis of the provisions on Polish social assistance provided through family benefits to refugees from Ukraine. Article 26 of the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state outlines five groups of benefits regulated by separate laws that may be enjoyed by Ukrainian citizens residing in the Republic of Poland, provided their stay is considered legal under Article 2(1) of this law. The criteria for receiving the benefit are twofold. Certain conditions are determined by the Act of 12 March 2022, while other conditions are laid out in special laws that contain provisions for a specific benefit.

Keywords: social benefits for Ukrainians; family benefits for Ukrainians; care benefits; parental benefit

INTRODUCTION

On 24 February 2022 Russia has launched an aggression against Ukraine, and countries bordering Ukraine have been faced with the necessity of accepting into their territory people fleeing from the embattled areas. 9.75 million refugees from Ukraine, mostly women and children, have crossed the Polish-Ukrainian border since the beginning of the war.¹ The situation calls for ongoing legislative efforts to regulate the legal situation of those fleeing the war, as Ukrainian citizens arriving in Poland face numerous difficulties.

The Council of the European Union on 4 March 2022 decided to implement a mechanism of so-called temporary protection for those fleeing Ukraine as a result of the war. This is a protection mechanism not used before and different from the existing institutions of temporary residence

¹ See <https://strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> [accessed: 11.02.2023].

permit and international protection in Polish domestic law. Temporary protection derives from Council Directive 2001/55/EC of 20.07.2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced persons and on measures to promote a balance of efforts between Member States in receiving such persons with its consequences.² It is a form of protection that guarantees not only legal entry and residence, but also material assistance for those fleeing Ukraine due to the war. Temporary protection applies in all European Union member states, but the directive itself only sets a minimum standard for the protection granted. EU member states may decide to grant greater protection to those fleeing Ukraine, as Poland has done.

By the Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state,³ the situation of citizens of Ukraine already residing on the territory of the Republic was regulated with effect from 24 February 2022 as well as those just entering its territory due to threats. The law protects Ukrainian citizens arriving in Poland from 24 February 2022 for 18 months (with the possibility of extending this period) [Klaus 2022, 19-21].

The purpose of this article is a legal analysis of the provisions of the on Polish social assistance provided through family benefits to refugees from Ukraine. Article 26 of the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state lists five main groups of benefits regulated by separate laws, which may be enjoyed by citizens of Ukraine residing on the territory of the Republic of Poland, if their stay is considered legal under Article 2(1) of this law. They are: 1) family benefits referred to in the Act of 28 November 2003 on family benefits;⁴ 2) upbringing benefit referred to in the Act of 11 February 2016 on state aid in raising children;⁵ 3) “Good start” benefit, referred to in regulations issued on the basis of Article 187a of the Act of 9 June 2011 on family support and the system of foster care;⁶ 4) family care capital benefit, as referred to in the Act of 17 November 2021 on family care capital;⁷ 5) subsidizing the reduction of a parent’s fee for a child’s stay in a day-care

² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12.

³ Journal of Laws of 2023, item 103 as amended.

⁴ Journal of Laws 2022, item 615.

⁵ Journal of Laws 2022, item 1577.

⁶ Journal of Laws 2022, item 447.

⁷ Journal of Laws 2021, item 2270.

center, children's club or day-care provider, as referred to in Article 64c(1) of the Act on the care of children up to 3 years of age.⁸

The conditions that must be met in order to receive the benefit are two-tiered. Some of them are determined by the Act of 12 March 2022. Other conditions are determined by special laws containing provisions for a specific benefit.

1. FAMILY BENEFITS

On the basis of Article 26(1)(1) of the Act on assistance to Ukrainian citizens residing in the territory of Poland are entitled to family benefits referred to in the Act of 28 November 2003 on family benefits. Family benefits are cash benefits and allowances related to the birth and upbringing of a child in the territory of Poland. The granting of family benefits is subject to an income criterion, i.e. income per family member. Family benefits are due for the period of residence on Polish territory.

Family benefits are: 1) family allowance and supplements to family allowance; 2) one-time allowance for the birth of a child (so-called "becikowe"); 3) care benefits, such as: nursing allowance, nursing benefit and special care benefit; 4) parental benefit. All of the above mentioned family benefits will be characterized in the context of helping Ukrainians.

By its nature, family allowance is intended to partially cover a child's living expenses. It is granted to both parents or one of them, the child's legal or actual guardian, or an adult learner who is not a dependent of the parents (if the parents are deceased), until the child reaches the age of 18 or completes schooling, but no longer than until he or she reaches the age of 21, or 24 if he or she continues schooling at a school or college and has a moderate or severe degree of disability [Drembkowski 2022, 182].

The granting of the right to family allowance depends, among other things, on meeting an income criterion. To receive it, the average monthly per capita family income or the income of a learner must not exceed the amount of PLN 674.00 or PLN 764.00 if the family member is a child with a disability certificate or a moderate or severe disability certificate. If the family income exceeds the amount entitled to family allowances, family allowances and supplements to family allowances are entitled to the difference between the total amount of family allowances plus supplements and the amount by which the family income was exceeded.

The amount of family allowance is per month: 1) PLN 95.00 per child up to the age of 5; 3) PLN 124.00 per child over the age of 5 until completion

⁸ Journal of Laws 2023, item 204.

of the 18th year of life; 4) PLN 135.00 per child over the age of 18 until the completion of the 24th year.

The application is submitted to the municipality or city office with jurisdiction over the place of residence.⁹ If the delivery of any of the documents would be impossible due to the ongoing hostilities in Ukraine, you should explain this circumstance in writing and ask for a waiver. To the basic amount of family allowance there are also allowances for: birth of a child; care of a child during parental leave; single parenting of a child; raising a child in a large family; education and rehabilitation of a disabled child; the child's commencement of schooling at a school outside the place of residence; beginning of the school year [Pietrzak 2022, 30-31].

One-time allowance for the birth of a child (so-called "becikowe") is due to the child's mother or father and the child's legal or actual guardian in the amount of PLN 1000. The right to a one-time payment for the birth of a child is granted to persons whose income per person in the family does not exceed the amount of PLN 1922.00. A one-time payment for the birth of a child is entitled if the child's mother remained under medical care no later than from the 10th week of pregnancy until the day of delivery. The application for determining the right to a one-time birth grant shall be accompanied by a certificate that the child's mother remained under medical care no later than from the 10th week of pregnancy until the date of delivery. A certificate that the child's mother remained under medical care no later than from the 10th week of pregnancy until the date of delivery may be issued by a doctor or midwife [Maciejko 2019, 215-20]. An application for a one-time allowance must be submitted within 12 months from the date of the child's birth to the municipality or municipal social assistance center. If the application relates to a child under legal guardianship, de facto guardianship or an adopted child, the application shall be submitted within 12 months from the date of the child's assumption of guardianship or adoption, no later than the child's 18th birthday.¹⁰

2. CARE BENEFITS

Care benefits include: attendance allowance, special attendance allowance, attendance benefit. Attendance allowance is granted to partially cover expenses arising from the need to provide care and assistance of another person due to inability to live independently.

⁹ The application can be found at the office or on the website: <https://empatia.mpips.gov.pl/-/zasilek-rodzinny> [accessed: 11.02.2023].

¹⁰ The application form and a list of required documents can be found at: <https://empatia.mpips.gov.pl/-/zapomoga-z-tytulu-urodzenia-dziecka-tzw-becikowe> – [accessed: 11.02.2023].

Attendance allowance is available to: a disabled child; a disabled person over the age of 16, if he or she has a severe disability certificate; a person who has reached the age of 75; a disabled person over the age of 16 who has a moderate degree of disability, if the disability arose by the age of 21 [Drembkowski 2022, 183-90]. Attendance allowance is entitled to PLN 215.84 per month.

The special care allowance is granted in order to provide permanent care for a person with a certificate of significant disability or a certificate of disability indicating the need for permanent or long-term care or assistance of another person in connection with significantly limited ability to lead an independent life, and the need for permanent participation of the child's guardian in the child's daily life in the process of treatment, rehabilitation and education.

The special care allowance is available to persons with maintenance obligations, as well as spouses, if they do not take up employment or other gainful employment or resign from employment or other gainful employment. Special care allowance is entitled to PLN 620.00 per month. The special care allowance is due if the total per capita income of the family of the person providing care and the family of the person requiring care does not exceed the income criterion amount of PLN 764 [Pietrzak 2022, 34].

Attendance benefit is a benefit due to resignation from employment or other gainful employment in order to take care of a person with a certificate of significant disability or a certificate of disability indicating the need for permanent or long-term care or assistance of another person in connection with significantly limited ability to lead an independent life, and the need for permanent daily participation of the child's guardian in the process of treatment, rehabilitation and education. Attendance benefit is available to strictly defined persons: mother or father, the actual guardian of the child, a person who is a related foster family or other persons with maintenance obligations, with the exception of persons with severe disabilities.

The attendance benefit is due if the disability of the person requiring care arose: no later than the completion of the 18th year of life or during school or higher education, but no later than the completion of the 25th year. The attendance benefit is due regardless of family income and amounts to PLN 2119.00 per month. In order to receive the care benefit, nursing benefit, special nursing benefit, one must file an application to establish the right to the benefit at the municipality or city office competent for the place of residence¹¹ [Bochenek 2022].

¹¹ A specimen form and a list of required documents are available on the website: <https://empatia.mpips.gov.pl/-/zasilek-rodzinny> [accessed: 11.02.2023].

3. PARENTAL BENEFIT

Parental benefit is a type of allowance granted in connection with the birth of a child, for a period of 52 to 71 weeks (depending on the number of children born, taken into care or adopted). It is granted regardless of income criterion and amounts to PLN 1,000 per month [Pietrzak 2022, 35].

Parental benefit is available to: the mother or father of the child; the actual guardian of the child; a foster family, excluding a professional foster family; a person who has adopted a child; a temporary guardian [ibid., 36].

Parental benefit is not available if: 1) maternity benefit or the equivalent of maternity benefit is collected; 2) the person applying for parental benefit has ceased to take personal care of the child; 3) in connection with the upbringing of the same child, the right to parental benefit, supplement to family allowance, nursing benefit, special care allowance or guardian's benefit is already established; 4) abroad is entitled to a benefit of a similar nature to the parental benefit.

4. CHILD-REARING BENEFIT (500+)

The child-rearing benefit (often referred to as the "500+ benefit") is a benefit to partially cover expenses related to raising a child, including child care and meeting the child's living needs. The money is paid by the Social Insurance Institution (ZUS) to Ukrainian citizens who crossed into Poland after February 23, 2022, due to the war effort. The money, in the amount of PLN 500 per month, is paid for each child until he or she reaches the age of 18. The benefit is not dependent on income and is paid in periods from June 1 to May 31 of the following year [Drembkowski 2022, 190-94]. The benefit is transferred in non-cash form every month to the payment account number in Poland indicated in the application.

A parenting benefit can be applied for: 1) a citizen of Ukraine or the spouse of a citizen of Ukraine who, after February 24, 2022, arrived with a child from Ukraine to Poland due to hostilities; 2) a citizen of Ukraine or the spouse of a citizen of Ukraine who, after February 24, 2022, came from Ukraine to Poland in connection with the hostilities, and the child was born in Poland; 3) a citizen of Ukraine or the spouse of a citizen of Ukraine who resided in Poland before February 24, 2022, but the child for whom the benefit is sought came from Ukraine to Poland after February 23, 2022 in connection with hostilities; 4) a citizen of another country (e.g., Poland) who, on the basis of a Polish court decision, has custody of a child who is

a citizen of Ukraine and arrived from Ukraine to Poland after February 23, 2022 in connection with hostilities.

The special application for 500+ in Ukrainian can only be submitted electronically via the ZUS's Platform for Electronic Services (PUE). Information on how to set up an account in this system is provided at Social Security offices. If the Social Insurance Institution (ZUS) grants a parental benefit, you do not receive a decision on the case, but only information about the granting of the benefit on your profile on the Social Insurance Institution's PUE, as well as by e-mail to the address provided in the application [Drembkowski 2022, 190-95].

A Ukrainian citizen who wishes to file an application with the Social Security Administration must prepare: a) passports – of the applicant and the child or other identity documents on the basis of which the border was crossed (if the applicant has them); b) certificate of the Polish PESEL ID – of the applicant and the child; c) bank account number in Poland; d) telephone number in Poland and e-mail address; e) a decision of a Polish court, if the applicant is a temporary guardian; f) a document confirming that the applicant has foster care of the child, if there is such a situation; g) a document confirming the legality of the applicant's residence and access to the labour market in Poland, if the applicant arrived in Poland before 24 February, 2022 [Pietrzak 2022, 38-39].

5. "GOOD START" BENEFIT

On the basis of Article 26(1)(3) of the Law on Aid to Ukrainian citizens legally residing in the territory of Poland, after February 24, 2022, there is a benefit called "good start". This support consists in granting a benefit of PLN 300 for each child once a year.

The "good start" benefit is due to: 1) parents, actual guardians, legal guardians, foster families, persons running family children's homes, directors of care and educational institutions, directors of regional care and therapeutic institutions – once a year per child; 2) to school learners – once a year [ibid., 39].

The "good start" benefit is also due to a temporary guardian who takes care of a minor who resides in the territory of the Republic of Poland without the care of adults responsible for him in accordance with the law in force in Poland. The "good start" benefit is due in connection with the start of the school year until the completion of: by a child or a student of 20 years of age, or 24 years of age – in the case of children or students with a disability certificate.

Proceedings for the “good start” benefit are conducted by the Social Insurance Institution (ZUS). Establishment of the right to the “good start” benefit and its payment take place, respectively, at the request of the mother, father, actual guardian, legal guardian, foster family, person in charge of a family home for children, director of an educational institution, director of a regional educational and therapeutic institution or a student [Drembowski 2022, 182-94].

A citizen of Ukraine legally residing on the territory of the Republic of Poland, the right to the “good start” benefit, is determined starting from the month in which the application was received, not earlier than from the month in which the citizen was entered in the register kept by the Commander-in-Chief of the Border Guard and applied for a PESEL number. In the case of benefits for a child, the child should also be entered in this register.

The application for benefits referred to in Article 26(1) of the Act on assistance to Ukrainians shall contain the applicant’s PESEL number and, if any, the type, series and number of the document on the basis of which the applicant crossed the border, and in the case of benefits for a child – the child’s PESEL number and, if any, the type, series and number of the document on the basis of which the applicant crossed the border. The Social Insurance Institution shall make available to a person applying for the “good start” benefit information on the granting of the “good start” benefit on his/her information profile created in the ICT system made available by the Social Insurance Institution. Failure to receive information on the award of the “good start” benefit does not stop the payment of this benefit [Szmid and Sawicki 2022].

6. FAMILY CARE CAPITAL

Pursuant to Article 26(1)(4) of the Act on assistance, Ukrainian citizens legally residing in the territory of Poland after February 24, 2022, are entitled to family care capital if they reside with their children in the territory of Poland.

The purpose of the capital is to partially cover the expenses of raising a child, including child care and meeting the child’s living needs. The capital is entitled to either PLN 500 or PLN 1,000 per month per child in the family. The total amount of capital paid out cannot exceed PLN 12,000 per child. The Family Care Capital will be paid in monthly parts of PLN 500. Parents will be able to independently indicate whether they want to receive the Capital in the amount of PLN 500 for 24 months or in the amount of PLN 1,000 for 12 months. The benefit is payable regardless of income [Pietrzak 2022, 46].

The right to the capital is granted to persons referred to in Article 2(1) of the Act of 17 November 2021 on family care capital, if they reside in the territory of the Republic of Poland for the period during which they are to receive the capital, unless the provisions on coordination of social security systems or bilateral international agreements on social security provide otherwise.

The capital is entitled to the mother or father, by which is also meant the person who has adopted a child for upbringing and has applied to the guardianship court to initiate proceedings for its adoption, for the second and each subsequent child in the family, if the child resides together and is dependent on the mother or father. The capital is payable from the first day of the month in which the child turns 12 until the last day of the 35th month preceding the month in which the child turns 36. This means that in the month in which the child turns 36, the benefit will no longer be paid. Where a child, in accordance with a court decision, is under the alternate custody of both divorced, separated or living apart parents, exercised during comparable and recurring periods, the amount of capital shall be determined for each parent in the amount of half of the amount of capital due [Szmida and Sawicki 2022].

In the event that the mother or father wastes the capital or parental benefit paid to them or spends it contrary to its purpose, the due capital in whole or in part shall be transferred to them by the head of the social welfare center or the director of the social services center, respectively, in the form of in-kind or payment of services. Receipt of applications for family care capital, their processing and payment of this benefit are handled by the Social Insurance Institution (ZUS) [ibid.].

7. CO-FINANCING FOR A CHILD'S STAY IN A NURSERY, CHILDREN'S CLUB OR DAYCARE

The co-financing is granted to a child who attends a nursery, children's club or is taken care of by a day caregiver, if the parent does not receive family care capital for this child. The parent will have to decide whether they want to use the subsidy or the family care capital. The co-financing amounts to a maximum of PLN 400 per child per month, not more than the fee paid by the parents for the child's stay in a nursery, children's club or day care provider. The fee for a child's stay in the facility does not include the fee for meals. The subsidy will be paid to the bank account of the facility attended by the child.

8. ONE-TIME SOCIAL BENEFIT FOR FIRST NEEDS

On the basis of Article 31 of the special law, citizens of Ukraine residing in the territory of Poland whose stay is considered legal, i.e. citizens of Ukraine who arrived in the territory of Poland after February 24, 2022 and who have been assigned a PESEL number, are entitled to assistance in the form of a one-time cash benefit of PLN 300 per person. It can be used for living expenses, in particular for food, clothing, footwear, personal hygiene products and housing fees. The possibility of granting such a benefit, which can help those fleeing the war in their initial plight, should be viewed as positive. The Polish authorities examining the application for this benefit are: the commune head, the mayor and the president of the city competent for the applicant's place of residence. An application for payment of a one-time cash benefit shall be submitted in writing to the social welfare center of the municipality having jurisdiction over the place of residence of the Ukrainian citizen. The application can be submitted by the eligible person, his legal representative, temporary guardian, or the person with actual custody of the child. The legislator specifies in the spec that the application must contain the data of the person making the application or the data of the person on whose behalf the application is made: first name(s) and last name; date of birth; nationality; gender; type of document on the basis of which the border was crossed; series and number of the document constituting the basis for crossing the border; information on the date of entry into the territory of the Republic of Poland; address of stay; contact information, including telephone number or e-mail address – if possessed; PESEL number – if assigned. It should be noted that the award of a one-time cash benefit by the mayor does not require the issuance of a decision, so a negative decision cannot be appealed to a higher authority [Pietrzak 2022, 27].

CONCLUSIONS

As of mid-March 2022, special benefits for Ukrainians in Poland and other forms of financial assistance for refugees coming to our country from war-torn Ukraine have been introduced. Financial benefits for Ukrainian citizens who have a child in their care are almost identical to those provided for Polish citizens. War refugees are entitled to, among other things, a one-time cash benefit of 300, a benefit from the Family 500+ program, a subsidy for a child's nursery fee or a benefit under the "good start" benefit. The provisions of the Law of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of Ukraine rightly make the provision of financial assistance conditional on legal residence

in the territory of the Republic of Poland, linked, among other things, to the assignment of a PESEL number.

Currently, the legislature's amendments, conditioning that when a foreigner leaves the country for more than a month, he loses the right to legal residence and money for children, should be viewed as positive. In order that cases of unlawful collection of benefits by those who no longer meet these requirements can be prevented, the Border Guard Commander-in-Chief shall make available to Social Security and local governments information on the departure of a refugee in excess of 30 days. The introduction of a legal basis for ZUS and municipal institutions to obtain information on the history of border crossing by a Ukrainian citizen, including the date of each entry and exit from Poland, should be done with the utmost caution so that the principle of trust in the state and the laws it enacts is not violated. For, as the Supreme Administrative Court recognized, "a component of the principle of trust in state bodies, taken as a citizen's legitimate right to expect a certain action of the state, is the predictability and consistency of the actions of its bodies. This principle should be viewed in light of the need for both the authority and the party to the proceedings to comply with it."¹²

It should also be noted that the provisions of the Law on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state properly modify the rules for granting benefits introduced by separate laws, in order to adapt them to the situation, and thus to make it possible for Ukrainian citizens to take advantage of these entitlements.

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¹² Judgment of the Supreme Administrative Court of 8 March 2016, ref. no. II OSK 1688/14, Lex no. 2113112.