

SOCIAL ASSISTANCE FOR PEOPLE WITH DISABILITIES – A SYSTEMIC ANALYSIS

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Abstract. The article analyses the institution of social assistance in the context of its position in the Polish legal system and presents the characteristics of the right to social assistance from a subjective perspective. Two principles of social assistance are analysed – the principle of protecting human dignity and the principle of subsidiarity, as well as their impact on the scope of benefits provided. Finally, the paper presents different legal forms and institutions for people with disabilities.

Keywords: legal system; subsidiarity; human dignity; institutions of social assistance.

INTRODUCTION

The discussion in this paper is intended to present an outline of the institutions legislation envisages as the legal framework for public administration to provide social support for persons with disabilities. This does not cover all the aspects of the issue as systemic conditions and detailed regulations make it very extensive.

It should be pointed out here a range of social assistance duties are discharged by public benefit non-government organisations as they are entrusted with some tasks by the public administration and as cooperation programmes are developed under the Public Benefit Activities Act.¹ Effective aid to the disabled certainly cannot be assured with but two instruments: the state and the market. What is midway between them is absolutely necessary. Effective assistance is impossible without it. Organisations, federal or lobbying institutions that act for various interests are needed. They should become the voice of the community. This is of paramount importance to the disabled as well. The role of such organisations in supporting persons with disabilities is enormous, a subject fit for separate research and other publications, merely signalled here.

¹ Act of 24 April 2003, the Public Benefit and Voluntary Activities, Journal of Laws of 2023, item 578.

The Social Economy Act, approved last year and published on 29 August 2022,² which systematises the existing social enterprise solutions, refers to some forms of support for the disabled, too.

Social economy denotes the activity of social economic entities for local communities: social and professional reintegration, job creation for those at risk of social exclusion, and social services, realised as business, public benefit, and other paid activities.

The Social Economy Act lists the forms of support for social enterprises. The possibility of financing by the Labour Fund and the State Fund for the Rehabilitation of Disabled Persons are the key options. In addition, social enterprises can take advantage of CIT reliefs for their efforts at the social and professional reintegration of their employees. Social economy has also become part of social problem solving strategies of local and county communities. The practical application of the Act will show whether the new solutions will be a positive change for the disabled. Scientific discussions in this area also require an in-depth review that the space constraints of this publication don't allow.

Pecuniary benefits as a form of social assistance, such as ongoing, periodic, designated and other benefits, are not part of this review either, since they are designed for broad ranges of beneficiaries and disability is not a distinguishing feature among them [Małecka-Łyszczek and Mędrzycki 2021, 111].

The dogmatic method is applied to this analysis of the social assistance system in Poland.

1. SOCIAL ASSISTANCE AS AN INSTITUTION OF ADMINISTRATIVE LAW – ITS POSITION IN THE LEGAL SYSTEM

The theory of social assistance distinguishes its broad and narrow scopes. In the former sense, social assistance is a set of diverse, non-equivalent forms of support undertaken by public institutions and financed with public resources, addressed to individuals or families in need. This social assistance is governed with a number of legal regulations beside the Social Assistance Act, including those covering housing allowances,³ family benefits,⁴ social pensions,⁵ assistance to those eligible for family maintenance,⁶ social

² Act of 5 August 2022, the Social Economy, Journal of Laws of 2023, items 1287, 1429.

³ Act of 21 June 2001, the Housing Allowances, Journal of Laws of 2023, item 1335.

⁴ Act of 28 November 2003, the Family Benefits, Journal of Laws of 2023, item 390 as amended.

⁵ Act of 27 June 2003, the Social Pension, Journal of Laws of 2022, item 240 as amended.

⁶ Act of 7 September 2007, the Assistance to Persons Eligible for Family Maintenance, Journal of Laws of 2023, item 1300 as amended.

employment⁷ or the professional and social rehabilitation and employment of persons with disabilities.⁸

Strictly speaking, social assistance is an institution governed with the Social Assistance Act and the legal acts issued in connection with the duties set out in the said Act.

Social assistance as a state welfare policy institution has since 1 May 2004 been grounded in the Social Assistance Act⁹ of 12 March 2004. The area of social assistance had previously been regulated with the Social Assistance Act of 29 November 1990¹⁰ and, still earlier, with the Social Care Act of 16 August 1923.¹¹ The 1923 Act officially ceased to apply after the 1990 law came into effect, however, it had not been applied by the socialist state in practice. The Social Care Act was regarded as repealed by way of *desuetudo* [Sierpowska 2020, 19].

Due to its objective scope, social assistance is part of substantive administrative law. This view, entrenched in the doctrine [Idem 2008, 31], is supported by linking the institution of social assistance legislation with an administrative procedure according to which authorities conduct most of their proceedings under the Social Assistance Act. This approach to social assistance means it becomes one of the divisions of substantive administrative law that affect the development of administrative law and public administration itself [Nitecki 2020, 196].

The Social Assistance Act has an extensive legal regulation that consists of substantive legal, system and procedural provisions, part of five chapters that govern: the general principles, the subjective scope, and tasks of social assistance (Chapter I); social assistance benefits, including the principles of payments for the benefits and benefit proceedings (Chapter II); the organisation of social assistance, including its organisational structure and the status of social workers (Chapter III); the realisation of actions co-financed by the *Fund for European Aid to the Most Deprived* (Chapter IIIA); as well as amending, provisional, and final provisions (Chapter IV). The Act has been amended a number of times during more than 20 years of its operation.

The prevailing Polish Constitution¹² of 1997 fails to provide any norms that would directly institute the right to social assistance or any particular benefits of this type. The views expressed in the doctrine and the Constitutional

⁷ Act of 13 June 2003, the Social Employment, Journal of Laws of 2020, item 176 as amended.

⁸ Act of 27 September 1997, the Professional and Social Rehabilitation and Employment of Persons with Disabilities, Journal of Laws of 2023, item 100 as amended.

⁹ Act of 12.03.2004, the Social Assistance, Journal of Laws of 2023, items 901, 1693.

¹⁰ Journal of Laws of 1998, item 414 as amended.

¹¹ Journal of Laws item 726 as amended.

¹² The Constitution of the Republic of Poland of 2 April 1997, Journal of Law No. 78, item 483 as amended.

Tribunal judgments imply systemic social assistance is part of the broadly-defined social security, which includes: national insurance, social provision, and social assistance. The Constitution fails to list any forms of realising this security.

Social assistance, together with national insurance and selective social security, make up the social security system under Article 67(1) of the Polish Constitution. Such a positioning of social assistance is characteristic of continental Europe. In Anglo-Saxon countries, where public social insurance is less developed, social security systems also comprise universal healthcare. Regardless of a system's constituents, though, social assistance by definition plays supplementary roles in contemporary European states [Dobkowski 2009, 168]. Moreover, Article 67 of the Polish Constitution fails to identify any forms of social security even in general terms or to specify whether it is to be implemented through insurance or social assistance. Other provisions of the Polish Constitution, e.g., Article 69, which envisages social assistance for the disabled, should be treated in the same way. These provisions refer to individual protection through social assistance only directly and in highly general terms and certainly lay no foundations for declaring the right to social assistance is expressed in the Polish Constitution [Sierpowska 2020, 22].

In line with the established terminology, social security encompasses all and any benefits awarded, out of public resources, to citizens in need. It consists of a system of facilities and performances serving to satisfy the reasonable needs of citizens who have lost or are limited in their capacity for working or suffer from excessive costs of supporting their families. Social assistance is supplementary to insurance and social security.¹³

Specialist literature regards the right to social assistance as subjective. Its extent and actual protection, as S. Nitecki rightly notes, is possible on reviewing the rights to particular benefits. "The right to social assistance means the possibility of applying for any benefits in this area, whereas the right to a benefit is approached more narrowly and related to the fulfillment of requirements for a specific, personalised benefit" [Nitecki 2008, 13].

The view of the subsidiarity of social assistance, whose objective is not to provide means of support or to satisfy all needs of its beneficiaries, is entrenched in judicial decisions. Thus, social assistance cannot involve an ongoing provision of means and is only subsidiary to the activities of the beneficiaries concerned themselves.¹⁴

¹³ Judgment of the Constitutional Tribunal of 20 November 2001, ref. no. SK 15/01, Journal of Laws item 1564.

¹⁴ Judgment of the Supreme Administrative Court of 29 April 2020, ref. no. I OSK 2698/19, Legalis no. 2487233.

The nature and purpose of social assistance require that it should be firmly positioned in the catalogue of state instruments which protect the fundamental human and civil rights. It remains a principle of the rule of law that a legal system is based on respect for and protection of human dignity, which is integral.

The legislator endows human dignity with a constitutional significance and a frame of reference for the entire system of values around which the Constitution is constructed. It is therefore the foundation of the whole legal order in the State. It is by means of social policy instruments, including social assistance, that the State discharges its special duty of guaranteeing minimum living conditions for every individual.

The objectives of social assistance express the values accepted by the legislator and actions expected for persons and families in difficult circumstances. The key purpose of social assistance is to support individuals and families with their efforts at satisfying their basic needs and to provide for their living conditions that would be appropriate to their human dignity. This means social assistance operates where the basic living conditions of an individual or a family are at risk or where the quality of their life is below a universally acceptable minimum.

In this light, social assistance benefits should be appropriate to an applicant's needs and their form should not be below their dignity. They should assure living above the so-called biological minimum and be adequate to the average living standards of a given community, by their very nature variable in time and space, just like the basic needs.

Thus, social assistance support should not be limited to benefits serving to satisfy a basic need and should comprise benefits that would allow an individual or a family in future to take advantage of their rights, resources and capabilities to satisfy their basic needs. This goal is advanced by e.g., social work or specialist advice, in particular, legal and psychological.

2. THE PRINCIPLES OF PROVIDING SOCIAL ASSISTANCE TO THE DISABLED – SUBSIDIARITY AND THE PROTECTION OF HUMAN DIGNITY

The law explicitly lists disability among the reasons for providing social assistance. The concept of disability should be identified with the characteristic of those holding the status of persons with disabilities under the provisions of the Professional and Social Rehabilitation and Employment of Persons with Disabilities Act. In the context of the Social Assistance Act, the disability can be nothing else but a feature of a disabled person. The latter is an individual affected by the risk of disability as defined by Article

7(5) of the Social Assistance Act. This should be linked with the provisions of the Professional and Social Rehabilitation and Employment of Persons with Disabilities Act. Thus, a disabled person is a holder of an official confirmation of their disability. The legislation distinguishes three degrees of disability: significant, moderate, and light. Article 6(1) of the Social Assistance Act defines a total work incapacity, which includes a significant or moderate degree of disability under the Professional and Social Rehabilitation and Employment of Persons with Disabilities Act [Małecka-Łyszczek and Mędrzycki 2021, 90-91].

Any administrative activities should be guided by values. J. Zimmermann, while reviewing fundamental values in administrative law, lists human welfare at the top. “Administrative law is to serve human welfare, and this can be seen as its fundamental, indeed sole obligation and the sense of its existence. Everything else – administrative structures and links among them, the forms of action, any rationing, etc. – serves that sole purpose” [Zimmermann 2018, 558] With reference to the subject matter of this paper, it should be pointed out all and any administrative legal regulations in this respect should first of all address human welfare.

In a separate chapter of her *Prawo pomocy społecznej* devoted to the principles of social assistance, Sierpowska presents their very extensive catalogue, distinguishing between those concerning the public administration system and administrative proceedings [Sierpowska 2008, 45-64]. The space constraints of this paper do not allow such a broad approach, therefore, this discussion will be limited to the protection of human dignity and subsidiarity, highlighted in the title of this section.

The regulation of the Social Assistance Act is interesting in this connection. An objective and the chief principle of social assistance is assuring living conditions appropriate to human dignity [Michalska-Badziak 2009, 481]. An applicant’s subjective assessment needs to be objectivised in the actions of social assistance authorities, a task made difficult as dignity is not defined in law. As S. Nitecki notes correctly, social workers and the staff of social assistance organisations are legally bound to consider all the aspects of human dignity in their actions. However, when the supplementary goals of social assistance are realised, the notion of human dignity is restricted, as a rule, to the aspects reported or stressed by those applying for benefits or officially selected by an administrative authority [Nitecki 2008, 67].

The concept of dignity is present several times in the Social Assistance Act in the context of the overall goal of benefits, that is, allowing individuals and families to live in conditions appropriate to human dignity. For instance, R. Michalska-Badziak believes that, although the legislator fails to specify what “basic needs” mean, they can be assumed to denote “a certain financial minimum allowing a person (family) for independent life in a community

and for satisfying a variety of social needs” [Michalska-Badziak 2009, 477], which is variable in time.

Respect for human dignity must also be considered in social work. Methods and techniques designed to improve the functioning of persons and families in their communities must take beneficiaries’ dignity into account. Human dignity is part of the organisation and services of social assistance organisations and family nursing homes, too.

Respect for dignity is also a duty of social workers serving individuals and families. One more important comment needs to be added here. Reinforcing the dignity of people being served is an essential part of non-financial actions, e.g., crisis intervention or social work. Subsidiarity is crucial, it fosters dignity. This is evident, by contrast, in the often paternalistic approach to the disabled [Małecka-Łyszczek and Mędrzycki 2021, 101].

The principle of subsidiarity in the area of social assistance can be viewed from different perspectives, with reference to the place of social assistance in the social security system, the objectives of social assistance, family duties, an individual’s responsibility for satisfying their own needs, the division of public administration’s tasks, the organisation of social assistance, task discharge by non-public actors, and the award of social assistance benefits. This space does not allow for covering all the questions, therefore, the discussion will focus around subsidiarity as the principle of an individual’s responsibility for satisfying their own needs [Michalska-Badziak 2018, 307].

The principle of subsidiarity can be interpreted out of Article 2 of the Social Assistance Act, though it’s not expressed there directly. It basically consists in not doing things individuals can do on their own; social assistance should only be provided when an individual is no longer self-sufficient in a crisis situation. The provision in question envisages applying social assistance once two conditions are met jointly: difficult circumstances arise and cannot be overcome by somebody’s own devices. Obviously, the legislator avoids defining ‘difficult circumstances’ and only lists their most common reasons, such as: poverty, homelessness, unemployment (Article 2 of the Social Assistance Act) [Sierpowska 2009, 209].

Social assistance may only be awarded once an individual has exercised, first, their rights, second, their resources and capabilities, that is, not only funds but also mental and physical properties, professional qualifications, active solving of their own and their families’ problems, and readiness to work with others to this end. Public resources must not be used by those who, able to satisfy their needs out of their own resources, choose not to do it. If an individual is unable to overcome difficulties by their own devices, communities can intervene, from the lowest, family level to other civil society institutions. If an issue cannot be solved by the civil society,

public authorities may step in to tackle such public tasks [Michalska-Badziak 2018, 308].

3. THE BASIC FORMS OF PROVIDING SOCIAL ASSISTANCE TO PERSONS WITH DISABILITIES

The current model of social assistance presumes a cooperation between the formal social assistance system, healthcare system, educational support, economic support, and indirect social assistance (non-government organisations) systems. The institutions that provide care, social assistance and support to persons with disabilities include assistance centres, daytime nursing homes, nursing homes, community self-nursing homes, occupational therapy workshops, and support centres. Local community, urban social assistance centres, and county family social assistance are the direct organisers of social assistance that engage in social rehabilitation tasks, such as co-financing for rehabilitation equipment, liquidation of barriers, and for sports.

County disability decision-making centres operate with county social assistance centres. A person with disabilities who is alone, dependent, and requires but is deprived of social assistance is eligible for such assistance in the form of care services (satisfaction of everyday needs, hygienic and nursing care, as much contact with the environment as possible) or specialist care services (suited to special needs relating to a type of disability, e.g., support with the acquisition and development of skills required for independent living, social assistance with community life, official affairs, and employment, support for the process of medical treatment and rehabilitation). Care services are awarded by a social assistance centre, which determines their scope, time, and location [Matejek and Zdebska 2022, 263].

Beside the statutory social assistance tasks delivered by social assistance centres, a person with disabilities may take advantage of institutional forms of support, such as: support centres, community self-nursing homes, nursing homes, daytime nursing homes, occupational therapy workshops, sheltered accommodation, and vocational rehabilitation facilities.

A support centre is a daytime social assistance organisation where the disabled can learn to be independent, to acquire basic everyday skills, and prepare for a working career.

Decisions to refer the mentally disturbed to an assistance centre and pay for services provided at such centres are issued by competent local authorities that administer or have administered support centres for the mentally disturbed.

Community self-nursing homes are daytime facilities that support the mentally ill, persons with intellectual disabilities, autism, as well as Alzheimer

patients. Their operation relies on the Social Assistance Act, the Mental Health Protection Act¹⁵ of 19 August 1994, the Labour and Welfare Policy Minister's Ruling¹⁶ on Community Self-Nursing Homes and Internal Documents (Statutes, By-Laws) dated 9 December 2010. Community self-nursing homes are designed to provide social assistance to adults with disabilities by means of daytime services in respect of integration, mobilisation, therapeutic and social support, and social assistance in crisis situations.

Depending on who they are intended for, there are four types of the homes: type A – for the chronically mentally ill, type B – for the intellectually disabled, type C – for those with other chronic mental disturbances, type D – for those in the autism spectrum or with multiple disabilities. The division relates to the rehabilitation process in a given facility.

Nursing homes are a form of institutional social assistance in support of those requiring continuing care due to their age, sickness or disability who are incapable of independent everyday living. In line with the Social Assistance Act, nursing homes, depending on who they are for, are divided into the following types: homes for the elderly, for those with chronic somatic conditions, the chronically mentally ill, adults with intellectual disabilities, children and youth with intellectual disabilities, the physically disabled, and for alcohol addicts.

Family nursing home is a 24/365 form of care and support service provided by a private individual or a public benefit organisation for those who require such support due to their disabilities, among other things. Such a home is operated under a contract between an individual or a public benefit organisation and a geographically competent local community [Małeczka-Łyszczek and Mędrzycki 2021, 125].

Daytime nursing homes are intended for those who require social assistance due to their age, sickness or other causes but are deprived of such assistance or their families are unable to provide it. The operation of such homes is based on the Social Assistance Act and internal regulations.

They provide care, therapeutic, catering and hygienic services, arrange for cultural and educational activities, develop individual free-time interests to remedy the sense of loneliness in the elderly. Activities to mobilise and improve general fitness, physical and psychological therapy, as well as psychological assistance are organised to develop contacts with the family and community.

Occupational therapy workshops are daytime facilities that support the disabled and their families, educate adults with intellectual disabilities

¹⁵ Act of 19 August 1994, the Mental Health Protection, Journal of Laws of 2022, item 2123.

¹⁶ Ordinance of 9 December 2010 of the Labour and Welfare Policy Minister on Community Self-Nursing Homes, Journal of Laws item 1586.

in actively supporting the processes of professional and social rehabilitation and skills necessary to improve the quality of their lives. The legal foundations for their operation are laid by the Professional and Social Rehabilitation and Employment of Persons with Disabilities Act as well as the Economy, Labour and Welfare Policy Minister's Ruling¹⁷ on Occupational Therapy Workshops of 25 March 2004 and organisational by-laws approved by an organisation administering the workshops.

Persons with an officially recognised disability status whose decisions determining their disabilities or degrees of disability indicate participation in occupational therapy workshops may take part. The professional and social rehabilitation of the participants follows their customised programmes of rehabilitation and therapy which contain details of a person with disability, scheduled actions, and expected work outcomes [Matejek and Zdebska 2022, 267].

Occupational therapy is the core activity, but a variety of workshops are conducted, e.g., movement-based activities, activities improving social communication, cooking, crafts, computer, gardening, arts, woodworking or tailoring workshops. The variety of workshops depends on the capacity of a facility and the skills of therapists running the activities.

Sheltered accommodation is a form of non-pecuniary benefit envisaged by the Social Assistance Act. Guidelines on its operation are part of the Labour and Welfare Policy Minister's Ruling¹⁸ on Sheltered Accommodation of 14 March 2012.

Both local and county authorities are obliged to run sheltered accommodation by force of law. This is a form of social assistance that prepares its residents, under specialist care, for independent living or supports those individuals in their everyday life.

Sheltered accommodation can be administered by any social assistance or public benefit organisation. Depending on the purpose of support, it's training or supported sheltered accommodation.

Supported sheltered accommodation is intended for: 1) persons with disabilities, especially with physical disabilities or mental disturbances; 2) the elderly or the chronically ill.

Supported sheltered accommodation provides household services and social assistance with everyday necessities and social contacts in order to develop or maintain independence within a person's abilities. Thus, an adult with a disability who needs support with their everyday living but doesn't

¹⁷ Ordinance of the Economy, Labour and Welfare Policy Minister of 25 March 2004 on Occupational Therapy Workshops, Journal of Laws item 587.

¹⁸ Ordinance of the Labour and Welfare Policy Minister of 14 March 2012 on Sheltered Accommodation, Journal of Laws item 850.

require the services of a 24/365 facility may be awarded such support in sheltered accommodation [Małecka-Łyszczek and Mędrzycki 2021, 130].

A decision to award support in sheltered accommodation is issued for a fixed period of time. Decisions of indefinite support in sheltered accommodation may be issued to the holders of decisions determining significant or moderate degrees of disability or, in special circumstances, to other individuals.

CONCLUSION

The institutions discussed and their tasks are not all the actions for the benefit of persons with disabilities, but a selected part of the support system.

Looking at the background and organisational structure of the social assistance system in Poland, one can say it is founded on social care created in the interwar period. The development of welfare policy since 1923 was obstructed at the time of real socialism. In the post-1989 period of social transformation, a protective and passive social assistance system was established. New solutions were sought after 2000 for a more active model of social assistance and integration [Zelek 2018, 187]. The present Social Assistance Act provides for a range of both pecuniary and non-pecuniary benefits in support of the excluded.

As far as social assistance for persons with disabilities is concerned, actions are increasingly important intended to raise the social awareness of those persons: their situation, capabilities, limitations, needs, and problems connected with various disabilities.

The legislator ought to create solutions aimed at an effective social assistance, and this requires a constant monitoring of needs and variable socio-economic conditions. As the conditions change, innovation and non-standard instruments need to be sought. An effective social assistance should be dynamic and responsive. The current models of public (joint) management suggest a focus is required on using the potential of social assistance beneficiaries and including them in joint decision-making processes, which means their greater empowerment that ties in with respect for dignity.

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