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Selected Sanctions in Polish Social Assistance Law

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Abstract

The social assistance system is determined by the support of individuals and families in their efforts to meet the necessary life needs. The purpose of assistance is to prevent difficult life situations that individuals and families cannot overcome using their own rights, resources and capabilities. This assistance must be provided in accordance with legal rules, and in all cases where these rules are not met, it must be modified, for example applying sanctions, otherwise it would turn into widespread distribution of public money. The author undertook an analysis of selected sanctions, which are provided for in the Act of 12 March 2004 on social assistance[1], reaching conclusions on the advisability and necessity of their application on a practical basis.

I. Introduction

New tasks are constantly being set for contemporary Polish social assistance. The purpose of activities launched as part of broadly understood social assistance is to support individuals and families in overcoming a difficult life situation, help in becoming independent in life and creating living conditions corresponding to human dignity. Social assistance is also determined by the creation of a network

1 The Act of 12 March 2004 on social assistance (Journal of Laws 2019, item 2473)

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of social services, assistance in integration with the environment of socially excluded people, as well as providing professional assistance to families affected by pathology, associated with, for example, alcoholism or drug addiction. On the one hand, social assistance is to support, in a rational way, dependent on legal regulations, to grant benefits to persons without income or with low income, of post-working age or people with disabilities; on the other hand, this support must comply with legal rules and in all those cases where these rules violate, be sanctioned. It is difficult to apply penalties in conditions where support centres are required to provide assistance to social assistance centres and other assistance institutions. The application of sanctions is almost always accompanied by negative social overtones, even when it finds strong legitimacy in the law, especially taking into account the often claiming attitudes of social assistance beneficiaries. The goal of the research is to analyse selected sanctions in the social assistance law. The author based his conclusion on an extensive source material in the form of decisions of administrative courts and presented the views of selected representatives of the doctrine. The institution of sanctions applied in the social welfare law raises a lot of controversy, because the goal of social welfare is support, not punishment. On the one hand, imposing sanctions is a last resort under the welfare regulations, but on the other hand, it is also an indispensable element of the effectiveness and efficiency of activities launched as part of social assistance[2].

II. Waste of Benefits

In accordance with art. 11 of the Act on social assistance, if a social worker finds a waste of benefits granted, their deliberate destruction or use in an unintended manner, or a waste of own financial resources, there may be a reduction in benefits, refusal to grant them or the granting of non-cash assistance. Paragraph 2 indicates that the lack of cooperation of a person or family with a social worker or family assistant, (...) refusal to conclude a social contract, failure to comply with its provisions, unjustified refusal to take up employment, other gainful work by an unemployed person or unjustified refusal to take up or interrupt training, internship, vocational training in the workplace, performing intervention works, public works, socially useful works, as well as refusal or discontinuation

[2] More about subject of administrative sanctions: Mirosław Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania* (Wolters Kluwer 2008), Ewelina Żelasko-Makowska, 'Sankcje administracyjne' (2017) 1 Przegląd Prawa Publicznego, 92–100, Dominika Cendrowicz, *Sytuacja administracyjnoprawna adresata świadczeń z zakresu pomocy społecznej* (Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2017).

of participation in activities in the field of social integration implemented under the Activation and Integration Program (...) or unjustified refusal to take addiction treatment in an addiction treatment facility by an addicted person, they may constitute grounds for limiting the amount or size of the benefit, refusing the benefit, repealing the decision to grant the benefit or withholding cash benefits from social assistance. Norm of art. 11 of the Act on social assistance indicates that in the event of refusal to grant a benefit or limitation of the amount or size of benefits from social assistance, the situation of dependents of a person applying for a benefit or benefiting from benefits should be taken into account.

The provision of art. 11 of the Act on social assistance indicates the possibility of applying sanctions in the event of negative behaviour of beneficiaries. These behaviours include the widely understood waste of services. The cardinal task of social assistance is support, but it must take place in conditions of cooperation between beneficiaries with assistance units and social assistance employees[3]. Therefore, if the principles and conditions of this cooperation are not respected by the beneficiaries, a legal tool is created to apply sanctions. These sanctions include the limitation of benefits, refusal to grant benefits, annulment of the decision to grant benefits, suspension of cash benefits or the award of non-cash benefits.

The provision of art. 11 refers to waste, which is primarily the passive or claim attitude of the beneficiary. Social assistance is determined by the pursuit of the recipient's independence. Assistance should be provided to the extent necessary for the individual case. Where there is no cooperation between the parties, there can be no place for effective actions in the area of social assistance, and where these actions have been launched, they must be modified (it must be possible to impose sanctions).

As indicated by the Provincial Administrative Court in Gliwice in a judgement of 12 December 2019, 'the refusal of the party's consent to carry out a community interview and the circumstances (behavior of the party) in which this happened, undoubtedly indicate the lack of cooperation of the party with the social worker in meaning of art. 11 para. 1 of the Act on social assistance, however, pursuant to this provision, such an attitude of a party does not oblige the authority to issue a negative decision, but can only constitute a basis for ruling this content'[4]. The thesis expressed in the court's judgement should be fully divided, because

3 Iwona Sierpowska, *Ustawa o pomocy społecznej. Komentarz* (Wolters Kluwer 2017) 105.

4 *A.N v self-government board of appeal in Częstochowa* [12 December 2019] II SA/Gl 897/19 (Provincial Administrative Court in Gliwice) Legalis 2268719. A similar tone was expressed by the Provincial Administrative Court in Gliwice in the judgment of 29.5.2019 "Passive or claim attitude of persons covered by social assistance may result in refusal to grant benefits or withholding payment of benefits". *A.W v self-government board of appeal in Katowice* [29 May 2019] II SA/Gl 422/19 (Provincial Administrative Court in Gliwice) Legalis 1951085

the authority, in reaching for the sanction, actually operates under conditions of administrative discretion. It should be emphasized that the application of sanctions in the social assistance law is extremely difficult tasks. You should be careful and extraordinarily insightful when analysing whether punishment is possible in a given case. Sometimes, the lack of cooperation of a party with a social worker may result from the unintended intentions of the party, or from the fact that the party is not aware of the negative consequences of its passivity. As R. Frąckowiak rightly points out, it is not enough to just receive information justifying the supposition of a waste of own resources of a social assistance beneficiary, but it is necessary to establish facts confirming this supposition and to 'indicate what is the negative impact of these events and behaviors on the current situation of the family applying for the benefit'[5].

From the standard of art. 11 uops shows the possibility for the social welfare body to apply various sanctions, among which, in the author's opinion, it is difficult to apply the theory of penalty gradation. Each one can be painful for the party. When imposing a penalty, one should be guided by the goal of social assistance, and the basic one is to enable individuals and families to overcome difficult life situations that they are unable to overcome using their own rights, resources and opportunities. Social assistance is to support in this effort, not to do it. It should be borne in mind that social assistance should not be burdened with the obligation of support in a situation where the beneficiary himself does not make the effort to resolve the difficult life situation in which he finds himself[6]. The legislator lists specific types of attitudes of the recipient, which may result in the application of sanctions. Among these pejorative behaviours are: refusal to conclude a social contract[7], failure to comply with its provisions, various forms of professional passivity – from unjustified refusal to take up employment, other gainful work by an unemployed person or unjustified refusal to take up or interrupt training, internship, vocational training at the workplace, performing intervention works, public works, socially useful works, by refusing or interrupting participation in activities in the field of social integration implemented under the Activation and Integration Program, referred to in the provisions on employment promotion and labour market institutions, or unjustified refusal to undergo drug treatment in addiction treatment plant by an addicted person. It should be remembered that the catalogue of passive attitudes of the recipient remains open. The occurrence of one of the recipient's reprehensible attitudes only opens the

5 Rufus Frąckowiak et al., *Ustawa o pomocy społecznej. Komentarz* (CH Beck 2019).

6 *I.Z. v self-government board of appeal in Bydgoszcz* [22 January 2008] II SA/Bd 966/07 (Provincial Administrative Court in Bydgoszcz) Legalis 163104

7 More on the consequences of refusing social contact see Lidia Zacharko et al., *Kontrakt socjalny - Pracownik socjalny* (PressHouse 2011) 99 ff.

possibility for the authority to apply sanctions, but this application must be preceded by a thorough analysis of the facts supported by evidence collected in the case. In addition, the regulation contained in para. 3 art. 11 of the Act on social assistance, requiring the authority to take into account the situation of the dependents of a person applying for support or using benefits when deciding whether to refuse assistance, limit its amount or size. As indicated by I. Sierpowska, the order of art. 11 para. 3 concerns the situation when the authority decides, however, to provide support despite the actual occurrence of the conditions for not providing assistance, guided by the need to protect the permanence of the family[8]. It seems that in the analysed case, the authority should be more careful in choosing forms of support so as not to contradict the idea of social assistance – support in overcoming the difficult life situation of beneficiaries, with their active involvement, with the idea of support and protection of the family.

It seems important to properly inform the party about the effects of a lack of cooperation already in the initial stage of consideration of a case, even before conducting a family environmental interview, which is the basic evidence in social assistance matters. Determining the personal situation and financial status is crucial for the possibility of positive consideration of an application for assistance, hence making it impossible to carry out an community interview (refusal to carry out, refusal to answer individual questions, failure to submit documents required by the authority, for example regarding health, unemployment or the degree of disability) may be considered as a lack of interaction between a person or family and a social worker, which in turn translates into the possibility of issuing a decision refusing to grant the requested benefit[9]. The use of repressive measures against the beneficiary is possible only on the basis of all the circumstances related to the family, material, professional and health situation of the recipient. Sanctions listed in art. 11 are used alternatively. The authority itself chooses which sanction to apply so as to exert an effect of repression on the one hand, and not to undermine existing assistance activities on the other.

III. Suspension of the Right to Benefits for a Person Temporarily Arrested

In accordance with art. 13 sec. 3, persons being detained are suspended from their right to social assistance benefits. No benefits are granted for pre-trial detention. The suspension of social assistance benefits for a detained person is

8 Sierpowska (n 3) 108

9 *W.G v self-government board of appeal in Poznań* [17 May 2018] II SA/Po 943/17 (Judgment of the Provincial Administrative Court in Poznań) Legalis 1786777

another example of a sanction that is obligatorily applied when there is a condition of temporary detention of a beneficiary. Given the cardinal goals of social assistance, which are to help individuals and families overcome a difficult life situation that they cannot overcome using their own resources and opportunities, and to meet the necessary living needs, it is reasonable to suspend the right to benefits for a detainee, who for the duration of his arrest is not in fact forced to take care of his life, health and accommodation, because he is assured of existence at a basic level[10].

The idea of pre-trial detention is to isolate the detainee in order to secure the correct course of criminal proceedings. Obtaining the status of a detained person is associated with a significant limitation of his rights. If so, it is also justified to suspend the detainee's right to social assistance benefits. This regulation must be positively assessed, because the detainee gets to the detention centre gains the subsistence minimum and assistance measures provided by the social assistance centre prove to be unnecessary. This solution is also desirable from the point of view of securing the interests of other beneficiaries of social assistance and is in line with the principle of balancing the legitimate individual interest with the general interest. In addition, the provision extends broadly to the possibility of suspension, which is about suspension of all benefits, both tangible and intangible[11]. According to the author, regarding the considerations, providing assistance to a detainee would be in clear contradiction with the basic objectives of social assistance and would be at odds with the principle of social justice.

IV. Withdrawal of Permission to Run a Social Assistance Home

An example of another sanction applied on the basis of the provisions of the Act on social assistance, not aimed directly at the beneficiary, but in relation to the entity to which the permit to operate a social assistance home has been issued. This sanction is based on art. 57a of the Act on social assistance, pursuant to which the voivode withdraws the permission to run a social welfare home, if a given entity ceased to meet the conditions set out in the Act on social assistance, ceased to meet the standards referred to in art. 55 item 1 and 2 of the Act on social assistance (i.e. the lack of standards in the scope and forms resulting from the individual needs of the residents of a social welfare home, as well as the organization of a social welfare home and the level of services provided without

10 Ł.*Ś v self-government board of appeal* [18 May 2017] II SA/Sz 112/17 (Judgment of the Provincial Administrative Court in Szczecin) Legalis 1635584

11 *P.K v self-government board of appeal* [21 July 2010] II SA/Po 32/10 (Provincial Administrative Court in Poznań) Legalis 308543

taking into account, in particular, the freedom, privacy, dignity and sense of security of the resident and his physical and mental fitness), as well as if the entity fails to present, at the request of the voivode, current documents, statements or information referred to in art. 57 sec. 3b of the Act on social assistance[12]. In the event of withdrawal of the permit to operate a social welfare home, the voivode deletes the home from the register of social welfare homes.

The purpose of applying the sanctions under art. 57a, it is possible to withdraw the permission to run a social welfare home when the entity that runs the home no longer meets the conditions and standards set out in the Social Welfare Act. This is extremely important because the services offered as part of a stay in a social care home are mostly addressed to the elderly, infirm, who must be provided with proper living conditions, which are subject to constant monitoring. One should also consider regulation of art. 129 sec. 1 of the Act on social assistance, which concerns the non-implementation of post-inspection recommendations, also resulting in withdrawal of authorization. However, the post-inspection recommendation referred to in art. 128 sec. 1 is institutionally directed to a nursing home, while the call under art. 57a is addressed to the entity operating the facility[13]. As for post-audit recommendations, it is possible to submit comments and objections, while with regard to the summons there are no legal mechanisms to question its implementation. What may raise doubts when it comes to the analysis of art. 57a, is the time limit within which the entity operating the social welfare home is to perform the obligations specified in the call for the voivode. It is appropriate to agree with I. Sierpowaska that this deadline must be adequate to the deficiencies found, reasonable for the obligations arising from the summons[14]. Therefore, it seems that this deadline should be varied when it comes to, for example, providing documents required by the voivode, and another when it comes to the implementation of 'corrective measures' in terms of meeting the standards of care by the institution or the conditions arising from the Act on social assistance. Removal from the register of social welfare homes is a material and technical activity preceded by the issuing of a decision on withdrawal of

12 The application for permission to run a social welfare home should be accompanied by: copies of the document confirming the legal title to the property on which the home is located, documents confirming the fulfillment of the requirements set out in separate regulations, the organizational regulations of the social welfare home or its project, and in the case of entities listed in art. 57 section 1 points 1-4 are, among others documents from the National Court Register, the Central Register and Information on Economic Activity, information on the method of home financing, a certificate or statement of non-arrears in the payment of social security contributions and taxes.

13 Wojciech Maciejko and Paweł Zaborniak, *Ustawa o pomocy społecznej. Komentarz* (Wolters Kluwer 2013) 280.

14 Sierpowska (n 3) 224.

permission to run an institution. Such a decision is subject to an instance control and, if successful, it will not result in removal from the register.

V. Return of Benefits Unduly Collected

The provisions of the Act on social assistance also provide for a sanction in the form of the return of benefits unduly collected. This is a sanction derived from art. 98 of the act on social assistance. An unduly collected benefit is a cash benefit obtained on the basis of false information or failure to inform about a change in material or personal circumstances (art. 6). The benefit unduly collected applies only to cash benefits. From the standard of art. 6 it is shown that the situation of an unduly collected benefit occurs when the recipient has received the benefit on the basis of false information or when he has not informed about a change in his material or personal situation. These are two different, alternative premises that can be used separately. Interpretation difficulties arise in determining what constitutes false information. In the absence of a statutory definition, it should be assumed that this is all information that does not correspond to actual findings or states. According to T. Krajewski, this is both information that the site is provided to the body consciously and unconsciously[15]. A different position was taken by the Provincial Administrative Court in Poznań in the judgement of 22 January 2020, in which it indicated that 'the condition for recognizing that the condition of art. 98 of the Act on social assistance, i.e. obtaining by a person using social assistance benefits on the basis of false information is to demonstrate that he knowingly provided false data about his property situation, misleading the authority'[16]. The author critically assesses the thesis contained in the cited judgement, because both in the case of deliberate and unintentional introduction of a social assistance body, a procedure of possible imposition of sanctions in the form of reimbursement of the amount that is wrongly collected should be initiated. It is about repayment of undue amounts, not about whether they were granted deliberately or not. If one accepts the argument that a refund should be made in situations where the beneficiary has deliberately misled the authority, then in all those cases where false information was provided unknowingly, should the withdrawal be demanded? This way of thinking seems to lead to many abuses among beneficiaries who, based on their ignorance (actual or alleged), would

15 Tomasz Krajewski, *Ustawa o pomocy społecznej. Interpretacje przepisów w oparciu o orzecznictwo* (CH Beck 2016) 185.

16 *(...) v judgement of Director of the Chamber of Tax Administration in (...)* [2 December 2019] II SA/Po 601/19 (Provincial Administrative Court in Poznań) Legalis 2278593

avoid sanctions in the form of the obligation to return the benefits they were not entitled to.

There are two views regarding the statement of a benefit unduly collected in the literature on the subject. Pursuant to the first issue of a decision to return an unduly collected benefit, it is preceded by a decision to revoke or amend the decision granting the benefit (Article 106 (5) of the Social Assistance Act). The jurisprudence of administrative courts indicates that as long as the decision on granting the benefit is not effectively revoked, there are no grounds for demanding a refund. According to the second view, the procedure for determining the amount wrongly collected is a separate procedure from the procedure for the verification of the decision to grant a benefit, so it is not necessary to previously revoke or amend the decision awarding the benefit[17]. Despite the fundamental discrepancy in interpretation in the case-law, it seems right to agree with the first view. Elimination from the market of a decision granting a benefit by revoking it, or modifying a previous decision by changing it, may give rise to a decision on a claim for reimbursement of the amount wrongly collected. If it were assumed that a decision to grant a benefit was on the market, and at the same time a decision to demand the reimbursement of the undue amount would be issued, two contradictory decisions regarding the same benefit would remain in legal circulation.

Confirmation of an unduly collected benefit is made by means of an administrative decision. This decision is constitutive, with the proviso that its effects go back, i.e. to the date of the reasons justifying the request for reimbursement[18]. A distinction should be made between a decision establishing an amount unduly collected and a decision demanding repayment of that amount and a time limit for repayment. Only after obtaining the attribute of legitimacy by a decision stating that an undue payment has been received, it is possible to issue a decision requesting the return of the benefit.

The provisions of the Act on assistance provide for the possibility of evading the effects of the application of sanctions in the form of a request for reimbursement for benefits unduly collected. Based on art. 104 cl. 4, in particularly justified cases, especially if the demand for reimbursement of expenses for the benefit rendered, due to fees specified in the Act and for unduly collected benefits in whole or in part, would constitute an excessive burden for the obligated person or would destroy the effects of the assistance provided, then the authority that issued the decision on the reimbursement of benefits unduly collected, at the request of a social worker or the person concerned, may refrain from requesting such

17 Cf Krajewski (n 15) 185

18 Stanisław Nitecki, Renata Babińska-Górecka and Monika Lewandowicz-Machnikowska, *Meritum Pomoc społeczna, Wsparcie socjalne* (Wolters Kluwer 2016) 177.

reimbursement, cancel the amount of unduly collected benefits in whole or in part, defer payment or divide the repayment into installments.

The decision based on art. 104 cl. 4 is a discretionary decision. Not every case will be a particularly justified case. The role of the authority is to thoroughly examine whether, in a given specific state of affairs, there is a possibility of either waiving the application of sanctions or applying mechanisms mitigating the penalty applied. 'The purpose of art. 104 clause 4 is the protection of a person obliged to reimburse the benefits received, which in turn relates to the 100 paragraph 1, the principle of being guided by the welfare of persons using it in proceedings regarding social assistance benefits. The issuing of a decision on the return of benefits unduly collected from social assistance must precede the explanatory proceedings in relation to the current life, family and material situation of the obligated person in terms of the possibility of using the benefits provided for in art. 104 clause 4 of the act'[19]. Under the concept of special situations that would justify the use of instruments under art. 104 cl. 4, extraordinary situations should be adopted, which means that the request for reimbursement of benefits seems to be devoid of logic, and the use of, for example, deferred payment or distribution of payments in installments is not justified in the facts of the case, for example the party constantly uses social assistance and demanding the return of the benefit received would have significantly worsened her situation[20].

VI. Conclusions

On the one hand, the application of sanctions in the Polish social assistance law, especially those addressed directly to recipients, should be the last resort; on the other hand, the inability to apply them would lead to widespread distribution of taxpayers' money. Support offered as part of state aid activities is necessary and is part of the legislation of each country, but must be provided rationally, in compliance with legal provisions, in a balanced way. It should reach people who cannot actually overcome their own weaknesses or solve life problems using their own potential. The system must be constructed in such a way that in the absence of cooperation, waste of resources, failure to take up employment, drug treatment, etc., sanctions could be applied. In social thinking about social

19 R.M v *self-government board of appeal in C.* [4 December 2014], IV SA/Gl 179/14 (Provincial Administrative Court in Gliwice) Legalis.

20 E.J v Judgement of provincial Administrative Court in Szczecin [04 July 2017] I OSK 1116/16 (Supreme Administrative Court in Warsaw) Legalis.

assistance, the approach should change from claims to active cooperation with aid bodies, the lack of which may result in the application of sanctions.

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