

TASKS OF SELF-GOVERNMENT IN THE FIELD OF SOCIAL ASSISTANCE IN THE LIGHT OF POLISH LAW

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Abstract in original language:

Do jednostek samorządu terytorialnego zaliczyć należy: gminy, powiaty oraz województwa. W Polsce analogicznie do innych krajów europejskich jedynie część zadań lokalnych i regionalnych jest realizowana przez agendy administracji rządowej, które hierarchicznie podlegają Radzie Ministrów, Premierowi bądź poszczególnym ministrom. Istotna część zadań administracyjnych jest realizowana przez samorząd terytorialny. Dokonują tego organy samorządowe, które są podporządkowane odpowiedniej wspólnotce lokalnej (gminnej, powiatowej) bądź regionalnej (wojewódzkiej) i które reprezentują jej interesy. Zgodnie z ustawą z 12 marca 2004 r. o pomocy społecznej (Dz. U. Nr 64, poz. 593; ost. zm. Dz. U. z 2007 r. Nr 221, poz. 1649) pomoc społeczna należy do instytucji polityki społecznej państwa. Ma ona na celu umożliwienie osobom i rodzinom przezwyciężenie trudnych sytuacji życiowych, których nie są one w stanie pokonać przy wykorzystaniu własnych uprawnień, zasobów i możliwości. Do zorganizowania pomocy społecznej zobowiązane są organy administracji rządowej i samorządowej. Na zasadach partnerstwa współpracują one z organizacjami społecznymi i pozarządowymi oraz z Kościołem Katolickim, innymi kościołami, związkami wyznaniowymi oraz osobami fizycznymi i prawnymi.

Key words in original language:

Polskie prawo; jednostki samorządu terytorialnego; pomoc społeczna.

Abstract:

Among local governments in Poland one can distinguish: commune, district and voivodeship (province) governments. In Poland, like in other European states, only a part of local and regional tasks is carried out by organs of central government administration, subordinate to the Council of Ministers, the Prime Minister or particular ministers. A significant portion of these tasks is carried out by organs of local governments, which are subordinate to the given administrative unit -- either local (commune and district) or regional (voivodeship). Among mandatory internal tasks of a commune the act covers such tasks as: summarizing the overall needs of the commune connected with social assistance, developing programmes aimed at solving social problems, addictions prevention and treatment, integrating families in high-risk groups, providing persons in need with shelter, meals and clothes, granting and paying permanent benefits and purpose benefits covering the costs connected with acts of God, granting and paying purpose benefits covering the costs of medical assistance for the homeless and other persons without income, who cannot have the aforementioned costs covered by the National Health Fund according to regulations governing social insurance, and paying social insurance premiums on behalf of person who are unable to work due to the necessity of giving direct, personal care to their chronically or very seriously ill family members.

Key words:

Polish law; local government; social assistance.

1. INTRODUCTION

In the past several years, in relation to Polish state, many intense changes have taken place. They have occurred for a variety of reasons and concerned non-uniform areas. Political and social transformations resulted, and sometimes forced, changes in Polish law. However, it seems that the most intense mobility of law can be seen in connection with the accession of Poland to the European Union¹.

Among many fields of law, which in recent years have undergone changes, there have been worked out a new solution for bodies of local self-government², as well as social assistance³. As I was trying to demonstrate in the paper, both the local government and social activities are organically linked with each other.

With this in mind the aim of the article was to present tasks appointed by the legislature appointed for individual units of local self-government in the provision of social assistance. The solutions presented relate to the Polish legal system. Article is divided into two parts. The first one presents the general problem of local government and the basic information in the field of social assistance. This part is therefore an introduction to the other, which raised the issues of individual tasks of social assistance and ways of its implementation.

The paper used legal acts of individual units of local self-government and social assistance. Among the literature that was there are commentaries to these laws, university textbooks and articles from scientific journals. This article only outlines the problem of participation of local government units in carrying out social assistance and may be a contribution to further research.

2. THE UNITS OF LOCAL SELF-GOVERNMENT AND SOCIAL ASSISTANCE

The institution of the modern local government is a result of long-term evolution. Self-government in Poland was re-activated in 1990, after forty years⁴. It is a specific organization of a local or regional community and at the same time - a form of public administration, in which residents form a community, by law, and relatively independently decide on the implementation of administrative tasks arising from the needs of the community on a given territory and permitted to self-government by law, under the supervision of statutory specific government administration. The following local government units can be extinguished: municipality, district and province. It is worth to point out that the Constitution of the Republic of Poland of 1997 in Article 164 Paragraph 1 states that the municipality is the basic unit of local self-government⁵.

¹ The Republic of Poland joined the EU on 1 May 2004 .

² The act of 8 March 1990 of municipal self-government (Laws Journal of 2001 no. 142 pos 1591 with amendments); The act of 5 June 1998 of district self-government (Laws Journal of 1998 no. 91 pos 578); The act of 5 June 1998 of province self-government (Laws Journal of 1998 no. 91 pos 576).

³ The act of 12 March 2004 on social assistance (Laws Journal of 2004 no. 64, pos. 593).

⁴ B. Dolnicki, Samorząd terytorialny, wyd. III, Kraków 2006, p. 17 i 15, ISBN 83-7444-199-2.

⁵ See: W. Skrzydło, Konstytucja Rzeczypospolitej Polskiej. Commentary, ed. IV, Kraków 2002, p. 223, ISBN 83-7333-106-9.

According to the classical theory of self-government, among tasks of individual units, there can be identified own and assigned tasks. It is worth to mention that the above-mentioned division has been adopted and has been used in most European countries⁶. As own tasks should be understood such tasks, that are to be performed by a unit itself. Interference of the state bodies is allowed only in the form of supervision determined normatively through correction of illegal activities⁷. Assigned task are entrusted to local government units to be performed by a statutory norm. Implementation of these tasks is associated with specific financial consequences and stronger supervision from organs assigning such tasks.

Each of these units of local government was obliged by law to carry out actions in the field of social assistance. The term social assistance is understood by law as a social security institution of state social policy, whose objective is to enable individuals and families to overcome difficult situations in life that they are not able to deal with using their powers, resources and opportunities⁸. In the literature it is stressed that social assistance is one of the oldest forms of social activity⁹. The aim of social assistance is to support individuals and families in their effort to satisfy essential needs, as well as enabling them to live in conditions which conform to the dignity of man. The primary task of social assistance is to prevent the above situations, as well as their correction. Units of local government responsible for benefits in terms of social assistance are taking actions which should results in independence of persons and families, and the integration of these entities with the environment.

Although the legislature imposed on each unit of local government responsibilities in the field of social assistance, the law on social assistance emphasizes necessity of cooperation between those units and entities interested in receiving such assistance¹⁰. The act clearly states that the entities in the most disadvantaged situations have a duty to cooperate in resolving this situation. It does not indicate the way or the extent of that interaction. Despite this it should be understood relatively broadly. It can therefore be assumed that it equally concerns for example active seeking a job or raising qualifications and real cooperation with both local authorities and individual social workers. Behavior of the entitled people aimed at non-cooperation in the field of the improvement of their difficult situation, refusal to conclude a social contract¹¹, not complying with its provisions, unjustified refusal to work by a person

⁶ See: M. Deubert, G. Liegmann, *Rechtsgrundlagen kommunaler Selbstverwaltung und regionalne Strukturen in Europa*, Köln 1989.

⁷ B. Dolnicki, *Samorząd terytorialny*, p. 26.

⁸ Art. 2 par. 1 of the act on social assistance.

⁹ See: K. Podolski, W. Turnowiecki, *Polityka społeczna*, Gdańsk 1998, p. 122.

¹⁰ Art. 10 of the act on social assistance.

¹¹ The term social contract should be understood a written contract with a person seeking assistance. The contract defines the rights and obligations of the contract parties, within the framework of joint efforts undertaken to overcome the difficult condition of that person or family. Art. 6 point 6 of the Law on Social Assistance.

who is unemployed, or refusal to undergo treatment by an addict can be a condition to refuse to grant, or cancel a decision granting benefits or stop cash benefits from social assistance¹².

It should be stressed that the failure to cooperate should not be the sole and absolute condition for the refusal of the assistance. You have to remember the actual cause of the impossibility of cooperation. It may in fact be due to certain reasons, such as alcoholic or psychic disease, or various types of psychological addictions¹³. Social assistance is granted to individuals and families in particular because of: poverty, orphanhood, homelessness, unemployment, disability, or long or severe illness, domestic violence, need of protection of maternity or great families, helplessness in care and educational matters, conduct of a household especially in incomplete or large families, lack of skills in adapting to life by young people leaving care and education centres, difficulties in adapting to life after being released from penal establishments, alcoholism or drug addiction, random events and crisis situations and natural or ecological disasters¹⁴.

We must stress that the above-mentioned list is only a sample criteria of dysfunctions occurring in a family, which should be fulfilled in order to apply for social assistance benefit. These criteria can be met individually, or they may be overlapping¹⁵.

3. TASKS IN THE FIELD OF SOCIAL ASSISTANCE AND THEIR IMPLEMENTATION

In accordance with Article 16 paragraph 1 of the act on social assistance, the obligation to ensure the implementation of social assistance tasks lies on local authorities¹⁶. Both the municipality and the district were obligated by the legislature to carry out the tasks in the field of social assistance¹⁷. Therefore, they can not refuse to help a person in need, despite the existing obligation of individuals or legal entities to meet their essential needs.

Each of the units of local self-government, under the terms of the Act, is required to provide benefits in terms of social assistance. However, it is worthwhile to mention that this assistance has different character. For the reason, that the municipality is the basic unit, and - de facto - is the closest to an eligible entity, the law imposed upon it the most responsibilities¹⁸. Among the most typical own tasks compulsory are: granting and paying periodic and targeted benefits, paying contributions to the pension and retirement scheme for a person who

¹² See: art. 11 par. 2 of the Act on Social Assistance.

¹³ See: C. Martysz, S. Nitecki, G. Szpor, *Komentarz do ustawy o pomocy społecznej*, Gdańsk 2001, p. 20

¹⁴ See: art. 7 of the Act on Social Assistance.

¹⁵ Ł. Borkowski [et al.] *Komentarz do ustawy o pomocy społecznej wraz ze zbiorem przepisów wykonawczych*, Kutno 2005, p. 20, ISBN 83-60179-10-7.

¹⁶ Art. 16 of the Act on Social Assistance.

¹⁷ Tasks in the field of social assistance should also be fulfilled by the government. See: Ł. Borkowski [et al.], *Komentarz do ustawy o pomocy społecznej*, p. 41.

¹⁸ *Prawo administracyjne*, red. J. Boć, Wrocław 1998, p. 178, ISDN 83-88166-67-0.

renounces the employment because of the need of long-term personal care of a sick family member, feeding children ; organization and delivery of care services, including in the place of residence. Own tasks of municipalities include among others: assignment and payments for economic independence in the form of benefits, loans and aid in kind, keeping and providing places in social welfare facilities and municipal supporting centers and cooperation with district authorities in the field of popularization of job posts and information on job vacancies¹⁹.

The following tasks assigned by the government and implemented by the municipality can be distinguished: granting and payment of permanent and targeted benefits for covering expenditures related to natural or ecologic disasters, organization and provision of special care services at the place of residence for people with mental disorders and maintenance and development of the infrastructure of environmental self-help homes for people with mental disorders²⁰.

Apart from tasks performed by each municipality, self- government units responsible in the field of benefits in terms of social assistance are districts. Each district performs public tasks of over-municipal character set out in the laws, for instance: professional training of social assistance personnel from the district, working out a list of district needs in the scope of social assistance, as well as development and implementation of the district strategy for resolving social problems, but after consultation with locally relevant municipal authorities²¹.

Among own tasks performed by a district dominant are those, which relate to the functioning of foster families and care and education centers. The sphere of activities mainly deal with the care of a family and child. These tasks are in particular: organization of care in foster families, providing monetary assistance to cover partial cost of living of children placed in them and paying compensation for being ready to adopt a child or provided care and upbringing for foster parents not related to the child; provision of care and education for children totally or partially deprived of parental care. Such assistance is provided in particular by organizing and conducting adoption and care centers, care and education centres, as well as creation and implementation of programs of aid for a child and family. In addition to the above, district's tasks include covering the cost of living children from the area of the district, placed in care and education centers and foster families, even in another district and granting monetary assistance to those who leave the above-mentioned facilities or continuing education²².

Provincial self-government has spontaneous tasks in social assistance. This is due to the fact that the scope of action of this self- government can not affect the independence of municipalities and districts²³. The activities of provincial self-government have mainly programming and

¹⁹ Art. 17 par. 1-2 of the Act on Social Assistance.

²⁰ Art. 18 par. 1 of the Act on Social Assistance.

²¹ Ł. Borkowski [et al], Komentarz do ustawy o pomocy społecznej, p. 47.

²² Art. 72, 78, 80 and 88 of the Act on Social Assistance.

²³ E. Ochendowski, Prawo administracyjne. Część ogólna, Toruń 1999, p. 305.

coordinating character²⁴. It should be understood that due to system reasons provincial self-government is "far away" from various beneficiaries of social assistance. This does not mean, however, that the self-government unit does not work for them. This activity can be described as more general action than at lower levels of self-government.

In accordance with Article 21 of the cited law, the tasks of provincial self-government include, in particular: development, updating and implementation of provincial strategies in the scope of social policy which is an integral part of the provincial development strategy covering a range of programs²⁵. There is a specific subordination of provincial self-government to the governor. It is mainly demonstrated in the reporting obligation and the balance of needs that should be handed over to the governor.

Article 22 imposes on the governor, a representative of the Council of Ministers in the province, defined tasks of social assistance. Of particular importance are the governor's powers and obligations concerning social assistance homes. These are for instance the right to issue and revoke permits for their operation, as well as keeping a register of these centres. In addition to the above, the governor has control competences. These include both organization units of social assistance as well as non-public entities fulfilling tasks of social assistance on the basis of relevant agreements²⁶.

The tasks of social assistance in municipalities carry out organizational units, which are social assistance centers²⁷. As it was rightly pointed out by one of the authors, social assistance centers are the main and often the sole assistance entity in a municipality²⁸. With this in mind it seems reasonable to say that the role of such centers is extremely important. Social assistance centers perform tasks of two types. First of all these are tasks assigned by the government²⁹. In addition to the above there must be distinguished mentioned above own tasks of a municipality³⁰. It is worth to note that in the implementation of the first type of tasks, social assistance centers are guided by the governor's findings, and for the implementation of others the base are findings of a reeve, mayor or a president. In order to improve the performance of the tasks in the field of social assistance, the legislature allowed for the creation within the municipality additional (other) organization units³¹. Use of this

²⁴ See: R. Golat, Nowe rozwiązania w pomocy społecznej, „Gazeta Samorządu i Administracji” 2004, nr 9-10, p. 53.

²⁵ The Act sets out the assistance programs: program against social exclusion, equal opportunities for persons with disabilities, social assistance, prevention and resolution of alcohol problems, cooperation with non-governmental organizations - after consultation with districts. See: art. 21 par. 1 of the Act on Social Assistance.

²⁶ More in M. Pyter, Problematyka kontroli i nadzoru w pomocy społecznej, „Przegląd Prawno-Ekonomiczny” no. 5 (4/2008), p. 28-35.

²⁷ Art. 110 par. 1 of the Act on Social Assistance.

²⁸ See: J. Krzyszkowski, Polityka społeczna i pomoc społeczna na poziomie lokalnym, „Polityka Społeczna” 1997, no. 7, p. 6.

²⁹ See: art. 18 of the Act on Social Assistance.

³⁰ See: art. 17 of the Act on Social Assistance.

³¹ See: art. 11 of the Act on Social Assistance.

competence is up to the municipal council, which should take an appropriate decision. It seems, however, that inspiration to create these units must come from the social assistance center manager, or reeve, mayor or president³².

At the level of a district, the tasks in the field of social assistance are carried out by district family assistance centers. As in the case of municipalities, the activities concern both own tasks, as well as appointed tasks in the field of social assistance. District family assistance centers' tasks in towns with district rights are carried out by municipal social assistance centers. Certain powers of the centers are similar to the scope of social assistance centers and their managers. It is, however, worth to note that district family assistance centers, with starosts have a duty to have supervision over activities of so-called foster family care, adoption-care centers, specialized counseling units, including family and support centers, social assistance homes care and education centers³³.

Important own tasks of a district are preparing and implementation of a district strategy to resolve social problems. The Act states that the manager of a district family assistance center must cooperate with the court in matters of custody and upbringing of children, which due to different reasons were wholly or partially deprived of parental care. It should in particular include mutual information and taking immediate action, bearing in mind the good of the child deprived of parental care. A particular type of center manager's activities is providing the court with a list of foster families not related to a child and professional not-related to the child³⁴. The manager obligated to the above-mentioned activities is required to make such action at least once a year. It is also stressed that in the event of changes of actual data or situation this list should be made more often³⁵.

Regional centers for social assistance are obligated to perform tasks in the field of social assistance. The primary task of these centers is to coordinate the implementation of the provincial strategy referred to in art. 21 paragraph 1 of the act on social assistance. In presented organizational structures operating at various levels of local self-government units, the vital role play social workers³⁶. In accordance with the legal status of social workers they are specialists that are professionally engaged in meeting social needs through methods of social work. That definition includes the following elements: a social worker is a professional in solving social problems of people in need, he performs professional activities, in the field of solving these problems or concerning about people; social worker works in the area of meeting the needs of individuals, small groups, as well as communities, social workers

³² See: Ł. Borkowski [et al], *Komentarz do ustawy o pomocy społecznej*, p. 195.

³³ See the regulation of the Minister of Social Policy of 14 February 2005 r. On care and education centers (*Laws Journal of 2005 r. No 37, pos. 331*).

³⁴ More in: the regulation of the Minister of Social Policy of 18 October 2004 r. On foster families (*Laws Journal of 2004 r. Nr 233, pos 2344*).

³⁵ See: Ł. Borkowski [et al], *Komentarz do ustawy o pomocy społecznej*, p. 198.

³⁶ An interesting opinion on social workers as professionals working in the field of social assistance presented B. Ćwietniak, W. Koczur, *Status zawodowy pracowników socjalnych w przepisach ustawy o pomocy społecznej*, „Praca i Zabezpieczenie Społeczne” 2000, no. 6.

carry out their tasks using certain methods, such as the method of conducting an individual case, the method of working with a group and method of organizing the environment³⁷.

According to article 119 par. 1 social worker's tasks include, in particular:³⁸ social work, researching and assessing phenomena that cause the need for the provision of social assistance and eligibility to receive these benefits, providing information, guidance and assistance in solving life issues to those who, with this assistance will be able to solve their own problems which cause difficulty in life. It is also important to efficiently and effectively use law in carrying out these tasks, help in providing people who are in difficult circumstances with guidance on the possibility of solving problems and assistance by the competent state institutions, local government and NGOs³⁹, stimulating social activities and inspiring self-help actions in fulfilling necessary needs of people, families, social groups and environmental groups, cooperation and interaction with other professionals to prevent and limit the effects of pathology and negative social phenomena, as well as mitigate the effects of poverty, initiating new forms of assistance to individuals and families in difficult situation⁴⁰.

Duties of a social worker, among others, are as follows: following principles of professional ethics, good of families and individuals; preventing anti-humanitarian and anti-discriminatory practices against individuals as well as families and social groups, giving comprehensive information to people about their benefits and available forms of assistance.

Social workers' tasks also include the obligation of professional secret and employees' commitment to improve their professional qualifications. As to the first statutory obligation, the rules of law require that a social worker observes secret regarding information obtained in connection with the environmental interview conducted and obtained information. The obligation to keep the secret is during the worker's employment, as well as after its expiration. Waiving of secret can be justified only with the good of the person or family, but this is a subjective issue. As to the second obligation, the social workers' commitment to raising their qualifications should be understood broadly. The law establishes a duty to participate in training and education but gives no legal basis to force social workers to get for example higher education. However, it is assumed that in an era of wide and attractive educational offer, the demand for higher education seems fully justified.

4. CONCLUSIONS

Among many tasks which the legislature imposed on local self-government, activities in the field of social assistance can be distinguished. These tasks are carried out in many ways, which depend mainly on the various levels self-government. There is no doubt that assistance

³⁷ A. Olubińska, *Praca socjalna. Aspekty humanistyczne i pedagogiczne. Teoria i praktyka*, Toruń 2004, p. 44-46.

³⁸ The term social work must be understood professional activities aimed at helping individuals and families in strengthening or regaining the ability to function in a society through playing appropriate social roles and creating an environment conducive to this goal. Article 6 par. 12 of the act on social assistance.

³⁹ See: The act of 24 April 2003 about activity of the public benefit and voluntary services (Laws Journal of 2003 no. 96 pos 873).

⁴⁰ See: art. 119 par. 1 of the act on social assistance.

in the widest extent is conducted by municipal self-government. It seems that this is mainly due to the implementation of the constitutional regulation, according to which the municipality is the basic unit of local self-government. It is positioned the closest to the entitled. Therefore, the character of municipal benefits is the most universal.

District self-government's domain are activities in the field of family support. This is an extremely important category of assistance, hence its allocation to districts seems to be fully justified. Specific social assistance is provided by provincial self-government. Most often these are strategic activities of social policy nature.

It is important that individual units of local self-government cooperate with entities entitled to benefits in terms of social assistance. The law emphasizes that duty of cooperation, and imposes this obligation on both self-governments and entities entitled to benefits.

It seems justified to claim that only cooperation between all levels of self-government and individuals and families in crisis situation can ensure an optimal implementation of the act on social assistance.

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