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The Costs of Maintaining an Animal as the Indispensable Existential Need under the Social Welfare Act

Introductory remarks

In the Constitution of the Republic of Poland of 2 April 1997,¹ which is currently in force, no norms can be found, which directly enact the right to social welfare or to a specific benefit arising from it. However, the constitutional principles, norms and values can be indicated, referring to the issues under discussion.

Among the whole set of values and norms that regulate the domain of welfare rights, defined in the Constitution, in the context of the right to welfare benefits human dignity deserves special attention, as it is the foundation of all freedoms and rights. The principles of subsidiarity and social justice are equally important. Dignity, subsidiarity and justice seem to have the deepest reference to welfare (social aid) issues. These principles are specified in detailed constitutional norms regulating the scope of freedom, as well as economic, social and cultural rights.² It should be also emphasized that constitutional values and norms constitute the source of guarantees, and not rights. Especially with reference to welfare benefits they act as a standard

¹ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, pos. 483, as amended).

² With reference to welfare, special attention should be paid to Arts. 67, 68, 69, 71, 72 of the Constitution.

that is detailed only in ordinary legislation.³ As to the specification of basic principles according to which the right to welfare aid is executed, currently the most significant legal act in Poland is the Social Welfare Act of 12 March 2004.⁴

Right to welfare aid, i.e. to obtaining from public bodies appropriate support by a person or family in difficult living conditions and circumstances, depends upon meeting conditions specified in the indicated law. The prerequisites for granting welfare aid can be divided into the following: basic ones – stemming from general regulations of the law, and detailed ones, related to the specific kind of performance (e.g. permanent benefit – Art. 37 of the Social Welfare Act, expedient benefit – Art. 39, placing in a social welfare home – Art. 54).

The general (basic) prerequisites may include: being a Polish citizen (principally welfare aid is designed for Polish citizens and certain categories of foreigners), meeting the income criterion specified in Art. 8 pass. 1 of the Social Welfare Act (exceptionally that criterion is not taken into consideration on the basis of special regulations – Arts. 40 and 41 of the Social Welfare Act), as well as the occurrence of difficult living circumstances (examples of such situations are indicated in Art. 7 of the Social Welfare Act). The Act also introduces negative premises, such as the lack of cooperation between the beneficiary of benefits and a social worker or the waste of social assistance benefit (Art. 11 pass. 1–2).

The fundamental principle affecting all activities in the field of social welfare system is the principle of subsidiarity expressed both in the preamble to the RP Constitution and in Arts. 2 and 3 of the Social Welfare Act. The above principle sets out the basic conditions for the granting of all welfare benefits and the limits for the interference of welfare authorities.

This article will present remarks regarding the possibility of granting a welfare aid benefit to support a person or a family in maintaining an animal. The considerations focus primarily on the prerequisites arising from the subsidiarity principle and on determining whether the costs of maintaining an animal can be considered as the indispensable existential need justifying the possibility of granting the welfare aid benefit.

The principle of subsidiarity in the Social Welfare Act

The subsidiarity principle, expressed in the preamble to the RP Constitution and developed in its subsequent norms, significantly affects the whole system of welfare law. The idea of subsidiarity, taken from Greek philosophy and developed in the Catholic

³ Judgement of the Supreme Administrative Court of 29 November 2016, I OSK 836/15, LEX No. 2169834.

⁴ Consolidated text, Journal of Laws of 2017, pos. 1769.

social science, like any other principle, assigns duties for public authority and demarcates limits of supporting persons who found themselves in difficult living conditions.⁵

Although the subsidiarity principle has no legal definition, its content is uniformly decoded in the doctrine of law and its basic dimension refers to the appropriate relationships between an individual, communities and state. The commonly quoted definition of subsidiarity has been contained in the encyclical issued by Pope Pius XI *Quadragesimo anno* in 1931, where the following is indicated: "Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them". The principle under discussion constitutes the basis for dividing tasks between citizens, different social structures (associations, foundations), local government and the state.⁶ From the point of view of subsidiarity it is significant to secure the possibility of acting freely by citizens, and only the tasks they are unable to perform on their own should be ascribed to the higher social structures: first to the local government and then to the state.⁷ Subsidiarity principle on the one hand assumes that citizens are responsible for their own business and free to accomplish their own intentions and plans, which higher structures should respect. On the other hand, in turn, it imposes upon public subject the necessity to support individuals when they are unable to accomplish their tasks and satisfy their basic living needs on their own.

When referring the subsidiarity principle to the sphere of social rights, it should be noted that public subjects are obliged to support individuals in ensuring a minimal level of existence corresponding to their dignity, but they cannot do everything for them and replace the individual activity.⁸ In its significance the activity of public subjects is only of auxiliary (subsidiary) nature when compared with the activity of an individual. The state and its structure are not, in accordance with the above, appointed to satisfy the existential needs of the population, but they are only to support individuals or families who, for reasons other than their fault, found themselves in difficult living conditions. The correct understanding of the subsidiarity principle with reference to welfare aid assumes that the aid is of supplementary, accessory nature and can be rendered exclusively to the persons or families who cannot satisfy their basic needs. The welfare aid in the whole system of social security is the last possibility to

⁵ T. Bąkowski, *Administracyjnoprawna sytuacja jednostki w świetle zasady pomocniczości*, Kraków 2007, p. 31ff.

⁶ W. Łączkowski, *Etyczne aspekty finansowania potrzeb socjalnych ze środków publicznych*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2004, z. 1, p. 8.

⁷ *Ibidem*.

⁸ See more extensively, K. Stopka, *Zasada pomocniczości w prawie pomocy społecznej*, Warszawa 2009, p. 61.

overcome difficult life situations and is granted by public authorities after other rights or possibilities have been exhausted.⁹

As emphasized before, the subsidiarity principle assumes the possibility of granting welfare aid exclusively in the case when persons or families are no longer self-sufficient and, in spite of their own attempts, are unable to effectively overcome difficulties.¹⁰ Subsidiarity, on the grounds of welfare law, like in the whole legal area, provides the activity of local and regional communities in terms of granting aid, as well as independence of individuals.¹¹ Supporting the assistance system based on the principle of subsidiarity reflects the constitutional principle of subsidiarity in the sphere of substantive administrative law.¹²

In order to emphasize the subsidiarity principle and give it an exceptional position within the system under discussion, the legislature defined welfare aid referring to subsidiarity. In accordance with Art. 2 pass. 1 of the Social Welfare Act, social security is the institution of state social policy which aims at enabling persons and families to overcome difficult life situations that they cannot overcome using their own rights, resources and capabilities. Therefore, it can be pointed out that any public action in the field of rendering all kinds of aid must depend on real possibilities of independent facing up to problems by an individual or a family. Here it should be emphasized that if the value, which is the dignity of a human being (a person), requires the state to provide the citizens with the possibility of existence on the basic level, then the subsidiarity principle assumes that the activity of public subjects in satisfying needs cannot restrict the independence and initiative of the individual. Welfare services should be addressed exclusively to persons who are unable to take care of their basic, indispensable existential needs and interests on their own. All welfare services constructed without respect for the subsidiarity principle not only break it, but also negatively affect social justice.

The subsidiarity principle is implemented primarily through provisions setting income criteria, the fulfillment of which conditions the granting of aid (Art. 8 pass. 1 of the Social Welfare Act) and other detailed prerequisites relating to specific benefits. In addition, as emphasized, assistance should be provided to meet the indispensable existential need. The reasons for which assistance may be provided are indicated,

⁹ See M.P. Gapski, *Prawo do pomocy społecznej w orzecznictwie sądów administracyjnych (wybrane zagadnienia)*, [in:] *Problemy z sądową ochroną praw człowieka*, t. 1, red. R. Sztuchmiller, J. Krzyżkowska, Olsztyn 2012, pp. 591–592.

¹⁰ See the judgement of the Provincial Administrative Court in Poznań of 6 November 2009, II SA/Po 307/09, LEX No. 531606.

¹¹ T. Bąkowski, *op. cit.*, p. 59; M. Kulesza, *Zasada subsydiarności jako klucz do reform ustroju administracyjnego państw Europy Środkowej i Wschodniej (na przykładzie Polski)*, [in:] *Subsidiarność*, red. D. Milczarek, Warszawa 1998, pp. 122–123.

¹² T. Bąkowski, *op. cit.*, pp. 59–60. This author emphasizes that the actual functioning of subsidiarity principle as a systemic principle is a consequence of the primary realization of subsidiarity principle in the sphere of substantive law.

for example, in Art. 7 of the Social Welfare Act and include, among others: poverty, orphanage, homelessness, unemployment, disability, long or severe illness, domestic violence, alcoholism or drug addiction, natural disaster.

The indispensable existential need in the light of the Social Welfare Act

Welfare benefits may be granted only to satisfy the indispensable existential need. In the Social Welfare Act, the indicated condition is included in Art. 3 pass. 1, as a general prerequisite for granting all kinds of aid. That term has not been normatively defined, so it requires an individual approach and adjustment to the circumstances of the particular case.¹³ It should be borne in mind that welfare bodies are obliged not only to meet the indispensable existential needs on an *ad hoc* basis, but to act in a preventive manner to empower individuals and families.

In the doctrine of the welfare law, it is emphasized that the indispensable existential need is the one without which a minimum standard of human existence could not be maintained.¹⁴ It is assumed that these types of needs relate primarily to food, clothing and shelter.¹⁵ This way of understanding the premise leads to providing the person in need with the minimum goods necessary to survive. However, at present, the purpose of welfare aid is not only to provide its beneficiaries with the minimum necessary to secure biological existence, but also to raise the standard of living of people in need so that they do not deviate significantly from the situation of other members of society.¹⁶ The situation of each person and family must be assessed individually, because it depends on the specific facts determining whether there is an indispensable existential need.¹⁷ Interpretative guidance on determining these indispensable needs may be the Regulation of the Minister of Social Policy of 7 October 2005 on the threshold for social intervention, which in para. 3 pass. 3 specifies that the scope of indispensable needs applies to food, housing, clothing and footwear, education, health and hygiene, transport and communications, culture, sport and leisure¹⁸. Pursuant to Art. 39 pass. 1 and 2 of the Social Welfare Act, it can be inferred that the indispensable existential need is in particular: the costs of purchasing food, medicine and treatment, fuel, clothing, basic household items, minor renovations and repairs in the apartment, as well as the cost of funeral.

¹³ Judgement of the Supreme Administrative Court of 20 September 2009, I OSK 1962/06, LEX No. 467105.

¹⁴ W. Maciejko, [in:] W. Maciejko, P. Zaborniak, *Ustawa o pomocy społecznej. Komentarz*, Warszawa 2013 (see notes on Art. 3).

¹⁵ *Ibidem*.

¹⁶ I. Sierpowska, *Pomoc społeczna. Komentarz*, Warszawa 2017 (see notes on Art. 3).

¹⁷ Cf. *Ibidem*.

¹⁸ Journal of Laws of 2005, No. 211, item 1762.

At the same time, it should be stressed that welfare bodies have limited financial resources to meet the needs of people in difficult situations, and that meeting the needs of each person is a continuous process. It is not possible to satisfy all existential or social needs all at once. Welfare aid is not an institution that can meet all the needs of members of a given community, but only periodically support those in need. Welfare services are, in principle, of optional nature and the applicant cannot request payment of a benefit in a particular amount, satisfying them; the task of welfare aid is not to support persons who found themselves in difficult or unsatisfactory living conditions or to meet all their needs and expectations.¹⁹ The general principles of granting services also reveal that the needs of persons and families taking advantage of welfare aid should be taken into consideration if they correspond to the goals and are included in the possibilities of welfare, which are limited by funds held by welfare bodies.²⁰ In the case that welfare benefits are refused or restricted due to insufficient financial means of the welfare center, it is necessary to demonstrate this circumstance (providing reasons for that decision) by specifying what amount was in possession of the center and how it was distributed among the persons in need, as well as to support it with specific evidence and documents.²¹

The possibility of granting welfare benefits to maintain an animal

As regards the essence of the issue, it should be borne in mind that social funds are directed to meet the basic living needs of people. It is obvious that welfare aid refers to individuals and families, nevertheless, it cannot be excluded that the indispensable existential needs of these entities will be related to maintain an animal. In the doctrine of law and the jurisprudence of administrative courts there is presented a common view that the cost of maintaining an animal cannot be regarded as an indispensable existential need.²² However, the above thesis has been neither widely referred to nor deeply justified.

¹⁹ Judgement of the Provincial Administrative Court in Warsaw of 17 May 2007, I SA/Wa 272/07, LEX No. 328249; of 6 June 2008, I SA/Wa 527/08, LEX No. 527554.

²⁰ Judgement of the Provincial Administrative Court in Łódź of 13 October 2010, II SA/Łd 404/10, LEX No. 755793; judgement of the Provincial Administrative Court in Warsaw of 21 December 2009, VIII SA/Wa 592/09, LEX No. 583659.

²¹ Judgement of the Provincial Administrative Court in Łódź of 2 April 2008, II SA/Łd 157/08, LEX No. 509567; judgement of the Provincial Administrative Court in Gdańsk of 13 March 2008, II SA/Gd 796/07, LEX No. 369001; judgement of the Provincial Administrative Court in Kraków of 30 January 2008, II SA/Kr 925/07, LEX No. 500936; judgement of the Provincial Administrative Court in Warsaw of 8 December 2006, I SA/Wa 1515/06, LEX No. 320619.

²² I. Sierpowska, *op. cit.* (notes on Art. 39). Judgement of the Provincial Administrative Court in Białystok of 15 September 2011, II SA/Bk 442/11, LEX No. 1085783; judgement of the Provincial Administrative Court in Kielce of 28 February 2008, II SA/Ke 655/07, LEX No. 500614.

It has been stated above that each case concerning granting of welfare benefits should be assessed individually with regard to its concrete aspects. In relation to the costs of maintaining an animal, two fundamentally different situations can be distinguished. The applicants may request the welfare benefit in order to keep farm animals that are bred to obtain consumer goods and financial means. In addition, individuals and families might apply for aid in maintaining animals kept for company, pleasure or other purposes.

These two situations should be discussed separately in order to ensure their correct assessment. As far as maintaining farm animals is concerned, it is difficult to find justification for spending welfare funds for this purpose. However, even small-scale livestock farming can secure some of the food and financial needs of individuals and families. It is similar to business activity. If it does not bring benefits that allow it to be carried out, then it becomes pointless because it worsens the material situation. The welfare aid does not serve to subsidize any business, moreover, there are specialized public administration bodies established to support agricultural activities. However, the problem of keeping domestic animals may be of a different nature. These animals might be bred not for material gain, but primarily for company and pleasure. Modern research in the field of medicine, veterinary medicine and sociology indicate the positive, even therapeutic impact of domestic animals on human well-being.²³ It is emphasized that regular contact with pets has a positive effect on the cardiovascular, immune, endocrine system, on physical activity and mental condition, as well as on the functioning of the elderly and children.²⁴ In some health care facilities, nursing homes, orphanages and addiction treatment centers, animals are used with a positive therapeutic effect which cannot be achieved by any other methods.²⁵ The literature cited below emphasizes the general positive impact of domestic animals on human health and life. However, the fact that a dog or a cat becomes part of the family and positively affects the life of the owner does not justify the assumption that the cost of maintaining pets is the indispensable existential need.

Nevertheless, such a conclusion cannot be excluded and granting welfare aid to support a person in maintaining an animal may be lawful. However, before taking such a decision, a community interview should be thoroughly conducted. It may be even necessary to obtain a medical certificate stating that possession of the animal is

²³ See K. Chmiel, Z. Kubińska, T. Derewiecki, *Terapie z udziałem zwierząt w rehabilitacji różnych form niepełnosprawności*, „Problemy Higieny i Epidemiologii” 2004, Vol. 95(3), pp. 591–595; H. Mamzer, *Stary człowiek i pies*, „Horyzonty Wychowania” 2015, Nr 32, pp. 70–78; J. Nawrocka-Rohnka, *Wpływ kontaktu z psem na organizm człowieka – przegląd literatury*, „Nowiny Lekarskie” 2011, Vol. 80(2), pp. 147–152; K. Girczys-Poędniok, R. Pudło, A. Szymłak, N. Pasierb, *Zastosowanie terapii z udziałem zwierząt w praktyce psychiatrycznej*, „Psychiatria” 2014, Vol. 11(3), pp. 171–176; M. Goleman, L. Drodz, M. Karpiński, P. Czyżowski, *Felinoterapia jako alternatywna forma terapii z udziałem zwierząt*, „Medycyna Weterynaryjna” 2012, Vol. 68(12), pp. 72–75.

²⁴ J. Nawrocka-Rohnka, *op. cit.*, pp. 148–150.

²⁵ Cf. *Ibidem*.

a vital need due to the specific illness or psychophysical state of the person. In such cases, it can be reasonably assumed that the welfare benefit realizes the goals specified in the Social Welfare Act. The analyzed regulations, however, do not allow to assume in each case that keeping an animal is necessary for the owner. As emphasized, each case must be considered individually and in some exceptional cases, when possession of the animal has a significant therapeutic effect, the granting of social support for the maintenance of the pet may be justified. It is obvious that a person applying for such assistance must meet all statutory conditions for granting a specific benefit.

It is necessary to add that according to the principle of subsidiarity, the benefit may be granted only if a person cannot overcome his/her difficult life situation by him/herself. Dealing with such situations should cover asking for assistance in maintaining an animal in non-governmental and social organizations involved in protection of animals and support of their owners. Only when such efforts are ineffective, can it be concluded that the applicant finds him/herself unable to overcome the difficult situation. It should also be taken into account that in case of disabled persons, some forms of help in maintaining assisting dogs are guaranteed in a separate mode, that is by provisions of the Regulation of the Minister of Labor and Social Policy of 19 December 2007 on the company fund for the rehabilitation of the disabled.²⁶

Having the above considerations in mind it should be concluded that granting the welfare benefit for maintaining an animal should be exceptional in practice of social assistance bodies. The provision of social assistance should always be connected with the needs of man and cannot be aimed at protecting or improving the living conditions of animals.

Conclusions

Based on the above considerations it should be pointed out that the principle of subsidiarity sets the basic framework for bodies granting welfare aid and orders to address it exclusively to persons and families in difficult life situations which they are unable to overcome on their own. The welfare bodies are entrusted with reliable and accurate establishing the actual state in any case, so that the aid is addressed to the appropriate subjects. The cost of maintaining an animal may be, in exceptional circumstances, considered as the indispensable existential need justifying the granting of welfare benefits, including in particular expedient benefit provided for in Art. 39 of the social welfare law. It should be emphasized, however, that before granting this type of aid it is necessary to consider carefully all the aspects of the individual case. The social welfare body must also have sufficient funds to grant this type of assistance. In the activities of the authorities it is important not only to adapt the aid to

²⁶ Journal of Laws of 2007, No. 245, item 1810.

the individual situation of applicants, but also to create a transparent, fair hierarchy of the beneficiaries' needs. If the possession of an animal has an undoubted, positive therapeutic effect for a given person or family, then granting of a social welfare aid for its maintenance should be considered as being in accordance with law.

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Abstract: The constitutional principle of subsidiarity developed in social welfare aid assumes that the aid is of supplementary, accessory nature and as such it can be rendered exclusively to the persons or families who cannot satisfy their basic needs. The benefits granted should aim at meeting basic human needs, which include expenditure on food, clothing, shelter, medicines and medical treatment. Granting welfare benefits for maintaining an animal is controversial and in most cases unacceptable. In case where the possession of a pet has a therapeutic purpose and is necessary for a given person, it may be assumed that granting the benefits lies within the scope of social assistance purposes, and thus remains in accordance with the Social Welfare Act.

Keywords: social welfare aid; granting welfare benefits; maintaining an animal; indispensable existential need

