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SELECTED PRINCIPLES OF SOCIAL WELFARE IN THE POLISH AND GERMAN LEGAL SYSTEMS

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INTRODUCTION. FEATURES OF THE SOCIAL WELFARE SYSTEMS IN POLAND AND GERMANY

Social assistance is a part of the social security system. In Poland and Germany it is regarded as the ultimate form of social support for people who are not entitled to benefits from social security and other forms of social support. In Poland, social assistance is regulated by the Social Assistance Act of 12 March 2004[1] (further SAA). In Germany, these problems are referred to in the Social Code, Book XII – Sozialgesetzbuch[2], substantially amended in 2005 (further SGB).

The Polish law defines social assistance as a social institution whose purpose is to enable individuals and families to overcome difficult life situations which they are not able to handle using their own powers, resources and opportunities. Entities eligible to receive aid are Polish citizens and certain categories of foreigners specified in the SAA, provided that the entitled live and are present on Polish territory. Social assistance is provided when two conditions are fulfilled: the occurrence of a difficult situation and the inability to overcome it. The SAA does not specify what are difficult situations, but it lists the most common reasons for their emergence in article 7. Circumstances generating life difficulties are given as the following: primarily poverty, unemployment and homelessness; in addition, social assistance is granted due to disability, long-term or serious illness, bereavement, domestic violence, the necessity to protect motherhood and large families, helplessness in matters of guardianship and upbringing, as well as running a household (especially in numerous and incomplete families), difficulty in adapting and integration - due to leaving an educational care centre or correctional institution, obtaining refugee status, alcoholism and drug addiction, random event, crisis, natural and environmental disaster. It should be emphasized that the above list is only illustrative, and there are other circumstances which may provide the possibility of obtaining public assistance benefits.[3]

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[1] Consolidated text Journal of Laws 2009 No. 175 item 1362 (as amended).

[2] Sozialgesetzbuch (SGB), Zwölftes Buch (XII), Sozialhilfe, Stand: Zuletzt geändert durch Art. 3 G v. 24.03.2011 I 453.

[3] Iwona Sierpowska, *Ustawa o pomocy społecznej. Komentarz* (Warszawa 2009) 59-64.

Social assistance is granted when an individual and family do not use their own powers, resources and opportunities as they do not have them, or they cannot make use of them. In the first case, support consists in providing monetary or non-monetary benefits; in the second case, the role of social assistance consists in showing the recipient the potential to use their own resources and powers. The legislator does not define the terms "privileges", "resources" or "possibilities" - they will be evaluated individually - but most certainly they refer to valuables, real estate, receivables, the possibility to pursue other benefits, and family responsibilities, including maintenance rights.

It should be noted that in the Polish system of social assistance the basic criterion for determining a right to benefits is income. Granting benefits is a part of an administrative procedure concluding with an administrative decision, which may be contested in this instance, as well as by means of an action of law.[4]

In Germany as in Poland, social assistance is addressed to people dependent on community aid and finding themselves in difficult life situations which they are not able to overcome on their own. In contrast to Polish solutions, this aid is based on a claim for benefits which are necessary for an existence consistent with human dignity and participation in social life.[5] The aid is only initiated when the individual, in spite of the family's help, is not self-sufficient. It functions as a publicly-funded form of elementary security. Its purpose is to provide decent living conditions mainly to people who are not entitled to other benefits under social security.[6] Social assistance aims for the empowerment of the beneficiary, and meeting this goal is ensured by the cooperation of the beneficiary with the authority granting support. The literature draws attention to the dualism of German social assistance based on the facts that, on one hand aid should be provided until the beneficiary regains the ability to independently satisfy his/her needs, but on the other hand such aid should be temporary and targeted at the beneficiary's quick independence.[7] People entitled to benefits are these who are not able to maintain themselves by using their own resources and capabilities, and those eligible for so-called basic security due to their age or a reduced ability to work. They are required to be residents of Germany. Recipient aid categories consist of assistance with life maintenance, the essential protection of the elderly (people over 65 years old) and those with reduced capacity for employment, as well as other forms of support (e.g. assistance with healthcare and the integration of the disabled). As in Poland, aid is dependent on the income criterion. The claimable nature of benefits in the German system is connected with the resolution of issues concerning social assistance by way of decisions, and with the possibility of an administrative appeal before the social court.

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[4] Iwona Sierpowska, *Prawo pomocy społecznej* (Warszawa 2008) 139ff; also Stanisław Nitecki, *Pomoc społeczna. Procedury i tryb przyznawania świadczeń* (Wrocław 2009) 169ff.

[5] Piotr Sałustowicz, *Pomoc społeczna w wybranych krajach Unii Europejskiej* (Warszawa 2009) 118.

[6] Veronika Ziegelmayer, 'Państwo socjalne w Niemczech: zmiana systemu?' in Katrin Kraus, Thomas Geisen, Krzysztof Piątek (eds), *Państwo socjalne w Europie. Historia – rozwój – perspektywy* (Toruń 2005) 99.

[7] ibid 121.

Despite numerous differences in the Polish and German social welfare systems, similar rules apply. This issue will be the subject of further discussion.

I. THE PRINCIPLE OF SUBSIDIARITY

Subsidiarity is the leading principle of social assistance in Poland and Germany.[8] It is also one of the basic principles of the functioning of state authorities. It is referred to in the teachings of the Catholic Church, and especially in one of the encyclicals of Pope Pius XI, whose words are often quoted to put forward the essence of subsidiarity. According to him, "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.[9]"

Shaped by legal rules, the content of the subsidiarity principle refers to the autonomy of citizens and communities in fulfilling public duties. The state should assist individuals, families and groups, but should not take over tasks which they can do themselves. Interference by the state or larger communities should only occur when a task exceeds the capacities of individuals and small communities. The principle of subsidiarity in relation to public administration authorities assumes the accomplishment of the widest range of tasks by the level of government closest to the citizen. Senior authorities should support and complement the activities of lower-level bodies if they are not self-sufficient. Matters concerning citizens should be dealt with by the authorities that are closest to them while decision-making at higher levels should occur in cases where it is more efficient, and when the capabilities of lower level structures are exceeded. Referring to the autonomy of individuals and communities, the principle of subsidiarity also highlights their responsibility. The state cannot restrict citizens' initiatives, replace them, deprive them of choice nor take responsibility for them. The priority of the individual and his/her autonomy as well as the position of lower communities in relation to higher ones should be strengthened. This principle implies not only an incentive to action, but even disapproval of passivity and protectiveness of the state.[10]

The principle being discussed can be reduced to a few statements, which are also applicable to social assistance. Firstly, society should not deprive an individual (or a small group) of what they can do themselves (non-receiving). Secondly, the state (society) should assist an individual (a small group) with tasks exceeding their own capabilities, and it should be what is referred to as self-help assistance (subsidiary assistance). It is worth

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[8] Eberhard Schmidt-Aßmann emphasizes that the principle of the welfare state in Germany has been shaped by the principle of subsidiarity, Eberhard Schmidt-Aßmann, O*gólne prawo administracyjne jako idea porządku. Założenia i zadania tworzenia system prawnoadministracyjnego* (Andrzej Wasilewski tr, Warszawa 2011) 196.

[9] Q*uadragesimo Anno Encyclical* quoted from (1982) 7 Znak 707-708.

[10] Julian Auleytner in Julian Auleytner (ed), *Nauka o polityce społecznej* (Warszawa 1990) 58; Józef Majka, *Filozofia społeczna* (Wrocław 1982) 186.

noting that self-help assistance is a distinct principle of support expressed in the German social welfare system. Thirdly, the aid should be temporary, motivating an individual to act autonomously (subsidiary reduction).[11]

The principle of subsidiarity in social welfare can be interpreted in several ways. Firstly, social assistance should be treated as a kind of finality in the system of social security. The granting of this assistance occurs when a person is unable to meet his needs with the income received from employment or social security benefits. In other words, individuals should provide themselves and their families with sufficient means of subsistence through work. They also should anticipate the risk of random events that might hinder their performance at work, and conclude a social security agreement. It is only the individual who receives insufficient means of subsistence from the above sources or none at all that may demand the state to offer support with public resources.[12]

In accordance with section 2 (2) SAA, social assistance is only granted when either a person or family are not able to overcome difficult life situations using their own powers, resources and opportunities. This principle sounds similar to that in section 2 SGB. Social assistance is not available to people who can afford to help themselves using their own powers, resources and opportunities, nor to those who receive other benefits.

The state (local government) should intervene in a citizen's life in crisis situations. However, it is important to provide a legal framework for these situations and criteria for evaluating the possibility of overcoming difficulties on one's own. Hence, the granting of many forms of support must meet certain conditions. These regulations exist to prevent social assistance from being transformed into a simple system of distribution. Their goal is to effectively influence beneficiaries so that they try to overcome life difficulties on their own and treat social assistance as only a temporary source of support. Required for most cash benefits, the necessity to meet income criteria is a strengthening of the subsidiarity principle. Thus, the aid goes to the poorest and most needy. Moreover, this principle is expressed in the regulations for determining applicants' financial situation, and in setting the rules for reimbursement of benefits and bearing costs of certain types of support by their beneficiaries.

It should be noted that in the Social Assistance Act, the subsidiarity principle is not described in the context of family ties and obligations. Generally, receiving social assistance does not depend on the availability of support from the closest relatives. It is only in care services where the problem of support from the family is touched upon. It is worth recalling that subsidiarity is primarily an attempt to solve life problems in the smallest community - the family. In Poland, the existence of support within the family does not translate into a limitation of claims to state institutions. In this respect, the principle of subsidiarity has been adopted neither in regulations nor social attitudes.[13] It should be pointed out that regulations anticipate various possibilities for raising claims against a needy person's

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[11] Aniela Dylus, 'Zasada pomocniczości a procesy transformacji' (1993) 9 *Polityka Społeczna* 4.

[12] Adam Łopatka, *Międzynarodowe prawo praw człowieka* (Warszawa 1998) 48.

[13] Stanisława Golinowska, 'Pomoc społeczna w koncepcjach współczesnego państwa opiekuńczego' (1998) 7 *Polityka Społeczna* 4.

family members, nevertheless they are secondary in nature and relatives' indifference cannot be grounds to refuse assistance. The situation looks different in German law, which makes aid dependent on the inability to obtain support from family members. Parents, children and spouses are obliged to help in the first place. However, when the family cannot provide immediate support, social services do it while retaining the right of recourse against those liable for supporting the beneficiary. Exceptions to this rule are minor pregnant women and those taking care of a child up to six years old. Then, the incomes of parents living with her are not taken into account. Another exception is the provision of basic services to the elderly and those with a reduced ability to take up employment. In such cases there is no obligation to provide for such persons by children and parents.[14] It is worth adding that in the Polish and German legal systems, the subsidiarity principle is also expressed in the division of tasks between the welfare state and local entities[15] as well as in relations between authorities and civil society organizations. In principle, social assistance is managed by the local government which is the closest to the beneficiary. Obviously, the administration of the smallest local authorities – municipalities - plays the leading role here. In accordance with the subsidiarity principle, tasks which go beyond the financial and organizational possibilities of municipalities are entrusted to larger communities. The subsidiarity principle can be also considered in terms of providing support by state and local authorities to non-governmental organizations performing the tasks of social assistance. Thus, the indirect support of citizens whose needs are met in part by such institutions takes place. If an individual cannot independently overcome life difficulties, one should search for assistance from the communities which are closest to the citizens. Apart from local authorities, these communities may also be social organizations. These institutions are complementary and often replace public administration in organizing help, taking up actions to motivate beneficiaries, developing social initiatives and integrating people with similar problems. Cooperation with NGOs by public authorities is beneficial for both the entities administering and those being administered. In this way the efficiency of public tasks, as well as access to specific social assistance benefits and their quality are increased. This brings tangible benefits to citizens and their communities. In one of its judgments the Supreme Administrative Court stated that, in accordance with the constitutional principle of subsidiarity of municipal authorities towards the community, individual citizens and NGOs, the statutory duty of the municipality is the search for optimal methods of cooperation with the entities involved in the provision of social assistance.[16] The basis of this cooperation is provided by article 1 (2) SAA on the partnership-based interaction of public authorities with civil society organizations and NGOs, the Catholic Church, other churches and religious associations, as well as natural and legal persons. This cooperation is primarily based on commissioning social assistance tasks to non-public entities. In the German

[14] Sałustowicz (n 5) 123-124.

[15] Edzard Schmidt-Jortzig in Edzard Schmidt-Jortzig, Alexander Schink, *Subsidiaritätsprinzip und Kommunalordnung* (Köln 1982) 20ff.

[16] Judgment of the Supreme Administrative Court of 14 June 2001 II SA/Kr 911/01, (2002) 6 *Samorząd Terytorialny* 49.

legal system, the principle of subsidiarity includes such aspects as the primacy of activities by private entities over public ones, which is particularly evident in the activities of social organizations.[17] The cooperation of social welfare authorities with the so-called third sector has a long tradition.[18] The principle of subsidiarity gives a special place in the social system to six major charity associations comprising the Federal Consortium. This public cooperation is mainly based on the use of staff of social organizations by public institutions and the funding of charitable institutions by the state. Currently, changes in trends of cooperation known as the "new subsidiarity" can be observed. They result from the commercialization of social services and organizational changes in charitable institutions, which have partly transformed into bureaucratic entities subject to political influence, providing services on the basis of marketability and profit.[19] It should be noted that the principle of subsidiarity not only has an impact only on the development of the third sector and the social economy, but also provides a choice of such a model of social services that is linked to their system of values (e.g. Catholic, evangelical or ideologically neutral institution).[20]

II. THE PRINCIPLE OF INDIVIDUATION

Historically, individuation was understood as a kind of freedom in shaping the type of assistance. The German doctrine preached the need to preserve it since, according to the welfare state idea, social support was to play a marginal role against the dominant social insurance, and therefore it was necessary to adapt assistance to individual cases. As stated by this rule, entities granted assistance according to the recipient's needs, and this aid was often spontaneous, diverse, and even undermined the right of equality before the law. Because of the welfare state crisis, such an understanding of individuation failed to stand the test of time. The increase in the number of beneficiaries of social assistance noticeable not only in Germany, as well as the development of democracy and the concept of state under the rule of law, emphasized the need for objective criteria and rules for granting assistance and regulating at least some types of benefits. In this way, individuation was limited by typification of benefits. However, the principle of individuation today still plays a significant role in the Polish and German social welfare systems. Firstly, it distinguishes this assistance from social insurance where the types of benefits are strictly defined by law and are dependent on random events, without the possibility of tailoring support to individual cases. Secondly, the individuation of benefits facilitates meeting the goals of social assistance, particularly by activating its beneficiaries and by "self-help assistance." The essential feature of the principle in question is its flexibility in adapting the forms of aid to specific situations and individual needs. In the Polish legal system, this principle is expressed

[17] Krzysztof Balon, 'Gospodarka społeczna w Niemczech – wybrane aspekty' [2006] *Ekonomia Społeczna*. *Teksty* 5ff.
[18] Werner Ballhausen, *Freie Wohlfahrtspflege* (Baden-Baden 2007) 344ff .
[19] Sałustowicz (n 5) 135-136.
[20] Balon (n 17) 5.

(albeit indirectly) in article 3 (3) SAA, according to which the form and value of the benefit should be customized to the circumstances justifying the granting of aid. In Germany, under to section 9 SGB, social assistance benefits should be adjusted to the nature of the case, especially the type of need, local relationships and the needy person's powers and resources. Thus, the authority has a choice in the selection of a specific benefit which should be tailored to the recipient's personal and property circumstances. It also has the possibility of providing other forms of assistance when it cannot accede to the applicant's request, as well as of converting the benefit to one that will be relevant to the beneficiary's current situation. The flexibility resulting from individuation allows for the modification of benefits, especially when it comes to their restriction and change of form (monetary for non-monetary).

The main instrument for implementing the principle of individualization is the community interview. It gives the possibility of identification and assessment of the case as well as selection of the best forms of assistance. This is particularly important in the case of social services and institutional support provided by nursing homes and educational care institutions, which require an individual approach to the ward. In Poland, this principle is expressed in the obligation to draw up an individual plan of work with children placed in educational care institutions. In Germany, in turn, it is stated in the statutory provision on considering beneficiary's wishes to be placed in the institution where it is possible to be taken care of by a clergyman of a particular religion. Individuation of benefits is treated as a positive value of social welfare law. Its main features are versatility and the ability to adapt to changing circumstances. However, this principle is also connected to certain dangers and inconvenience in use. The danger of arbitrariness in both granting benefits[21] and social workers' attitude towards people seeking help is especially real. In Germany, following this principle may also result in work under constraints. Reference to this order stems from a detailed analysis of an individual case, including the assessment if a difficult situation may be overcome through wage labour[22]. K.W. Frisk also indicates other risks associated with the rule under analysis. According to this author, the individualization of benefits "means the practical abandonment of the idea of universal social rights. Burdening both parties, that is the beneficiary and the benefit provider, with the need to negotiate the most relevant forms of assistance, not only do we question the idea that someone has a right to get something, but also give social workers possibilities to intervene into individual biographies both huge and difficult to precisely determine."[23]

III. THE PRINCIPLE OF HUMAN DIGNITY

Human dignity is a value which is subject to special protection in both Polish and German social welfare law. The provisions referring to this

[21] Herbert Szurgacz, *Wstęp do prawa do prawa pomocy społecznej* (Wrocław 1992) 44-45.
[22] Sałustowicz (n 5) 125.
[23] Kazimierz W Frieske, 'Kontrowersje wokół instytucji pomocy społecznej' (1998) 7 *Polityka Społeczna* 13.

value in both legal systems sound very similar. Enabling people and their families to live in conditions conforming to human dignity is one of the main objectives of article 3 (1) SAA. Similarly, the chief idea of section 1 SGB is enabling beneficiaries to live life at a level conducive to human dignity. In Germany, the inviolability of human dignity and the obligation to protect it by public authorities are inscribed in the principle of the social state. This principle implies the authorities' concern to equalize social contrasts and ensure the social security of citizens.[24]

Dignity is a fundamental value of the entire legal order. It is natural and primitive when compared to the state, which implies it must be respected by legislators and public authorities. The prohibition against violating human dignity is absolute and applies to all. Therefore, the authorities' activities should respect individuals' autonomy and their quest for self-realization. The premises of this sense of dignity are, among others, to provide the material minimum, allowing the individual to function independently in society and to create opportunities for the development of human personality.[25] The welfare systems in Poland and Germany attempt to meet these objectives. The state should provide a decent life to people in difficult situations[26] and marginalized in society. "Both those who are able to earn a living and overcome the problems, and those who do not have such a possibility for a variety of reasons, retain the natural right to live in dignity."[27] The respect for dignity does not allow for any form of discrimination as it is not dependent on age, mental status, level of development or financial situation. This is particularly important in the functioning of social assistance institutions, which often help people pushed to the margins of society. These who are mentally ill, disabled and illiterate are not deprived of dignity. This also applies to persons who lapse into addictions (alcoholism, drug addiction) and who are deprived of their liberty. Dignity should not also be related to citizenship since it is the right of every person regardless of their legal relationship with the state.[28]

The circumstances justifying the provision of assistance, such as unemployment, disability, age, orphanhood, homelessness etc. are causes of frustration and a lack of a sense of dignity. Social assistance through an extensive and varied benefit system seeks to provide not only material, but also mental support. Undoubtedly, the elimination of passivity, integration activities, motivation, developing operational skills and stimulating self-action strengthens the sense of dignity. The quality of assistance providers' relationships with people searching for support has significant importance

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[24] Manfred Wienand, *System socjalny i praca socjalna w Republice Federalnej Niemiec* (Main 1999) 9.

[25] Judgment of 4 April 2001 K11/00, (2001) 3 Orzecznictwo Trybunału Konstytucyjnego Zbiór Urzędowy item 54.

[26] The aim of social assistance is to meet the essential living needs of individuals and families and enable them to live in conditions compatible with human dignity. Helping a disabled person with buying a washing machine might be the factor that allows him to create decent living conditions – Judgment of the Supreme Administrative Court of 17 February 2000 SA 2212/99, LEX No. 53935.

[27] Maria Teresa Romer, *Godność człowieka w prawie pracy i pomocy społecznej* in *Godność człowieka a prawa ekonomiczne i socjalne* (Warszawa 2003) 61.

[28] Krystian Complak, 'Uwagi o godności człowieka oraz jej ochrona w świetle nowej konstytucji' (1998) 5 *Przegląd Sejmowy* 42.

for the protection of their dignity. These employees should have appropriate qualifications and personality features facilitating communication. Guided by respect for the beneficiaries' interests and dignity, social workers should act in accordance with the principles of professional ethics, oppose discrimination and inhumane practices, as well as observe professional secrecy (article 119(2) SAA). Unfortunately in practice, dignity as perceived in this way is not properly protected. Although it is called the royal standard in the literature, its minor practical significance is also emphasized.[29] The main problem is not only financially and organizationally limited social services, but also beneficiaries' expectations and attitudes as well as legal restrictions on the sizes of certain benefits (e.g. in Poland the minimum amount of a regular benefit for a single person is 30 PLN, and of the temporary benefit – 20 PLN).

Despite a similar perception of human dignity in Polish and German legislature, in practice the principle in question is implemented differently. This stems from the fact that dignity cannot be described in a uniform manner, neither in time nor in space, which for comparative analysis seems particularly relevant. The question of a decent life looks different when viewed from the perspective of a big city and a small village, an urbanized region and rural areas, and the differences become more obvious when we analyze decent life conditions from the perspective of different countries. However, comparing the amount of benefits in Poland and Germany is not the subject of our considerations as the same amount of benefits does not reflect the conditions of life which are ensured by social assistance. That what in Poland can be seen as a decent existence might be regarded as insufficient in Germany. However, such observations should be neither surprising nor offensive. There are no universal standards of social security. These standards are created by the state according to its capabilities and the development of society in order to ensure the best life conditions corresponding to human dignity. The social determinant of human dignity should be a social minimum[30] whose guarantor is the state, formally committed to preserving the discussed value.

IV. THE PRINCIPLE OF (CONDITIONAL) CONSIDERATION OF BENEFICIARIES' NEEDS

Human needs are unlimited, as after satisfying one the next appears. The state is not able to satisfy all its citizens' needs, and attempts in this direction inevitably lead to crisis, the best example of which is the welfare state. The Polish and German social welfare systems do not present a uniform position in terms of meeting needs. In Poland, more emphasis is put on the urgency of needs and the ability to satisfy them by public institutions. Therefore, the principle in question is clarified in the Polish law and connected with the financial and organizational capacities of social welfare institutions.

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[29] Sałustowicz (n 5) 122.

[30] Stanisław Nitecki, *Prawo do pomocy społecznej w polskim systemie prawa* (Warszawa 2008) 114.

Social assistance is an area in which meeting all the actual and potential needs of beneficiaries is not possible, and it is difficult to be satisfied with the performance of the administration. The essence of social assistance financed from public funds should amount to satisfaction of basic, essential needs. Such an assumption indicates that the authorities initiate appropriate action in situations when either the basic conditions of human existence are threatened or the quality of life drops below the socially acceptable minimum.[31]

In standardization of needs there is a notion which is legally vague. According to W. Maciejko, an essential need is one "without which minimum standards of human existence cannot be maintained."[32] This notion explains the needs justified by preservation of life, health, playing social roles, income-earning opportunities and acting as a family member. These are legitimate needs for a basic compilation of values worthy of protection, which may be satisfied by the minimal standard.[33] According to E. Kulesza, necessity should be understood in the context of biological existence and of meeting diverse social needs.[34]

In Polish and German regulations, it is possible to identify a common plane with respect to the issue of beneficiaries' needs. Both acts emphasize the necessity of meeting life needs, which is to lead to overcoming difficult situations and being freed from poverty. In both legal systems, the reasons for falling into crisis situations are not relevant for the provision of aid.[35] However, if the situation is difficult due to the person's attitude (e.g. lack of interest in the employment), the aid might not be granted and the benefit can be withdrawn. Basically, the goal is to meet current needs, and as social assistance is not retroactive cash benefits are not granted to cover debts. Since social assistance meets a particular individual's needs, any claims for benefits cannot be assigned to third parties.[36]

In Poland, the principle of (conditional) consideration of beneficiaries' needs is obligatory. In accordance with article 3 (4) SAA, individuals' and families' needs should be taken into account if they meet the objectives and are within the capabilities of social assistance. Capabilities, in turn, depend mainly on the available financial resources. While in the case of benefits which were granted public law status the lack of financial resources may not be grounds for a refusal to grant aid, financial problems might result in the failure to provide financial assistance in reference to other benefits. Thus, the social assistance authority may refuse to grant discretionary benefits if there are no funds for this purpose. Such a solution should be regarded as a certain degree of freedom given to entities organizing social assistance which enables the authorities to classify the needs reported by the beneficiaries, establish priorities and diversify

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[31] Szurgacz (n 21) 39.

[32] Wojciech Maciejko in Wojciech Maciejko, Paweł Zaborniak, *Ustawa o pomocy społecznej. Komentarz,* (Warszawa 2008) 18.

[33] ibid 192.

[34] Ewa Kulesza, *Uwagi o modelu pomocy społecznej ukształtowanym ustawą z 29 listopada 1990 roku* (1993) 58 Acta Universitatis Lodziensis. Folia Iuridica 272.

[35] Jost Hüttenbrink, *Sozialhilfe und Arbeitslosengeld II, Hilfe zum Lebensunterhalt, Grundsicherung, sonstige Ansprüche, Verfahren, Verwandtenregress* (München 2007) 111.

[36] Sałustowicz (n 5) 126.

benefits awarded. The authorities directly involved in the distribution of resources for social assistance are the most knowledgeable, not only in terms of the necessary assistance for each eligible person but also the financial possibilities to satisfy these needs. When the money transferred from the budget is not sufficient for all those in need, the authorities must carefully measure the amounts of assistance given, and thereby consider applicants' subjective and objective situations (Judgment of the Supreme Administrative Court from 26 April 1999, II, SA / Ka 1316-1397, OwSS 1999 / 4 / 111). Limiting funds for social assistance means that some benefits are rarely awarded, their amount is reduced, the catalogue of needs is narrowed, and therefore the authorities have sufficient funds to satisfy them.

In Germany, there is not as much talk about the principle of (conditional) consideration of beneficiaries' needs as of the principle of meeting needs (life, average, individual). It is also noteworthy that at some points the concept of the beneficiary's "need" is replaced with the term "wish", which indicates considering a far broader scope of needs. Nevertheless, the German legislature has set some limits for support. According to section 9(2) SGB, beneficiaries' wishes concerning the form of benefits should be taken into account if appropriate. Both the lack of the possibility of self-satisfying the need and its insufficient satisfaction should be especially taken into account. The assistance provider should not fulfill wishes which might entail additional costs. Attaching importance to costs is of particular significance in the performance of social services.

In conclusion, it should be emphasized that the scope of meeting individuals' needs depends primarily on the possibility of awarding such aid. Limited financial resources make it necessary to reduce both the needs which the state assumes responsibility for and the resources for satisfying them. However, regardless of the condition of public finances and the state's budgetary situation, it must be clear that social assistance does not provide a life of comfort and affluence. In the array of needs which should be satisfied within the framework of social support certain principles and values must be considered, not only the aforementioned human dignity, but also social justice. The latter should determine the boundaries of beneficiaries' needs (wishes).

V. THE PRINCIPLE OF BENEFICIARIES' COOPERATION

Another principle of social assistance in Poland and Germany is the duty of beneficiaries to cooperate with social welfare institutions. This imperative is expressed explicitly in article 4 SAA, according to which individuals and families receiving assistance are required to cooperate in solving their difficult situation, and in section 9 Book I SGB[37], which states that beneficiaries must work according to their capabilities. Moreover, the obligation of beneficiaries to cooperate with the entities providing help is

[37] Sozialgesetzbuch (SGB), Erstes Buch (I), Allgemeiner Teil, Stand: Zuletzt geändert Art. 110 Abs. 5 G v. 8.12.2010 I 1864.

mentioned in section 1, linking the above-mentioned cooperation with achieving the objectives of social assistance.

The aid is temporary and assumes the formation of appropriate attitudes in people using it in order to overcome life difficulties. This role of social support prioritizes the education of its beneficiaries. It should enhance their sense of responsibility and help them realize their right to self-determination. It is also important to counteract the potential for dependence on social assistance. Support should take the form of so-called self-help assistance. It should, in cooperation with the beneficiary, develop the beneficiary's sense of responsibility and show him/her the possibility of self-coping.

The obligation of cooperation takes diverse shapes and it depends on the form of assistance; some benefits feature protectiveness, while others cannot exist without the beneficiary's involvement. In the Polish and German social welfare systems this cooperation is understood in similar ways, and it is expressed in such aspects as: reporting relevant changes in the beneficiary's situation, participation in evidence gathering during proceedings relating to benefits, submitting to treatment, accepting offered employment and commitment to professional mobilization. Some benefits are accompanied by individual programs defining the beneficiary's obligations in return for aid, and these programs can embrace the homeless, refugees and people becoming independent.

The enforcement of the beneficiary's obligation of cooperation is very important, otherwise the assistance is limited to the simple distribution of benefits without eliminating the sources of social problems. The duty of cooperation sets certain obligations for the beneficiary. Unfortunately, in practice beneficiaries display a passive approach and even take benefits for granted. Such an attitude may be grounds for refusing to grant benefits, reversing the decision to grant assistance and even prohibiting the payment of benefits. Such effects can result from a lack of cooperation between beneficiaries and social workers in solving difficult life situations, the refusal to sign a social contract, breaching its provisions, the unjustified refusal to work and an addict's refusal to take treatment in a dedicated facility, and may provide the basis for refusing provision of a benefit (article 11 (2) SAA).

In the German legal system, the nonfeasance of the duty to cooperate results in either a total or partial deprivation of the claim for social assistance. In order to refuse to grant the benefit or to reduce its amount, the authority must take into account the situation of the beneficiary's dependents. This does not mean that if an authority recognizes the family members' plight he/she may not refuse nor reduce the assistance. In this case, the possibility of adjusting the benefits and of offering direct aid to the recipient's dependents (e.g., clothing, educational prompts, meals, etc.) should first be considered.

Beneficiary's disabilities cannot be considered as grounds for determining a lack of cooperation, even when this lack is evident. Benefits may be granted with regard to the objectives of the social assistance. It should be noted that the obligation to cooperate must be interpreted in terms of the principles and objectives of social assistance, adapted to specific situations and individuals. Therefore, the lack of effective cooperation must

be carefully assessed, especially in the case of addicts and mentally disabled.

The obligation of cooperation does not apply only to the recipient, but also to social workers. It should be emphasized that a lack of cooperation having negative consequences for the beneficiary should be understood in light of his/her difficult situation and not of difficulties in establishing facts by the employee of an organizational unit of the social assistance authority. A social worker should draw up a written plan of cooperation, which in Poland takes the form of a social contract.

CONCLUSIONS

The discussed principles of social assistance in Poland and Germany should be regarded as fundamental to both legal systems. A special role here should be attributed to the subsidiarity principle, whose plurality indicates not only a place in the social security system, but also the division of public and social tasks, cooperation with authorities and social organizations ,as well as self-help and beneficiaries' mobilization. Therefore, it will not be an exaggeration to claim that it is the principle of subsidiarity that is the source of social assistance and the determinant of its objectives. The adoption of similar rules in Polish and German law indirectly results from the association of the two social security schemes with a conservative model of social policy, whose motto is the principle of subsidiarity, keeping taxes at a high or medium level, the expansion of social security, a passive policy *vis a vis* the labor market, extensive legal protection of employment and a large role for the third sector in the provision of social services.