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SOCIAL JUSTICE AND EQUALITY AS PRINCIPLES OF SOCIAL ASSISTANCE

ABSTRACT

The study is devoted to the analysis of the principles of social justice and equality in one of the areas of providing administration, which is the social assistance. The principle of social justice expresses a sense of community and responsibility for the fate of others, justifies taking action aimed at eliminating social inequalities, improving living conditions and supporting economically weaker groups. The equitable distribution of wealth in the social assistance refers to the occurrence of unmet need and the lack of self-sufficiency. The principle of social justice is the rule justifying the adjustment of benefits to real needs, mobilization of beneficiaries, the primacy of family above the duties of public authorities and the improvement of the efficiency of social services.

Equality as a principle of servicing administration means first and foremost the provision of equal access to benefits. Nevertheless, it does not mean granting benefits to all people in need.

It varies the recipients of benefits according to the relevant feature which boils down to a difficult situation with the simultaneous inability to overcome it. A derogation from the principle of equality must be justified, and its source can be the social justice. It explains not only granting specific permissions to selected members of society, but also derogations from the equal treatment of similar subjects, which are dealt with in the process of granting the social assistance benefits.

KEY WORDS: social justice, equality, social assistance, benefit, servicing administration

Introduction

The social welfare system in Poland is built on many principles which are subject to various classifications. The most important rules governing the

social welfare system are the principle of subsidiarity, individuation and typification of benefits, discretion and claiming attitude, the protection of personal property, as well as payment and financing from the public funds.¹ Moreover, the principle of (conditional) consideration of beneficiaries' needs, the principle of co-operation of the subjects using assistance to solve their difficult situation,² the principle of human dignity, the principle of partnership with social welfare authorities in the functional sense, the principle of exhaustion of the objective self-help remedies, the principle of the real need and the principle of providing assistance to the Polish citizens living and residing in Poland, are also mentioned.³

Apart from the above-mentioned, universal principles deriving from the Constitution which the whole system of law is based on, also play an important role. Among them, there is the principle of social justice and the principle of equality. The purpose of this paper is to analyze the social welfare system, and, in particular, examine whether the distribution of goods in the form of benefits bears the marks of social justice, and whether we are dealing with an equal access to the social assistance.

These issues are inextricably linked to the tasks of the state and its executive apparatus involved in the distribution of goods. Therefore, social welfare will be presented as a sphere of the public administration. The administration which performs socially useful tasks and meets people's collective and individual needs by providing benefits is called a servicing administration. To sum up, the present study is to analyze principles of social justice and equality in the administration providing in the area of social welfare.

The principle of social justice

Social justice is not uniformly interpreted. First of all, it is necessary to separate justice from its axiological sense. However, justice as a value and

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- 1 R. Michalska-Badziak, *Prawo pomocy społecznej* [in:] *Materiałne prawo administracyjne. Pojęcie, instytucje i zasady*, M. Stahl (ed.), Warszawa 2002, pp. 216–128; I. Sierpowska, *Prawo pomocy społecznej*, Warszawa 2011, p. 59 and the next.
 - 2 S. Nitecki, *Prawo do pomocy społecznej w polskim systemie prawnym*, Warszawa 2008, p. 92.
 - 3 W. Maciejko, *Instytucje pomocy społecznej*, Warszawa 2009, p. 19 and the next.

an idea is considerably important to the interpretation of the principle of social justice. J. Karp defines justice as „ a standard, a criterion and a measure which we use in order to assess social life (...). Determining something as fair expresses a subjective judgment, but is based on objectively established assessing criteria (...), which are the principles of human beings' equality, freedom and utility.”⁴

The concept of social justice was established in the doctrine of law in the late nineteenth and early twentieth century as an expression of full citizenship, equality and expansion of the state's responsibility for social affairs. According to L. Garlicki, the principle of social justice is, in a sense, a reference to the principle of the social state, to its obligations to citizens and its protective role.⁵ A. Pułło shows social justice as a social principle and one of the most important human virtues. It influences the sensitivity to social injustice and the interest in more human and equitable living conditions. The author treats social justice as the rule of a fair state, which consists of social and political justice.⁶ Justice in the country, as B. Jastrzębski says, „is primarily a rational distribution of profits earned by men, it is such a state where some people do not get rich as a result of unjustified expropriation and appropriation of property developed by other people.”⁷ However, social justice does not mean equal distribution of goods, provision of prosperity and the same economic position to all people. It is more about creating opportunities, the use of which leads to the improvement of living conditions (an access to education, medical care, accommodation). Social justice is also gauged by a measure of civic obligations, such as taxes and care for the elderly and the disabled. The state is a major distributor of goods and executor of duties, and it shapes the sense of social justice or injustice.⁸

The state cannot only focus on the economy, pushing into the background the citizens' social security (and vice versa). The state's actions

4 J. Karp, *Sprawiedliwość społeczna. Szkice ze współczesnej teorii konstytucjonalizmu i praktyki polskiego prawa ustrojowego*, Kraków 2004, p. 32.

5 L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2005, p. 66.

6 A. Pułło, *Sprawiedliwość społeczna w systemie zasad naczelnych Konstytucji RP*, „Państwo i Prawo” 2003, no 7, pp. 11, 14–15.

7 B. Jastrzębski, *Ustrojowe zasady demokratycznego państwa prawa. Dylematy i mity*, Olsztyn 2003, p. 101.

8 See: D. Miller, *Principles of Social Justice*, Cambridge–Massachusetts–London 2001, pp. 8–11.

must come down to the balance between the public interest and the interest of the individual. However, it is not about a commonly understood sense of justice, but about justice in a society. This principle is expressed in art. 2 of the Constitution and is also referred to in its preamble. Social justice relates to the relations between social groups, as well as the relationship between these groups and the state, not to the relations between the state and the individual⁹. It is a complex formula referring to the equal treatment, however, it does not mean absolute equality. Its relative understanding applies to the social and economic conditions, as well as the area where it is used.

According to Z. Ziemiński, the distinction between compensatory and distributive justice adopted by Aristotle dominates in the legal tradition. The first one comes down to returning good for good and evil for evil. The second one is the “equal treatment of subjects showing the same characteristics considered important for the distribution of a given good or spreading essential responsibilities.”¹⁰ To the permanent elements of the principle of social justice A. Domański includes consideration of each citizen’s good and a prohibition of social stratification, which in turn imply the prohibition of discrimination and favouritism. The elementary expression of the principle of social justice is the obligation to ensure at least a minimum required for a human existence to all.¹¹ There is a view in the Constitutional Court which in the light of justice differentiation of entities should remain in proper relation to the differences in their situations. The distributed justice expressed in this way means that the equal should be treated equally and the similar similarly. Such an understanding of justice also means accepting different treatment of various subjects by the law, however, this different treatment should be justified.¹² “This principle implies the existence of balance between the essential features of particular people’s categories and their proper treatment (the principle of relevance). A duty of the state is to clarify the

⁹ B. Banaszak, *Prawo konstytucyjne*, Warszawa 2004, pp. 225–226.

¹⁰ Z. Ziemiński, *Sprawiedliwość społeczna jako pojęcie prawne*, Warszawa 1996, p. 13.

¹¹ A. Domańska, *Zasada demokratycznego państwa prawnego* [in:] D. Górecki (ed.), *Polskie prawo konstytucyjne*, Warszawa 2008, p. 59.

¹² See: The Judgement of the Constitutional Tribunal of 16 December 1997, K 8/97; The Jurisprudence of the Constitutional Tribunal 1997, no 5–6, pos. 70; The Judgement of the Constitutional Tribunal of 13 April 1999, K 36/98; The Jurisprudence of the Constitutional Tribunal 1999, no 3, pos. 40.

criteria for the distribution of such goods (...) on the basis of which it would be possible to clearly determine whether and which categories of citizens have a right to receive distributed goods, in what quantities the goods have been granted and who carries the obligation to realize these rights and how to assert their fulfillment.”¹³ These rules are not only legislative guidelines, but also indications for the construction of the social order, setting the hierarchy of objectives and population needs, as well as for a suitable task prioritization of public authorities. It appears to be especially important from the point of view of the diversity and multiplicity of benefits for citizens and limited funds allocated for these purposes. Here, it is worth mentioning A. Błaś’s view exposing stabilizing and protective functions of administration, revealing themselves, among other things, in the promotion and protection of important values from a social point of view. The author claims that “through its activities, public administration consolidates fundamental values such as confidence in the relationship between citizens, the security of the citizen’s legal situation, ensures social order and the citizen’s rights and freedoms, as well as social justice.”¹⁴

In servicing administration, social justice ought to be connected primarily with an access to benefits and public facilities as well as with the distribution of goods (distributive justice). This section should be based on two determinants. First, the range of benefits should be relevant to the possibilities of the state budget, and secondly, the provision of services cannot be equated with a guarantee of prosperity. The universality of access does not exclude the application of additional criteria, as well as the introduction of payment. It is worth quoting the Judgment of the Constitutional Tribunal of 8 June 2010,¹⁵ which states that the legislator is constitutionally entitled to introduce additional qualifying criteria, especially in the social sphere. It is justified when it comes to the benefits fully funded with public resources whose expenditure must take into account the economic situation of the state. In the opinion of the Constitutional Court there is a relationship between the individual’s rights

¹³ A. Domańska, *Zasada...*, pp. 59–60.

¹⁴ A. Błaś, *Administracja publiczna w warunkach gospodarki rynkowej* [in:] *Współczesne europejskie problemy prawa administracyjnego i administracji publicznej*, A. Błaś and K. Nowacki (eds.), Wrocław 2005, pp. 78–79.

¹⁵ SK 37/09, OTK-A 2010, no 5, pos. 48.

and the scale of possibilities to satisfy them by the state, which requires the use of various types of differentiating criteria, limiting the subjective scope of privileges and the degree of their implementation.

The use of compensatory justice when compared to servicing administration, and especially social help, would exclude the possibility of granting many benefits and would even undermine the meaning of this function. In these terms, supporting people who do not work or have not shown the foresight and did not guarantee themselves the income in case some random events, it is simply unfair. In social issues the concept of retributive justice gives way to distributive justice. It expresses a specific social order, the necessity to generate benefits for the needy citizens and to ensure everybody an equal start in life. As emphasized by Z. Ziemiński, such understanding of social justice is compatible with Christian social doctrine, according to which “everyone shall be assisted in meeting essential needs if they are not able to satisfy them on their own.”¹⁶ In this context, social justice combines with solidarity. It is worth noting that a similar concept is presented in the egalitarian theory of justice whose main representative is R. Dworkin. According to his views, in a market economy it is necessary to correct the amount of economic benefits vested in people “in order to facilitate a better access to shared social resources to some citizens’ categories, which were not allocated to them because of the lack of initial economic advantage, happiness and innate abilities.”¹⁷

There are different rules as to the fair distribution of goods. They can be distributed equally, according to the individuals’ merit and according to their needs. In social assistance there is a third formula which refers to the concept of charity, including the reduction of human suffering caused by the inability to meet their own needs.¹⁸ This rule is consistent with the principle of individualization of benefits. A fair help is the one which fits beneficiary’s needs and will enable them to overcome a difficult situation. An important instrument helping the administration to implement the principles of social justice is a family community interview, which enables accurate understanding of needs, situation assessment and a selection of an appropriate form of support. The fair support

¹⁶ Z. Ziemiński, *Sprawiedliwość...*, pp. 56, 88.

¹⁷ J. Karp, *Sprawiedliwość...*, p. 98.

¹⁸ A. Domańska, *Zasady sprawiedliwości społecznej we współczesnym polskim prawie konstytucyjnym*, Łódź 2001, p. 52.

is effective, and thus avoids the waste, activates the beneficiary, as well as makes him responsible for his fate. It would be certainly unfair to give equal benefits from social assistance as it would be a denial of its ideas and values. It would not take into account the specificity of particular recipient's benefits and it would be just a simple distribution. It is worth noting that the formula of simple egalitarian system appears in the social security system. For instance, it concerns family benefits, but in contrast to social assistance, these benefits are only intended to provide financial support to low-income families, not to try to overcome the difficult situation with the cooperation of the assisting institution. Additionally, there is also a third principle of justice in the social insurance system, which is "to each according to his merit." The manifestation of social justice is also a claim for undue benefits and reimbursement of expenses incurred for the assistance. One must agree with S. Nitecki who claims that the body has a right for load balancing and claiming a refund according to the individuals' and families' capabilities, rather than in equal amounts from all the obliged.¹⁹ The powers to discharge the nursing home resident's family members from fees paid for the maintenance in the facility should be evaluated in similar categories.

The problem deserving attention is the concept of social justice from the perspective of family responsibilities to people eligible for social assistance. The responsibility to maintain the family members recognized by the law is not always obvious to the obliged. What is fair in the light of the law might be perceived differently by the public. An example confirming this controversy can be obliging a son to pay alimony to his mother – a charge of social welfare who abandoned her child in the past. The Act of Social Assistance²⁰ says that family responsibilities come before the duties of the state. If there are people who, in accordance with the alimony obligation, can provide a person in need with the necessary means of subsistence, their duties come before the social assistance. The eligibility for this assistance should therefore be treated as secondary and complementary to alimony. It should be noted that the Act of Social Assistance gives organs the power to activate the family in order to help the person in need, for instance, by giving them the possibility to bring

¹⁹ S. Nitecki, *Prawo...*, p. 125.

²⁰ Ustawa z dnia 12 marca 2004 r. o pomocy społecznej (Dz. U. from 2009 no 175, pos. 1362 with further changes), further SAA.

actions for alimony, charging family members for the relative's staying in a nursing home or ordering reimbursement of expenses from the beneficiary families. Unfortunately, the authorities do not always use these powers, relieving the family of their responsibilities to the closest. The effects of groundless primacy of social law over the family law are felt by all citizens. In case of benefit payments to people entitled to alimony and not collecting the expenses from the beneficiary's relatives incurred for the assistance, economic weights are transferred to taxpayers.²¹ The question is whether it is in the canons of social justice?

The social assistance is the sphere in which the distribution of benefits is less accepted by society, compared with other areas of the providing administration. While the access to the educational services, healthcare and culture is considered as equal and free, the access to social assistance is not so obvious and is sometimes perceived as unfair. According to some people, as such are considered too low benefits, according to others too low. Similar controversy raises the question of income criteria qualifying for benefits. A socially equitable should be considered a model of social welfare in which the benefits (either temporarily or permanently) are used by people not capable of drawing income from their job or social security and not receiving support from their family. Meanwhile, the income thresholds for entitlement to assistance show that the conditions for receiving benefits are often met by people receiving pensions and even working professionals. Of course, increasing the threshold will not make the situation more equitable, because it can lead to the fact that work will simply become not profitable. It would be more appropriate to increase the difference between what you earn and what you can get for free, namely the difference between the amount of social assistance and the lowest pensions, pensions and the minimum wage.

The question of social justice also suggests the behavioral observation of social assistance recipients. Z. Ziemiński wrote about a formula of simple egalitarianism that "it does not stimulate to incur effort for the common good, it may cause, as the parable of the laborers in the vineyard teaches, the opposition on the part of those who had to have more trouble in order to gain a particular kind of good (...)." ²² This view is, in my opinion, does

²¹ M. Andrzejewski, *Świadczenia z pomocy społecznej a obowiązki alimentacyjne członków rodziny*, *Ruch Prawniczy Ekonomiczny i Społeczny* 1999, no 3–4, p. 68.

²² Z. Ziemiński, *Sprawiedliwość...*, p. 24.

not only concern a simple egalitarianism. The claiming attitudes of social assistance beneficiaries, a waste of benefits and the lack of any involvement in the improvement of one's own destiny often arouse public opposition and create a sense of injustice. These feelings, however, can also occur on the part of actual and potential beneficiaries, living in poverty, with no prospects for work and improving living conditions. As emphasized by B. Jastrzebski, "in a democratic state of law and social justice, while social and legal justice are at stake, a citizen or social group should have the right to call the state for help."²³ How to explain, in the light of principles of social justice, the distribution of manufactured goods which maintains high rates of poverty, yet low efficiency of social assistance?²⁴ Is the state which cannot solve the problem of beneficiaries' mobilization, including the unemployed, and does not see the poor performance of social administration and unsatisfactory cooperation between county employment offices and social welfare centers fair? Finally, is to be the decentralization of social functions of the state and shifting the responsibility for carrying out welfare tasks to local governments an expression of social justice? These rhetorical questions are not just complaints against the state and its apparatus, they are also a perception of complexity and multi-dimensionality of social justice as a constitutional principle and values.

An equitable access to benefits and their distribution should be a guiding idea of the providing administration. An elementary understanding of social justice requires to help those who are in difficulty and cannot satisfy the needs making their own efforts. This basic understanding of the essence of justice and social welfare expresses its main goal. In this sense, we can say that the principle of social justice is carried out in the providing administration in the area of social assistance. Another issue is the implementation of this principle in practice. Not all of the presented criticisms should be directed at the authorities and their auxiliary apparatus (to a large extent they relate to state policies and activities of the legislature). Much, however, depends on the very administration, since it is the main creator of the providing function. These are the authorities

²³ B. Jastrzębski, *Ustrojowe...*, p. 103.

²⁴ According to statistics from 2010 in Poland 8,7% of population benefited from the social assistance. 80% of beneficiaries was receiving benefits for over 10 years. See: S. Czubkowska, K. Klinger, *Polski system świadczenia biedy*, Gazeta Prawna 20 April 2010, no 76, pp. A1, A8.

which decide on the allocation of specific assistance and its effectiveness depends on them. They have a direct impact on the improvement of methods for interaction with the beneficiaries and to develop cooperation with non-state actors, as well as the increasing professionalism of their staff. Shortcomings in these areas are not always a question of lack of funds. It is not an exaggeration to say that the social evaluation of the administrative apparatus distributing benefits, which is the government closest to citizens, is a major component of the judgment of the principle of social justice and translates to the evaluation of the entire state.

Equality as a principle and value

The term “equality” is basically used in two ways – as an “identity” and the “likeness”. M. Błachut analyzing different contexts of meaning of the term comes to the conclusion that the use of equality as an identity is of little use and impossible to realize in a legal sense. In the law equality should be identified with similarity or proportionality, at most, one can speak of identity or likeness limiting to a certain trait or traits.²⁵

The concept of equality is analyzed in different contexts of meaning. You can speak about equality before the law as well as about political, social, economic and moral rights. Equality has a descriptive, evaluative and distributive meaning.²⁶ It is possible to distinguish equality as a principle and a value. In the latter approach S. White mentions an instrumental value – equality is treated instrumentally as a base for other values; immanent justice – justice being inferred from the moral principle of equality, the supreme value – equality is an instrumental justice, and thus a superior value²⁷. This distinction shows that equality is often combined with justice. This applies not only to axiological dimension, but also issues of political principles.

Equality is one of those rules which are governed not only nationally, but also internationally. Polish legislator mentions it among the general

²⁵ M. Błachut, *Postulat neutralności moralnej prawa a konstytucyjna zasada równości*, Wrocław 2005, pp. 79–82; Z. Kmiecik, *Zasada równości obywateli wobec prawa w orzecznictwie NSA*, Państwo i Prawo 1988, no 10, p. 57.

²⁶ Z. Kmiecik, *Zasada...*, p. 57.

²⁷ S. White, *Równość*, Warszawa 2008, p. 37.

principles opening the catalog of individual's rights and freedoms. The constitution in article 32 says that everyone is equal before the law and is entitled to equal treatment by public authorities. An extension of these provisions is the prohibition of discrimination for any reason in the political, social and economic life. Equality before the law stems from the constitutional law – the equal treatment in the process of law application and equality in the law. Equality refers to natural persons, legal persons and organizational units without legal personality. According to L. Garlicki, regulations and jurisdiction allow you to identify essential features of the principle. According to the author equality:

- 1) requires to treat parties and similar situations equally;
- 2) refers to the recipient's legal situation and recognizes the presence of socio-economic inequalities;
- 3) is not absolute and allows for different treatment of similar subjects;
- 4) is closely related to the principle of social justice;
- 5) is universal and applies to all spheres of society and all the possible differences introduced by the law.²⁸ Inequality, in the sense of lack of identity, can be fair and justified by a social market economy.

In the jurisdiction of the Constitutional Court there is this established view that from the principle of equality stems an order of equal treatment of the legal entities in a particular group. All legal entities, characterized by a given equally significant (relevant) feature should be treated equally and by the same measure, without any discriminatory and favouring differences. However, different entities may be treated differently. A derogation from the equal treatment does not have to mean a violation of this rule and does not have to come to the discrimination or favoritism. However, the introduction of differential treatment always requires the differentiation of evaluation criterion. It should be of significant character (relevant), and be proportionate in relation to other values, principles and constitutional norms to justify a different treatment of similar subjects.²⁹ Relevancy means that the distinction must be reasonable. Proportion, however, refers to the balance of the parties' prefer-

²⁸ L. Garlicki, *Polskie...*, pp. 97–98.

²⁹ See: The Judgement of the Constitutional Tribunal of 31 March 2008, P 20/07, OTK-A 2008, no 2, pos. 31; The Judgement of the Constitutional Tribunal of 5 October 2005, SK 39/05, OTK-A 2005, no 9, pos. 99.

ably treated and issues that will be affected by an unequal treatment of similar subjects. Equality, therefore, cannot be understood in absolute terms, but it should be evaluated in relation to a category of subjects characterized by a common feature. A creation of such groups cannot be random and must be justified, otherwise, it will be seen as a form of an unfair privilege. Equality is very often associated with justice. It is used to assess the fairness of social differentiation. Applying the same criteria to all interested in receiving a particular good (which does not mean receiving equal shares of distributed goods) and devoting to their needs and issues of equal attention can be regarded as a compliance with both these rules.³⁰ Acceptable and even sometimes necessary is differentiating citizens in the light of law. A common criteria for such differentiation are: an age, a marital status, a financial status and a health status. Equality can therefore mean an acceptance of diverse legal position. This stems from the fact that an equal treatment of the same subjects in some respects mean usually different treatment of the same subjects in other respects.

One of the features of the providing administration is an universal and equal access to benefits. The underlying idea of this assumption is the universal and equal access to public goods. It is expressed in the fact that the state and its administration are to provide various support to not only impaired, but all citizens, ensuring universal access to goods and services.³¹ In general, the benefits can be used by anyone, but specific acts may impose special restrictions. The scope of these restrictions varies and depends on the regulation of the individual's constitutional rights, but also on the economic capacity of the state. It is different when it comes to the universal and equal access to services in the field of education, health and culture, and different in the field of social welfare. The universality of access to social assistance means that its benefits can be used by anyone, provided that they meet the statutory requirements. Firstly, they will be in a difficult situation, which they will not be able to overcome with the use of their own powers, resources and capabilities.

³⁰ M. Chmaj, *Równość wobec prawa i zakaz dyskryminacji* [in:] M. Chmaj, L. Leszczyński, W. Skrzydło, J.Z. Sobczak, A. Wróbel, *Konstytucyjne wolności i prawa w Polsce*, vol. I. *Zasady ogólne*, Kraków 2002, p. 139.

³¹ See: Z. Czarnik, J. Postuszny, *Zakład publiczny* [in:] *System prawa administracyjnego*, R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), vol. 6, *Podmioty administrujące*, Warszawa 2011, p. 431.

ties, and secondly, meet additional conditions for obtaining a particular benefit.

It is also worth noting the requirements connected to holding Polish citizenship or a specific permit for a foreigner (such as a residence or settlement permit in Poland), as well as the residence and staying on the territory of the Polish Republic. It is difficult, of course, to discuss the requirements referring to a place of residence (staying). In order Polish authorities could effectively provide the assistance, the beneficiary must be in their area of operation. Thus, it cannot be stated that these conditions eliminate the universality of access to the social assistance.

In light of these considerations, the question whether you can actually talk about equal access to services arises, since social assistance is directed to certain categories of recipients? Answering yes to this question, it should be noted that equality does not mean identity and differentiation in the law is not only acceptable, but necessary. Analyzing the scope of rights to social assistance, not only the economic plight of individuals and families must be taken into consideration, but often objectively occurring inequalities resulting from the place of residence or social origin, lack of appropriate skills and abilities. These factors have a huge influence on the occurrence of circumstances justifying granting the benefits, such as poverty, unemployment and helplessness in the matters of care, education and many more. B. Jastrzębski believes that people are born unequal and equality can be spoken about only in a formal sense. A social position, as well as intellectual abilities, skills, resourcefulness and origin can be a source of inequality. Therefore, the very fate, writes the author, “determines the differences between people which manifest themselves in various forms. Of course, the purpose of the state, especially the legislation should be to eliminate these differences.”³² In the system of law and social policy, social assistance is seen as a final attempt of such practice.

Referring the foregoing to the Constitutional Court, it should be noted that the selection of recipients of social assistance is based on the relevant feature, which is a difficult life situation (usually determined by the measure of income) combined with a lack of self-sufficiency. It is worth adding that relevant characteristics taken into account by the institutions of social support include unemployment, many children, disability, risk of social exclusion and others. The occurrence of these

32 B. Jastrzębski, *Ustrojowe...*, p. 168.

features combines with the threat of discrimination and the lack of opportunities to exercise the rights. Therefore, the reaction of the legislator is to create a special legal regulations aimed at selected groups. Their aim is to grant additional powers, resources and other facilities to enable their recipients to exercise the rights and function in the society on equal terms with the rest of its members.³³

Peoples' life to whom the assistance is addressed is at risk, whether it is in the physical or in the socio-psychological sphere (a failure in care and education, a sense of marginalization, addiction). Keeping proportion between the beneficiaries' interests and the interests of those whose rights could be affected by the different treatment of similar subjects, provide the income criteria and the extent of the granted assistance. Income criteria allow for granting the benefits to the poorest of the poor. The amount of financial aid seems to keep the right balance to other income derived from employment or benefits from the social security system, although it is certainly a matter of discussion. An extra reinforcement of keeping the indicated balance is a discretionary character of benefits. The fulfillment of the conditions necessary to receive all forms of assistance does not guarantee getting them. Even the fulfillment of the conditions for receiving a particular benefit does not warrant the grant. Also, the obligations imposed on the beneficiaries, such as signing and implementation of the social contract, cannot be forgotten.

As it has been already stated before, the derogation from the equal treatment of similar subjects must be justified by the values, principles and constitutional standards. The principle of social justice is of the greatest importance here. It does not only explain granting specific permissions to selected members of society, but also the derogation from the equal treatment of similar subjects, especially dealt with when granting social assistance benefits. It is difficult not to agree with the statement that it is social justice which "provides decisive criteria for the recognition of this or the other characteristic [differentiation] as the important or outlines some limits in which the choice can be made."³⁴ Other values influencing the content of the principle of equality in the context being

33 I. Sierpowska, *Pojęcie niepełnosprawności i procedury orzekania o niepełnosprawności* [in:] I. Sierpowska, A. Kogut, *Status osoby niepełnosprawnej w polskim systemie prawa*, Wrocław 2010, pp. 31–32.

34 M. Błachut, *Postulat...*, p. 120.

analyzed are: the human being's dignity, common good, solidarity and balance of public finances.

In the light of the principle of equality it is worth noting that the position of Polish citizens and foreigners in the law of social welfare is not the same. The right to social assistance benefits have foreigners who hold the appropriate license (permission) associated with the residence and staying in Poland. In addition, legislature divides beneficiaries into further categories, highlighting the recipients of general services, people who are entitled to special benefits (refugee and foreigners with subsidiary protection status, chapter 5 SAA) and those receiving assistance to a limited extent (foreigners with a tolerated residence permit and victims of human trafficking Art. 5 clause 2 point b and Chapter 5a SAA).

These divisions are based on relevant features, related to the foreigners' specific position resulting from their refugee status, subsidiary protection or recognition as a victim of human trafficking. It may be added that the Constitution, ensuring freedom and executing constitutional rights to all entities which are under the authority of Poland, accepts in this respect different statutory regulations for foreigners (Article 37 paragraph 2). There is therefore no reason to question the foreigners' position in the Act of Social Assistance and make allegations concerning the infringement of the principle of equality. It is worth noting that the acts included in the social security approach this problem in different ways; an extension of the regulations to foreigners, assistance to people entitled to child support and the unemployed are clearly mentioned in family benefits, however, the social employment applies only to foreigners with a refugee status.

The principle of equality is expressed not only in the content of regulations, but also in the application of the law. Thus, it is possible to analyze it in material and formal terms. The doctrine points out the relationship of the principle of equality with the issuance of legislation and internal regulations.³⁵ Their provisions are caused by the need to clarify and refine the act and to ensure quite uniform interpretation of the rules. In order to do this, there are various acts of internal management in social assistance. An example of such forms of action are local social assistance programs, developed on the basis of needs reported by

³⁵ Z. Kmiecik, *Ogólne zasady prawa i postępowania administracyjnego*, Warszawa 2000, p. 107.

those in charge of organizational units of social assistance (Art. 110 paragraph 9 and 10 and Art. 112 paragraphs 12 and 13 SAA) and municipal and county strategies of solving social problems, as well as voivodship strategy of social policy.³⁶

The principle of equality requires similar settlement of similar states. This principle is so realized “when the authorities applying the law make decisions basing on legal norms irrespective of the individuals’ characteristics from the perspective of the norm content.”³⁷ The body evaluates whether we are dealing with the same or different case, using some margin of discretion. The examination of cases is based on the law applicable to their circumstances. The adaptation of administrative actions should be predictable and at the same time should not wear signs of unreasonable or arbitrary behaviour. The equal treatment of cases requires a comparison of the facts and “the way how the characteristics are defined in the legal text.”³⁸ The same facts can be theoretically (and practically) treated differently, even if the similarity criteria derive from the same legal text. A difficulty in abiding by the principle of equality may be unclear construction of the rule, the application of different rules of interpretation and evaluation of the facts as well as the use of discretionary power. These threats, as well as the need for an individual approach to each case and a duty to take into account various principles of law, including the balancing of interests, draw a picture of dilemmas colliding with the principle of equality. Taking them into consideration, it cannot be expected that all people in similar life situation will get similar benefits from the social assistance (or that they even receive them). It is impossible, not only in the scale of the whole country, but even within a single county.

It should be noted that the majority of benefits is granted on the basis of discretionary decisions that allow for flexibility in the application of law, and thus a refusal to help, despite the fact that a particular person or family meets the requirements to receive it. This problem has been frequently pointed out in the judicature, referring not only to discretion, but also limited financial resources at the disposal of the social body.³⁹ In

³⁶ S. Nitecki, *Prawo...*, p. 121.

³⁷ W. Jakimowicz, *Wykładowia w prawie administracyjnym*, Kraków 2006, p. 75.

³⁸ M. Błachut, *Postulat...*, p. 87.

³⁹ See: The Judgement of the Voivodship Administrative Court in Wrocław of 1 July 2008, IV SA/Wr 183/08, LEX no 509355; The Judgement of the Supreme Administrative Court of 19 June 2007, I OSK 1464/06, LEX no 299415.

the judgment of the Administrative Court in Warsaw of 21 December 2009,⁴⁰ it was stressed that the needs of individuals and families receiving benefits from the social assistance should be taken into account if they meet the objectives and the capabilities of social assistance, which is undoubtedly conditioned by the county's finances. A similar opinion was expressed in the judgment of the Administrative Court in Bydgoszcz of 24 September 2008,⁴¹ which indicated that the lack of sufficient funds to cover all the submitted requests for the provision of benefits entitles the authority to adequately limit the assistance. The authority dealing with the distribution of benefits under the social welfare must avoid glaring disproportions in the amount of benefits paid to entitled people. The allocation of funds for discretionary benefits must take into account the constitutional principle of equality of citizens before the law. From the point of view of this principle, decisions should not bear the characteristics of discretionary freedom and should be based on reliable evidence, and the authority offering limited resources should distribute them rationally. A reduction of benefits, income criteria and determining the hierarchy of needs and the order of satisfying them can help in maintaining the principle of equality. Granting benefits in order of submitted requests should be considered contrary to the principle of equality.

The views of doctrine and jurisdiction allow for the identification of main elements of the principle of equality. The application of these rules does not, however, guarantee the compliance with the principle of equality and social justice. It is more about getting closer to the standard, the ideal, and not to its achievement. The social assistance is the sphere where the application of those rules causes particular dilemmas. If the authority applying above rules decides that the refusal to grant the benefit is in line with the principles of equality and justice, this negative decision may not be possible from the point of view of other statutory restrictions. In particular, the prohibition of refusing assistance by the municipality and the county to the person in need in the situation of an existing obligation of individuals and legal persons to meet this person's needs. The order of similar importance expressed in Art. 11 paragraph 3 SAA says that the refusal to grant or limiting social assistance benefits must consider the situation of people dependent on the person applying for benefits or receiving help.

⁴⁰ VIII SA/Wa 592/09, LEX no 583659.

⁴¹ II SA/Bd 578/08, LEX no 535004.

STRESZCZENIE

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**SPRAWIEDLIWOŚĆ SPOŁECZNA I RÓWNOŚĆ
JAKO ZASADY POMOCY SPOŁECZNEJ**

Opracowanie poświęcone jest analizie zasady sprawiedliwości społecznej i równości w jednym z obszarów w administracji świadczącej, jakim jest pomoc społeczna. Zasada sprawiedliwości społecznej wyraża poczucie wspólnotowości i odpowiedzialności za los innych, uzasadnia podejmowanie działań, których celem jest niwelowanie nierówności społecznych, polepszanie warunków życia ludności oraz wspomaganie grup ekonomicznie słabszych. Sprawiedliwy rozdział dóbr w pomocy społecznej odwołuje się do wystąpienia niezaspokojonej potrzeby i braku samowystarczalności. Sprawiedliwość społeczna jest regułą uzasadniającą między innymi dopasowanie świadczeń do rzeczywistych potrzeb, aktywizację świadczeniobiorców oraz podnoszenie efektywności służb socjalnych.

Równość jako zasada pomocy społecznej odnoszona jest przede wszystkim do równego dostępu do świadczeń. Niemniej nie oznacza ona przydziału świadczeń wszystkim potrzebującym. Jej stosowanie odwołuje się do cechy relewantnej sprowadzającej się tu do wystąpienia trudnej sytuacji życiowej z jednoczesnym brakiem możliwości jej samodzielnego przezwyciężenia. Odstępstwa od zasady równości muszą mieć uzasadnienie, jego źródłem może być sprawiedliwości społeczna. Tłumaczy ona nie tylko przyznanie określonych uprawnień wybranym członkom społeczeństwa, ale również odstępstwa od jednakowego traktowania podmiotów podobnych, z czym mamy do czynienia w procesie przyznawania świadczeń z pomocy społecznej.