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# Analyses & Opinions

Analizy i Opinie

## **Assessment of the Government Draft Legislation on Social Assistance**

**Tomasz Kaźmierczak**

# Assessment of the Government Draft Legislation on Social Assistance

Tomasz Kaźmierczak

- The government should withdraw its draft legislation on social assistance from the Sejm because it does not meet the expectations associated with such important legal act. In its suggested shape, the legislation will not contribute to the reform of public finances, does not introduce any significant new regulations or solutions, and does not propose any authentic reorganization of the Polish social assistance system. The draft is inconsistent with the adopted Law on Public Benefit Activity and Volunteerism (Ustawa o organizacjach pożytku publicznego i wolontariacie) and Law on Social Employment (Ustawa o zatrudnieniu socjalnym). The adoption of the legislation in its present form may complicate and seriously delay a genuine reform of the Polish social policy system.*

The government has submitted a draft legislation on social assistance to the Lower House. Its assessment must take into consideration the peculiar context in which the new government initiative has appeared. Firstly, the new legislation was prepared parallel to the government's activities aimed at reforming public finances. Therefore, one should expect it either to contain regulations that would promote achieving social assistance objectives in a more effective manner or regulations that would limit its scope. In other words, the proposed legislation should be consistent with the government social and economic policies.

Secondly, government legislative activities in the field of social policy and statements by government officials indicate the government's intention to introduce a new comprehensive model of regulating

this sphere of social life. The model contains the already adopted Law on Public Benefit Activity and Volunteerism and Law on Social Employment, as well as three pieces of legislation under development: on family allowances, on employment promotion and this one - on social assistance. One would expect the latter legislation to play a central role in that package. Consequently, the question arises what is the relation between the draft project submitted to the Lower House and the pieces of legislation already adopted. Is there indeed a substantial change, not to say a qualitative breakthrough, in the approach to social policy?

Thirdly, social policy in many countries in Europe and elsewhere is in the phase of being modified by new solutions after the breakup of the welfare state, which was based on a wide range of social

transfers. The twilight of social policy relying on redistribution is associated mainly with its cost, which even the strongest economies are not able to carry. Also important is its destructive impact on the moral condition of the population and the dissemination among it of the “free ride” attitude – taking advantage of goods created without one’s participation. In some countries, for example in Great Britain and the United States, this search has already taken the form of implemented reform, in others the debate is still going on. A particular attention is given to the so-called “active social

policy” model, in which support disbursed from the public purse is meant to serve the beneficiary’s active participation in social life. This search is also reflected in long-term plans of the European Union, best expressed in the Lisbon Strategy. Consequently, the question arises whether the draft legislation on social assistance reflects this contemporary search and dilemmas? Does it constitute a Polish contribution to the current debate on the new social policy paradigm? These questions must be taken into account when assessing the government draft project of the social assistance law.

## What new aspects does the government draft project contribute to the social assistance system?

The draft project under discussion is strikingly similar to current legislation. Many provisions have been left unchanged, many have been changed only a little (and often the new formula is worse than the old one). In essence, the “new” legislation does not bring any changes to the currently functioning social assistance system. There are no changes either to the basis for or to the nature of citizens’ entitlements. The list of statutory benefits – forms of assistance – remains essentially the same. Procedures are the same. Social assistance tasks remain the same with only small shifts in the competencies of various levels of public administration. What is new, therefore, in the draft project?

- It proposes a new income criterion (mean-test) qualifying for cash benefits and abandons

its upward valuation; the list of benefits is simplified.

- It introduces a triple-tier charge for staying in a social-assistance home – the sequence of charging will be as follows: the boarder, his family and, as a solution of last resort, the *gmina* of his origin if the boarder himself does not have sufficient resources.
- It introduces new forms of foster parenting: multi-child foster families and specialized foster families.
- It regulates the issues of assistance to refugees.
- It limits the range of benefits financed by the State. The proposed version covers permanent social benefits, refugee benefits, earmarked assistance due to natural disasters, specialized care for persons with mental disorders, self-help community facilities. The most popular benefit

type – temporary cash benefits – becomes a responsibility of the *gmina*, although it will be subsidized by the State in the interim period of three years.

These changes are identified in the Justification of the project as *main change directions*. The “new” legislation is also expanded by a whole series of provisions taken from current ordinances. Although such treatment increases the difference between the “old” and “new” legislation, it does not contribute anything new to the functioning of the social assistance system. In fact, the range of proposed innovations is limited. Although we can read in one of the first sentences of the Justification that *the principal objective of the proposed changes is*

*the reconstruction of the social assistance system*, we cannot help the impression that in reality we are dealing here only with its slight adjustment. The slogan of “new legislation” hides nothing more than an amendment of the old one. What is more, some changes are a continuation of earlier amendments. This applies in particular to the change that is possibly the most far-reaching – shifting the responsibility for temporary benefits on the *gmina*. Shifting tasks from the group of tasks that are commissioned (i.e. financed by the State) to the group of tasks performed by local self-governments (i.e. financed by *gminas* or *powiats*) reflects the principal direction of the evolution of the current social assistance system since its creation in 1990.

## The draft legislation does not fit into the public finances reform program

The proposed legislation does not refer to the public finances reform even at the declarative level. It does not contain any effectiveness-raising solutions, not even the so-called quasi-market mechanisms. The only perceptible trace of attempting to lower the costs, albeit only on the State side, is the proposition of a triple-tier charge for staying in a social-assistance home.

The starting point for preparing the draft legislation was not as much the will to rationalize public spending, including social assistance spending, as the conviction that the system is underfunded. In the government’s opinion, the need to make changes ensues from problems associated with insufficient funding. As we can read in the Justification, *“the*

*system of social assistance is the “last link” which in a situation of insufficient resources available for supporting an ever growing number of clients becomes in itself inefficient and restrictive, and this is why it is necessary to undertake activities that would be more effective and efficient.”* In the draft project of the legislation, these “more effective and efficient activities” boil down to changes in temporary benefits. Despite the awareness of budgetary limitations, the government accepts that they will cause a growth in expenditures over successive years (in excess of PLN 650 million in 2004 and in excess of PLN 1530 million in 2008).

No matter how one assesses the fragmentary solutions presented in the draft project and their

starting point, which, by the way, is indeed rooted in reality – the social assistance system has been underfunded in the past few years, in other words, budgetary resources earmarked for social assistance have not been covering citizens' entitlements –

social assistance seems to be excluded from the area of public finances reform. The question is whether this has been an intentional decision or is it the effect of the absence of coordination in government legislative work.

## The draft legislation is not a nucleus of a new concept of social policy

**B**oth the Law on Public Benefit Activity and Volunteerism and the Law on Social Employment constitute undoubtedly a new quality in the sphere of social policy. The first can be treated not only as a procedural expansion of the constitutional principle of subsidiarity but, first and foremost, as an expression of the will to include non-governmental organizations (NGOs), with their energy and inventiveness, in the processes aimed at solving social issues. The second piece of legislation takes on the problem of activating citizens excluded from the labor market, which to date has been totally absent from social policy. Both pieces of legislation can be viewed as elements of a new social policy, active and activating, urging social partnership and, therefore, involving local communities to a higher level than hitherto. Whereas in the draft legislation on social assistance there is no trace of such social policy model or of any links with the two above-mentioned pieces of legislation. It contains no special provisions that would stimulate cooperation between local self-governments and NGOs (while the possibility of such cooperation has existed for a long time). In turn, social employment has not found its way to the list of social assistance benefits,

and social integration centers and clubs – to the list of social assistance facilities. Consequently, it is difficult not to have the impression that the draft legislation on social assistance and the two other pieces of legislation belong to two separate orders.

Indeed, it should be noted that according to the government's intention *the suggested changes aim first and foremost at activating the client while at the same time improving his attitude – teaching him to cope in a difficult life situation*. The draft legislation gives key importance to the so-called social contract. Leaving out the doubt whether a certain working technique, which as any technique has its applicability limitations, can be raised to the rank of a legislative principle, there is the question of the basis for hopes associated therewith. Social assistance centers have been applying the social contract for years, without much success. Even the authors of the draft legislation themselves express skepticism with respect to its effectiveness when they write in the Justification that they do not predict any significant impact of suggested regulations on the labor market. *A certain impact consisting in promoting the will to look for work among social assistance beneficiaries may be created by the introduction of the social*

*contract institution. Nevertheless, the scale of that phenomenon and its influence on the labor market are difficult to estimate.*

Consequently, the draft legislation on social assistance does not constitute a step toward

implementation of a new concept of social policy. In this situation one must ask which legislative initiatives of the government should be treated as an expression of its true intentions since they do not make up a cohesive whole.

## **The government project does not respond to current social challenges and needs**

**T**he work on a new legislation on social assistance was not taken up out of the will to develop new forms of dealing with social problems. On the contrary, the project is based on the assumption that the current social assistance system meets the needs of the Polish society but only suffers from insufficient funding. *The condition of public finances – we can read in the Justification – prevents the introduction of a universal guaranteed financial support for all low-income citizens. This is why the new regulations focus on those “target” groups where there exist additional criteria sanctioning benefits, such as a prolonged illness, disability, absence of work prospects.* In the government’s opinion, ideal social assistance is one that guarantees a minimum income to everyone. This point of view is rooted in the redistribution model of social policy, which elsewhere in the world is becoming obsolete. This, in turn, indicates that the draft legislation on social assistance is “outdated” by its very nature.

Of course, one would not have to be concerned with developments elsewhere in the world if one were certain that the social assistance system which the draft legislation supports is indeed

what Poland currently needs. But such certainty is simply not there. It should be remembered that the system was developed between 1989 and 1990, on the eve of the Great Change. Its objective was to ensure social protection – minimize the social costs of transformations, the size of which was at that time unforeseeable. There is no doubt that social assistance has acquitted itself of that task. However, today’s task is not to protect the weakest but to stimulate social and economic development so as to ensure a place for the weakest within the society and not on its periphery. The current system fails to redirect social assistance practices and this is why it requires changes. First of all, tasks need to be redefined and new instruments must be found. The government draft project does not take up that mission and tries to solve new problems with old methods. Therefore, it is “outdated” also in another sense – by falling short of meeting current social needs.

## **The draft legislation on social assistance must be withdrawn from the Lower House**

**O**ne cannot see any rational reasons why this draft of a new legislation on social assistance has been developed. It was neither out of the need to reform public finances, since it does not take this issue into consideration at all, nor out of the will to introduce new solutions and regulations into the social practice leading to some sort of a true reconstruction of the system, because none are proposed. There is no doubt that the range of introduced changes justifies an amendment of the current legislation. What is more, it must be admitted that some proposals referring to important particular issues are welcome, such as formalizing the status of private care facilities and placing them under public supervision. But why would this amendment take the form of a legislative initiative? The matter would probably not be worth fussing about were it not for a single but very significant threat. Indeed, the adoption of the new legislation may delay a real reform of social assistance. Therefore, it is better to withdraw the current project from the Lower House and start the legislative work all over again.

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