

# PROCEDURES OF ALLOCATING SOCIAL SUPPORT BENEFITS IN THE POLISH LEGAL ORDER – AN OVERVIEW OF RELATED ISSUES

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## ***Abstract:***

*The objective of this article is to present basic mechanisms used by the Polish legislator in developing procedures related to granting of social support benefits. The object of analysis included regulations governing the procedure related to granting of housing allowances, family benefits and benefits from the alimony fund. The procedures are characterised with significant decentralisation of regulations, whose sources are both regulations of the Code of administrative procedure, detailed regulations and executive acts. Despite certain differences in legal institutions used by the legislator, the procedures are constructed in compliance with one scheme based above all on very high activity of the applicant to demonstrate his or her fulfilment of premises required for granting of the applied for benefit.*

**Keywords:** *social support – administrative procedure – housing allowances – alimony fund benefits – family benefits – decentralisation of regulations.*

In the Polish legal system, social support benefits belong to the social protection system and they are granted to satisfy certain needs or to persons in a specific situation. Defined as above, social support takes a position in the social protection system right after social security (retirement, pension and health security), but before social assistance and constitutes a transitory form between those two components of social protection<sup>1</sup>. The difference between social security and social support is that the latter is performed in the subjective scope by the bodies of public administration, and in particular by bodies of territorial self-government, and not by the social security institution. On the objective side, social support applies to all persons who – because of their age, employment history and health condition – cannot or need not undertake employment in order to obtain resources to satisfy their needs and, therefore, they are entitled to claim allocation of such funds on the legal path<sup>2</sup>. On the other hand, social support as defined above differs from social assistance only with respect to the objective scope as, in subjective respects, it is usually performed by the same institutions. Whereas social assistance is supposed to satisfy the basic needs of a person (family), which the given person or family is not able to take care of using their own capabilities, resources and rights, the situation is different in the case of social support. Benefits foreseen within social support are, in fact, granted to persons in

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<sup>1</sup> S. Nitecki, Świadczenia z funduszu alimentacyjnego i dodatki mieszkaniowe. Procedura i tryb przyznawania, Wrocław 2009, p. 18.

<sup>2</sup> M. Andrzejewski, Ochrona praw dziecka w rodzinie dysfunkcyjnej (dziecko-rodzina-państwo), Kraków 2003, p. 118.

order to satisfy a certain need (housing allowances), because of a specific actual condition of the person (unemployment), or they constitute a form of support to persons and families who do not generate high incomes but bring up children, or require additional assistance because of health condition or age (family benefits, benefits from the alimony fund). Whereas in the case of social assistance benefits, bodies of public administration require activity in striving to resolve the difficult living condition, in the case of social support the fact of obtaining the benefits is not as a rule connected to a form of activity aimed at improving one's living condition. Consequently, in the case of social support one can refer to utilisation of the welfare function and not a function aimed at achieving independence and leaving the social protection system<sup>3</sup>. Moreover, it should be emphasised that although the said benefits perform different functions in the state social policy system, their aim is similar and it comes down to enabling persons and families live in such conditions as correspond with human dignity<sup>4</sup>.

The group of social support benefits includes first of all housing allowances, family benefits and alimony fund benefits. The procedure of granting the above mentioned benefits constitutes the object of analysis in this article. However, considering limited scope of such studies, it is impossible to present all procedural institutions connected with the analysed subject area. Therefore, the objective of this article is only to demonstrate basic mechanisms used by the legislator in developing those procedures.

As an introduction into the discussed issues it ought to be stated that conditions for granting the above benefits are regulated in separate acts<sup>5</sup> which, apart from material and legal issues, contain procedural regulations. Respective provisions are also contained in executive acts issued on the ground of statutory delegation<sup>6</sup>. However, despite the broad normative matter including procedural regulations, procedures governing granting of the aforementioned benefits should be classified as so-called non-autonomous procedures. In fact, provisions of the Code of administrative procedure<sup>7</sup> apply to all those procedures in aspects which are not regulated; in the Polish legal order, the Code of administrative procedure is the fundamental act regulating the procedure before bodies of public

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<sup>3</sup> S. Nitecki, *Prawo do pomocy społecznej w polskim systemie prawnym*, Warszawa 2008, p. 46-48.

<sup>4</sup> S. Nitecki, *Świadczenia z funduszu alimentacyjnego i dodatki mieszkaniowe*, op. cit., p. 11.

<sup>5</sup> Respectively, in the Act of 21 June 2001 on housing allowances (Journal of Laws № 71, item 734 as amended); Act of 28 November 2003 on family benefits (consolidated text in the Journal of Laws of 2006, № 139, item 992, as amended) and in the Act of 7 September 2007 on assistance to persons entitled to receive alimony (consolidated text in the Journal of Laws of 2009, № 1, item 7, as amended).

<sup>6</sup> See regulation of the Council of Ministers of 28 December 2001 on housing allowances (Journal of Laws № 156, item 1817, as amended); regulation of the Minister of Infrastructure of 27 December 2001 on the manner of conducting the environmental inquiry, template of the inquiry questionnaire and declaration on the financial status of the applicant and other members of the household, as well as template of identification document of employee entitled to conduct the environmental inquiry (Journal of Laws № 156, item 1828); regulation of the Minister of Social Policy of 2 June 2005 on the manner and mode of procedure in cases related to family benefits (Journal of Laws № 105, item 881) and regulation of the Minister of Labour and Social Policy of 7 July 2010 on the manner and mode of procedure, method of determining the amount of income and templates of the application, certificates and declarations related to determination of the right to obtain benefits from the alimony fund (Journal of Laws № 123, item 836).

<sup>7</sup> Act of 14 June 1960 Code of administrative procedure (consolidated text in the Journal of Laws of 2000, № 98, item 1071, as amended) – hereinafter the C.A.P.

administration in individual cases resolved by way of administrative decision<sup>8</sup>. One ought to stress here that in proceedings related to allocation of housing benefits and family benefits, provisions of the Code of administrative procedure are applied directly and, thus, without any changes with respect to general principles of applying them. However, in proceedings related to allocation of benefits from the alimony fund, provisions of the Code of administrative procedure are applied respectively which means that even in cases not regulated in detailed provisions, the given body ought to adapt the text of procedural provision from the Code of administrative procedure to the regulation contained in the provision of substantive law<sup>9</sup>.

It ought to be raised here that the administrative procedure regulated in the provisions of the Code of administrative procedure does not constitute a normatively closed system, which is evidenced by the references to separate regulations, contained in the Code of administrative procedure, with some of the separate regulations relating to particular procedural issues, e.g. detailed requirements to be fulfilled by the application, different deadline of handling cases than prescribed in the Code of administrative procedure or different deadline for appeal. Typical regulations of one or two provisions of the Code of administrative procedure are replaced by detailed provisions of a separate act as an integral part of legal regulation of the procedure, but only in selected issues regulated by that act and during the period of its validity. This does not involve infringement of administrative procedure cohesion, its general principles or fundamental procedural guidelines, as it only involves change of the content or form of certain procedural assumptions or their legal effects, or the impact onto the course of the administrative case itself<sup>10</sup>. However, detailed regulations may also introduce procedural differences, which in selected cases restrict application of certain provisions of the Code of administrative procedure, exclude application of some of them because of introduction in their place of own procedural regulations applicable to examination of cases of one kind<sup>11</sup>.

All the above legislative efforts were applied to regulating procedures governing the granting of social support benefits constituting the object of interest of this article. In fact, analysis of procedural regulations contained outside the Code of administrative procedure and related to granting of those benefits allows the conclusion that most of them expand the regulations contained in the Code of administrative procedure, or in a few cases modify or completely exclude their application in certain situations. It may also be the case that the aforementioned laws constitute in part redundant repetition of the regulations contained in the Code of administrative procedure. Moreover, they introduce new – towards the ones contained in provisions of the Code of administrative procedure – procedural regulations concerning, above all, methods governing determination of facts of the case.

As far as the object of procedural regulations contained outside the Code of administrative procedure and relating to granting the analysed social support benefits is concerned, they relate above all to competence of a given institution in the specific area,

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<sup>8</sup> The reference is defined explicitly in art. 32 par. 2 of the Act on family benefits and in art. 25 of the Act on assistance to persons entitled to receive alimony. In case of proceedings related to granting of housing allowances, provisions of the Code are applied on the ground of art. 1 item 1 of the Code of administrative procedure.

<sup>9</sup> See: S. Nitecki, Świadczenia z funduszu alimentacyjnego i dodatki mieszkaniowe, op. cit., p. 22.

<sup>10</sup> J. Borkowski, (in:) (in:) Prawo procesowe administracyjne, tom 9 Systemu prawa administracyjnego, edited by R. Hauser, Z. Niewiadomski, A. Wróbel, Warsaw 2010, p. 87.

<sup>11</sup> Ibidem, p. 88.

method and conditions of initiating the proceedings, formal evaluation of the application, legal form of handling the case, activities connected with acquisition of respective information which is important to resolution of the case, deadlines of handling the case, enforceability of the decision and the possibility to revoke or amend the decision. These issues will be analysed further hereinafter.

Indication in detailed regulations of the institution competent to handle a given case is an example of expanding the provisions of the Code of administrative procedure. In fact, it ought to be emphasised that article 20 of the Code of administrative procedure, with respect to material competence of the institution, only contains a reference to provisions governing the scope of activity of the given institution. Basically, it is a situation in which competence of a body in terms of review and handling of a given category of cases is not specified in regulations governing the scope of its activity, but in legal regulations governing the competences which are contained in acts of substantive law character<sup>12</sup>. One should emphasise that apart from material competence of the institution, while regulating the procedure related to cases for granting of benefits from the alimony fund and family benefits, the legislator specified as well the method of determining its territorial competence (considering the place of residence of the person authorised to receive the benefit). However, introduction of this regulation constitutes redundant repetition of art. 21 § 1 item 3 of the Code of administrative procedure, which in the same manner defines the territorial competence of the institution of public administration in cases not concerned with real estate or running a workplace.

All the analysed procedures are initiated upon application submitted by an entitled person. However, the fact that detailed regulations specify the method of initiating the procedure may not be qualified as regulations excluding application of provisions of the Code of administrative procedure, but more as their elaboration. Indeed, pursuant to art. 61 § 1 of the Code of administrative procedure, the administrative procedure is initiated upon the request of a party or ex officio. Yet, the way of initiating the administrative procedure is usually determined by procedural regulations contained in detailed acts regulating issues related to specific legal relations in the area of administrative substantive law<sup>13</sup>.

Elaboration of the norms contained in provisions of the Code of administrative procedure (art. 63 § 2) includes specification in the analysed regulations of the obligation to submit respective documents along with the application for allocation of a specific benefit. What is more, attention ought to be paid to very high formalisation of applications for granting of those benefits in relation to the requirements contained in the Code of administrative procedure. Apart from the obligation to fill in a respective official application form, the party must attach thereto a number of certificates and declarations. Considering the scope of required documents, it ought to be stated that the degree of formalisation of those applications in fact shifted the burden of proof onto the applicant. If premises for allocation of a right to particular benefits are compared with the information which must be provided in order to fill the official form correctly and the catalogue of documents (certificates and declarations), which must be attached thereto by the party, there are no doubts that the aim behind formalisation of applications for granting of the analysed benefits was in fact to obligate the party to prove fulfilment of conditions for

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<sup>12</sup> J. Borkowski, Zakres przedmiotowy Kodeksu postępowania administracyjnego w świetle nowelizacji, „Państwo i Prawo” 1980, № 5, p. 39.

<sup>13</sup> H. Knysiak-Molczyk, Uprawnienia strony w postępowaniu administracyjnym, Kraków 2004, p. 115.

granting of the benefit covered by the application. In fact, this would be impossible if the procedure was conducted exclusively based on provisions of the Code of administrative procedure whereby, pursuant to art. 7 and art. 77 § 1 of the Code of administrative procedure, the burden of proof rests with the institution.

As far as formal evaluation of the application by the institution is concerned, a slight modification of respective regulations contained in the Code of administrative procedure was introduced by the legislator into procedures related to granting of benefits from the alimony fund and family benefits. These procedures foresee, above all, a longer deadline for submitting missing documents (from 14 to 30 days, whereas the deadline foreseen in the Code of administrative procedure is 7 days). Mixed character of that deadline deserves attention. On the one hand, the institution appoints this deadline independently and it acts as an organisational deadline, whereas on the other hand the institution does not have complete freedom in this respect as it is restricted by wording of the provision. Therefore, within specified limits and upon a justified request, the deadline may be extended up to the maximum length, but it may not exceed the limits prescribed in provisions of the Act<sup>14</sup>. It should also be emphasised that in the procedure related to allocation of benefits from the alimony fund, the legislator foresees a new legal institution as compared with those regulated in the Code of administrative procedure, namely the possibility to refuse consideration of the application, which takes place by way of administrative decision if required documents are not furnished within the deadline specified by the institution. It ought to be raised that a decision on refusal consideration of the application is only possible if the applicant fails to furnish the required documents. On the other hand, if the application contains deficiencies which prevent the institution from determining basic information concerning the applicant (including, above all, the address), on the ground of art. 64 § 1 of the Code of administrative procedure, the institution does not examine the application further. In this perspective it ought to be stated that examination of the application is a broader category than consideration of the application. In fact, examination of the application means that the institution proceeds to examining the case based on effective submission of the application. Therefore, the fact that the application is not further examined means that because of irremovable deficiencies the application was not submitted effectively. On the other hand, consideration of the application involves proceeding by the institution to analysis of the administrative case; it allows undertaking an activity aimed at removing deficiencies in the application and analysis of conditions related to acquisition of a given right. If deficiencies in the application are not removed upon request of the institution, this constitutes an obstacle against further examination of the application. Then, the institution does not proceed to the stage involving examination of the conditions related to the determination of the right and issues a decision on refusal consideration of the application<sup>15</sup>.

As far as the procedure related to granting of housing allowances is concerned, the legislator directly specified the form of handling the case – by way of administrative decision. Obviously, this does not mean that granting of benefits from the alimony fund and family benefits does not take place by way of administrative decision. However, implementation of this solution dispels all doubts related to interpretation of the form of

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<sup>14</sup> S. Nitecki, Świadczenia rodzinne. Procedura i tryb przyznawania, Wrocław 2009, s. 85.

<sup>15</sup> W. Maciejko, Procedura w sprawach świadczeń z funduszu alimentacyjnego, „Służba Pracownicza” 2009, № 1, p. 33.

handling the application for granting of a housing allowance<sup>16</sup> and it enables direct application in this procedure of the regulations of the Code of administrative procedure despite lack of direct reference to those provisions in the Act on housing allowances<sup>17</sup>.

As far as the procedure related to collecting evidence is concerned, the possibility of conducting environmental inquiries is foreseen in cases related to granting of housing allowances and family benefits. Within the general administrative procedure, the inquiry is to be qualified into so called unspecified evidence measures, i.e. measures whose utilisation is not regulated in the provisions of the Code of administrative procedure<sup>18</sup>. It ought to be emphasised that in contrast to social assistance, in the discussed cases the inquiry is only supposed to confirm the circumstances of actual condition declared by the party. It should, in fact be noticed that although the inquiry is an important element of the clarification procedure, its completion is not a condition of conducting the administrative procedure and issuance of the administrative decision. The fact of granting the housing allowance or family benefit occurs as a rule based on documents submitted by the applicant together with the application or furnished during the procedure; a provision which applies to social assistance, stipulating that issuance of a decision on granting or refusal to grant the benefit must be preceded by conducting of the inquiry, does not apply here. Therefore, the inquiry is only conducted if the institution has justified doubts with respect to credibility of documents submitted by the applicant<sup>19</sup>.

In all analysed kinds of procedure, the legislator foresees longer deadlines for handling of cases than prescribed in the Code of administrative procedure. Despite different provisions, the regulations constitute elaboration of the provisions of art. 35 § 4 of the Code of administrative procedure which stipulates that detailed regulations may specify different deadlines for handling of cases than indicated in the Code. However, this solution ought to be evaluated in a negative way. Since in the analysed procedures the obligatory clarification procedure is not conducted as a rule because of formalised activities connected with its initiation, the regimes applicable on the ground of the Code of administrative procedure would allow the applicant to obtain the decision without delay (art. 35 § 2 of the Code of administrative procedure), and thus – even immediately. However, detailed regulations applicable in this area require issuance of decisions within as much as 3 months of submitting the application.

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<sup>16</sup> In fact, the doctrine stipulates the necessity to specify the legal form of handling the case as a rule in the provisions of substantive law. On the other hand, court judicature allows the possibility of issuing a decision if provisions of substantive law do not explicitly foresee this form of handling a given case, but issuance of such decision must then result directly from the provision, e.g. as competence of the institution of public administration to resolve the case, expressed by means of a verb (“allows”, “allocates”, “confirms”, “consents”) – e.g. in resolution of the Supreme Administrative Court of 12.10.1998, OPS 6/98, ONSA 1999, № 1, item 3 and resolution of the Supreme Administrative Court of 15.11.1999, OPK 24/99, ONSA 2000, № 2, item 54.

<sup>17</sup> In fact, pursuant to art. 1 item 1 of the Code of administrative procedure, the Code of administrative procedure regulates among others the procedure before institutions of public administration in individual cases resolved by way of administrative decision, belonging to the competence of those institutions.

<sup>18</sup> A different opinion is expressed on this subject by G. Manjura (Dodatki mieszkaniowe. Komentarz, Warszawa 2005, p. 133), who believes that “environmental inquiry is a special form of evidence from visual inspection”, i.e. evidence whose performance is regulated by provisions of the Code of administrative procedure.

<sup>19</sup> S. Nitecki, Świadczenia z funduszu alimentacyjnego i dodatki mieszkaniowe, op. cit., p. 35 and 101. Pod. G. Manjura, Dodatki mieszkaniowe. Komentarz, op. cit., p. 133.

Another elaboration of the regulations of the Code of administrative procedure is introduction into regulations governing procedures related to granting of housing allowances and benefits from the alimony fund of mechanisms allowing immediate payment of granted benefits. Of a similar character are the supervisory rights, foreseen in regulations on the method of proceeding in cases related to granting benefits from the alimony fund and family benefits, vested in the institution of public administration, which allow revocation or change or decision in case of premises resulting in loss of the right to obtain the benefits. The legal institution established by those regulations undoubtedly serves to prevent unauthorised outflow of funds from the state treasury and constitutes a possible basis for subsequent claim to return the unduly received benefit which, however, requires issuance of another decision. From the procedural perspective, this institution supplements extraordinary modes of proceeding, foreseen in the Code of administrative procedure. In fact, it should be stated that in these regulations the legislator adopted completely different criteria of challenging final administrative decisions than those prescribed in the provisions of the Code of administrative procedure for resumption of proceedings, declaration of invalidity, revocation or change of a decision, by combining them closely with the substantive law premises related to obtaining the right to the benefits.

Summing up the above discussion, one ought to state that procedures related to allocation of social support benefits, despite certain differences, are constructed around one scheme based above all on very high activity of the party to demonstrate his or her fulfilment of premises required for granting of the applied for benefit. It is not certain, however, what was the reason behind introduction of additional (above those contained in provisions of the Code of administrative procedure) procedural regulations concerning granting of those benefits, as the legislator did not specify the reason thereof in any justification of drafts of the discussed detailed regulations. In terms of construction, the provisions in special acts are grouped in separate chapters or, as it is the case with the procedure related to granting of housing allowances, in one provision (art. 7) containing several editorial units (paragraphs). Nevertheless, the provisions alternate with substantive law and substantive-technical law regulations, which are not allowed in compliance with principles of proper legislation<sup>20</sup>. Moreover, such provisions may lead to incorrect application of them by institutions of public administration and to misleading a person who participates in proceedings conducted based on those regulations or who intends to subject him or herself to their regime.

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<sup>20</sup> Pursuant to § 24 of regulation of the Council of Ministers of 20 June 2002 on “Principles of the legislative technique” (Journal of Laws № 100, item 908), detailed regulations are to be published in the correct order – first, provisions of substantive law, followed by provisions concerning institutions (organisation provisions), provisions on proceedings before institutions (procedural provisions) and provisions on criminal liability (criminal law provisions) and, while being organised in thematic groups, they ought to be identified with titles describing the content of each group.