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INTERPRETATION OF THE PRINCIPLE OF SUBSIDIARITY IN THE LIGHT OF THE LAW ON SOCIAL ASSISTANCE OF 12 MARCH 2004

1. Introduction

The principle of subsidiarity (Latin *subsidium* – help, support) which originated from Catholic social teaching¹ is an essential principle of functioning of state organs. It constitutes the subject of concern of many branches of science, especially philosophy (including ethics), law, economy. It became the basis for building social order in a country. It is treated as a principle of international, state, regional and local politics and moreover, it is considered a legal doctrine.²

As far as the legal aspect is concerned, the principle of subsidiarity assumes that legal regulation of the situation of citizens and groups of citizens should ensure them maximum independence and participation in public duties, with the state as an auxiliary. Thus, the state should not take over the duties which may be realised by individuals and their families.³ The crucial justification of imperious influence of the state and of supranational organisations, on the range of operations of lower social structures, individuals, families, is undoubtedly the lack of their self-sufficiency in satisfying necessities of life especially with regard to limited economic, organisational possibilities or other important conditionings.

¹ *Encyklika Quadragessimo Anno*, Znak 1982, No. 7–9, p. 691 and the following; A. Klose, *Katolicka nauka społeczna*, Warsaw 1985, p. 30; J. Auleytner, *Nauka o polityce społecznej. Wybrane problemy teorii i praktyki*, Warsaw 1990, p. 56; J. Krucina, *Mysł społeczna Kościoła*, Warsaw 1993, p. 20–21; J. Wierusz-Kowalski, *Zasada subsydiarności, Człowiek i Światopogląd* 1981, No. 5, p. 62.

² T. Bąkowski, *Administracyjnoprawna sytuacja jednostki w świetle zasady pomocniczości*, Warsaw 2007, p. 57 and next.

³ M. Sthal (ed.), *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warsaw 2004, p. 136.

One should remember that legal doctrine does not have to be expressed *expressis verbis* in a normative act since it cannot result from the existing system of law. In Poland the principle has been included in the Constitution of the Republic of Poland⁴ and expressed in ordinary acts, among others in the Law on Social Assistance of 12 March 2004.⁵ Placing the principle of subsidiarity in the Preamble to the Constitution of the Republic of Poland requires developing it in ordinary legislation and in the process of application of law. Public organs are obliged to strive for creating, interpretation and application of the law in accordance with the principle of subsidiarity. It also constitutes the basis for definition of public tasks and their distribution between various entities of state power and determining the principles of execution of these tasks.⁶ It is indicated that this is one of the principles organising the life of a community which is of directive character. It is of fundamental importance in the sphere of interpretation of the Constitution and laws in which it is reflected. It is in the Constitution of the Republic of Poland, that political dimension of this principle is defined. If the principle of subsidiarity assumes the activity of local and regional community then it should be regulated in the sphere of substantive law. The Law on Social Assistance is such an example.

The principle of subsidiarity is of considerable significance in the relation between public administration – individual as far as it concerns administrative culture. Polish Law on Social Assistance obliged public administration organs (governmental and self-governmental) to completion of tasks in the sphere of social assistance in cooperation, according to the principle of partnership, with non-public subjects, especially associations, foundations, Churches and religious associations. Whereas individuals receiving social assistance benefits pursuant to the Law on Social Assistance have been obliged to active cooperation in solving difficult life situations (dysfunctions).

The principle of subsidiarity in relation to institutions of social assistance should be, above all, considered from two perspectives: first, connected to the situation of particular units (families) which should satisfy their life needs individually⁷, second, connected to organization of the state and

⁴ Dz. U. Nr 78, pos. 473 with subsequent changes.

⁵ Uniform text from 2009, Dz. U. Nr 175, pos. 1362 with subsequent changes, hereinafter called L.S.A.

⁶ A. Dylus, *Zasada pomocniczości a procesy transformacji*, Polityka Społeczna 1993, No. 9, p. 4.

⁷ S. Nitecki, *Prawo do pomocy społecznej w polskim systemie prawnym*, Warsaw 2008, p. 96 and I. Sierpowska, *Prawo pomocy społecznej*, Warsaw 2007, pp. 53–54.

such a distribution of powers which would situate tasks on a possibly lowest level of organisation. Within such interpretation it is of crucial importance to social assistance institutions.

The described principle assumes the responsibility of an individual (human) to satisfy their needs and anticipates interference of community with the state on the forefront when an individual is not able to satisfy their needs independently. Undoubtedly, it is a principle related to broad relation, individual – community – state. It could be reduced according to E. Popławska to two fundamental postulates: as much freedom as allowed, as much socialisation as necessarily needed; as much society as allowed, as much state as necessarily needed.⁸ The content of the principle of subsidiarity refers to independence of citizens and communities in performance of public tasks and is shaped by the law in force.

2. The principle of subsidiarity as general principle of social assistance

In the opinion of G. Szpor constitutional principles (materialising social justice, innate and inalienable human dignity or subsidiarity), principles provided for in the Law on Social Assistance and general principles of administrative proceedings are, above all, related to institutions of social assistance according to the form of benefits granted.⁹ Due to the fact that social assistance is granted by organs of public administration it is possible to speak about the principles of organisations and activity of social assistance administration (subsidiarity, decentralisation, legality, dualism, principles of administrative proceedings as searching for the objective truth, ex officio principle, information, active participation of parties in administrative proceedings, decision permanence, double-instance, rapidity and simplicity, the right to go to court), as well as about the principles characteristic of the social assistance system, namely the principle of subsidiarity, individualisation and typisation, discretion and demanding attitude, protection of personal goods and chattels, financing aid from public resources, payment, cooperation of entities benefiting from social assistance with so-

⁸ E. Popławska, *Wpływ zasady subsydiarności na przemiany ustrojowe w Polsce*, in: *Subsydiarność*, edited by D. Mielczarek, Warsaw 1998, p. 126.

⁹ Cz. Martysz, S. Nitecki, G. Szpor, *Komentarz do ustawy o pomocy społecznej*, Gdańsk 2001, pp. 11–13.

cial workers.¹⁰ General principles which relate to institutions of social assistance are not uniform and may be singled out on the basis of diverse criteria.¹¹

Summing up, both political principles resulting from regulations in the Constitution of the Republic of Poland and laws defining the functioning of public administration and principles *sensu stricto* related to social assistance are of crucial importance for social assistance.

The principle of subsidiarity is the legal key construction of social assistance. Despite the fact that the legislator in the Law on Social Assistance does not use the term ‘principle of subsidiarity’ the principle may be without effort interpreted in its Article 2 Section 1. An interdiction to replace individuals in tasks they can realise independently results from the above description. The state and its organs provide aid to people in need to some extent, as a last resort, and when it is necessary. The analysis of the above-mentioned regulation leads to a conclusion that it is a policy regulation. It expresses as well the general principle of social assistance.¹²

The discussed principle is reflected in the very statutory definition of social assistance. According to Article 2 of the Law on Social Assistance social assistance is an institution of social politics of the state aiming to enable individuals and families to overcome difficult life situations they are not able to overcome using their own possibilities, resources and rights. It is organised by organs of public administration (governmental and self-governmental) in cooperation with non-public subjects based on partnership. Moreover, individuals (families) benefitting from social assistance are obliged to adopt an active attitude in solving difficult life situations. It is then an aid organised by organs of governmental and self-governmental administration in cooperation with numerous non-public subjects in the form of diverse and time-changing benefits (both material and non-material) financed, above all, from public sources, realised according to the principle of subsidiarity

¹⁰ I. Sierpowska, *op. cit.*, p. 45 and the following and R. Michalska-Badziak, *Prawo pomocy społecznej*, rozdz. IV, in: *Materialne prawo administracyjne, Pojęcia, instytucje, zasady*, edited by M. Stahl, Warszawa 2005, pp. 246–248.

¹¹ A. Miruć, J. Radwanowicz, *Zasady ogólne pomocy społecznej w orzecznictwie Naczelnego Sądu Administracyjnego*, in: *Polski model sądownictwa administracyjnego*, edited by J. Stelmasiak, J. Niczyporuk, S. Fundowicz, Lublin 2003, p. 237. and A. Miruć, *Pomoc społeczna*, rozdz. 7, w: *Administracyjne prawo materialne. Zagadnienia wybrane*, edited by E. Smoktunowicz, Białystok 2003, pp. 222–224.

¹² K. Stopka, *Zasada subsydiarności w prawie pomocy społecznej*, Warsaw 2009, p. 99 and the following.

and individualization of benefits justified by difficult life situation of these people (families).¹³ Its goal is to satisfy the indispensable needs as well as to prevent difficult life situations.

In the sphere of social assistance the discussed principle comes down to formulating some important assumptions. Firstly, society should not deprive the individual (family) of what they are able to do themselves, the so-called interdiction to deprive, secondly the state should support the individuals (families), the so-called subsidiary accompaniment, thirdly, the assistance should be of temporary character mobilizing the individual (family) to stimulation and self-reliant activity, the so-called subsidiary reduction.¹⁴ Subsidiary accompaniment means that in matters which individuals are not able to achieve on their own society assistance should be provided to them to help them become independent. However, the postulate of subsidiary reduction means that if a person is already independent, the society should cease helping them since it could damage the whole order and we would deal with excess of assistance activity.

The discussed tenet is based upon two grounds. The first is that appropriate organs of public authority are obliged to enable individuals (families) to overcome exceptional life difficulties. Secondly, the principle is implemented only if an individual (family) touched by difficult life situation (dysfunction) makes adequate efforts to cope with this situation unaided and this proves to be insufficient.¹⁵

According to the legislator, the principle of subsidiarity should be treated as a legal principle and a general principle of social assistance. It should be remembered that the notion of legal principles is not considered in unequivocal manner (J. Wróblewski, S. Wronkowska. M. Zieliński, Z. Ziemiński).¹⁶ According to J. Wróblewski, the notion of legal principle designates exclusively the norms of the law in force or their logical consequences, considered as fundamental to the legal system.¹⁷ The author distinguishes postulates of legal system from the principles. However, in the light of the concept of Poznan law school the notion of legal principles includes not only norms inferred from the texts of legal acts but also norms the binding force of

¹³ A. Miruć, *Pomoc społeczna...*, op. cit., p. 221–222.

¹⁴ A. Dylus, *Zasada pomocniczości...*, op. cit., p. 4.

¹⁵ I. Sierpowska, op. cit., pp. 46–49 and S. Nitecki, op. cit., pp. 96–101.

¹⁶ Because of the fact that the principle of subsidiarity is directly expressed in the L.S.A. and is expressed in the above concepts, I omit a detailed analysis of the above-mentioned views within the theory of law.

¹⁷ J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, Warsaw 1959, p. 257.

which has not direct justification in legal acts, solely in judicial doctrine unanimous as far as the fact of their binding force is concerned.¹⁸

Substantive considerations, namely objective criteria, support recognising the principle of subsidiarity as a general principle. Since subsidiarity indicates situations in which social assistance is generally applicable, it also expresses socially significant legal content. It defines the field of operation of social assistance and its basic objectives. Undoubtedly, it also constitutes substantiation and development of the principle of subsidiarity consolidating the right of citizens and their communities determined in the preamble to the Constitution of the Republic of Poland. This significantly influences further provisions of the Law. Other principles in the Law on Social Assistance, among others the principle of individualisation and facultative character of benefits, correspond with its content¹⁹; the principle of the duty of participation of individuals benefitting from social assistance in solving dysfunctions.²⁰

The principle of social assistance has features of legal norm and the obligation to observe is comprised in the general obligation to observe the law and influences significantly the content of its remaining regulations, permits its precise definition, modification and correction. The principle of subsidiarity in social assistance expressed in the Article 2 Section 1 of the Law on Social Assistance as a general principle, is of legally substantive character. This requires substantial proceedings of specified type and indicates the range of operation of social assistance that is *ratio legis* of the Law. This also determines values which should be realised by means of the regulations of the Law, it formulates basic estimations for interpretation of its particular provisions and decides on the content of the remaining substantial norms which it contains.

The content of the Article 2 Section 1 of the Law on Social Assistance and the principle of subsidiarity which it formulates:
firstly – it should be applicable in all institutions provided for in the Law on Social Assistance,
and secondly – any breach of the principle should be treated as a breach of law with all the resulting consequences.

It should be indicated that the question of practical application of the principle of subsidiarity in the process of granting benefits under social assistance is crucial.

¹⁸ M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warsaw 2002, p. 35.

¹⁹ Art. 3 Section 3 and 4 of the L.S.A.

²⁰ Art. 4 of the L.S.A.

3. Subsidiarity characteristic as significant aspect of the principle of subsidiarity

In accordance with the legislation in force, among the traits assigned to contemporary social assistance in Poland, the subsidiarity characteristic is mentioned next to individualisation and facultative character of benefits, financing of benefits from public funds, determining the amount of benefits on the minimum level, social justice. Social assistance functions in situations in which conditions of basic subsistence of the individual (family) are endangered. Difficult life situation is not sufficient, there has to occur an impossibility to manage with own funds, possibilities and rights (the characteristic of subsidiarity). The characteristic of subsidiarity appears to be the most important element of the principle of subsidiarity.

As mentioned above, the principle of subsidiarity in social assistance may be interpreted in several aspects.

Firstly, social assistance should be treated as a last resort in the whole system of social security. Social assistance is an element closing the system of social security in Poland, its specific 'life belt'. According to this principle, an individual (family) has the right to individual initiative and action in satisfying their needs individually, and the state cannot replace them in doing this if it is unnecessary. This approach is convergent with the principle of subsidiarity expressed in the preamble to the Constitution of the Republic of Poland.²¹ It results from one of the legal decisions of the Supreme Administrative Court (SAC) that ascertainment of the fact alone that a subject applying for financial benefit from social assistance did not use own possibilities and rights, constitutes a prerequisite for dismissal of the complaint and refusal to grant assistance.²²

In this situation it became necessary to create legal norms determining the objective and subjective scopes of the right to social assistance.

To the right to benefits from social assistance, if international agreements do not stipulate otherwise, are entitled Polish citizens if they live and reside on the territory of the Polish Republic, foreigners living and residing in Poland on the basis of settlement permit, having the permit for tolerated residence or a refugee status granted on the territory of RP and citizens of member states of the European Union or European Economic Area residing

²¹ A. Miruć, *Zasada pomocniczości w prawie pomocy społecznej*, Administracja. Teoria. Dydaktyka. Praktyka, 2008, No. 3 (12), pp. 26–41.

²² SAC sentence of 12 April 1994., SA/Gd 84/94, unpublished.

on the territory of RP with settlement permit.²³ The scope of subjects entitled to benefits has been determined and is subject to substantiation with relation to particular forms of assistance.

The individuals (families) who found themselves in a difficult life situation (dysfunction) and are not able to overcome it with their own financial resources and rights may apply for benefits from social assistance. The legislator, formulating the regulation of the Article 2 Section 1 of the Law on Social Assistance, employs underdetermined phrases since ‘the notion of difficult life situations, possibilities of entitlement and resources’ is not precisely defined. In order to determine the right content of the principle of subsidiarity the interpretation of the above-mentioned notions should be done.

The phrase ‘difficult life situation’ used by the legislator should be broadly interpreted and the limits of this interpretation are indicated by the Article 7 of the Law on Social Assistance which enumerates exemplary dysfunctions, among others: poverty, orphanhood, homelessness, unemployment, disablement, domestic violence, alcoholism, drug addiction, natural or ecological disaster, long-lasting or dangerous illness, the need for protection of motherhood or large family protection, helplessness in care and education, and household problems (especially in large and incomplete families), lack of skill in adaptation to life of young people leaving special education centres, difficulties in integration of people who were granted refugee status, difficulties in adaptation to life of people released from penal institutions. The exemplary list means that there may exist other premises for granting assistance e.g offence against property and that they cannot constitute a self-contained basis for refusal of instituting proceedings and granting benefits.²⁴ They are called social risk or social situations.

The types of situations justifying assistance indicate that the circumstances generating life difficulties are above all the reasons of individual character that is resulting from the fact of being a human, as well as environmental reasons resulting from membership to a society. Assigning a specific status quo to one of the mentioned groups of causes is not an easy task and depends on the circumstances of a specific case.²⁵

²³ Art. 5 of the L.S.A.

²⁴ G. Szpor, C. Martysz, S. Nitecki, *Komentarz do ustawy o pomocy społecznej*, Gdańsk 1999, p. 30.

²⁵ They are defined as social risk or social situations.

Interpretation of the principle of subsidiarity in the light of the Law...

It should be emphasised that the scope of the notion of difficult life situations will be subject to change according to transformations occurring in socio-political and economic relations in the country.

However, the fact of using the phrase 'entitlements, resources and possibilities' underlines the fact that social assistance is applicable in such life situations which are estimated from the angle of resources, entitlements and possibilities of people applying for benefits from social assistance. Thus, an individual (family) should satisfy their needs individually using own resources, possibilities and entitlements.

The notion 'entitlement' appears to be an elementary notion of legal and law language constituting a determined term. The doctrine of the theory of law understands under the term entitlement a legal situation occurring for a given subject according to the obligation of the addressee of the norm of attitude directed towards the rights of the same subject.²⁶ In principle, the right to which a specific subject is entitled is connected to a possibility to claim from the addressee of the legal norm the realisation of the required behaviour.

The term 'resources' used in the Law relates to property situation of the entitled which determines the income, regardless of its title and source, mainly remuneration, savings interests and material goods and especially valuable objects like works of art, jewellery, cars and immovables. However, the term 'possibilities' should be understood mainly as psychophysical features, occupational qualifications, skills.²⁷

According to the law in force, granting multiple forms of support (especially financial benefits) demands the fulfilment of definite formal requirements (revenue criterion) to avoid formation of a system of simple distribution of money and services. Granting financial benefits requires complying with income criterion which enhances the role of the principle of subsidiarity and the assistance really gets to people in need. This aspect of the principle of subsidiarity is reflected in regulations which concern determining property situation of persons (families) applying for benefits and return of benefits and bearing charges by beneficiaries of social assistance. The principle of subsidiarity relates both to financial benefits and care services provided in the environment or social assistance organisational units.

²⁶ S. Wronkowska, *Podstawowe pojęcia prawa i prawoznawstwa*, Poznań 2005, pp. 163 and 165.

²⁷ J. Starega-Piasek, *O roli prawa i wartościach w pomocy społecznej*, *Polityka Społeczna* 1998, No. 7, p. 10.

It should be added that limitation or refusal to grant a benefit might occur only in situations provided for in the Law on Social Assistance, that is mismanagement of benefits granted, intentional destruction of benefits, inappropriate use, mismanagement of own funds.²⁸ A person serving a penalty of deprivation of liberty is not entitled to benefits from social assistance and temporarily arrested persons are suspended from entitlement to benefits. Social assistance has the possibility to refuse a claim to return expenses for granted benefits which is also connected to the principle of subsidiarity. Organs of social assistance in particularly justified cases, especially if a request constituted a heavy burden for an obligated person or frustrated the results of assistance rendered, might abandon the return of unduly collected benefits on a request of social worker.

According to Polish legislation individuals and families who comply with the criteria defined in the Law on Social Assistance are entitled to claim for social assistance. Z. Leoński emphasises the fact that they may be treated as subjective law.²⁹ If the needs of individuals (families) correspond with goals and possibilities (especially financial) of social assistance they should be taken into account (Article 3 Section 4, Law on Social Assistance). Other solutions provide that a commune and a district (legally obliged to perform the task of social assistance cannot refuse social assistance to a person in need despite the existing obligation of private and legal persons (Art. 16 Section 2, the Law on Social Assistance).³⁰

In connection with the fact that social assistance benefits are realised by public authorities the right to social assistance benefits can be defined as subjective right. The public subjective right of a person (family) means that in a situation when their needs cannot be satisfied with own resources, possibilities and rights they can legally and effectively request social assistance benefits from administrative organs after having complied with the statutory criteria.³¹

The right to social assistance is a public subjective right of persons (families) which gives rise to an obligation and not a favour when it comes to satisfying their needs. The right to social assistance results from the content of the Constitution of the Republic of Poland, the Law on Social

²⁸ Art. 11 and art. 12 of the L.S.A.

²⁹ Z. Leoński, *Materialne prawo administracyjne*, Warsaw 2003, p. 280.

³⁰ Subjects to which tasks in the sphere of social assistance were commissioned by the local government units cannot also refuse assistance – Art. 16 Sec. 3 of the L.S.A.

³¹ J. Boć, A. Błaś, *Publiczne prawo podmiotowe*, in: *Prawo administracyjne*, edited by J. Boć, Wrocław 2005, p. 526–527.

Assistance and other legislative acts. The fact that in the Law on Social Assistance we find many regulations giving the possibility to grant benefits is the result of that Poland does not have sufficient financial resources for that purpose. In this situation discretionary rules demanding the sense of responsibility for the effects of social assistance from the workers of public administration (social workers) may serve better the achievement of its goals than inflexible regulations defining in detail the premises for granting social assistance. Discretionary rights do not transform a right into a mercy but increase the possibility to take into account different life situations and satisfying the most justified needs. When recognising the right to social assistance as public subjective right, protection procedure of its realisation should be ensured.

In the Law on Social Assistance the analysed principle was not regulated in the context of family relationships and duties.³² Therefore granting social assistance does not in principle depend on the possibilities of support from closest relatives. Solely in the case of care services the problem of the so-called family help is brought up. The essential indication of the discussed principle is the question of assuring protection to children deprived entirely or partly of parental care as well as legal obligation to bear expenses for a stay in foster homes or other care institutions which is imposed on parents. When a family is not able to ensure care the duty is taken over by the district. The form of assistance defined by the law depends on personal situation of the child and final judicial decision on placing the child in a foster family is brought out by proper family courts.

4. Organisational aspect of the principle of subsidiarity

Another aspect of the discussed principle is expressed in the division of tasks in the sphere of social assistance between the state and local government and also between particular levels of local government.

In principle in Poland, local government is in charge of social assistance, especially on the level of communes and districts. The tasks of government administration are in this case of supervisory, programme, planning and legislative character. The duty of local government is satisfying the needs of local and regional communities, whereas social assistance is undoubtedly part of these needs. The significant part of tasks in the discussed field falls

³² S. Golinowska, *Pomoc społeczna w koncepcjach współczesnego państwa opiekuńczego*, Polityka Społeczna 1998, No 7, p. 4.

to the commune. The tasks which exceed the financial and organisational possibilities of a commune are entrusted to bigger communities, the district and voivodship council.³³

The main charge of realisation of social assistance tasks lies on local-government administration, since more complete recognition of occurring needs of citizens and selection of more effective forms and methods of administrating social assistance is possible on the level of local communities.³⁴ A commune (and also a district) being the closest to the people in need and providing social assistance, implements the above-mentioned principle of subsidiarity.

The tasks effectuated in the discussed sphere by the units of local self-government (commune, district) are generally connected to factual administering social assistance in financial and non-financial form to people in need. On the other hand, tasks performed by units of regional self-government (voivodship self-governments) are of more general, strategic character and are related above all to supporting communes and districts in their activity connected to granting social assistance benefits.

Tasks and competence of voivodes in the domain of social assistance involve above all reviewing the quality of services and control and coordination of activities in this sphere undertaken by the units of local government and have been limited significantly.

However, legislative and supervising functions (minister in charge of social security) and consultative-advisory functions (Council for Social Assistance) have been attributed to the central administration level.

The fact that organs of public administration performing tasks in the domain of social assistance, in the more and more broad scope cooperate on the basis of partnership with other subjects from outside the administration sphere. It is connected to a more and more developed specialisation of certain tasks, extension of range of operation of assistance granted, as well as the necessity to a more precise definition of the needs in this scope. Hence, organizational model of social assistance existing in Poland evolves in the direction compatible with the principle of subsidiarity determined in the Constitution of the Republic of Poland and the Law on Social Assistance.³⁵

If an individual is unable to overcome life difficulties individually, they should turn for help to the communities closest to citizens. These com-

³³ I. Sierpowska, *op. cit.*, p. 48.

³⁴ Such a status quo occurs in practice in all Western European countries.

³⁵ A. Miruć, J. Maćkowiak, *Administracja pomocy społecznej w Polsce*, in: *Jednostka w demokratycznym państwie prawa*, edited by J. Filippek, Bielsko-Biała 2003, pp. 425–439.

munities, apart from local governments, may be, above all, non-governmental organizations. These institutions complement and frequently replace self-government administration in organizing help, take actions in favour of activation of people profiting from benefits, develop social initiatives, integrate people sharing the same problems. The cooperation of public authorities with non-governmental organisations is beneficial for administering and administered subjects. In this way the effectiveness of public tasks realisation and access to specific social assistance benefits and their quality are improved. It has measurable benefits to the citizens and their communities. The Supreme Administrative Court in one of sentences stated that according to the constitution, the principle of subsidiarity of the organs of commune with relation to community, individual citizens and their non-governmental organisations, the statutory duty of a commune, is to find optimal methods of cooperation with subjects administering social assistance.³⁶

The problematic of including non-public subjects into realization of social assistance tasks is connected tightly to organizational aspect of the principle of subsidiarity. It is a beneficial phenomenon both to social assistance administration and to beneficiaries. Thanks to involvement of non-public subjects in social assistance, the access to specific forms of support is increased and the standard of services provided is elevated. Furthermore, commissioning tasks gives administration organs benefits in form of financial savings.

Many subjects offering direct help to people in need operate in Poland. According to a criterion of legal basis of operation the most significant role is played by associations, foundations and churches and religious associations. They are the most full expression of the idea of civil society and should constitute an equivalent partner to the local government. It appears that their involvement in performing social assistance tasks became necessary because of fast development of administration tasks in this sphere which administration is not able to carry out. Their activity fills the space between public administration and the citizen. Generally, their services are cheaper and more professional. First of all, they express social needs better.

The above discussed issue lets us repeat after I. Sierpowska³⁷, that the principle of subsidiarity may also be analysed in the sphere of administering assistance by the state and the units of local government to non-governmental organizations and other non-public subjects which fulfil vital social

³⁶ SAC sentence of 14 June 2001, II SA/Kr 911/01, *Samorząd Terytorialny* 2002, No. 6, p. 49.

³⁷ I. Sierpowska, *op. cit.*, p. 48.

assistance tasks. Therefore, we deal in this situation with the so-called indirect support of citizens whose needs are frequently satisfied by non-governmental organizations.

5. Final remarks

The principle of subsidiarity is the key legal construction of social assistance. Its multi-faceted character is, above all, the evidence of its complexity. Despite rich literature on this subject, a uniform, generally accepted definition of this principle has not yet been created. Even in the literature appear the views that it is an open notion and the principle is recognized as one being in continuous formation.³⁸

The reflection of the discussed principle is found in the very legislative definition of social assistance. In the context of administrative-legal regulation, the postulate of enhancement of the rights of citizens and their communities which requires entrusting the right to individual realisation of any public task to lowest institutionalised local forms of social life, ensues from the assumptions of the principle of subsidiarity. Communities of higher rank and the state are to be a *subsidiium* and should not perform public tasks which can be performed on a lowest level. The legislator, while creating the principle of subsidiarity wanted to avoid promoting people, who according to their own will would restrain from indispensable activity aiming at improvement of own life situation, being convinced that a proper organ of social assistance will replace them in supporting financially their family.³⁹

The described principle has both positive and negative aspects. On the one hand, it requires helping those who are not able to get over the difficulties with their own funds, rights and possibilities and on the other, it forbids the state to hinder individuals (families) from their individual actions.⁴⁰

The principle of subsidiarity appears to be a principle having significant importance in shaping the relation individual – community – public administration and which belongs to the so-called principles of administra-

³⁸ A. Dylus, *Idea pomocniczości a integracja europejska*, Państwo i Prawo 1995, No. 5, p. 61 and P. Haberle, *Das Prinzip der Subsidiarität aus der Sicht der vergleichenden Verfassungslehre*, Archiv des öffentlichen Rechts 1994, Vol. 119, No. 2, p. 172.

³⁹ W. Maciejko, *Instytucje pomocy społecznej*, Warsaw 2009, p. 24.

⁴⁰ S. Nitecki, *op. cit.*, p. 96.

tive culture.⁴¹ It may be analysed in the context of duties of the individual, assistance duties of third persons, and relations of social assistance to other benefit systems. The Article 2 Section 1 of the law on Social Assistance quoted repeatedly in the present study plays the role of a programme regulation, expressing the multifacetedness of the principle of subsidiarity as general principle of social assistance.

S U M M A R Y

The fundamental, multifaceted principle of social assistance provided for by the Constitution of the Republic of Poland and expressed in Article 2 Section 1 of the Law on Social Assistance is the principle of subsidiarity. Even though the legislator does not use the notion of subsidiarity it is easily interpreted from the Article. In the present study the principle is considered, above all, from two points of view: the first one related to situation of individual units (families) which should satisfy their needs individually using their own means, possibilities and entitlements, the second one connected to such organization of the state and such distribution of powers to situate them on the lowest level of organisation possible (a commune, a district).

⁴¹ G. Łaszczycza, Cz. Martysz, A. Matan, *Kodeks postępowania administracyjnego. Komentarz*, vol. 1, Warsaw 2007, p. 95.

