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RISK MANAGEMENT OF UNDULY COLLECTED BENEFITS IN SOCIAL WELFARE UNITS IN POLAND

ZARZĄDZANIE RYZYKIEM NIENALEŻNIE POBRANYCH ŚWIADCZEŃ W JEDNOSTKACH POMOCY SPOŁECZNEJ W POLSCE

Summary: This article addresses the issue of unduly collected social welfare benefits in Poland, analyzing the legal mechanisms for their recovery and risk management in this area. The author highlights the complexity of the definition of “unduly collected benefit” and the associated interpretational difficulties. The obligation to return unduly collected benefits and the issue of the statute of limitations on claims are discussed in detail. A crucial part of the study is the analysis of risk factors, among which the most significant are identified as: intentional or unintentional concealment of information by beneficiaries and procedural errors by administrative bodies. The author emphasizes the importance of prevention, including reliable information about obligations and careful verification of data. The study points to the need for more precise regulations and strengthened control mechanisms, balancing the public interest with the rights of individuals receiving support.

Keywords: risk management, social welfare in Poland, unduly collected benefits, management, risk factors

Streszczenie: Artykuł porusza problematykę nienależnie pobranych świadczeń z pomocy społecznej w Polsce, analizując mechanizmy prawne ich odzyskiwania oraz zarządzania ryzykiem w tym obszarze. Autorka podkreśla złożoność definicji „nienależnie pobranego świadczenia” oraz związane z nią trudności interpretacyjne. Szczegółowo omówiony zostaje obowiązek zwrotu nienależnie pobranych świadczeń oraz kwestia przedawnienia roszczeń. Istotną część opracowania stanowi analiza czynników ryzyka, spośród których

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za najistotniejsze uznaje się: celowe lub niezamierzone zatajanie informacji przez beneficjentów oraz błędy proceduralne organów administracyjnych. Autorka akcentuje znaczenie działań prewencyjnych, w tym rzetelnego informowania o obowiązkach i dokładnej weryfikacji danych. W opracowaniu wskazano na potrzebę precyzyjniejszych regulacji oraz wzmocnienia mechanizmów kontrolnych, z zachowaniem równowagi między interesem publicznym a prawami osób otrzymujących wsparcie.

Słowa kluczowe: zarządzanie ryzykiem, pomoc społeczna w Polsce, nienależnie pobrane świadczenia, zarządzanie, czynniki ryzyka

INTRODUCTION

The social welfare system in Poland undoubtedly plays an important role in providing support to individuals and families in difficult life situations. It should be noted, however, that this system faces challenges related to efficiency and transparency. Risk management in the public sector is not only a technical calculation of the probability of damage occurrence but also a complex process that takes into account social, political, and institutional aspects. Therefore, the issue of unduly collected benefits materializes as one of the key risks, undermining citizens' trust and generating financial losses. Legal instruments, such as the obligation to return unduly collected cash benefits, form the foundation upon which the integrity and credibility of the social welfare system rest. They allow for the elimination of abuses and constitute a specific defense mechanism protecting public funds from unjustified depletion.

In light of the above considerations, it becomes extremely important to thoroughly understand the issue of unduly collected benefits and to develop effective mechanisms for preventing and responding to this phenomenon. It is necessary to ensure that public funds allocated to social welfare are spent rationally and transparently, and that assistance reaches those who genuinely need it. This article focuses on the analysis of significant legal aspects related to the institution of unduly collected social welfare benefits. In particular, it focuses on discussing the concept of unduly collected benefits in light of applicable legal provisions and jurisprudence, analyzing the prerequisites for the obligation to return unduly collected benefits, the statute of limitations for claims arising from unduly collected benefits, and, above all, risk management in this area.

This article attempts to answer the following research problem: are the current Polish legal regulations regarding unduly collected social welfare benefits sufficient and effective in the context of ensuring rational management of public funds, protecting the state's financial interests, and respecting the rights of beneficiaries? The purpose of this article is to describe the current Polish legal provisions regard-

ing unduly collected social welfare benefits and to identify potential gaps and areas requiring clarification or modification, in the perspective of optimizing the risk management process and increasing the efficiency of the system.

The methodology used in this work is based on dogmatic-legal analysis, including an analysis of legal provisions, in particular the Act of 12 March 2004 on Social Welfare (hereinafter: the Social Welfare Act)¹ and the Act of 14 June 1960, Code of Administrative Procedure (hereinafter: the CAP)². An important element of the research will be the analysis of the jurisprudence of administrative courts (the Supreme Administrative Court—hereinafter the SAC, and Voivodeship Administrative Courts – hereinafter VACs), allowing for the identification of practical problems in the application of the law and the methods developed in the jurisprudence for solving them. This will be supplemented by an analysis of the literature on administrative law, administrative procedure, and social welfare.

Based on a preliminary analysis of legal provisions and jurisprudence, the following research hypothesis has been formulated: the current Polish legal regulations regarding the risk management of unduly collected benefits in social welfare, although constituting a necessary tool for protecting public funds, are, in practice, interpreted and applied inconsistently, are in some cases ineffective, and do not fully implement the principles of social justice and building trust in administrative bodies, which indicates the need for their clarification and strengthening of control and information mechanisms.

This article aims to provide a better understanding of the risk management mechanisms for unduly collected benefits in the social welfare system, particularly in relation to the presented research hypothesis.

DEFINITION OF AN UNDULY COLLECTED BENEFIT

The institution of the return of unduly collected benefits, despite its public law nature, originates from the institution of unjust enrichment—one of the sources of civil liability. The nature and purpose of this institution is to restore the property balance between subjects of law whenever it turns out that it has been disturbed by a property transfer that has no legal basis³. However, the institution of the return of unduly collected benefits has independently developed mechanisms for the creation of an obligation

¹ Act of 12 March 2004 on Social Welfare, consolidated text, the act is published in *Dziennik Ustaw* (hereinafter: *Journal of Laws*), the official gazette for the promulgation of Polish law (2024), item 1283, as amended.

² Act of 14 June 1960, Code of Administrative Procedure, consolidated text, *Journal of Laws* (2024), item 572, as amended.

³ G. Karaszewski, *Commentary on the Civil Code*, [in:] J. Ciszewski, P. Nazaruk (eds), *Kodeks cywilny. Komentarz*, Warsaw 2019, p. 722.

determined by a decision ending jurisdictional proceedings⁴. In particular, the concept of an unduly collected benefit within the meaning of the Social Welfare Act should be distinguished from the institution of undue performance, which exists only in civil law and is defined in Article 410 of the Act of 23 April 1964 – Civil Code (hereinafter: CC)⁵. The construction of the concept of an unduly collected benefit is contained in Article 6, point 16 of the Social Welfare Act, which states that an unduly collected benefit should be understood as “a cash benefit obtained on the basis of false information presented or failure to inform about a change in financial or personal situation”. The explanation contained in the aforementioned provision indicates that only a cash benefit from social welfare can be considered an unduly collected benefit. It should be emphasized that the legislator divided social welfare benefits into two categories, i.e., cash and non-cash benefits⁶. The above-mentioned definition refers only to the first group of benefits. It is therefore unacceptable to consider a non-cash benefit, e.g., in the form of a meal or necessary clothing, as unduly collected. A closed catalog of cash benefits is contained in Article 36, point 1 of the Social Welfare Act; it includes: permanent benefit, periodic benefit, specific-purpose benefit and special specific-purpose benefit, benefit and loan for economic independence, assistance for independence and for continuing education, cash benefit for maintenance and coverage of expenses related to learning the Polish language for foreigners who have obtained refugee status, subsidiary protection, or a temporary residence permit in the Republic of Poland granted in connection with the circumstance referred to in Article 159, paragraph 1, point 1, letter c or d of the Act of 12 December 2013 on Foreigners⁷, and remuneration due to a guardian for providing care granted by the court.

In addition to specifying the group of benefits that can be classified as unduly collected, the definition of an unduly collected benefit includes two causes leading to the undue collection of a benefit, i.e., the presentation of false information or failure to inform about a change in personal and financial situation.

The first situation may arise in the course of proceedings establishing the right to a given benefit, at the stage of gathering evidence. If a party presents false information and this situation comes to light, the proceedings are subject to resumption on the basis of Article 145, § 1, point 5 of the CAP. However, this information should be relevant to the case, i.e., there should be a direct relationship between the new circumstances or new evidence and the subject of the original proceedings in the case. Information that has been concealed must have an impact on the right to receive the granted benefit or on its amount. A party may present false informa-

⁴ W. Maciejko, *Commentary on the Social Welfare Act*, [in:] P. Zaborniak, W. Maciejko (eds), *Ustawa o pomocy społecznej. Komentarz*, 4th edn, Warsaw 2013, Article 98.

⁵ Consolidated text, *Journal of Laws* (2024), item 1061, as amended.

⁶ The indicated division results from Article 36 of the Social Welfare Act.

⁷ Consolidated text, *Journal of Laws* (2024), item 769, as amended.

tion, for example, in a statement made under penalty of perjury. There may also be a circumstance in which a party forges evidence in the form of a certificate from a private sector entity, i.e., an employer, or in the form of an official confirmation of certain facts by the competent administrative body. Then, the proceedings are subject to resumption pursuant to Article 145, § 1, point 1 of the CAP, because the evidence on the basis of which the factual circumstances relevant to the case concluded with a final decision were established turned out to be false. False evidence includes, among other things, false documents, i.e., forged or with falsified content. Forgery is the counterfeiting or alteration of a document. Moreover, to fulfill the criteria of counterfeiting a document, it is sufficient to counterfeit only a fragment of it, e.g., the issuer's signature or a stamp, as long as it has legal significance⁸. Resumption of proceedings on the basis of Article 145, § 1, point 1 of the CAP requires the joint occurrence of three conditions: firstly, in the evidentiary proceedings conducted in a given administrative case, there was the occurrence of false evidence. Secondly, the forgery of the evidence must be confirmed by a final judgment of a court or other body. Thirdly, the false evidence was the basis for establishing factual circumstances relevant to the case⁹. A party may also provide false information during a social worker's interview. The social interview is a special means of evidence, a specific way of collecting information about the party's situation, constituting for the social welfare authority a necessary and basic source of information about the personal, family, and financial situation of the person applying for benefits. It is the basis of factual findings made in the administrative decision and subject to legal assessment. The party applying for social welfare benefits is obliged to enable the authority to make factual findings, in accordance with Articles 4, 106, paragraph 4, and 107, paragraphs 1, 4a, 5, and 5b of the Social Welfare Act, i.e., to enable an assessment of the actual family and financial situation¹⁰. The party should provide the social worker with true information. They confirm the content of this special protocol by signing it. The presentation of false information may be a conscious action, consisting in deliberately misleading the authority in order to extort benefits, as well as an unconscious action¹¹. For example, a party may make a mistake, a clerical error, when preparing a statement.

The second reason leading to the undue collection of a benefit specified in the definition of an unduly collected benefit, i.e., failure to inform about a change in financial or personal situation, occurs after the issuance of an administrative decision, when the individual's right has been authoritatively concretized. The beneficiary was imposed

⁸ Judgment of the Supreme Administrative Court of 30 June 2020, I GSK 559/20, LEX no. 3048101.

⁹ Judgment of the Supreme Administrative Court of 17 December 2019, II OSK 3194/18, LEX no. 2771651.

¹⁰ Judgment of the Voivodeship Administrative Court in Łódź of 30 January 2020, II SA/Łd 766/19, LEX no. 2799036.

¹¹ I. Sierpowska, *Pomoc społeczna. Komentarz*, 5th edn, Warsaw 2020, p. 72.

with the obligation to immediately inform the authority that granted the benefit of any change in their personal, income, and financial situation that is related to the basis for granting the benefits. This obligation is defined in Article 109 of the Social Welfare Act. However, the party should be properly instructed about this obligation by the competent authority. The authority is obliged to do so by the principle of informing the parties expressed in Article 9 of the CAP. According to the cited principle, public administration authorities are obliged to properly and exhaustively inform the parties about the factual and legal circumstances that may affect the determination of their rights and obligations that are the subject of administrative proceedings and should ensure that the parties and other persons participating in the proceedings do not suffer damage due to ignorance of the law. For this purpose, they are obliged to provide them with necessary explanations and instructions. A person applying for a given benefit should therefore be properly informed, in particular about the consequences of presenting false information during the proceedings, as well as about the obligation resulting from the aforementioned Article 109 of the Social Welfare Act and about the consequences of neglecting this obligation. Due to the specificity of the parties to proceedings regarding the granting of cash benefits from social welfare, the authority should make every effort to make the party aware of the obligation incumbent on them. People applying for cash benefits from social welfare often struggle with disabilities, long-term illnesses, and other difficult life situations that very often affect their understanding of the law. In a way, the authority is called upon to act as an advisor and defender of the parties and participants in the proceedings in the social welfare system. The information obligation plays a particularly important role in proceedings in the field of social welfare, where parties often require proper guidance. If the beneficiary was not aware of their obligations and the consequences of their non-fulfillment, because the authority did not fulfill its information obligation, then the return of the benefit cannot be claimed. Therefore, it should be considered insufficient to provide instruction that amounts to quoting the provision in the content of the administrative decision or on the statement form that the party fills in during the proceedings. The role of the social worker is to properly explain to the party the information obligation incumbent on them, in particular in the form of a conversation conducted during the social interview. Social workers are obliged to provide the party with all necessary information about the legal situation in which the party finds themselves, and about the resulting rights and obligations. Lack of knowledge of the regulations may be the cause of inept and even destructive actions for the party, which is to be prevented by the authority's obligation to provide the party with appropriate information. The authority cannot limit itself only to providing legal information, but must also provide appropriate instructions on how to proceed in order to avoid damage¹². The finding that a person or family

¹² Judgment of the Voivodeship Administrative Court in Gliwice of 11 July 2017, IV SA/Gl 39/17, *Legalis* no. 1650578.

benefiting from cash benefits paid by social welfare authorities has collected such benefits unduly within the meaning of Article 6, point 16 of the Social Welfare Act requires the administration to demonstrate that these entities were aware of the existence of circumstances affecting the granting of this benefit and, despite this, provided the authority with false information or did not inform about a change in their financial or personal situation¹³. It is well established in the jurisprudence of administrative courts that unduly collected benefits should be understood only as benefits collected by a person who can be attributed certain characteristics regarding the state of consciousness (will) or specific actions (omissions)¹⁴. Therefore, in order to attribute to a person benefiting from benefits that they have unduly collected a benefit during the indicated period, the authorities should first demonstrate that they were aware of the existence of circumstances affecting the granting of this benefit and, despite this, provided the authority with false information or did not inform about a change in their financial or personal situation. The position that it is not possible to consider as fulfilling the requirements of proper instruction the citation of the content of a provision or provisions is well established in the jurisprudence of administrative courts¹⁵. Instruction meets the requirements of proper instruction only when it is worded in a way that is understandable to a specific person and in such a way that they can relate its content to their situation, so that they then know that a specific circumstance in their situation is relevant to the granting of their entitlement, and its occurrence creates an obligation on their part to inform the authority of this fact¹⁶. For example, it would be reasonable for a social worker to provide hypothetical circumstances that would result in the loss of the right to benefits. Instruction about circumstances whose occurrence in the future will result in the loss of the right to benefits must refer individually to the person receiving the benefit, and not only contain general norms that do not relate at all to the specific situation of the beneficiary at the given moment.

Furthermore, in relation to the essence of an unduly collected benefit, one should consider the situation in which the party to the proceedings did not inform the authority about a change in their living or financial situation affecting the entitlement to a cash benefit from social welfare or the amount of this benefit, but the fact of the change in the party's situation was known to the authority *ex officio*. It often happens that persons or families benefiting from cash benefits from social welfare *sensu stricto* simultaneously receive other benefits for which the same authority that granted the

¹³ Judgment of the Voivodeship Administrative Court in Lublin of 4 December 2019, II SA/Lu 541/19, LEX no. 2768279.

¹⁴ Judgment of the Voivodeship Administrative Court in Krakow of 13 November 2015, III SA/Kr 338/15, LEX no. 1939549.

¹⁵ See, among others, Judgment of the Voivodeship Administrative Court in Białystok of 14 May 2024, II SA/Bk 170/24, LEX no. 3722327; Judgment of the Supreme Administrative Court of 2 August 2024, I OSK 1520/23, LEX no. 3758933.

¹⁶ Cf., among others, judgments of the Supreme Administrative Court in Warsaw of 8 March 2013, case no. I OSK 1529/12; LEX no. 1339588, or of 27 October 2010, case no. I OSK 981/10; LEX no. 745403.

social welfare benefit is competent to determine the right. An example is family allowance. This allowance is included in the income of a family applying for a cash benefit from social welfare. During the period of receiving a cash benefit from social welfare, a person in the family may obtain the right to family allowance, which, in the case of exceeding the income criterion referred to in Article 8, paragraph 1 of the Social Welfare Act, will result in the loss of the right to a social welfare benefit. In the event of not exceeding the indicated criterion, there may also be a need to change the amount of the benefit received, such as a permanent or periodic benefit, because the amount of these benefits depends on the amount of monthly income earned by the person or family. In the event of the occurrence of the discussed circumstance (obtaining the right to family allowance), the party to the proceedings is not obliged to inform the authority about the change, because this fact is known to the authority *ex officio*. In this situation, the authority should initiate *ex officio* administrative proceedings to verify the entitlement to a cash benefit from social welfare, of which the party should be informed. If the authority fails to do so and pays the benefit without prior verification on the basis of Article 106, paragraph 5 of the Social Welfare Act, it is unacceptable to blame the party, to consider the benefit unduly collected, and to demand a refund. Such behavior of the authority would violate the principle of building trust in public authority expressed in Article 8 of the CAP. The public administration authority, or more specifically, the social welfare center, carrying out a wide range of activities in the field of social security, in practice encounters situations in which it has inconsistent information regarding the family of a beneficiary entitled to benefits. These inconsistencies should be examined and properly corrected *ex officio*.

A comprehensive understanding and application of the definition of an unduly collected benefit, based on an in-depth analysis of the provisions of the Social Welfare Act and taking into account the extensive case law, is a *sine qua non* of effective risk management in social welfare units. This definition, although at first glance it may seem unambiguous, in fact contains a number of subtleties, the knowledge of which is necessary for the correct classification of benefits as unduly collected. The correct interpretation of the definition plays a key role in the process of identifying and assessing risk. It enables a precise determination of which factual situations may lead to the creation of unduly collected benefits, and thus determines the implementation of adequate control and prevention mechanisms. Knowledge of the case law, i.e., established court rulings, is in turn necessary to ensure uniform application of the law and to avoid interpretation errors that may lead to incorrect classification of benefits as undue or, even worse, to unjustly imposing the obligation to return on beneficiaries.

In the context of risk management, knowledge of the definition of an unduly collected benefit and its correct interpretation allows for distinguishing situations in which there is a real risk of unduly collected benefits from situations in which

such a risk is minimal or does not exist. It also allows for the estimation of the probability of the occurrence of unduly collected benefits and the potential financial and image consequences for the unit, based on an analysis of specific factual and legal circumstances. Furthermore, it constitutes the basis for the implementation of appropriate verification, control, and monitoring procedures, as well as training for employees, in order to prevent the creation of unduly collected benefits, taking into account the specificity of a given type of benefit and potential sources of risk.

The multitude of entities involved in the process of granting and verifying benefits, as well as the complexity and ambiguity of the regulations, combined with the often difficult to determine *ex officio* financial situation of beneficiaries, undoubtedly increase the risk of errors and inaccuracies.

OBLIGATION TO RETURN AN UNDULY COLLECTED BENEFIT

The regulation in the Social Welfare Act regarding the obligation to return an unduly collected benefit is an implementation of the constitutional, paramount principle of social justice, which requires a balance between the interests and expectations of potential recipients of social benefits and the interests of those who, in practice, finance these benefits¹⁷. The enforcement of this obligation is a manifestation of the pursuit of maintaining balance in social relations. In light of the aforementioned principle, it is justified for the legislator to impose sanctions for dishonest, unjustified actions of an individual benefiting from support financed from public funds. The discussed obligation should therefore be identified with the need to redress the damage caused to the general public, who indirectly finance the expenses incurred for social assistance. In this context, it is important to emphasize that the application of sanctions within the social assistance system must be consistent with the fundamental purpose of such support — namely, to provide targeted help to those in need while ensuring compliance with legal standards. As noted in the literature, failure to adhere to these standards risks turning public assistance into an uncontrolled distribution of public resources¹⁸.

In order to be able to effectively invoke the obligation to return an unduly collected benefit and enforce its implementation from a given person/family, it is necessary to authoritatively concretize this obligation in the form of an administrative decision. It is therefore necessary to conduct proceedings to verify the existence of a factual situation giving rise to the obligation to return and to establish the existence of this obligation by means of an administrative act. This type of administrative deci-

¹⁷ G. Szklarski, *Konstytucyjne prawa socjalne na tle zasad sprawiedliwości społecznej*, "Public Procurement Law" 2014, no. 3, pp. 50-78.

¹⁸ E. Żolnierczyk, *Selected Sanctions in Polish Social Assistance Law*, "Wrocław Review of Law, Administration & Economics" 2020, vol. 10, no. 1, p. 61.

sion is declaratory in nature, as it is a declaration of will of the public administration authority confirming the existence of a given legal status as defined by the Act¹⁹.

This act will have legal effect *ex tunc*, i.e., from the moment the given legal status arises - in this case, from the moment the benefit is collected after prior presentation of false information or failure to inform about a change in the income situation, if this information had an impact on the entitlement to the given benefit or its amount.

In connection with the establishment of the obligation to return an unduly collected benefit, it remains to determine the amount of the benefit subject to return, to set a deadline for settling the liability, and to consider the possibility of applying the institution of waiving the claim for return. Taking into account the Code's principle of speed and simplicity of administrative proceedings, the verification procedure in the case of unduly collected benefits should include all the above-mentioned elements. As a result of one proceeding in this matter, a decision should be issued stating that the benefit was collected unduly and there is an obligation to return it, specifying the amount of the unduly collected benefit and the deadline for fulfilling the obligation to return, or possibly a decision to waive the claim for return. The above should be derived from the literal interpretation of Article 104, paragraph 3 of the Social Welfare Act. This is supported by the inclusion of the conjunction "and" in the interpreted provision and the use of the singular, not plural, form of "administrative decision"²⁰. Systemic interpretation also supports this interpretation of the provision in question. In recent years, the legislator, striving to unify the practice of returning unduly collected benefits in various areas of social life, has amended the regulations concerning the procedure for collecting these liabilities, for example, in the Act of 28 November 2003 on Family Benefits²¹ and the Act of 7 September 2007 on Assistance to Persons Entitled to Alimony²². These changes indicate the legitimacy of conducting one proceeding, resolving all the above-mentioned issues in the case of unduly collected benefits. A decision containing all the above-mentioned elements is also an enforcement title for the compulsory implementation of the obligation to return, which results from Article 104, paragraph 1 of the Social Welfare Act. Issuing one decision in the case of the return of unduly collected benefits does not violate the rights of the party; on the contrary, it determines their legal situation once and for all.

As mentioned above, the decision, in the part concerning the determination of the obligation to return an unduly collected benefit, is declaratory in nature. Also, the ruling on the amount subject to return, as a related act, is a declaratory element, because it results indirectly from the decision stating the undue collection of the

¹⁹ P. Przybyśz, *Instytucje prawa administracyjnego*, Warsaw 2020, p. 318.

²⁰ Judgment of the Supreme Administrative Court of 24 June 2020, I OSK 86/20, LEX no. 3110938.

²¹ Consolidated text, Journal of Laws (2024), item 323, as amended.

²² Consolidated text, Journal of Laws (2023), item 1993, as amended.

benefit and confirming the obligation to return, while the designation of the date of return has constitutive features²³. The decision concluding the proceedings in the case of an unduly collected benefit from social welfare is therefore of a mixed nature, i.e., constitutive-declaratory. The mixed nature of such a decision is also supported by the position of J. Zimmermann, according to whom each constitutive act contains elements of a declaratory nature, because it confirms literally or implicitly that the prerequisites for its issuance have occurred, while each declaratory act contains a certain element of constitutiveness, because only when such an act is issued can its addressee effectively invoke their right; such an act constitutively states that all the prerequisites for acquiring a certain right have occurred²⁴.

Despite the statutory obligation to return an unduly collected benefit regardless of family income (Article 98 of the Social Welfare Act), it is possible to apply the institution of waiving the claim for return at the request of the person concerned who unduly collected the benefit, or of a social worker, on the basis of Article 104, paragraph 4 of the Social Welfare Act. The authority conducting proceedings in the case of an unduly collected benefit, after establishing that there is an obligation to return due to the undue collection of the benefit, should verify whether there is a “particularly justified case” referred to in Article 104, paragraph 4 of the Social Welfare Act. More precisely, it is the social worker, as the person conducting the basic evidence in social welfare cases, i.e., the social interview, who should verify the financial and living situation of the person or family who is a party to the proceedings and, on this basis, consider the possibility of applying to the head of the social welfare center for the application of a concession for the party in the form of a waiver of the claim for return. If the social worker applies for the application of this institution and the application is approved, then in the operative part of the decision, the authority will limit itself only to indicating the existence of the obligation to return the unduly collected benefit and to a provision on the decision to waive the claim for return. If, however, the authority decides not to apply the discussed concession *ex officio*, then before issuing a decision in the case, it should properly instruct the party to the proceedings about the possibility of applying for the application of the relief defined in Article 104, paragraph 4 of the Social Welfare Act. The purpose of Article 104, paragraph 4 of the Social Welfare Act is to protect the person obliged to return the collected benefits, which is related to the principle set out in Article 100, paragraph 1 of the Social Welfare Act of being guided in proceedings concerning social welfare benefits by the welfare of those benefiting from them. When determining the existence of a “particularly justified case,” the authority does not act within the framework of administrative

²³ I. Sierpowska, *Pomoc społeczna. Komentarz*, 5th edn, Warsaw 2020, p. 454.

²⁴ J. Zimmermann, *Prawo administracyjne*, Warsaw 2020, pp. 396-397.

discretion, because although the indicated expression is vague, and the legislator only emphasizes, by way of example, what should be identified with the concept of a particularly justified case, the authority is obliged to make a binding assessment, which may be broad but not arbitrary. As J. Zimmermann notes, contemporary doctrine and judicial decisions have permanently departed from the concept of identifying administrative discretion with the interpretation of vague concepts, and these concepts cannot currently be included in the statutory formulations authorizing discretion; the leeway resulting from the vagueness of these concepts authorizes the authority, as indicated above, to make a binding assessment²⁵. The authority is therefore obliged to comprehensively consider the party's situation and to consider the possibility of classifying it as a premise defined as a particularly justified case. The interpretation of the facts in connection with the provision of Article 104, paragraph 4 of the Social Welfare Act should take into account the assumptions, objectives, and principles of social welfare. It is significant that after determining that the party meets the normative prerequisites, on the existence of which the possibility of applying the institution of waiving the claim for return depends, the authority is not obliged to rule in accordance with the party's request, because in this particular case administrative discretion applies²⁶, which is determined by the use in the above-mentioned provision of the word "may," interpreted as authorization for discretion. Therefore, two types of decision-making leeway, i.e., administrative discretion and the use of a vague concept, are in this case interconnected, because the statutory formula authorizing administrative discretion has been supplemented with conditions specified in the form of vague expressions, and its implementation is practically dependent on their interpretation²⁷.

Taking into account the authority's action within the framework of administrative discretion, it should be emphasized that even in the event of an exemplary circumstance identified with the concept of a particularly justified case, i.e., a situation where the claim for reimbursement of expenses for the granted benefit, due to unduly collected benefits in whole or in part, would constitute an excessive burden for the person obliged or would negate the effects of the assistance provided, the authority is not obliged to waive the claim for return. The mentioned circumstance is closely related to the income situation of the person obliged, and it should be borne in mind that Article 98 of the Social Welfare Act provides for the independence of the obligation to return in relation to the income situation.

In conclusion, this analysis of the obligation to return unduly collected social welfare benefits reveals a complex relationship between the principle of social justice, the protection of public funds, and the situation of the individual. Risk

²⁵ Ibidem, p. 422.

²⁶ Judgment of the Supreme Administrative Court of 25 June 2019, I OSK 3533/18, LEX no. 2700723.

²⁷ J. Zimmermann, *Prawo administracyjne*, Warsaw 2020, p. 422.

management in this area requires balancing the public interest, which is to ensure the effective and purposeful use of funds allocated to social assistance, with the interest of the individual, who may find themselves in a difficult life situation. The need to concretize the obligation to return by means of an administrative decision, as well as the possibility of waiving this obligation in “particularly justified cases,” emphasizes the legislator’s desire to take into account individual circumstances. The decision-making process, on the one hand based on legal provisions, and on the other hand taking into account the interpretation of vague concepts, requires the administration to comprehensively consider the party’s situation, taking into account both the objectives of social welfare and the risk of abuse of the system. Therefore, effective risk management of unduly collected benefits in the context of social welfare is a challenge that requires continuous monitoring, analysis, and improvement of procedural mechanisms.

STATUTE OF LIMITATIONS ON CLAIMS FOR THE RETURN OF UNDULY COLLECTED BENEFITS

The role of the institution of the statute of limitations is to resolve the conflict between the interests of an inactive creditor, who adopts a passive attitude due to the lack of an obligation to immediately pursue the claim, and the interests of the debtor, for whom the obligation to satisfy the claim becomes too burdensome after a certain time, or who has even fulfilled their obligation but, due to the passage of time, cannot prove it. The statute of limitations serves to stabilize the legal order, as it removes the state of legal uncertainty in a situation where the entitled party does not exercise their subjective rights for a very long time, i.e., does not take action to obtain satisfaction of the claims they have against the debtor²⁸.

While property rights in civil law are subject to the statute of limitations in accordance with Article 117 of the CC, property rights in public law are subject to the statute of limitations or expire only if this has been expressly specified by the legislator²⁹. Receivables due to unduly collected social welfare benefits are public, not private, in nature, as the source of their creation is not a civil law event, but a public law event arising as a result of the issuance of an administrative decision. Therefore, the regulations of the statute of limitations institution regulated in the CC do not apply to unduly collected social welfare benefits. However, the legislator included provisions on the statute of limitations for this type of receivables in a special act.

²⁸ T. Partyk, *Instytucja przedawnienia ma służyć stabilizacji porządku prawnego*, LEX/el. (2017).

²⁹ Judgment of the Voivodeship Administrative Court in Warsaw of 23 January 2017, I SA/Wa 1094/16, LEX no. 2328928.

According to Article 104, paragraph 5 of the Social Welfare Act, receivables due to unduly collected cash benefits from social welfare are subject to the statute of limitations after 3 years from the date on which the decision determining these receivables became final. The legislator seems to understand the concept of the statute of limitations of receivables as the cessation of the legal grounds for collecting these receivables after a certain period. A time-barred receivable is not subject to enforcement under the provisions of the Act of 17 June 1966 on Enforcement Proceedings in Administration³⁰ and cannot be voluntarily returned³¹. The running of this period may be interrupted in the cases specified in Article 104, paragraph 6 of the Social Welfare Act, i.e., in the event of deferment of the payment deadline or spreading the repayment of the receivables into installments. The administrative decision resolving on the indicated concessions is discretionary in nature; therefore, it can be either positive or negative. The issuance of a negative decision by the authority in this regard does not interrupt the statute of limitations. Only a decision that essentially modifies the deadline for settling the receivables interrupts the running of the statute of limitations³². Article 104, paragraph 6 of the Social Welfare Act also regulates the moment of restarting the statute of limitations after interruption. It starts anew from the day following the day set as the last day for payment of the deferred receivables or the day set as the last day for payment of the last installment of the receivables.

Furthermore, in addition to the statute of limitations, the Social Welfare Act includes a prohibition on issuing a decision on the return of unduly collected benefits if more than 10 years have passed since the date of their collection (Article 104, paragraph 7 of the Social Welfare Act). The wording “shall not be issued” used in the cited provision indicates the binding nature of the provision.

When considering the issues of the statute of limitations and the prohibition on issuing a decision on the return of unduly collected social welfare benefits after a certain period, it is necessary to consider the method of calculating the periods. Taking into account Article 14 of the Social Welfare Act, which contains a reference to the appropriate application of the CAP as a general act in unregulated matters, it should be indicated that when calculating the periods of the statute of limitations and the period on which the prohibition on issuing a decision on the return of receivables depends, Article 57 of the CAP should be applied.

The periods in Article 104, paragraphs 5 and 7 of the Social Welfare Act are specified in years; therefore, Article 57, § 3a of the CAP, added to the CAP relatively recently – by the amendment of 7 April 2017, will apply. According to the indicated provision of law, “periods specified in years end with the expiry of that day in the last year that corresponds to the initial day of the period, and if there is no such day in the last year – on the

³⁰ Consolidated text, Journal of Laws (2023), item 2505, as amended.

³¹ M. Wincenciak, *Przedawnienie w polskim prawie administracyjnym*, Warsaw 2019, p. 172.

³² *Ibidem*, p. 173.

day immediately preceding that day.” In the case of the statute of limitations, the initial day of the period is the day on which the decision determining these receivables became final. Pursuant to Article 16, § 1, first sentence of the CAP, final decisions are those against which no appeal is available in the administrative course of proceedings or a request for reconsideration of the case. Final decisions therefore include decisions issued by the authority of first instance against which no appeal or request for reconsideration of the case was filed within the statutory period, decisions issued by the appellate authority or the authority examining the request for reconsideration of the case, and decisions that are final under special provisions³³. In the event of interruption of the running of the statute of limitations, the initial day of the new running of the period is the day following the day set as the last day for payment of the deferred receivables or the day set as the last day for payment of the last installment of the receivables. As regards the prohibition on issuing a decision on the return of unduly collected benefits after more than 10 years, if more than 10 years have passed since the date of their collection, the initial day of the period is the day of collection of the benefit. In practice, this will therefore be the day on which the amount of the benefit is credited to the recipient’s bank account or the day of actual receipt of the benefit in cash. The phrase “more than 10 years” may raise interpretation doubts, as it can be assumed that this wording means a prohibition on issuing a decision on the return of unduly collected benefits after the expiry of a 10-year period and at least one second, or only after the expiry of 11 years.

The institution of the statute of limitations on claims for the return of unduly collected social welfare benefits, protecting against claims that are too distant in time, is in line with the concept of limiting the risk of abuse and ensuring the stability of the system. The three-year statute of limitations, running from the date the decision becomes final, and the ten-year period limiting the possibility of issuing a decision on return, serve a preventive and stabilizing function, minimizing the risk of burdening beneficiaries with disproportionate or difficult-to-verify obligations. At the same time, these periods signal the need for prompt and effective recovery of receivables before the statute of limitations expires. The authority must therefore monitor and enforce receivables effectively, preventing their irretrievable loss due to the expiry of the period, which constitutes a real risk to public finances.

RISK MANAGEMENT – CONCLUSIONS AND RECOMMENDATIONS

According to the definition provided by G. Dickson, risk management encompasses the identification, analysis, and economic control of events that may have unfortunate or harmful consequences in the future for a company’s assets or abil-

³³ M. Kamiński, *Postępowanie administracyjne*, [in:] T. Woś (ed.), *Postępowanie sądowoadministracyjne*, Warsaw 2017, p. 153.

ity to generate income³⁴. Risk management, in the context of unduly collected benefits, is an iterative process that includes identifying, analyzing, assessing, and minimizing the risk of this phenomenon occurring. Its purpose is not only to reduce financial losses resulting from the unauthorized collection of benefits but also to protect the integrity of the social welfare system, build social trust, and ensure that public funds are directed to people who actually meet the statutory criteria. This process requires taking into account the specific functioning of social welfare units, the dynamics of relationships with beneficiaries, and the complexity of legal and social conditions.

A constitutive stage of risk management is the precise identification of potential sources and risk factors. Based on the analysis carried out, the following risk factors regarding unduly collected benefits in social welfare can be distinguished:

- Intentional concealment of significant facts, providing false data regarding financial, family, or health situation, falsifying documents;
- Unintentional failure to disclose significant facts resulting from insufficient information provided by the authority to the parties about their obligations;
- Failure to inform about changes in personal, income, or property situation that affect the entitlement to benefits, resulting, among other things, from misunderstanding of the regulations, negligence, lack of awareness of the obligation to inform about changes, difficulties in fulfilling this obligation (e.g., due to language barriers, lack of access to the Internet, or problems with communication);
- Interpretative and procedural errors on the part of the authority (incorrect application of legal provisions, errors in the document verification process, insufficient control over disbursed funds, resulting, for example, from lack of knowledge, work overload, or time pressure).

However, the catalog of risk factors in the discussed area is broad and open and requires systematic analysis. Furthermore, the risks themselves require analysis to determine the probability of a given risk occurring and the potential consequences of its materialization. In this context, it is necessary to take into account both quantitative factors (e.g., the number of benefits paid unduly, the value of these benefits) and qualitative factors (e.g., loss of public trust, costs of recovering benefits, negative impact on the unit's image).

Minimizing the risk of unduly collected benefits should be based on complementary strategies, adapted to the specificity of the identified threats. These strategies should include prevention, early detection, and adequate response. Prevention should include educational and informational activities aimed at beneficiaries and potential beneficiaries, training for social workers, and the implementation

³⁴ G. Dickson, *Principles of Risk Management*, "Quality in Health Care" 1995, no. 2, p. 75.

of clear and precise procedures. Early detection, in turn, should include monitoring warning signals indicating irregularities (e.g., inconsistent information in documents), open communication with beneficiaries and encouraging them to report any changes in their situation, and also taking into account anonymous reports of suspected irregularities. Finally, the response should be based on swift and decisive action to verify the information and take appropriate steps, launching the appropriate procedure.

Mechanisms for systematic learning from mistakes and adapting procedures should also be implemented in the area of social welfare. This would mean not only responding to identified irregularities but, above all, analyzing their causes, drawing conclusions for the future, and implementing changes in verification and control processes.

CONCLUSION

The analysis of the issue of risk management of unduly collected benefits in the social welfare system in Poland undertaken in this article sheds light on the complexity and multidimensionality of this issue. A detailed discussion of the definition of an unduly collected benefit, combined with an analysis of the prerequisites for the obligation to return and the issue of the statute of limitations, reveals the interpretational difficulties and practical challenges faced by social welfare units.

The analysis carried out, based on the dogmatic-legal method, enriched with a study of the jurisprudence of administrative courts, confirms the research hypothesis put forward at the outset. The applicable legal regulations, although they form the foundation of the system, are in practice interpreted inconsistently and raise doubts. The identified legal gaps indicate the need to clarify the provisions and also to strengthen control and information mechanisms. The complexity and ambiguity of the regulations governing the granting of benefits appear to be a significant risk factor, generating interpretational difficulties. Excessive casuistry and legal instability can weaken the effectiveness of regulations and hinder their enforcement, which fully applies to the area analyzed here.

A particularly important aspect that has been highlighted is the need to balance the public interest, which is the protection of public funds, with respect for the rights of social welfare beneficiaries. Balancing these often opposing interests requires the administration not only to have in-depth knowledge of the regulations but also to be able to apply them flexibly, taking into account the individual circumstances of each case.

In conclusion, this article contributes to further discussion on optimizing the risk management system for unduly collected benefits. It indicates the need to eliminate the identified ambiguities and legal gaps. At the same time, it em-

phasizes the importance of strengthening the competence of social welfare system employees in the interpretation and application of regulations. Social workers operating on the front line of contact with beneficiaries have a certain degree of freedom in interpreting and applying regulations. This decision-making autonomy, although indispensable in the individualization of the assistance process, can simultaneously lead to inconsistencies in practice and generate a risk of errors. The implementation of the proposed general recommendations requires a change of approach in the practice of applying the law, with an emphasis on individualization and prevention instead of solely reactive action.

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