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Social security for war and military invalids, veterans and repressed persons - between social provision on account of merit and social compensation

Since the regaining of independence by the Polish State in 1918, there has been a process of shaping benefit systems covering particular social groups over the years. At present, the groups include: war and military invalids, war veterans and persons subjected to various forms of repression in the war and post-war period for political, national, racial and religious reasons, soldiers of substitute military service forcibly employed in coal mines, quarries, uranium ore plants and construction battalions, civilian blind victims of warfare, anti-communist opposition activists and persons repressed for political reasons.

The emergence and evolution of entitlement systems covering particular social groups is the result of combination of historical events with political, constitutional and social factors. It has been widely accepted that schemes covering these particular social groups are part of the social security provision. The reason for this is the traditional assignment due to the qualification of these types of schemes to social security in the past. Continuation of this trend is incorrect as it has changed over the years. The schematic assignment results from the assumption that the pecuniary and non-pecuniary rights are financed from the state budget and implemented by state bodies. The basis for determining the nature of the systems of particular social groups is the process of their emergence, evolution and connection with other legal systems.

The aim of the social security system is to secure the individual in the event of the realization of the social risk by providing livelihoods. It counteracts the exclusion of the individual from social life for economic reasons and to counteract falling into extreme poverty. The characteristics of social security include its universality, the obligation and automaticity of coverage by the system in the course of service, professional activity, proportionality to the service, the impossibility of changing systems, the uniformity of the type of benefits in the event of the fulfillment of social risks by the system of benefits, the financing of benefits from the budget and implementation by state authorities.

In the case of schemes of particular social groups, there is no systemic universality, no automaticity of coverage and on dependence of these entitlements on professional activity. These schemes are based on past events. This is done by specifying the prerequisites, which are, respectively, action for the independence and sovereignty of the state or being subjected to

various forms of repression for political, national, racial and religious reasons during the war and in the post-war period, used respectively by the totalitarian systems of the Third Reich and the USSR and in the post-war period by state apparatus.

The legal nature of benefit systems has changed over the course of their historical development. In the inter-war period, they have a provisioning character. They were intended to provide a means of livelihoods to people whose disability resulted from their participation in the war and for people who reached a certain age and who had legitimized their active participation in the war but were not incapacitated. The entitlement systems of the inter-war period were characterized by combining the features and functions of the social security system with elements of the labor law, health care and social welfare system. They realized the principle of social solidarity consisting in ensuring the right to benefits financed from the state budget and creating preferential entitlements aimed at forcing and motivating the entitled persons to return to activity, thus reducing the burden of realized benefits on the state budget. Despite their statutory definition as provision schemes, there was a combination of social security and state support functions.

After the end of Second World War, the changes introduced in the entitlement systems resulted in the redefinition of the subjective circles, influenced by political, systemic and economic changes. The retention of the statutory designation of entitlements as provision occurred only in the case of entitlements granted to war and military invalids. This definition allowed this system to be assigned to the social security system. In the case of the system of entitlements dedicated to war veterans and persons subjected to various forms of repression during the war and in the post-war period, the cash benefits granted to these social groups lost their provision character. Granted cash entitlements in the form of allowances in the same amount for all entitled persons required the character of obligatory auxiliary or targeted benefits. The reliefs and exemptions granted, on the other hand, were optional. This system included entitlements in the fields of health care, social welfare, labor law and social security. There was a clear separation of provision and relief functions in these schemes.

In existing entitlement regimes, it is essential to establish and definition of the subject of entitlements. Article 19 of the Constitution of the Republic of Poland imposes an obligation on the state to surround veterans of struggles for independence with special care, especially war invalids. The term “veterans of struggles for independence” includes social groups that meet certain criteria allowing to distinguish: veterans of war who are war invalids, combatants who are war invalids, and combatants.

The constitutional norm has a framework character which makes it dependent on the will of the legislator to grant certain rights to a particular social group or social groups. The constitutional norm does not guarantee state protection to social groups that were subject to repression for political, national, religious or racial reasons during the war and in the post-war period. In this case, the references in the preamble of the 1997 Constitution of the Republic of Poland to the experience of violations of human rights and freedoms in the homeland should be considered as the basis for the granting of entitlements to these social groups. The broad scope of this reference means that its framework includes all forms of repression used during the Second World War by the Third Reich and the USSR and in the post-war period by the state apparatus. The definition of the subject of entitlements in the various systems of entitlement is done by indicating the premises and conditions whose fulfillment constitutes the basis for the granting of entitlement. The massive scale of repression applied during the Second World War and in the post-war period means that, as a general rule, entitlement systems are not established in the period immediately following the end of repression, but in a period far removed from its end. Also, the dependence of this process from political, constitutional and social changes cannot be overlooked. The scope of rights is also related to potential number of beneficiaries.

Benefits for war and military invalids, veterans and repressed persons are usually divided into pecuniary and non-pecuniary. In addition to this division, a distinction can be made between entitlements under different benefit schemes. In the case of pecuniary entitlements, a distinction can be made between mandatory entitlements and discretionary entitlements in terms of cash assistance. Monetary allowances and other pecuniary benefits to which particular social groups are entitled can be attributed to the function of financial assistance implemented by the state. They can be ascribed a function of purpose or economic destiny due to the concept used to define these benefits. However, the purpose and use of these funds depends solely on the will of the beneficiary. The particular social groups system do not allow for the possibility of creating personalized entitlements, specific and properly attributed to the person concerned, taking into account his or her economic or material situation arising at the time of taking action or being subjected to repressions, or in the period afterwards, whether working or not. Given the nature of the entitlements granted, the amount of pecuniary benefits, and the period of their receipt, they cannot be attributed and equivalence or compensation function. What is notable is the impossibility of considering these functions on the principles of a technique dedicated to the social insurance or social provision system. A feature of the systems of particular social groups is their correlation at the system level and the introduction of correlation with other fields of law, their impact on these fields and, as a result, the formation of inter-system

correlations and impact on other systems, such as, for example: the social insurance system, the health insurance system, labor law, tax law, social assistance. Progressive processes of unification and correlation of entitlements lead to modification of systems in terms of increasing their scope or adapting them to changing economic and social conditions over the years. On the other hand, non-pecuniary entitlements should also be considered as auxiliary entitlements. Within the group of these entitlements there can be distinguished the entitlements that can be used repeatedly, without limitations. These entitlements are the kind of benefit, aid from the state. They should be considered as aid entitlements due to the reduction of expenditures in households.

The separateness of legal acts regulating benefits for which war and military invalids, war veterans and repressed persons are entitled leads to the conclusion of the separateness of the benefit systems to which particular social groups are entitled. Each of the systems contains a separate scope of subjects and a separate catalogue of benefits to which a specific category of subjects is entitled. The autonomy of the systems is based on the action of the national community, social solidarity implementing wealth, financial solidarity and the guarantee of securing funds for the realization of entitlements. The question arises of maintaining a balance between the scope of entitlements, the financial capacity of the state and the scope of entitlements financed from the state budget. Attention is drawn to the principle of correlating the amount of special monetary allowances and cash benefits under schemes covering particular social groups. In general, systems covering these social groups can be described as systems where there is a unilateral obligation relationship imposed on the state. The systems set up lack the element of individual and group precaution. Assignment to the particular system is not a result of different forms of professional activity or service. In the case of these schemes, an important issue is the coincidence of rights to benefits. This occurs with regard to the overlap of pension benefits of war invalids and military invalids and the overlap of entitlements to cash benefits under separate schemes. It is necessary to distinguish the impossibility of accumulation of cash benefits from different schemes from the possibility of existing non-cash, in-kind entitlements from several schemes. In the case of systems of particular social groups, an important element is the time caesura applied to determine the time interval allowing the subject of entitlement to be distinguished with the simultaneous application of the premises specifying the nature of the entitlements. An incorrectly defined time frame results in a narrowing of the subject of the power. The possibility of claiming a particular status is not coercion but a right, which can be exercised by the applicant at any time. The functioning of the schemes is based on their funding from the state budget.

The system of cash benefits to which the designated social groups are entitled is not based on the principle of a one-off payment or a fixed amount to all those entitled. They are individual in nature as they depend on the date of granting the entitlement to persons and on the further duration of life. Among the entitlements granted for life is a group of non-pecuniary benefits. However, in this case, entitled persons may or may not use these benefits, depending on their individual needs. There also remains the question of non-monetary benefits which are benefits that the entitled persons cannot use because of their age, rendering the scope of these benefits pointless and inadequate to the needs of the entitled persons. There is no possibility of different entitlements being granted in individual cases with a broader scope or in a different amount from other entitled persons. In the systems of particular social groups, there is no unification of concepts in terms of the subjects of entitlement due to the basis on which the rights arise. Thus, it is not possible to determine the nature of the entitlement system by the concepts used to define the subject of entitlements. In these systems there are entitlements attributed to particular social groups. At the same time, concepts unified by features and functions are used to identify specific entitlements. Concepts defining entitlements specific to a particular system are also used. The use of concepts defined in other legal systems makes it possible to unify the conceptual grid used in various areas of law, which means introducing simplification and unambiguity of concepts. However, it may lead to a distortion of the nature of the rights to which a given social group is entitled. The aim of avoiding such a situation is to leave the existing conceptual grid in place. This is particularly the case for invalidity pensions for war and military invalids. For the system of particular social groups, it is characteristic to unify the procedures by referring to the procedures used in the social insurance system. This allows the use of universal, functioning legal regulations in terms of scope and operation to secure the efficient operation of pension authorities.

Entitlement systems covering particular social groups have been based on the combination of the nature of the provision system with a support, assistance function, which allows a new system to be formulated as a provision and assistance system. The use of this term is intended to reflect the nature of this system and its proper placement within the social security system. This avoids the misnomer of this system when using the term “veterans’ and repressed persons’ system” and the term “veterans’ law”. The introduction of such a conceptual generalization would be incompatible with the will of the legislator intentionally constituting separate benefit systems covering individual social groups. It would mean erroneous systematization of the belonging of these social groups to the proper system of entitlements and misinterpretation of the attribution of veterans’ rights to those particular social groups which

do not have such a status in the light of the existing system solutions. The system in force have the role of securing basic needs of life or securing assistance in the fulfilment of needs of a diverse nature. In the case of the provision system for war and military invalids and their families and the system of civilian blind victims of war, the role of these systems is to secure means of subsistence and to provide basic financial security and assistance for the nature of differentiated entitlements, including those of a targeted nature. Such features are also present in the case of a scheme covering anti-communist opposition activists and persons repressed for political reasons.

In the case of other schemes for particular social groups, their role is to provide financial assistance and targeted aid. These schemes do not prevent poverty, eliminate or prevent a difficult financial situation, as the entitlements contained in these systems benefit people of different material status. These systems can be credited with the function of mitigating the effects caused in the past. An important issue is the possibility for these schemes to evolve by extending entitlements, which would translate into the quality of life and support to meet the increasing needs related to age, health and the need to intensify care for these people.

There are doubts about the current catalog of non-monetary, in-kind benefits, which can be attributed to the role of episodic or apparent entitlements. An entitled person may also never use her or his entitlements because the nature of the entitlements does not suit him or her due to his age, health or need. In such cases, the entitlements granted may be perceived as illusory, not useful. The entitlements granted are not designed to meet different types of individual needs. These entitlements are not tailored to the needs of the entitled person, or flexible to the changing situation of the entitled person. There is lack of entitlements in special needs schemes to keep up with new trends in attitudes towards older people and their changing needs due to technical and cultural changes. This argues for a move away from the archaic design of these systems to introduce changes that take into account the age and needs of their beneficiaries, the growth in social awareness and the possibilities of new forms of care and technology.

Against the background of the considerations concerning the system of entitlements of particular social groups, one cannot ignore the issue of applications for the granting of entitlements to underage victims of the 1939-1945 war, persons displaced from Gdynia in 1939-1940, and juniors and junaks conscripted into the General Organization "Serving Poland (pol. Służba Polsce)". The reasons for not granting entitlements for these social groups are the repeated imprecise definition of the subject and the possibility of verifying the premises justifying the entitlement.

In the future, it cannot be ruled out that the systems will be singled out on the basis of a new type of repression underpinning entitlements, the form and scope of which may be the same as current entitlements or entitlements adapted to changing realities and changing social expectations.

To sum up, it should be emphasized that the problems concerning the origin, development, evolution of the rights to which people are entitled as the results of their actions in favor of independence and sovereignty of the Polish State or as a result of being subjected to various forms of repression by the totalitarian systems of the Third Reich and the USSR or the state apparatus are extremely extensive and complicated due to the existing principles of unification and connections between the rights themselves covering particular social groups and their impact on other rights systems included in the social security system. The legal systems covering particular social groups are characterized by a differentiated definition of the subjects of entitlements and the range of monetary and non-monetary in-kind, to which they are entitled. There is a structural uniformity in these systems shaped by recurrent features. As these features are essentially the same in all entitlement systems covering particular social groups, it must be assumed that they comprise a single system. The repetition of these features becomes the basis for the separation of a separate provision and assistance system in the social security system.