

CARE BENEFIT AND SUPPORT BENEFIT – ASSESSMENT OF INTERTEMPORAL LAW

KATARZYNA MAŁYSA-SULIŃSKA*
PRZEMYSŁAW KLEDZIK**

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ABSTRACT

On 1 January 2024, a new support scheme for persons with disabilities and their carers entered into force. New solutions in this regard were included in the Act of 7 July 2023 on the Support Benefit, which introduced a new benefit directly for persons with disabilities and significantly modified the catalogue of benefits available to their carers. The provisions of this Act also altered the nature of the care benefit, which, until that time, had provided compensation to carers of persons with disabilities for not being able to undertake gainful activity. At the same time the legislator, subject to certain conditions, allowed for the possibility of establishing the right to the care benefit under the terms in force until 31 December 2023. This study analyses the normative regulations applicable to acquiring the right to the care benefit after 1 January 2024, based on the regulations in force until 31 December 2023.

Keywords: care benefit, support benefit, confluence of rights to care-related allowances

INTRODUCTION

On 1 January 2024, the regulations of the Act of 7 July 2023 on the Support Benefit¹ came into effect. They introduced crucial changes to the support scheme for persons with disabilities and their carers. The provisions of this Act introduced a new benefit, specifically designed for persons with disabilities, into legal transactions.

* LLD hab., professor of the Jagiellonian University (Poland), e-mail: k.malysa-sulinska@uj.edu.pl, ORCID: 0000-0002-6406-8851

** LDD hab., professor of the University of Szczecin (Poland), e-mail: pkledzik@poczta.fm, ORCID: 0000-0003-2376-5092

¹ Journal of Laws of 2023, item 1429, as amended (hereinafter ‘SBA’).



They also significantly altered the regulations (as outlined in the Family Benefits Act of 28 November 2003)² that apply to the carers of such persons. Consequently, as of 1 January 2024, a new mechanism aimed directly at persons with disabilities was implemented: the support benefit. The legislator intended this benefit to partially cover the costs associated with meeting the individual life needs of persons with disabilities. Alongside the introduction of this benefit into the legal system, significant changes were made to the existing benefits directed at carers of persons with disabilities. Article 16a FBA, which provided the basis for establishing the right to the special care allowance, became ineffective at the end of 2023.³ Meanwhile, the amendment to Article 17 FBA (which regulated the care benefit) took effect after the last day of 2023. By introducing these amendments, the legislator altered the character of the care benefit. In its new wording, Article 17 FBA stipulates that the care benefit is, in contrast to its previous form, directed solely at carers of persons with disabilities who have not yet reached the age of 18. Moreover, the granting of this benefit is no longer contingent upon the carer refraining from gainful employment.⁴

A defining feature of these new normative solutions is the redirection of financial support directly to persons with disabilities aged 18 or older who require such support. The drafters of the amendment believe that this approach aims to empower persons with disabilities. A person with disabilities who receives financial aid in the form of this benefit will be able to decide for themselves how to allocate the funds, unlike when support is directed to their carers. Given this rationale, it was determined that financial support would only be provided to the carer until the person with disabilities reaches the age of 18, following the establishment of the right to the care benefit (which is no longer dependent on the carer refraining from gainful employment).⁵

When implementing this amendment to the support scheme for persons with disabilities and their carers, the legislator opted to retain the provisions in force until 31 December 2023, alongside the new normative regulations introduced on 1 January 2024, provided that certain conditions are met.⁶ In explaining this, the drafters clarified that the new criteria for granting benefits to carers of persons with disabilities apply to all first-time applicants from 1 January 2024. However, carers who acquired the right to care benefits 'for the period preceding the entry into force of the Act will be allowed to retain their right to those benefits under the principle of the protection of acquired rights pursuant to intertemporal laws, as

² Journal of Laws of 2024, item 323, as amended (hereinafter 'FBA').

³ For more on the special care allowance, see Małysa-Sulińska, K., Kawecka, A., 'Komentarz do art. 16a u.ś.r.', in: Małysa-Sulińska, K. (ed.), *Świadczenia rodzinne. Komentarz*, Warszawa, 2023 (in print).

⁴ For more see Małysa-Sulińska, K., Kawecka, A., 'Komentarz do art. 17 u.ś.r.', in: op. cit.

⁵ More on this subject: Explanatory memorandum to the Support Benefit Act, Sejm Document No. 3130, <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=3130> [accessed on 13 November 2024].

⁶ For more, see Małysa-Sulińska, K., Kawecka, A., 'Komentarz do art. 16a u.ś.r.' and 'Komentarz do art. 17 u.ś.r.', in: op. cit.

long as the person with disabilities for whom they care does not opt for their own support benefit.⁷

Thus, it is necessary to analyse the intertemporal provisions expressed in the text of the SBA, which refer to the possibility of acquiring, after 1 January 2024, the right to a care benefit under the regulations in force until 31 December 2023. In many cases, the right to this care benefit was established to support the care of an adult person with disabilities, who, under the regulations in force until 1 January 2012, may request that the right to the support benefit be established for them. It is also essential to determine how to interpret care benefit cases (as referred to by the legislator) where the right arose before 31 December 2023.

It should be noted that the discussion in this study excludes other care benefits, as there has been a trend in judicial decisions where carers who hold an established right to one type of care benefit request an additional benefit. This issue was addressed in the judgment of the Constitutional Tribunal of 21 October 2014, K 38/13,⁸ which declared that Article 17(1b) FBA is unconstitutional in the way it differentiates between the right to the care benefit for persons caring for someone with disabilities, based on the time the disability arose. It appears that those who request the establishment of the right to the care benefit while receiving another benefit for caring for an adult person may be motivated by the desire to receive a higher amount. This is because the care benefit is currently paid at an amount nearly five times higher than the special care allowance and the carer's allowance.⁹

THE RELATION OF THE SUPPORT BENEFIT TO THE CARE BENEFIT GRANTED UNDER PROVISIONS IN FORCE UNTIL 31 DECEMBER 2023

As mentioned earlier, the legislator, through the SBA, introduced a new type of benefit linked to the degree of disability: the support benefit. The recipients of this benefit are persons with disabilities who have not yet reached the age of 18.¹⁰ The support benefit, therefore, acts as an alternative to carer's allowances, including the care benefit, as if

⁷ See Explanatory memorandum to the draft Support Benefit Act, Sejm Document No. 3130, <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=3130> [accessed on 13 November 2024].

⁸ Journal of Laws of 2014, item 1443.

⁹ For more see Małysa-Sulińska, K., *Ekspertyza prawna dotycząca rozwiązań normatywnych w zakresie przesłanki ustalenia prawa do świadczenia dla opiekuna osoby z niepełnosprawnością odnoszącej się do niepodejmowania albo rezygnacji z zatrudnienia lub innej pracy zarobkowej*, Chancellery of the Senate, 2022, <https://www.senat.gov.pl/gfx/senat/pl/senatekspertyzy/6501/plik/oe-420.pdf> [accessed on 13 November 2024]; Małysa-Sulińska, K., Kawecka, A., 'Mnogość świadczeń dla opiekunów osób z niepełnosprawnościami a praktyka orzecznicza w zakresie ustalania prawa do świadczenia pielęgnacyjnego', in: Stec, M., Małysa-Sulińska, K. (eds), *Wspólnotowy wymiar samorządu terytorialnego – rzeczywistość a oczekiwania*, Warszawa, 2022, p. 147 *et seq.*; Małysa-Sulińska, K., 'Praca zarobkowa a prawo do świadczenia dla opiekunów osoby z niepełnosprawnością. Rzeczywistość a oczekiwania', in: Stec, M., Małysa-Sulińska, K. (eds), *Odpowiedzialność samorządu terytorialnego w sferze socjalnej*, Warszawa, 2023, p. 105 *et seq.*

¹⁰ See Article 3 SBA.

the support benefit is granted to the person with disabilities, their carer is not entitled to a carer's allowance.¹¹ It is important to emphasise that the overlap of entitlement to the support benefit is only possible with the care benefit established under the provisions in force until 31 December 2023. However, it is impossible for the support benefit to collide with the care benefit established under the laws in force from 1 January 2024, as these new provisions stipulate that the former is granted to persons with disabilities aged 18 or older, while the latter is directed at carers of persons with disabilities who are under 18.¹²

The provisions of Article 63(7)–(10) SBA regulate the impact of proceedings for establishing the right to the support benefit on pending proceedings for granting the care benefit, as well as on cases where such proceedings have already been successfully concluded, and the benefit is being paid.

The legislator has adopted a solution whereby a request from an entitled person for the grant of the right to the support benefit results in the suspension – until the resolution of the case initiated by the request for establishing the right to the support benefit – of the pending proceedings concerning the establishment of the right to the care benefit.¹³ In such a case, the reinstatement of suspended proceedings and the adjudication on establishing the right to the care benefit require a prior decision in the case for establishing the right to the support benefit.¹⁴

The legislator also addressed the scenario where a request for the establishment of the right to the support benefit is made during the period in which the care benefit is being received, with the right to the care benefit having been established under the regulations in force until 31 December 2023. If a person with disabilities makes such a request, the payment of the care benefit, as established under the pre-2024 regulations, will be withheld.¹⁵ However, it is important to note that, should the request for the support benefit be refused or dismissed, the care benefit will be paid from the month in which the payment was withheld until the end of the period for which the care benefit was granted, provided that the conditions outlined in the FBA, in the wording in force until 31 December 2023, are still met.¹⁶ Expanding on the above, it should be explained that, as highlighted in the introduction, the legislator allowed the application of Article 17 FBA, in its form as it stood before 31 December 2023, to continue after this date. In the case of individuals who receive the care benefit after 31 December 2023, granted under the existing provisions, the following regulations must be applied: the FBA in its existing form and the provisions of the Act of 20 December 1990 on Social Insurance of Farmers,¹⁷ also in its existing wording.¹⁸ This means that, unlike those who receive the care benefit established under the provisions in force as of 1 January 2024, recipients of the pre-2024 care

¹¹ See Article 63(6) SBA.

¹² For more see Małysa-Sulińska, K., Kawecka, A., 'Komentarz do art. 17 u.ś.r.', in: op. cit.

¹³ See Article 63(7) SBA.

¹⁴ See Article 63(8) SBA.

¹⁵ See Article 63(9) SBA.

¹⁶ See Article 63(10) SBA.

¹⁷ Journal of Laws of 2024, item 90, as amended.

¹⁸ See Article 63(15) SBA.

benefit are not permitted, in particular, to take up employment. However, at the same time, the benefit granted to them will not expire when the person with disabilities they care for reaches the age of 18.¹⁹

POSSIBILITY OF ESTABLISHING THE RIGHT TO THE CARE BENEFIT AFTER 31 DECEMBER 2023 BASED ON REGULATIONS IN FORCE UP TO THAT DATE

Given the volume of decisions issued in Poland for granting the care benefit, the consistently high number of pending proceedings in this regard, and the judgment of the Constitutional Tribunal of 5 December 2013, K 27/13,²⁰ which declared Article 11(1) and (3) of the Act of 7 December 2012 on amending the Family Benefits Act and Certain Other Acts²¹ unconstitutional (as regards violating acquired rights), resulting in the expiration by operation of law on 30 June 2013 of previously issued decisions regarding the care benefit – often for an indefinite period – the SBA regulation, in Chapter 7,²² included transitional provisions applicable to intertemporal situations.²³ Legal scholars and commentators emphasise that one of the typical and essential matters that should be resolved in intertemporal regulations is how to finalise proceedings initiated while the provisions being repealed were still in force, as well as proceedings that were not concluded by the time these provisions were repealed. It is highlighted that the legislator must, in such cases, stipulate, *inter alia*, which entities are competent to finalise pending proceedings, the procedure to follow in such closures, whether and to what extent steps taken so far should be considered valid, and whether and what steps need to be repeated. The legislator may, in particular, establish norms solely regulating the closure of such cases.²⁴

Referring the above solely to the care benefit, it should be noted that in Article 63(1) SBA, the legislator established that in cases concerning the care benefit referred to in the FBA provisions in its previous wording, for which the right was established by 31 December 2023, the previous provisions shall apply.

In Article 63(2) SBA, the legislator further stipulated that persons who, prior to the entry into force of this Act, or from the date of its entry into force under the rules effective until 31 December 2023, were granted the right to the care benefit, as referred to in the FBA in its previous wording, at least until 31 December 2023, retain the right to the care benefit under the rules effective until 31 December 2023. However, this

¹⁹ For more see Małysa-Sulińska, K., Kawecka, A., 'Komentarz do art. 17 u.s.r.', in: op. cit.

²⁰ Journal of Laws of 2013, item 1557.

²¹ Journal of Laws of 2012, item 1548, as amended (hereinafter 'the Amending Act of 2012').

²² Chapter 7 'Transitional and adjusting regulations and final regulation' – Article 59–71 SBA.

²³ Situations referred to as intertemporal are legal situations of certain entities that originated under 'the rule of the old laws' and continue to exist after the entry into force of a 'new law' or possibly legal situations that originated 'under the rule of the old laws' but become ineffective due to the enactment of a new law. See Wronkowska, S., in: Wronkowska, S., Zieliński, M., *Zasady techniki prawodawczej. Komentarz*, Warszawa, 2004, p. 81.

²⁴ See Wronkowska, S., in: Wronkowska, S., Zieliński, M., *Zasady techniki...*, op. cit., p. 82.

retention is limited to the duration of the period for which the right was granted, taking into account the provisions of Article 63(3) SBA.

Article 63(3) SBA further provides that the persons referred to in Article 63(2) retain the right to the care benefit under the rules in force until 31 December 2023, even in cases where a new certificate of the degree of disability or a disability certificate is issued for the person under their care (Article 63(2) SBA). This provision also specifies that retaining the right to the care benefit under the terms described in the first sentence is conditional upon submitting a request for a new certificate of the degree of disability or a disability certificate within three months from the day following the expiration date of the previous certificate. Additionally, a request for the determination of the right to the care benefit must be submitted within three months following the issuance of the certificate of the degree of disability or a disability certificate (Article 63(3) SBA *in fine*).

CASES QUALIFIED AS THE ARISING OF THE RIGHT TO THE CARE BENEFIT UNTIL 31 DECEMBER 2023

Given the scope of this study, it is reasonable to focus primarily on the provision in Article 63(1) SBA, which addresses the typical intertemporal question raised earlier, particularly in the context of the phrase used in this provision, stating that the previous provisions of the FBA shall apply to cases concerning the care benefit 'for which the right arose by 31 December 2023'.

When analysing this phrase in the context of the rules of the Polish language – as the verb is used in the past-tense grammatical form,²⁵ which expresses that the 'arising of the right' should occur before the designated date (31 December 2023) – we must assume that it refers to an event that has already taken place or an action carried out before this date. Undoubtedly, in terms of the legal consequences that follow from the granting of the care benefit, this provision refers to cases where the benefit has been granted in proceedings concluded with a final decision before 31 December 2023. It must also be emphasised that granting the care benefit by way of a final decision to a carer of a person with disabilities entails a range of responsibilities associated with the execution of such a benefit and the resulting future events. For instance, in the case of a change in the place of residence of the entitled person, the competent authority is obliged to transfer the request and case file to another authority that holds territorial competence to carry out this responsibility.²⁶ Moreover, competent authorities are required to transfer necessary documents, including information on the case, to the governor, where provisions on the coordination of social insurance systems should be applied.²⁷ Authorities are also obliged to initiate proceedings in the event of an unduly received benefit.

²⁵ See Sobol, E. (ed.), *Nowy słownik języka polskiego*, Warszawa, 2003, p. 788.

²⁶ See Article 25(4) FBA.

²⁷ See Article 23a(2) FBA.

With regard to the regulation of Article 63(1) SBA, it is also crucial to consider whether this provision, in the context of the expression 'the right arose', may also apply to proceedings initiated before 31 December 2023 that had not been concluded with a final decision by that date.

In fact, such a possibility, at least indirectly, is suggested by the content of the aforementioned Article 63(2) SBA. It states that persons who, before the entry into force of this Act, were granted the right to the care benefit under the terms in force until 31 December 2023 shall retain the right to this benefit on the same terms. Thus, according to this provision, it is possible to grant the care benefit after 1 January 2024 under the terms in force until 31 December 2023.

An analysis of the regulation of Article 63(1) and (2) SBA may give rise to doubts due to the lack of coherence between these two provisions. The first provision clearly reserves the condition that the 'arising of the right' must occur by 31 December 2023. The second regulation merely mentions granting the right under the terms in force until 31 December 2023 without specifying the conditions under which this should be done. It seems that the most consistent interpretation would be to assume that in both cases, whether the final decision is issued before or after 1 January 2024, the right to the care benefit should arise before 31 December 2023. However, this would imply that the decision regarding the care benefit would take the form of a declaratory decision rather than a constitutive one. In essence, the content of Article 24(2) and (2a) FBA could confirm this declaratory nature of the decision. Pursuant to these provisions, as a general rule, the right to family benefits, including the care benefit, is established from the month in which the request and correctly completed documents are submitted (Article 24(2)). However, if a request for the establishment of the right to a benefit dependent on disability is filed within three months of the issuance of a disability certificate or a certificate on the degree of disability, this right shall be established from the month in which the request for the declaration of disability or degree of disability was filed (Article 24(2a)). Thus, Article 24(2a) FBA introduces an exception to the principle of establishing the right to family benefits from the month in which the request with correctly completed documents is submitted.²⁸ In both cases, the provisions of Article 24(2) and (2a) FBA introduce the possibility of granting the benefit retrospectively from the date of issuing the decision in the case. These regulations, in light of the circumstances outlined within them, which provide the basis for decision-making, may further raise doubts as to when exactly the right to the care benefit arises. Specifically, does the right arise on the date of filing the request for such a benefit or on the date of issuing the decision on disability or degree of disability?

To conduct a reliable interpretation of the law, it is reasonable to refer to other regulations where the legislator used similar constructions in intertemporal provisions, and where interpretation has already been carried out in the process of applying the law. It should be noted that in Article 13 of the above-mentioned 2012 Act amending the FBA, the legislator, in the context of the solutions challenged by the Constitutional Tribunal, aimed at extinguishing decisions on care benefits, declared:

²⁸ Cf. Sapeta J., in: Małysa Sulińska, K. (ed.), *Ustawa o świadczeniach rodzinnych. Komentarz*, Warszawa, 2015, p. 388.

'in cases concerning the care benefit, the right to which arose before the entry into force of this Act, when establishing this right for this period, the existing provisions shall apply.' Therefore, in terms of the object of regulation, the construction of this provision stipulates an almost identical solution to that adopted in Article 63(1) SBA. However, apart from directly invoking the content of Article 13 of the Amending Act, the explanatory memorandum to the 2012 Amending Act does not clarify the meaning and purpose of this regulation, which would make it easier to explain it.²⁹ In terms of practical interpretation issues, this regulation has been the subject of assessment by the Administrative Courts. In this context, the Voivodeship Administrative Court in Poznań expressed the view that Article 13 of the 2012 Amending Act must be understood to mean that, in the case of a request for the care benefit effectively submitted before the entry into force of this Act (i.e., before 1 January 2013), the administrative body (both at first and second instance) should first assess whether the applicant meets the requirements for receiving the care benefit under the provisions in force until 31 December 2012. If the answer is affirmative, as interpreted by the administrative court, a decision granting the right to the requested benefit should be issued under the existing regulations. If the answer is negative, however, Article 13 of the 2012 Amending Act, as pointed out by the administrative court, shall not apply, and the authority should proceed to examine the request under the regulations in force at the time the decision is made, i.e., after the amendment introduced by the Amending Act referred to above.³⁰

The Voivodeship Administrative Court in Bydgoszcz adopted a more far-reaching interpretation of Article 13 of the 2012 Amending Act, stating that the wording of this article does not stipulate that it only provides the basis for granting the care benefit for the period up to 31 December 2012, nor only for requests filed before that date. The court, therefore, concluded that the correct interpretation of this provision must recognise that if a request for establishing the right to a benefit dependent on disability is submitted (including the right to the care benefit on existing terms) within three months from the date of the issuance of a disability certificate or a certificate on the degree of disability, the right shall be established from the month in which the request for the declaration of disability or the degree of disability was submitted. Therefore, as long as the applicant entitled to the care benefit under existing regulations, invoking a certificate of severe disability obtained upon a request submitted by 31 December 2012, files a request within these three months for establishing the care benefit under the existing provisions, he or she retains the right to this benefit in the existing amount until 30 June 2013, provided that the requirements stipulated in the existing provisions are met.³¹

²⁹ Cf. Explanatory memorandum to the Act of 7 December 2012 on amending the Family Benefits Act and Certain Other Acts, Sejm Document No. 727 of 6 September 2012; <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=724> [accessed 13 November 2024].

³⁰ See judgment of the Voivodship Administrative Court in Poznań of 11 September 2013, IV SA/Po 616/13, Central Database of Decisions of Administrative Courts (CBOSA), <https://orzeczenia.nsa.gov.pl> [accessed on 13 November 2024].

³¹ See judgment of the Voivodship Administrative Court in Bydgoszcz of 18 June 2013, II SA/Po 490/13, CBOSA.

Based on the content of the explanatory memoranda of the judgments referred to above, it is reasonable to conclude that the right to the care benefit arose no later than upon the submission of the request for granting this right, subject to the applicant meeting the statutory requirements for receiving such a benefit. Furthermore, the deadline for submitting such a request, in connection with the date of issuing decisions in proceedings for declaring disability or the degree of disability, may additionally support the view that the right to the care benefit arises in certain situations even before the date of submitting such a request. Consequently, the decision on establishing the right to the care benefit possesses declaratory attributes.

As regards the almost identical construction of the provision and the general principles of administrative procedure, the rule of law, equality before the law, and deepening trust in public authorities³² (which are key standards guiding the operation of public administration bodies), it is reasonable to assume that the interpretation of intertemporal provisions, as expressed in the judgments cited above regarding Article 13 of the 2012 Amending Act, particularly in the judgment of the Voivodeship Administrative Court in Bydgoszcz, should also apply to the regulation of Article 63(1) SBA, including its subsections 2 and 3.

However, in the practice of adjudicating cases concerning the care benefit, numerous instances have arisen where the initial date on which the right to the care benefit is established does not align with the dates stipulated in Article 24(2) and (2a) FBA. For example, it may be noted that the carer of a person with disabilities may not meet the condition of resigning from employment on the date of obtaining the disability certificate or the certificate of the degree on disability. Another, more significant example relates to the admissibility (widely accepted in judicial decisions) of granting the care benefit to individuals who already have an established right to an old-age pension, provided that the right to the old-age pension is suspended beforehand.³³ In such cases, it is assumed that the right to the care benefit will be established as of the date the right to the old-age pension is suspended, which often occurs after the date the request is filed in the course of the proceedings for granting the care benefit.³⁴ This raises questions about whether the right to the care benefit

³² See Article 6, Article 7, and Article 8(1) of the Act of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2024, item 572). For the legal character of general principles of administrative procedure, cf. Rozmaryn, S., 'O zasadach ogólnych kodeksu postępowania administracyjnego', *Państwo i Prawo*, 1961, Vol. 12, p. 889; Adamiak B., in: Adamiak, B., Borkowski, J., *Kodeks postępowania administracyjnego*, Warszawa, 2021, pp. 58–60; Szreniawski, J., 'Rola i znaczenie zasad ogólnych Kodeksu postępowania administracyjnego w stosowaniu prawa', in: Niczyporuk, J. (ed.), *Kodyfikacja postępowania administracyjnego. Na 50-lecie K.P.A.*, Lublin, 2010, p. 813; Tarno, J.P., 'Zasady ogólne k.p.a. w orzecznictwie Naczelnego Sądu Administracyjnego', *Studia Prawno-Ekonomiczne*, 1986, Vol. XXXVI, p. 63; Martysz, Cz., in: Łaszczycza, G., Martysz, Cz., Matan, A., *Kodeks postępowania administracyjnego. Komentarz*, Vol. 1, Warszawa, 2010, pp. 100–101.

³³ Cf. Kledzik, P., 'Prawo do renty i emerytury a przyznanie świadczenia pielęgnacyjnego – w aspekcie orzecznictwa sądów administracyjnych', in: Małysa-Sulińska, K., Stec, M. (eds), *Opowiedzialność samorządu terytorialnego...*, op. cit., pp. 155–184.

³⁴ See judgments of the Supreme Administrative Court of 14 June 2022, I OSK 1559/21 and of 18 November 2022, I OSK 21/22, as well as judgments of the Voivodeship Administrative Court in Gorzów Wielkopolski of 30 June 2022, II SA/Go 215/22, Voivodeship Administrative Court in Lublin of 26 May 2022, II SA/Lu 217/22 and Voivodeship Administrative Court in Gliwice of 31 August 2022, II SA/Gl 721/22, CBOSA.

can be considered to have arisen by 31 December 2023 in cases where the request is submitted within three months of the issuance of the disability certificate, but after 1 January 2024, and where the person resigns from employment after 1 January 2024. A similar issue arises when the request for the benefit is submitted in 2023, but the suspension of the right to the old-age pension – dependent on another authority – occurs after 1 January 2024.

This interpretation of the intertemporal provisions of the SBA, which assumes that the decision on establishing the right to a care benefit is declaratory, has already been reflected in judicial decisions. It has been argued that

‘Article 63(1) SBA must be understood to mean that in the case of an application for a care benefit successfully submitted before 1 January 2024 (i.e., before the entry into force of Article 43(4)(a) SBA amending Article 17 FBA), the authority, when examining the application after 1 January 2024, is obliged to assess whether the applicant meets the requirements for obtaining the care benefit as laid down in the FBA in the version in force up to 31 December 2023. If the applicant meets these requirements, the authority must issue a decision granting the benefit based on the provisions of the FBA in force before the amendment. If the authority finds that the requirements are not met, Article 63(1) SBA will not apply, and the authority should examine the application under the provisions in force at the time of the decision, which includes considering the amended wording of Article 17.’³⁵

Also noteworthy is a position that supports the declaratory nature of decisions on care benefits and addresses the issue of whether all requirements for the recognition of the arising of the right to the benefit were met before 31 December 2023. In one case, the court held: ‘Pursuant to Article 63(1), in care benefit cases (...) referred to in Article 43 of the amended Act (Family Benefit Act), in the existing wording, where the right to the benefit arose before 31 December 2023, the existing provisions shall apply.’ In a case where the applicant had a right to an old-age pension that was not suspended before 31 December 2023, and this formed the basis for refusing to grant the care benefit, the court ruled:

‘The arising of the right to the benefit can only be recognised where the applicant meets all the requirements set out in the Family Benefit Act before 31 December 2023, even if the authority was unable to issue a decision granting this right before this date. This provision allows for the granting of the benefit to individuals who submitted a complete application before the legal changes were implemented, and whose cases could not be processed by the authorities before 31 December 2023. However, this provision cannot be applied in cases where the granting of the benefit before 31 December 2023 was impossible because the applicant had not met all the requirements.’³⁶

What also needs to be noted here is that there is an established line of judicial decisions presenting a different view:

³⁵ See judgment of the Voivodship Administrative Court in Bydgoszcz of 14 March 2024, II SA/Po 1811/23. Cf. also judgment of the Voivodship Administrative Court in Poznań of 6 March 2024, IV SA/Po 105/24 and of 17 April 2024, IV SA/Po 190/24, CBOSA.

³⁶ See judgment of the Voivodship Administrative Court in Szczecin of 11 January 2024, II SA/Sz 961/23, CBOSA.

'The literal interpretation of Article 63(1) of the 2023 Support Benefit Act allows for the opinion that the regulation, in its pre-amendment wording, must be applied only to cases in which the right to the benefit arose by 31 December 2023. In other words, the "old act" may be applied where the authority issued a decision granting the applicant the right to the care benefit before the end of 2023. Consequently, negative rulings, that is, those refusing the granting of the care benefit, are subject to the provisions in force until 1 January 2024.'³⁷

In the context of the present analysis of legislation, this view cannot be considered correct. However, an investigation of court rulings issued based on Article 63 SBA suggests that this is an isolated view, and the same court subsequently changed its line of decisions, as evidenced by one of the rulings referred to above.

It is essential to highlight, in line with the interpretation of Article 63 SBA presented in this paper, the purpose of this intertemporal regulation. It is pointed out that:

'the rules laid down in Article 63(1)–(16) of the 2023 Support Benefit Act reflect the constitutional protection of acquired rights. When assessing whether the retroactive application of this provision is contrary to the Constitution, depending on the case type, principles such as citizens' trust in the state, security and certainty of legal transactions, security of regulated relationships, and the protection of acquired rights must be taken into account. Deviation from the principle of non-retroactivity may only be made when motivated by important public interest and when it follows directly from the act. In turn, the objective of the act does not justify the adoption of retroactive effect. Since, by the legislator's will, the care benefit may be granted on existing terms, lengthy administrative proceedings cannot deprive the applicant of the opportunity to obtain this benefit under the terms effective to date.'³⁸

This leads to the conclusion that a re-examination of the case, where the administrative court repeals a decision that refused to grant the applicant a care benefit in a case initiated before 1 January 2024, should not prevent the granting of the care benefit, even if a significant amount of time has passed since the repealed decision was issued. The party should not bear the negative consequences of the authority's actions in such a case, including those involving the interpretation of law, which the court later considers incorrect solely because a considerable amount of time has passed since the decision was issued, even if this time extends significantly beyond 1 January 2024. In such a situation, the authority's responsibility should be to assess whether the right to the care benefit arose before 31 December 2023. If evidence supports this, the authority should then verify – while considering the period for which the degree of disability of the person under care was declared – whether this care is still being provided or until what date it was provided.

³⁷ See judgment of the Voivodship Administrative Court in Gliwice of 10 January 2024, II SA/Gl 1469/23, LEX 3662547.

³⁸ See judgment of the Voivodship Administrative Court in Poznań of 24 April 2024, IV SA/Po 231/24, CBOSA.

CONCLUSION

The examples presented above show that the expression 'the right to which arose before' cannot necessarily be equated with the universally applied formula 'for cases already initiated but not closed, existing provisions shall apply', which considers the requirements for intertemporal provisions set by the principles of legislative technique.³⁹

Therefore, it may turn out in practice that the interpretation of intertemporal provisions, in the absence of transparency and clarity, will be carried out – similarly to the regulation of Article 13 of the 2012 Amending Act – by administrative courts. At the same time, it seems necessary to take into account the objective associated with the interpretation of regulations in administrative law, that is, decoding the so-called norms of administrative law, which provide the basis for the operation of administrative authorities in the course of administrative (jurisdictional) proceedings and ensure the correct creation of individual and specific norms of administrative law.⁴⁰ As a consequence of the above, it must be assumed that when interpreting the law regarding care benefits, the interpretation of Article 63(1) SBA should focus particularly on the regulations in Article 63(2) and (3) SBA. A situation where the legal position of entities referred to in Article 63(1)–(3) SBA is not differentiated should be the determinant of the correct interpretation. Consequently, individuals who apply for the care benefit for the first time before 31 December 2023, or whose right to this benefit has expired and who reapply for this right to be granted on existing terms before 31 December 2023, and where proceedings in these cases cannot be finalised before 1 January 2024, should not be left in a worse situation compared with individuals whose right to the care benefit expired after 1 January 2024 and who may still receive it on existing terms.

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³⁹ Cf. § 30(2)(1) of the Annex to the Regulation of the President of the Council of Ministers of 20 June 2002 on 'Rules of Legislative Technique' (Journal of Laws of 2016, item 283).

⁴⁰ See Jakimowicz, W., *Wykładnia w prawie administracyjnym*, Kraków, 2006, p. 380.

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