

# Ensuring a Dignified Life in Polish Law

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## I. Introduction

Social protection in Poland is pursued through an extensive and diversified system of social benefits. The system is quite developed and provides various forms of benefits, which include a basic role of social insurance, supplemented by assistance of a monetary and non-monetary nature. In

particular, the 2004 reform of social assistance generally improved the support for people in need by simplifying the previous system of means-tested benefits and reducing the margins of discretion in the benefits amount.<sup>1</sup>

Despite the existence of numerous instruments of social protection, the number of people living in poverty in Poland is still consistent. Based on Eurostat data, EAPN concluded that extreme poverty was still at 4.7% in 2022.<sup>2</sup> Data show that poverty has recently increased in particular for elderly persons (an increase from 3.8 to 3.9 per cent) and children (an increase from 5.3 to 5.7 per cent).<sup>3</sup> This persistent poverty highlights ongoing challenges to the effectiveness of current social protection measures. Current discussions focus on the adequacy of existing thresholds and benefits. There is a growing debate on whether the current income thresholds adequately reflect the cost of living and protect individuals from poverty, emphasizing the need for more frequent adjustments to these thresholds.

Against this framework, the purpose of this study is to present the Polish solutions aimed at providing means of subsistence or support to ensure better living conditions for groups in need, and to assess whether the benefits provided for in various benefit systems allow us to conclude that the Polish legislator actually ensures a life in dignity.

The study will be divided into two main parts. In the first part, we will present the constitutional conditions, as the superior source of Polish social law is the Constitution of the Republic of Poland of 1997. This basic legal act contains a number of provisions that, on the one hand, constitute the basis for the activity of the legislator in the area of social law and, on the other hand, also define its obligations as regards the creation of specific solutions.

We will also present an outline of the Polish social law system, i.e. we will point to the existing benefit systems, the main assumptions of these systems and their mutual relations. In this section, we consider it necessary to cite the legal regulations on the minimum wage, the aim of which is to ensure that every person in gainful employment receives a wage that guarantees a life in dignity.

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1 I. Wójcicka, 'Poland: Minimum Income Schemes. A Study of National Policies' (2009), pp. 3-4 <<https://ec.europa.eu/social/BlobServlet?docId=9038&langId=en>> accessed 14.11.2024.

2 EAPN, 'Poverty Watch 2023. Monitoring of Poverty and Anti-Poverty Policy in Poland 2022-2023' (17 October 2023) <<https://www.eapn.eu/wp-content/uploads/2023/10/eapn-EAPN-PL-English-version-2023-PW-5823.pdf>> accessed 14.11.2024.

3 Ibid.

In the second part of the study, we will analyse and discuss some important detailed solutions. We will focus on those insurance and assistance benefits which we find the most important for the purpose of the study. We have chosen them on the basis of the function they perform in the system of social law – they are benefits that provide a livelihood for people who, for various reasons (age, illness, family or life situation), cannot independently provide for themselves the means to ensure a certain minimum of life, or whose aim is to ensure a slightly higher standard of living than merely that of biological survival. These benefits therefore either replace the income that the person concerned does not earn on his or her own for various reasons, or supplement the income earned on his or her own when it is too low to ensure the necessary minimum and a dignified life. Benefit receipt is, in some cases, subject to specific income criteria, while in other cases it is granted regardless of such criteria, but the purpose and legal structure of these benefits make it possible to classify them as benefits ensuring a dignified life.

## II. Overview

### 1. Normative Background

#### a) Dignity and Social Justice in the Constitution

Article 2 of the Constitution<sup>4</sup> states that the Republic of Poland is a democratic state governed by the rule of law, implementing the principles of social justice. The concept of social justice involves, among other things, ensuring social security and securing basic conditions of existence for those who, for reasons beyond their control, remain unemployed. The principle of social justice is normatively and axiologically linked to the principle of human dignity that is formulated explicitly in Article 30 of the Constitution. Both principles are invoked in the jurisprudence of the Constitutional Court, in order to specify the scope of the legislator's freedom in defining

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<sup>4</sup> Constitution of the Republic of Poland of 2 April 1997 <<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970780483/U/D19970483Lj.pdf>> accessed 14.11.2024.

social rights, such as the right to social security referred to in Article 67 of the Constitution.<sup>5</sup>

Pursuant to Article 30 of the Constitution, inherent and inalienable human dignity is the source of human and civil liberties and rights. It is inviolable, and its respect and protection are the duties of public authorities. This is considered a fundamental principle of the political system; it links the fundamental human and civil rights and freedoms to dignity, and is normative in nature, which means that it constitutes an independent benchmark for constitutional control.<sup>6</sup> One of the aspects of the obligation to respect dignity is to provide the material conditions for a humane existence.<sup>7</sup> According to the Constitutional Court, an obligation to respect and protect human dignity has been imposed on public authorities. A prerequisite for the respect for human dignity that is understood in this way is, among other things, the existence of a certain material minimum that ensures the individual's ability to function independently in society, as well as the creation of opportunities for each person to fully develop their personality in the surrounding cultural and civilisational environment.<sup>8</sup> These general constitutional norms are therefore important for the specific solutions adopted by the legislator within the framework of social law.

As elucidated in the next paragraphs, the provisions of the Constitution of the Republic of Poland not only make the principle of human dignity a fundamental principle of the political system, but by regulating a number of social rights therein also serve as an expression of the so-called "socialisation of human dignity". This means that human dignity cannot be fully guaranteed without establishing appropriate instruments of social protection. In turn, the constitutional norms oblige the legislator to create appropriate specific solutions and benefit systems that will guarantee an adequate level of social security and thus also life in dignity. Of particular importance here is the constitutional entrenchment of the issue of minimum wages and social security in the event of old age or incapacity, which

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5 See Judgment of the Constitutional Tribunal of 6 October 2015, Case SK 19/14, OTK-A 2015/9/141.

6 L. Bosek, 'Zasady ogólne', in: M. Safjan and L. Bosek (eds.), *Konstytucja RP, Tom I Komentarz. Art. 1-86* (C.H. Beck 2016), pp. 735 ff.

7 L. Garlicki, 'Komentarz do art. 30', in: L. Garlicki and M. Zubik (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II* (Wydawnictwo Sejmowe 2016), note 29.

8 See Judgment of the Constitutional Court of 4 April 2001, K 11/00, OTK 2001/3/54 <<https://ipo.trybunal.gov.pl/ipo/Sprawa?sprawa=3483&dokument=184>> accessed 14.II.2024.

compels the legislator to adopt specific solutions and at the same time provides the population with a legal basis for a constitutional assessment of these solutions by the Constitutional Court. They provide a model of constitutional control.

### b) Constitutional Foundations of Social Security

Detailed regulations on social rights aimed at ensuring economic security and a life in dignity for individuals are included in the Constitution of the Republic of Poland in the chapter on economic, social and cultural freedoms and rights. The following provisions of the Constitution should be noted here: Article 65(4), which deals with the establishment of a minimum wage, provisions guaranteeing the right to social security (Article 67), the right of persons with disabilities to special protection through state assistance in securing their existence (Art. 69), the right of a family in a difficult material and social situation to special assistance from public authorities (Article 72), the right to individual assistance for pupils and students aimed at ensuring equal access to education (Article 74), and the right of a child deprived of parental care to care and assistance from public authorities (Article 72(2)).<sup>9</sup> In addition, we should also mention Article 18, concerning the protection of marriage, family, and motherhood. By establishing certain social rights in the Constitution, the state defines the priorities of its social policy and the scope within which the ordinary legislator is obliged to act when creating legal regulations on social benefits.

### aa) Programmatic Nature of Social Rights and Justiciability

As a rule, no claims for specific benefits arise for citizens from constitutional regulations. These provisions most often contain only programmatic norms addressed to the ordinary legislator so that it may achieve the goals set forth in the Constitution. Moreover, most of the provisions on social rights are listed in Article 81 of the Constitution, which stipulates that the rights set forth in the provisions listed therein can be asserted within the limits set by law. Thus, it is only from statutory norms that an entitled person can derive a specific subjective right, in particular to a social benefit.

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<sup>9</sup> M. Lewandowicz-Machnikowska, *Regulacja prawa socjalnego wsparcia dla osób o niskich dochodach* (Wydawnictwo Uniwersytetu Wrocławskiego 2013), pp. 63 ff.

The references to ordinary laws used in the Constitution are in two forms, and the limits and nature of this reference are not the same in both cases. Firstly, the aforementioned Article 81 of the Constitution explicitly specifies which rights can be asserted within the limits set by the law, and secondly, the contents of some provisions on social rights not mentioned in Article 81 of the Constitution, such as Article 67 on the right to social security, refer explicitly to the law and indicate that the scope and forms of exercising the right mentioned therein are determined by law. This means that the determination of the content of the individual rights included in Article 81 is left to the discretion of the legislator. In the case of the second type of references, on the other hand, the essential elements and limits of the law are shaped directly by the Constitution, and only their concretisation and the manner of implementation are left to the ordinary legislator.<sup>10</sup> However, it should be emphasised that the rights listed in Article 81, such as the right to assistance in securing the existence of persons with disabilities (Article 69), the right to special assistance to families in a difficult material and social situation (Article 71(1)), the right to special assistance to a mother before and after childbirth (Article 71(2)), and the right to security of a citizen's housing needs (Article 75) are constitutional rights, and can therefore be asserted by the entitled party at least to the extent of the minimum of this right, which is determined by its essence.<sup>11</sup>

In this sense, it is important to note that the Constitution guarantees citizens the right to a court procedure, i.e. the right to a fair and public examination of a case without undue delay by a competent, impartial and independent court (Article 45), as well as the right to appeal judgments and decisions issued at first instance (Article 78). Furthermore, anyone whose constitutional freedoms or rights have been violated has the right, on the principles set out in the law, to file a complaint to the Constitutional Court regarding the conformity with the Constitution of a statute or other normative act on the basis of which a court or organ of public administration has made a final decision on his/her freedoms or rights or on his/her obligations specified in the Constitution (Art. 79). Constitutional regulations are of particular importance with regard to the protection of citizens' rights

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10 J. Oniszczuk, 'Problemy realizacji wolności i praw socjalnych gwarantowanych w Konstytucji RP', in: L. Wiśniewski (ed.), *Wolności i prawa jednostki oraz ich gwarancje w praktyce* (Wydawnictwo Sejmowe 2006), p. 206.

11 J. Trzciński, 'Komentarz do art. 81 i art. 68 Konstytucji', in: L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Wydawnictwo Sejmowe 2003).

to social benefits – any decision refusing to grant a benefit may always be challenged and verified through a two-instance procedure.<sup>12</sup>

### bb) The Right to Social Security

Article 67 of the Constitution stipulates that a citizen has the right to social security in the event of incapacity to work due to illness or disability and upon reaching retirement age. The scope and forms of social security are determined by law (sec. 1). A citizen who is unemployed not of their own free will and who has no other means of subsistence has the right to social security, the scope and forms of which are set by law (sec. 2).

The Polish legislator has used the explicit phrase “right to social security”, to which a citizen is entitled in several life situations specified in Article 67 of the Constitution. This provision does not create any subjective rights of the individual in relation to the state, as it is left to the ordinary legislator to specify the “scope and forms” of social security. The legislator is therefore obliged by means of ordinary laws, using social security techniques of its choice, to establish the benefits that will allow individuals to exercise their right to social security.

The Constitution imposes an obligation on the ordinary legislator to determine the scope and forms of social security. This means that its actions should result in creating a whole system of benefits, of diverse scope, constituting the content of this notion.

This system, as a whole, is intended to enable citizens with no capacity to work due to illness or disability, who have reached retirement age, or who are unemployed not of their own will, and have no other means of subsistence, to fully exercise their right to social security.<sup>13</sup> What transpires from the right to social security is that every citizen should be guaranteed the right to benefits in the event of incapacity to work due to illness, disability, reaching retirement age, being unemployed involuntarily and having no other means of subsistence. It is understood that Article 67 is the

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12 Decisions of organs granting benefits from non-insurance systems are always subject to appeal to a higher authority and then to an administrative court (also a two-instance procedure). On the other hand, in the case of decisions of the Social Insurance Institution (ZUS) regarding social insurance benefits, an appeal can be filed to the common court – the social insurance court (also here the proceedings are two-instance).

13 See Judgment of the Constitutional Tribunal of 25 September 2019, SK 31/16, OTK-A 2019/53.

basis for establishing and distinguishing the scope of social security from its minimum, which constitutes the essence of the right to entitlements that go beyond this scope. Thus, the legislator has a certain amount of freedom to shape the entitlements under the right to social security. However, the lower limit of this freedom is the obligation to guarantee the minimum of the right – its essence.

Article 67 is violated when the legislator has not granted the persons indicated therein the benefits that ensure their subsistence at the minimum level of existence. The content of the right to social security under Article 67 is determined on the basis of the content of this provision and sources of international law, which Poland is obliged to respect, e.g., ILO Convention No. 102 on Minimum Standards of Social Security.<sup>14</sup>

One of the basic issues concerning the content of the right to social security in the Constitution is what social risks are covered by this right. Although the provision of Article 67 does not list all traditional social risks, this does not mean that these situations are not covered by the concept of social security or do not require protection by the Polish state. This is because, as a rule, Article 67 was not created to define the concept of social security and should be read together with other provisions of the Constitution concerning social rights and international obligations assumed by Poland.<sup>15</sup> Firstly, as it transpires from the wording of the provision, a citizen has the right to social security in the event of incapacity to work due to illness or disability. The constitutional provision in question deals with the risk of incapacity to work regardless of the legal basis for its provision and the related incapacity to provide for one's livelihood through one's own labour, which can arise from two separate factual situations – illness or disability (also if they are caused by an accident at work or occupational disease<sup>16</sup>). Sickness and disability differ in that sickness is transient and requires the provision of periodic benefits, and disability is rather permanent and requires the provision of long-term benefits. Sickness and disability also involve other social risks which are unrelated to work, and which are

14 K. Ślebzak, 'Komentarz do art. 67', in: M. Safjan and L. Bolek (eds.), *Konstytucja RP, Tom I Komentarz. Art. 1 – 86* (C.H. Beck 2016), p. 1511.

15 H. Pławucka, 'Prawo do zabezpieczenia społecznego w orzecznictwie Trybunału Konstytucyjnego', in: T. Kuczyński and Z. Kubot (eds.), *Z zagadnieniami prawa pracy i prawa socjalnego. Księga jubileuszowa Profesora Herberta Szurgacza* (Difin 2011), p. 504; and M. Zieleniecki, 'Prawo do zabezpieczenia społecznego' *Gdańskie Studia Prawnicze* 13 (2005), pp. 566 ff.

16 K. Ślebzak (n 14), p. 1513.

protected in separate benefit systems. Their foundation is Article 68 (right to health care) and Article 69 (right of persons with disabilities) of the Constitution. The benefits included in the above systems are not related to the loss of means of subsistence, but rather to the need to obtain benefits from the health care system or the need to cover costs incurred as a result of increased expenses.

A separate social risk protected under the right to social security in the Constitution is the risk of incapacity to work after reaching retirement age. The legislator is supposed to provide an adequate benefit to replace income from work to a person who has reached a certain age and has the relevant merit. Exercising the right to social security therefore requires that the conditions for acquiring and exercising the right to an old-age pension be indicated in the law. Article 67 of the Constitution itself does not contain detailed conditions for the acquisition of benefits or the manner of determining their amount. However, the Constitutional Court has repeatedly stressed that the legislator, when implementing the provisions of the Constitution concerning security and related to incapacity to work due to reaching retirement age, should take into account the postulate, arising directly from the principle of social justice, to maintain fair proportions between the size of the pension, which is a 'meritorious' benefit, and the size of this 'merit'. This merit is determined by two elements: the length of the period of professional activity leading to the acquisition of the right to a pension, and the income earned from this activity.<sup>17</sup> Furthermore, no citizen who finds themselves in one of the situations indicated in Article 67 of the Constitution, including incapacity to work after reaching retirement age, may be deprived of a benefit that guarantees them the receipt of at least the social minimum.<sup>18</sup>

Another risk protected under the right to social security is being unemployed not of one's own will and having no other means of subsistence. This, in practice, is combined with the risk of unemployment. The protection, however, is limited to those cases where a person is capable of working and he or she can work, and their unemployed status quo is independent of the will of the unemployed person. Moreover, the person should have no other means of subsistence. As for other social risks, it is assumed that, for

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17 Judgment of the Constitutional Tribunal of 8 May 2000 SK 22/99 OTK 2000/4/107.

18 See Judgments of the Constitutional Tribunal: 8 May 2000, case file no. SK 22/99, OTK ZU no. 4/2000, item 107; 7 February 2006, case file no. SK 45/04, OTK ZU no. 2/A/2006, item 15; 27 January 2010, case file no. SK 41/07, OTK ZU no. 1/A/2010, item 5.

example, the risk of a family losing its breadwinner has been included in the constitutional right to social security, since it is of a substitutive nature for incapacity benefits due to age or incapacity to work, i.e. for the benefits previously received by a breadwinner who died.

Another important issue is how social security law benefits are related to the minimum subsistence and human dignity. Constitutional protection is given to the value of the benefit at the time of its determination, which means that benefits should provide maintenance at the level of the minimum subsistence. The preservation of the real value of the benefit by means of a valorisation mechanism is also protected, with the legislator having considerable freedom in choosing the relevant valorisation methods.<sup>19</sup>

### cc) Special Assistance for Families

Another important provision from which social rights are derived is Article 71 of the Constitution. According to this provision, the state shall take into account the welfare of the family in its social and economic policies. Families in a difficult material and social situation, especially families with many children or single-parent families, are entitled to special assistance from the public authorities. These provisions do not provide grounds for constructing individual claims of the individual against the state. What distinguishes the provisions of Article 71(1), second sentence, is that we are here dealing with a constitutional determination of the scope of benefits for families in difficult situations.<sup>20</sup> This provision specifies that assistance to families in difficult financial and social situations, especially those with many children and single-parent families, is supposed to be of a “special” nature, i.e. should go beyond the usual assistance provided to others.

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19 Cf. Judgments of the Constitutional Tribunal on (case file no.): K. 14/92, OTK in 1993, part II, item 35; K. 23/95, OTK in 1995, part II, item 33; K 8/96 OTK ZU No. 4/1996, item 32; K. 4/99, OTK ZU No. 7/1999, item 165.

20 See grounds of Judgment of the Constitutional Tribunal of 13 April 2011, SK 33/09, OTK-A 2011, no. 3, item. 25, pp. 366 ff.

#### dd) The Minimum Wage

A fundamental means of ensuring a dignified existence is to guarantee working people an adequate wage that enables them and their families to secure their justified needs. The minimum wage provisions, which have their source in the Constitution, are intended to serve this purpose. Article 65(4) of the Constitution of the Republic of Poland stipulates that the minimum amount of remuneration for work or the method of determining this amount shall be set by law. Due to the autonomous nature of constitutional terms, this provision refers to the performance of any gainful work, and therefore not only to work performed based on an employment relationship.<sup>21</sup> The remuneration for work should be a fair remuneration – it should be sufficient to meet the justified basic needs of the individual (the minimum standard of a life in dignity).

#### c) What Shall Be the Minimum? The Issue of Quality-of-Life Measures and Income Thresholds

Before proceeding to the illustration of benefits, it is necessary to consider what criteria can and should be adopted when evaluating individual solutions, including the number of benefits and income thresholds (in the case of benefits that depend on this criterion, which is especially the case in the group of social assistance and social support benefits). In Poland, there are four poverty thresholds and income benchmarks that can be used to assess social needs and poverty levels. They are set by the Institute of Labour and Social Affairs and are: the social intervention threshold (Próg Interwencji Socjalnej – PIS), family income support (Wsparcie Dochodowe Rodzin – WDR), social minimum (Minimum Socjalne – MS) and subsistence minimum (Minimum Egzystencji – ME). The common feature of these criteria is that they are minimum consumption thresholds determined using the method of basic needs and the corresponding basket of goods and services (also known as the basket method). These four measures serve as important benchmarks for guiding policy decisions and framing discussions on social protection.

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<sup>21</sup> A. Krzywoń, *Konstytucyjna ochrona pracy i prawa pracowniczych* (Wolters Kluwer 2017); A. Sobczyk and K. Kulig, ‘Komentarz do art. 65’, in: M. Safjan and L. Bösek (eds.), *Konstytucja RP, Tom I Komentarz. Art. 1-86* (C.H. Beck 2016), p. 1477.

The subsistence minimum (ME), also called the biological minimum, defines the level of satisfaction of consumption needs, below which there is a biological threat to human life and psychophysical development.<sup>22</sup> Satisfying needs at this level and within this material range enables nothing more than survival. This means that this category can be considered the lower limit of the poverty scale. The basket of basic subsistence needs includes only expenses related to food, clothing and footwear, housing costs, children's education costs, hygiene and health care products at a level that allows biological survival. This means that social benefits should always be available to people whose income is below the designated subsistence level.

The type and level of needs met at the level of the social minimum (MS), on the other hand, should ensure such conditions as to enable the reproduction of life forces of a human being, upbringing of children and maintenance of social bonds during work, study and leisure. Therefore, the social minimum (MS) determines a level of expenditure, the achievement of which also enables participation in social life (provides better housing conditions, better food, allows to pay for leisure and recreation).<sup>23</sup> For this reason, the basket of basic needs also includes expenditure on culture, sport and leisure, transport and other areas. The social minimum thus sets the limit of household expenses that measure a decent living standard at the minimum level<sup>24</sup>, which in turn allows beneficiaries to maintain ties with society.<sup>25</sup>

When evaluating the adopted detailed solutions of the social law in terms of living a life in dignity, a more adequate criterion would be the social minimum (MS). A life in dignity should be based not only on biological survival, but also on participation in social life, and therefore should also take social inclusion into account. Ensuring income at the level of the

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- 22 L. Deniszczuk and B. Sajkiewicz, 'Kategoria minimum egzystencji', in: S. Golinowska (ed.), *Polska bieda II. Kryteria – Ocena – Przeciwdziałanie* (Instytut Pracy i Spraw Socjalnych 1997).
- 23 B. Szatur-Jaworska, 'Diagnoza, diagnozowanie, badania diagnostyczne w polityce społecznej', in: G. Firlit-Fesnak and J. Męcina (eds.), *Polityka społeczna* (Wydawnictwo Naukowe PWN 2018).
- 24 P. Kurowski, *Koszyki minimum socjalnego i minimum egzystencji – dotychczasowe podejście* (2002), p. 2 <[https://www.ipiss.com.pl/wp-content/uploads/2022/11/rola\\_funkcja\\_min\\_soc\\_egz.pdf](https://www.ipiss.com.pl/wp-content/uploads/2022/11/rola_funkcja_min_soc_egz.pdf)> accessed 14.11.2024.
- 25 L. Deniszczuk and B. Sajkiewicz (n 22).

subsistence minimum (ME) does not remove problems that generate social exclusion.<sup>26</sup>

The social intervention threshold (PIS) represents the minimum income level below which a household or individual is considered to require social assistance, while the family income support (WDR) is a benchmark used to define income criteria in family benefits.

Importantly, the subsistence minimum is linked to the category of the social intervention threshold, which typically defines the income criterion in social assistance. Legal mechanisms for increasing these criteria are to ensure that social assistance benefits are available to people in need and that their value does not fall below the subsistence minimum<sup>27</sup> (in practice, PIS are close to ME in a certain period, while WDR thresholds, used to define income criteria in family benefits, are set more or less as an average of ME and MS). However, while the subsistence and social minimum criteria are reviewed on an ongoing basis (annually – ME, and even quarterly – MS), the WDR and PIS are set every three years (as provided for in the Act on Family Benefits and the Act on Social Assistance). At such a value, they are taken into account in order to establish income criteria for social assistance (PIS) and family benefits (WDR) for the next 3 calendar years, which means that the current income criteria in these benefit systems are based on prices and costs from several years ago, which, especially in the light of high inflation, raises doubts as to whether these systems can fulfil their function of protection against poverty. The (too) rare valorisation of PIS, WDR and, as a consequence, income thresholds in social assistance and family benefits is subject to criticism. In the light of rapidly rising prices and wages in Poland (both minimum and average wage), it appears that many people actually living in poverty (or even in extreme poverty – with incomes below the subsistence minimum level) do not have access to benefits that are supposed to protect them from poverty because they are ‘too rich’ to do so. Among other things, it has been proposed to introduce an annual valorisation of the criteria in question and of the income thresholds for benefits in the Act on Social Assistance.<sup>28</sup> This question is

26 R. Babińska-Górecka, ‘Problem wykluczenia społecznego a system świadczeń z pomocy społecznej’, in: J. Blicharz and J. Boć (eds.), *Prawna działalność instytucji społeczeństwa obywatelskiego* (Kolonia Limited 2009), p. 520.

27 P. Kurowski, ‘Rola progów minimalnej konsumpcji w polityce społecznej w Polsce’, *Polityka Społeczna* 4 (2019), p. 44.

28 K. Nowakowska, ‘Pomoc społeczna w Polsce jest pełna absurdów: Skrajnie ubodzy zbyt bogaci na zasiłki i miliony, które nie eliminują biedy’ <<https://www.gazetaprawna.pl>

reasonable when considering that PIS (important for social assistance) in particular tend to be closer to the subsistence minimum (ME) than the social minimum (MS). However, it must be stressed that, in general, the normative anchoring of the ME and MS thresholds, followed by the WDR and the PIS, is assessed positively in science, and the criteria themselves are an important part of the social debate and social dialogue.<sup>29</sup> Another question is whether it is purposeful to complicate the system, and whether it would not be possible to use the ME and MS criteria directly for the purposes of the Social Assistance Act and the Family Benefits Act, since ME and MS are determined by the Institute for Labour and Social Affairs anyway, and much more frequently than PIS and WDR. This would allow for a better shaping of income thresholds and the availability of benefits from these benefit systems.

Below, we present the amounts of the social minimum (MS) and the subsistence minimum (ME) for 2023, in PLN.<sup>30</sup> It is to note that every 'per person' amount has increased compared to the 2022 figures (so year by year) by around PLN 200 (MS) and around PLN 120 (ME). At this time, the income thresholds for social assistance and family benefits were not changed and the values adopted in 2019 were in force, based on WDR and PIS data from previous years. It should be emphasised that the amount of the income criterion entitling to social assistance benefits (PLN 776 for a person running a household alone and PLN 600 per person in a family) are currently lower than the subsistence minimum (!), which raises significant doubts from the point of view of the fulfilment by social assistance of its fundamental role. The same remark applies to family benefits, where the income threshold is PLN 674 per person in a family (or PLN 764 if there is a disabled child in the family) – much below the social minimum and even below the subsistence minimum (ME). The result is that many people whose incomes are below the subsistence minimum thresholds are unable to obtain social assistance benefits and are thus condemned to live in extreme poverty.

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a.pl/praca/artykuly/9567365,pomoc-spoeczna-w-polsce-jest-pelna-absurdow-skrjanie-ubodzy-zbyt-bog.html> accessed 14.11.2024.

29 P. Kurowski (n 27), p. 45, p. 47.

30 Own compilation based on data published by Instytut Pracy i Spraw Socjalnych (Institute for Labour and Social Policy) <<https://www.ipiss.com.pl/wp-content/uploads/2024/04/MS-srednioroczne-2023-1.pdf>> and <<https://www.ipiss.com.pl/wp-content/uploads/2024/04/ME-srednioroczne-2023.pdf>> both accessed 14.11.2024.

<i>Social minimum (MS) level – 2023</i>							
	Employee households					Pensioner households	
	1-person	2-person	3-person	4-person	5-person	1-person	2-person
In total	1717.41	2906.84	4292.76	5586.52	6885.10	1684.33	2849.81
Per person in the family	1717.41	1453.42	1430.92	1396.63	1377.02	1684.39	1424.91

<i>Subsistence minimum (ME) level - 2023</i>							
	Employee households					Pensioner households	
	1-person	2-person	3-person	4-person	5-person	1-person	2-person
In total	901.04	1547.38	2240.55	3143.69	4044.23	854.08	1453.49
Per person in the family	901.04	773.69	814.85	785.92	808.85	854.08	726.74

To enable the reader to relate the above data to the Polish realities, the amounts of remuneration should also be indicated. The average remuneration (net of social security contributions and taxes) was PLN 5540.25 (2022) and PLN 6246.13 (2023) gross and the minimum remuneration was PLN 2209.56 (2022) and PLN 2783.86 (2023) gross (net of social security contributions).<sup>31</sup> This means that a single parent of a child under the age of 18 earning the minimum wage had an income that was well above the subsistence minimum but slightly below the social minimum. This income, however, was supplemented with certain social benefits (e.g. child support benefit in the amount of PLN 800 per month), thanks to which the income of such a household also exceeded the defined social minimum.

## 2. Social Benefits

To meet its obligations resulting from the Constitution, the Polish legislator has created a social security system which is relatively vast in terms of both the number of potential benefit recipients and the subject of the benefits. The system includes not only cash benefits, but also benefits in the form

<sup>31</sup> In 2024, the minimum wage is PLN 3261.53 gross (net of social security contributions and taxes). This significant increase in the minimum wage in previous years was due to high inflation in Poland.

of services, e.g. care services for dependent persons, placement in a social assistance home, and especially health care benefits, in the form of certain activities.

#### a) Social Insurance

The basis of this system is social insurance, based on contributions, laid out by the Act on the Social Insurance System.<sup>32</sup> The idea behind it is to create a state fund based on a separate part of the national income generated by working people, who contribute to its foundation to varying degrees, which then has consequences in terms of shaping their right to the benefits they may receive.<sup>33</sup> The social insurance system includes old-age pension insurance (old-age pension insurances together with nursing compensatory allowances), disability pension insurances (disability pension and training pension, nursing compensatory allowance, survivor's pension, supplementary allowance for complete orphans), sickness and maternity insurance (sickness benefit, rehabilitation benefit, compensatory allowance, maternity allowance, care allowance) and work accident and occupational diseases insurance (sickness allowance, rehabilitation benefit, compensatory allowance, disability allowance, training allowance, survivor's pension lump-sum compensation), nursing compensatory allowance and supplementary allowance for complete orphans, covering the costs of dental care and vaccination, and supplying them with orthopedic items within the scope set forth by the law. In principle, social insurance is of a comprehensive nature, which means that the legislator's goal was to cover the widest possible group of people who make their living from work and earn income from it, with the exception of a few professions for which separate schemes have been created to cover typical social risks. Social insurance coverage is based on the so-called insurance entitlements that are related to gainful activity, e.g. work performed on the basis of an employment contract or conducting non-agricultural business activity, and entitlements which are not related to gainful activity, but which are important from the point of

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32 Act of 13 October 1998 on the social insurance system, Journal of Laws of 2022, item 1009, consolidated text.

33 I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego* (Wolters Kluwer 2020), p. 52.

view of the state's social policy, e.g. providing personal care for a child or a dependent family member.<sup>34</sup>

Farmers however are covered by a separate social insurance system (which is insurance only by name, because its expenses are, in about 90% of cases, covered from the state budget). Outside the basic social insurance system, there are also selected professional groups, such as judges and prosecutors who receive emolument when retired, as well as soldiers and officers of the uniformed services, e.g. the police, whose social security in the event of a social risk is provided using the pension provision method.<sup>35</sup> The risk of unemployment is also secured through the provision method and, among other things, through the payment of unemployment benefits, as well as some disability-related benefits, i.e. social pension, or benefits for people who are caregivers for family members with disabilities.

### b) Social Support

Due to their significant development in the recent period, attention should be paid to benefits referred to as 'social support benefits', the purpose of which is primarily to supplement income and meet socially justified needs. They include nursing allowances, family allowances, benefits from the Maintenance Fund, housing benefits, scholarships for pupils and students.<sup>36</sup> These benefits are also aimed at ensuring an appropriate standard of living and development, e.g. a child support benefit. The legal structure of most of these benefits (i.e. dependence on income criteria) means that they are intended to be available to persons/families in need of such support due to their financial situation. However, the exception is the child support benefit, for which the income criteria have been completely eliminated.

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34 G. Uścińska, *Prawo zabezpieczania społecznego* (C.H. Beck 2021), p. 60.

35 K. Ślebzak, in: A. Wypych-Żywicka (ed.), *System prawa ubezpieczeń społecznych. Część ogólna* (Wolters Kluwer 2020), p. 529.

36 M. Lewandowicz-Machnikowska (n 9), p. 33 ff.

### c) Social Assistance

People who cannot provide for their livelihoods through their own work and who do not meet the requirements necessary to receive benefits on the account of social insurance and find themselves in a difficult life situation that they are unable to overcome using their own rights, resources and opportunities, may apply for social assistance benefits. Therefore, one can speak of the complementary role of social assistance in the social law system in the sense that it complements the protection provided by other benefit systems.<sup>37</sup> Hence, the two systems work together to provide a comprehensive safety net for individuals in need. Benefits from social assistance and social insurance can generally be cumulated. As a rule, if an individual is receiving social insurance benefits, they can still be eligible for social assistance if their total income from social insurance and other sources is below the threshold required for social assistance.

Some social assistance benefits are obligatory (and claim-based), which means that if the person applying for the benefit meets the conditions on which the right to receive the benefit depends, the authority is obliged to grant it in a strictly defined amount, e.g. permanent allowance. Other benefits, on the other hand, are discretionary and depend on the needs and individual situation of the person applying for assistance, e.g. purpose-specific allowance.

### d) Minimum Wage

Although the minimum wage cannot be considered a social benefit per se, in Poland it remains a fundamental tool of ensuring a dignified existence. Minimum wage is currently regulated by the Act of 10 October 2002 on the minimum wage.<sup>38</sup> This law specifies the procedure for determining the annual amount of the minimum wage and the criteria to be considered in determining this amount (which is the rate of price increase (inflation)

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37 K. Stopka, 'Refleksje nad rolą pomocy społecznej w polskim systemie zabezpieczenia społecznego', in: R. Babińska-Górecka, A. Przybyłowicz, et al. (eds.), *Prawo pracy i prawo socjalne. Teraźniejszość i przyszłość. Księga jubileuszowa dedykowana Profesorowi Herbertowi Szurgaczowi* (E-Wydawnictwo, Prawnicza i Ekonomiczna Biblioteka Cyfrowa, 2021), pp. 351-363.

38 Consolidated text, Journal of Laws 2020, item 2207, as amended.

forecast for the following year and – if the minimum wage is less than half the national average – also by two-thirds of real economic growth).<sup>39</sup> The amount of the minimum wage is negotiated annually by the Social Dialogue Council<sup>40</sup>. Until 2017, the Act only defined the monthly amount of the minimum wage applied only to employees, i.e. those employed under an employment relationship. As a result of an amendment that came into force in 2017, those employed under civil law contracts were subsequently also protected. A minimum hourly rate is set annually for these contracts.

### III. Analysis

#### 1. Old-Age, Unemployment and Disability Support

##### a) The Problem of the So-Called New Old-Age Pensions

Social insurance is the basic pillar of the social system in Poland. Bearing in mind the solutions adopted in social insurance, benefits from this system are not particularly interesting from the point of view of ensuring a minimum decent life. The amount of social insurance benefits is generally determined as a derivative of the income (remuneration) earned during the period of professional activity. This means, in principle, the social insurance system provides benefits at a relatively high level, depending on the amount of a person's earnings. However, it is crucial to draw attention to the growing problem of poor old-age pensioners in Poland, who receive an old-age pension benefit below the so-called "minimum old-age pension" (the amount of the minimum benefit set by law and valorised every year, to ensure a social minimum).

The problem is the result of the 1999 old-age pension scheme reform. At that time, a new old-age pension scheme was introduced in Poland, under which an old-age pension at statutory retirement age is received if only one condition is met – reaching the retirement age of at least 60 for women and 65 for men. The amount of the benefit is strictly dependent on

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39 In the event of a forecast inflation rate of more than 5%, two dates are set for the change of the minimum wage and the minimum hourly rate: as of 1 January, and as of 1 July. That was the case in 2023 and 2024.

40 The Social Dialogue Council is the most important institution of national social dialogue in Poland. It constitutes a forum for tripartite dialogue and cooperation between the representatives of employees, the representatives of employers and the representatives of government, functioning at the central level.

the amount of old-age pension contributions paid. Acquiring the right to an old-age pension is not determined by a certain length of qualifying insurance period. The method of determining the amount of the new old-age pension (dividing the amount of accumulated and valorised contributions by the expected life expectancy in months), results in the fact that if a given insured person has ever been subject to old-age pension insurance and has paid at least one contribution, the right to an old-age pension is established. In extreme cases, this old-age pension thus amounts to literally a few PLN. The guarantee of the so-called "minimum old-age pension" (in 2024 it is PLN 1620.65 net) covers only those whose qualifying insurance period is a minimum of 20 years (women) or 25 years (men). Taking into account the subsistence minimum and social minimum criterion indicated above, the minimum pension significantly exceeds the subsistence minimum threshold and is slightly lower than the social minimum for pensioner households.

Unfortunately, currently more than 340,000 people in Poland already receive an old-age pension amounting to less than the minimum old-age pension, and nearly 19,000 people receive a benefit of less than PLN 400.<sup>41</sup> This results in the old-age pension not serving its purpose and not allowing those who receive such low benefits to support themselves. Paying old-age pensions below the minimum subsistence thresholds results in old-age pensioners being forced to rely on social assistance benefits to meet their most basic needs anyway (if they met the income thresholds for social assistance, which is not always the case).

#### b) Unemployment Benefits

In most cases, losing a job results in losing a livelihood. For this reason, it is important to provide a minimum of assistance to the unemployed while

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41 Structure of the amount of benefits paid by Social Insurance Institution after the March 2022 valorisation; Zakład Ubezpieczeń Społecznych, 'Struktura wysokości świadczeń wypłacanych przez ZUS po waloryzacji w marcu 2022 roku' (2022) <<https://www.zus.pl/documents/10182/39637/Struktura+wysoko%C5%9Bci+wyp%C5%9Bwiadcze%C5%84+wyp%C5%82acanych+przez+ZUS+po+waloryzacji+w+marcu+2022+r..pdf/75b859ca-4130-0372-9d23-27c1882aced6?t=1653904662501>> accessed 14.II.2024.

they are searching for a new job.<sup>42</sup> What works as such assistance is the unemployment benefit, serving as an expression of treating unemployment from a social perspective.<sup>43</sup> In Poland, this benefit is defined as a lump-sum benefit. Its amount does not depend on the amount of previous earnings<sup>44</sup>, since it is not a social insurance benefit.

Unemployment benefit is granted to persons within the meaning of the Act of 20 April 2004 on employment promotion and labour market institutions.<sup>45</sup> However, the mere possession of the legal status of an unemployed person is not equivalent to obtaining the right to unemployment benefits. The benefit is only available to unemployed persons who have lost their jobs and, before registering at the labour office, had been performing the type of gainful work specified by the law, for at least 365 days during the 18 months for which “contributions” to the Labour Fund were paid by the employer, and whose earnings were not less than the minimum wage. The amount of the benefit depends on the length of service and the period of its receipt (180 or 360 days), as it is assumed that in the case of long-term unemployment, social assistance benefits are a more appropriate form of assistance. This is because long-term unemployment creates a risk of deprivation, and what comes as a form of mitigating this risk is essentially social assistance (especially periodic allowance).<sup>46</sup>

The relatively low amount of the benefit (compared to the average or even the minimum wage) is supposed to motivate people to effectively look for a new job (the so-called motivational function of the benefit).<sup>47</sup> It should be noted, however, that the amount of the benefit significantly exceeds the subsistence minimum for a one-person household and oscillates around the social minimum thresholds: from 01/06/2024, the basic monthly amount of the unemployment benefit amounts to PLN 1512.42

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42 See more in: M. Paluszkiewicz, ‘Świadczenia dla bezrobotnych i poszukujących pracy’, in: M. Włodarczyk (ed.), *System prawa pracy. Tom VIII. Prawo rynku pracy* (Wolters Kluwer 2018), pp. 1122 ff.

43 K. Jaworska, *Socjalne traktowanie bezrobocia* (Wydawnictwo Uniwersytetu Warmińsko Mazurskiego 2017), p. 10.

44 As a result, the Polish model of securing unemployment can be described as a hybrid one, combining elements of the insurance assistance technique (due to the partly contributory model of financing the benefit) – see more in: K. Jaworska (n 43), pp. 212-213.

45 Consolidated text, Journal of Laws of 2022, item 690, as amended.

46 W. Sanetra, *Zatrudnienie i bezrobocie. Przepisy i komentarz* (Wydawnictwo Prawnicze 1993), p. 86.

47 K. Jaworska (n 43), pp. 183-184.

net for the first three months and PLN 1187.73 for the remaining period.<sup>48</sup> It is also worth pointing out that in the case of unemployment benefits, the legislator has introduced a mechanism of automatic valorisation by the average annual index of prices of total consumer goods and services in the previous year. This allows to make the number of benefits more realistic, and the amounts of benefits after valorisation are announced by the Minister of Labour. Moreover, in the system of support for the unemployed, there is the possibility of drawing a benefit and, in combination, receiving a salary from gainful activity. This only applies to unemployed persons who are entitled to unemployment benefit. These recipients, in the event of taking up employment, may receive a so-called activation allowance of up to half the amount of the unemployment benefit to which they are entitled for half the period for which they would be entitled. This applies in particular to the unemployed who have found a job on their own. This is intended to encourage the self-motivated seeking of employment.

Unemployment benefits are available not only to Polish citizens, but also to foreigners living in the territory of Poland on the basis of legal residence permits indicated in the Act.

c) Social Pension

The purpose of the social pension is to compensate for the incapacity to acquire entitlement to benefits from the social insurance system due to the fact that total incapacity to work arose before entering the labour market. A social pension is granted to any adult who is totally incapable of working (i.e., unable to perform any work) due to impairment of bodily functions, which arose before the age of 18 or 25 (during school or higher education). The law does not provide any income criterion for receiving a social pension, but it is only available to people who cannot earn a living through their own efforts. This benefit is available not only to Polish citizens, but also to foreigners living in the territory of Poland on the basis of legal residence permits indicated in the Act. This benefit is intended to be a source of subsistence for the entitled person and, in a way, takes priority over social assistance benefits; it especially takes precedence over the permanent benefit (the Act on Social Assistance expressly provides that

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48 However, depending on the number of years of employment, the benefit for a given unemployed person may be 80%, 100% or 120% of the amounts indicated.

a person entitled to a social pension is not entitled to a permanent benefit even if he or she fulfils the conditions for its granting. However, it is not possible to exclude the receiving of social pension and periodic benefit if the social pensioner meets the conditions, including income criteria, for periodic benefit. This is not possible in the case of single persons, but in the case of multi-person households it is possible).

The social pension amount is equal to the amount of the minimal complete incapacity pension (in 2024, it is PLN 1620.27 net). By linking the amount of the social pension to the amount of the minimum complete incapacity pension, the benefit is subject to annual automatic valorisation. There is also an ongoing discussion (and legislative work) regarding the increase of the social pension to the amount of the minimum wage, which would significantly change the financial situation of recipients of this benefit.

d) Benefits Granted by the President of the Social Insurance Institution in Exceptional Cases

Socially insured persons and their surviving family members who, as a result of special circumstances (e.g. they are a few weeks short of the required contribution periods), do not meet the conditions required to obtain the right to an old-age or disability pension and are unable to take up employment or activities covered by social insurance and do not have the necessary means of subsistence due to their total inability to work or their age may, by way of exception, be granted special benefits by the President of the Social Insurance Institution. Their amount in practice is equal to the amount of the minimum old age pension; they are also valorised annually like all social insurance pensions. These benefits cannot be considered as social insurance benefits, as they are financed from the state budget. Their receipt is not subject to income criteria; however, a condition for their granting is the lack of the necessary means of subsistence, which is examined in the course of the procedure for granting this benefit. These benefits are therefore intended to provide a certain minimum for a decent life for those who cannot provide for themselves.

## 2. Social Assistance Programmes

### a) Permanent, Periodic and Purpose-Specific Allowance

Social assistance is described as a “low-lying social safety net that protects against a hard fall to the bottom if one slips down the rungs of the social ladder and fails to stop at higher levels of protection”<sup>49</sup>. It is intended to support individuals and families in their efforts to meet their essential needs and enable them to live in conditions commensurate with human dignity. From the point of view of the subject matter of this study, it can be said that all social assistance benefits are therefore in the nature of benefits ensuring a life in dignity, but it is not possible to discuss them all: the Act on Social Assistance defines 7 types of cash benefits and a dozen or so types of non-cash benefits which include, among others, provision of shelter, meals, necessary clothing, etc. We have therefore decided to present the basic cash benefits – permanent benefit, periodic benefit and purpose-specific benefits.

Social assistance benefits are available not only to Polish citizens, but also to foreigners living in the territory of Poland based on legal residence permits indicated in the Act.

#### aa) Permanent Allowance

Permanent allowance is a social assistance benefit aimed at providing income to a single adult or an adult in a family who is unable to provide it through their own efforts. The lack of such an opportunity results from complete incapacity to work or incapacity to work<sup>50</sup> due to reaching retirement age. This means that the permanent allowance is granted to an adult who is unable to provide sufficient means of subsistence (due to age, disability or incapacity to live independently) and whose material situation does not allow for a dignified existence. It is also necessary in cases where a difficult life situation has occurred combined with the incapacity to overcome it independently. This allowance is available to a person who does not meet the conditions for obtaining a social insurance pension or social

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<sup>49</sup> J.Jończyk, *Prawo zabezpieczenia społecznego* (Zakamycze 2001), p. 390.

<sup>50</sup> That is a formal declaration of incapacity for work, which is one of the conditions for receiving a social security pension.

pension and, in this sense, it has a subsidiary role in the social law system, just like most social assistance benefits.

Granting the right to a permanent allowance requires that an income criterion is met. As mentioned above,<sup>51</sup> income thresholds for social assistance are revised every 3 years, taking into account the result of the social intervention threshold (PIS) study carried out by the Institute of Labour and Social Affairs upon indications of the Minister competent for social protection.<sup>52</sup> In 2023 and 2024, the PIS was significantly lower than the subsistence minimum (ME) set by the Institute of Labour and Social Affairs, as a result of which some of the people who live below the subsistence minimum cannot apply even for social assistance benefits. Thus, the existing mechanisms for the valorisation of income criteria (every 3 years) must be considered inadequate as it fails to ensure a dignified life for those in real need. According to the most recent update, for social assistance benefits to be received, a person running a household alone must now show an income lower than PLN 776, with the amount of permanent allowance not lower than PLN 100 nor higher than PLN 1000<sup>53</sup> per month – it should be the difference between 130% of the income threshold amount and the applicant's income. The period for which the permanent allowance is granted is determined by the social assistance institution at its discretion, considering the duration of the circumstances which justify granting the benefit. A permanent benefit can be defined as a benefit that replaces a pension for people who are not entitled to it, or that supports a pensioner if the amount of the pension is so low that the recipient meets the social assistance income criterion.

#### bb) Periodic Allowance

Periodic allowance is another social assistance benefit that aims to provide means of subsistence. It is granted, in particular, due to long-term illness, disability, unemployment or the possibility of maintaining or acquiring entitlements to benefits from other social security systems. It may be received by a single person or a family whose income does not exceed the statutory income criterion (PLN 776 for a single person, or PLN 600 per person in

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<sup>51</sup> See Sec. II.I.c).

<sup>52</sup> Art. 9 paras. 1 and 2 of the Social Assistance Act.

<sup>53</sup> The amounts indicated apply from 2024 – previously, for many years, it was PLN 30 and PLN 719 respectively.

the family) and in the event of the occurrence of one or more difficult life situations justifying the granting of a social assistance benefit. The amount of periodic allowance granted depends on the income of the person or family. The allowance is paid up to the difference between the income criterion established in accordance with the Social Assistance Act and the income which the applicant actually earns. In the case of a person running the household alone, the periodic allowance may not be higher than the amount of the income criterion per person in the family. The period for which a periodic allowance is granted depends on the individual situation of the person or family. In practice, this allowance is most often paid to unemployed persons who are not entitled to unemployment benefits. It can also be received by persons who are able to work (contrary to the permanent allowance, which persons who are able to work are not entitled to). It is also sometimes granted to persons who have no source of income due to protracted proceedings for other benefits (e.g. social security pensions).

### cc) The Purpose-Specific Allowance

The purpose-specific allowance<sup>54</sup> may be granted in order to satisfy an essential living need (i.e. a need justified in terms of preservation of life, health, fulfilment of social roles, function of a family member)<sup>55</sup>, in particular to cover partial or full costs of food purchases, medicines and treatment, heating, including fuel, clothing, necessary household items, minor repairs and renovations in the flat, as well as funeral costs. In addition, the homeless and other persons who have no income and no possibility of obtaining health care benefits may be granted a purpose-specific allowance to cover part or all of their expenses for health care services. The granting of a purpose-specific allowance depends on the income criterion and the occurrence of a difficult life situation and the incapacity to overcome it independently.<sup>56</sup> The right to the special-purpose allowance is fully based on how the discretion of the administrative social assistance body is constructed.<sup>57</sup>

54 I. Sierpowska, 'Komentarz do art. 39', in: I. Sierpowska (ed.), *Pomoc społeczna. Komentarz* (Wolters Kluwer 2021).

55 I. Sierpowska, 'Przesłanki nabycia prawa do świadczeń', in: I. Sierpowska (ed.), *Meritum. Pomoc społeczna. Wsparcie socjalne* (Wolters Kluwer 2016), p. 78.

56 Ibid, p. 40.

57 W. Maciejko 'Komentarz do art. 39', in: P. Zaborniak and W. Maciejko (eds.), *Ustawa o pomocy społecznej. Komentarz* (Lexis Nexis 2013).

Discretion is manifested in the possibility of choosing the content of the decision depending on the circumstances of the case, and in particular on the income received by people applying for assistance, the scope and type of their needs, as well as the funds available to the authorities for benefits and the number of people applying for them.<sup>58</sup> The authority decides both on granting the purpose-specific allowance and its form and amount.<sup>59</sup> The legislator has not even specified the amount of this benefit, so that it is left to the granting authority to determine the amount of the purpose-specific allowance.<sup>60</sup> The addressee of the benefit is a single person, a person in a family or a family. If the need is of an individual nature (e.g. purchase of medicines), the benefit will be addressed to a specific person; if the allowance is to meet the needs of an entire family (purchase of firewood), then the addressee of the benefit will be the family.<sup>61</sup> The benefit in question is always granted for a specific purpose, and not to cover the full monthly living costs of the beneficiary. It is therefore of an *ad hoc* nature, aimed at a specific living purpose and is a lump-sum benefit (unlike a permanent or periodic allowance).<sup>62</sup> It is not a source of subsistence, but is used to meet a very specific need, here and now, which for some reason the person is unable to meet on his or her own (e.g. buying winter fuel, food, medicine). It is about meeting the most basic needs of life to enable a person's existence. In this sense it helps provide a life in dignity.

A special-purpose allowance may also be granted in the event of a loss suffered by a person or family as a result of a fortuitous event or as a result of a natural or ecological disaster – even if the income thresholds are exceeded. In this case, the social assistance institution is obliged to assess whether the party actually suffered losses as a result of a fortuitous event, natural or ecological disaster, and assess their scale, which requires the applicant to prove such a loss.<sup>63</sup> Granting special purpose-specific allowance in the amount which does not exceed the income criterion of a single person or a family, respectively, is also possible in particularly justified cases. Assessing whether given circumstances constitute a particularly justified

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58 I. Sierpowska (n 54).

59 G. Uścińska, *Prawo zabezpieczenia społecznego* (C.H. Beck 2021), p. 492.

60 Ibid.

61 I. Sierpowska (n 54).

62 I. Sierpowska, 'Kommentarz do art. 40', in: I. Sierpowska (ed.), *Pomoc społeczna. Komentarz* (Wolters Kluwer 2021).

63 I. Sierpowska, 'Kommentarz do art. 41', in: I. Sierpowska (ed.), *Pomoc społeczna. Komentarz* (Wolters Kluwer 2021).

case is the responsibility of the social assistance institutions and is made within the administrative discretion, considering both the needs reported by the applicant (and other applicants) and the institution's financial capacity.

Due to the way in which the amounts of benefits are determined, there is no mechanism for automatic valorisation. It is therefore always a political decision and does not guarantee an increase in the level of benefits and their adaptation to current socio-economic conditions.

### b) Activation Mechanisms

Social assistance benefits are provided on the basis of the subsidiarity principle according to which social assistance is an institution of the state social policy aimed at enabling persons and families to overcome difficult life situations which they are unable to overcome using their own entitlements, resources and possibilities, and persons and families benefiting from social assistance are obliged to co-operate in solving their difficult life situation (Art. 2, para. 1 and Art. 4 of the Social Assistance Act).

In general, therefore, in social assistance, undertaking gainful activity will lead to loss of benefits if the earned income exceeds the income thresholds. The Act does not provide for mechanisms that would encourage gainful activity in the form of continued entitlement to benefit. On the contrary: if there is any change in the personal, income or property situation, which is related to the basis for granting benefits, persons and families benefiting from social assistance benefits are obliged to immediately inform the body that granted the benefit. Bearing in mind the low-income criteria, even low earned income may result in deprivation of the right to social assistance benefits or in inability to obtain them due to exceeding income thresholds. This is downright demotivating and may, in practice, encourage people to work in the black economy.

In social assistance, we have one exception to this rule. This is the periodic benefit collected when a person covered by a social contract takes up employment, as it is continued to be paid regardless of income, up to the date resulting from the decision granting the periodic benefit – but no longer than for a period of two months from the date on which the person

was employed.<sup>64</sup> A social contract is a contract concluded by a social assistance body with a person or family in order to strengthen their activity and independence in life, at work or to counteract social exclusion.<sup>65</sup> The conclusion of a social contract is at the discretion of the social assistance body. The social worker dealing with the case of a person claiming social assistance benefits must always individually assess its effectiveness. In particular, it has to be considered whether the person, due to their situation or other circumstances and conditions, will be able to independently and consciously work out the common provisions of the contract with the social worker and implement them. The assumption is that since the content is negotiated and therefore agreed upon with the beneficiary, they should feel more obliged to fulfil the provisions of the social contract, although it is assumed that the contract is not a civil law contract, but rather an administrative contract (which is rarely used in Polish law).

### 3. Family and Child Support

#### a) Family Allowance with Supplements

The Act of 28 November 2003 on family benefits<sup>66</sup> mentions a number of benefits aimed at providing financial support to families with lower incomes. Their essence is to meet the basic needs of the family and ensure that its members live at a level that is commensurate with human dignity.<sup>67</sup> These benefits are financed from the state budget. The basic benefit is family allowance. It is available to both Polish citizens and foreigners legally residing in the territory of Poland, and its purpose is to partially cover the expenses of maintaining a child. It is granted to one or both parents or the child's legal guardian.

Family allowance is a benefit granted to low-income families, as its receipt is conditioned by an income criterion<sup>68</sup>: the income per person in

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64 The possibility of combining earnings with a periodic allowance derives from Art. 38 (para. 4a) of the Social Assistance Act.

65 Art. 108 of the Social Assistance Act.

66 Consolidated text, Journal of Laws of 2022, item 615.

67 A. Kawecka, 'Rozdział 1. Przepisy ogólne', in: K. Małysa-Sulińska (ed.), *Ustawa o świadczeniach rodzinnych. Komentarz* (Wolters Kluwer 2015), p. 21.

68 M. Lewandowicz-Machnikowska, 'Zasiłek rodzinny i dodatki do zasiłku rodzinnego', in: I. Sierpowska (ed.), *Meritum. Pomoc społeczna. Wsparcie socjalne* (Wolters Kluwer 2016), p. 242.

the family cannot exceed certain amounts (in 2023 this was PLN 674, and PLN 764 if a family member is a child with a certain degree of disability; these amounts have not been changed since 2018, as no changes were made to the income threshold amounts or to the benefits themselves during their verification in 2021). As of 2016, exceeding the income threshold does not mean that the benefit cannot be granted, as the “1 PLN for 1 PLN” rule was introduced at that time. According to this rule, in such a situation, the benefit is paid in the amount of the difference between the amount of family benefits (i.e. family allowance and supplements to this allowance) and the amount of income exceeding the income thresholds.<sup>69</sup> The “zloty for zloty” (PLN 1 for PLN 1) mechanism can be regarded as a mechanism encouraging economic activity. In this case, a slight exceeding of income thresholds does not result in deprivation of the right to benefits, but in their proportional reduction (e.g. exceeding the income threshold for family benefit by 50 PLN will not result in deprivation of the benefit, but in its payment to be reduced by 50 PLN). The allowance is paid for each child in the family who has not reached the age of 18. After reaching this age, the allowance is also paid if the child continues to study (for no longer than until the age of 21). The amount of the benefit depends on the age of the child (ranging from PLN 95 to PLN 135).

Family allowance is often supplemented by a number of payments, which include allowances for childbirth (PLN 1,000); for child care during parental leave<sup>70</sup> (PLN 400 per month); for single parenting (PLN 193 per month for each child, but no more than PLN 386 per month); for raising a child in a large family (PLN 95 per month for the third and subsequent children in the family); for education and rehabilitation of a disabled child (PLN 90 or PLN 110 per month, depending on the age of the child).

The law does not provide a mechanism for an automatic valorisation of income thresholds and benefit amounts in the family allowances system. Changes are made by an ordinance of the competent minister and should take place every 3 years, but in practice the amounts are revised less frequently (e.g. when revising the income thresholds and benefit amounts in 2021, they were left unchanged). The lack of valorisation for 6 years with a significant increase in the minimum and average wages in Poland

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69 Ibid, p. 243.

70 It is one of the types of leave granted to employees to enable them to provide personal care to a child; it can last up to 36 months (and up to 72 months in the case of care of a disabled child). It is an unpaid leave (no remuneration from the employer is paid and no sickness insurance benefits are granted during this time).

has resulted in a significant decrease in the number of family benefits granted – fewer and fewer families meet the income criteria. Perhaps the government wanted to effectively extinguish the family benefits system due to the introduction of the child support benefit in 2016.

### b) Child Support Benefit

The child support benefit is a relatively new benefit, introduced by the Act of 11 February 2016 on state aid in raising children<sup>71</sup>, which is part of the system of material aid for families raising children.<sup>72</sup> It was meant to increase fertility rates by reducing the financial burden on the family which results from raising children.<sup>73</sup> This benefit is intended to provide partial coverage of expenses related to satisfying the basic needs and raising children. The primary goal (to increase the fertility rate) has not been achieved, but the benefit has made it possible to reduce the poverty of Polish families and ensure a higher standard of living.<sup>74</sup> Polish citizens and foreigners legally residing in the territory of the Republic of Poland are entitled to this benefit.

The group of eligible persons includes, first of all, the mother or father if the child resides with and is their mother's or father's dependant (but also that of an actual guardian or the legal guardian in certain cases). It is granted until the child reaches the age of 18. As per 2024, each child is entitled to one benefit in the amount of PLN 800 (previously, since 2016, in the amount of PLN 500 per month, hence the colloquial term "500+" for the benefit). The amount is determined by the Act itself. It does not provide

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71 Consolidated text, Journal of Laws of 2022, item 1577, as amended.

72 A. Nowicka-Skóra, 'Pojęcie i cel świadczenia wychowawczego', in: I. Sierpowska (ed.), *Meritum. Pomoc społeczna. Wsparcie socjalne* (Wolters Kluwer 2016), p. 408.

73 Parliamentary paper no. 216 – Uzasadnienie projektu ustawy o pomocy państwa w wychowywaniu dzieci z projektami aktów wykonawczych p. 1-6 <<https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=216>> accessed 14.11.2024.

74 A. Kaczmarek and W. Kudela, *Analiza i skutki ustawy o pomocy państwa w wychowywaniu dzieci, tzw. program "Rodzina 500 plus"*, *Przegląd Prawa Publicznego* 6 (2018), pp. 8, 21. Although in the cited text, the authors point to an apparent pronatalist effect in 2016 and 2017, this effect was no longer apparent in subsequent years (see the Statistical Information of the Central Statistical Office, *Główny Urząd Statystyczny, Rocznik Demograficzny 2021*, in the section 'Population. State and structure and natural movement in territorial' in 2021 as of 30 June, p. 8 <<https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-demograficzny-2021,3,15.html>> accessed 14.11.2024.

for an automatic valorisation mechanism, but authorises the Council of Ministers to increase the benefit (to date, the Council of Ministers has not used such authorisation).

Initially, the benefit was unconditionally granted for the second and each subsequent child in the family, and for the first child only if the income threshold criterion per person in the family was met, but in the run-up to the 2019 parliamentary elections, this condition was abolished, and the benefit is now not subject to an income threshold.

The child support benefit is financed from the state budget. It is worth noting that the child support benefit is not included in the income on which the granting of other income-supplementing benefits (such as family benefits or social assistance benefits) depends. It is worth mentioning that there is an ongoing discussion as to whether this benefit should not, however, be made conditional on an income threshold again and whether it should only be granted if at least one parent is working. Such a solution would have an activating character and would motivate beneficiaries to work. In our opinion, however, it is doubtful whether it would be politically feasible to push through such a solution.

### c) Maintenance Fund Benefits

Pursuant to the Act of 7 September 2007 on assistance for persons entitled to maintenance, benefits from the maintenance fund are state-funded support for children entitled to child support whose parent is evading the obligation of drawing on this benefit. A person entitled to the maintenance fund benefit is a child who has been awarded child support from a parent, but where its enforcement is ineffective.

The maintenance fund benefit is available to an eligible person until he or she reaches the age of 18, or 25 if he or she is studying at school (including a higher education institution). In special cases, it may be granted indefinitely (if the eligible person has a certificate of significant disability). The benefit depends on the income criterion, which in 2024 is PLN 1209 per person in the family.<sup>75</sup> This amount will be subject to increases every 3 years by the valorisation rate (the first verification took place in 2023, previously the income criterion was PLN 900). The income criterion is

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<sup>75</sup> Which puts a single parent with one child and earning the minimum wage over the indicated income threshold.

judged to be too low (a single mother with one child, for example, is not entitled to the benefit, even if she only earns the minimum wage).

It is important for eligible persons that the “zloty for zloty” rule applies here as well (it has applied since 2020). Maintenance fund benefits are paid on a monthly basis. They are paid in the amount of child support currently established by the court or as part of a child support settlement, but they amount to no more than PLN 500 per month. Both Polish citizens and foreigners legally residing in Poland are entitled to them.

#### 4. Support Benefit for Persons with Disabilities in Need of Support and Nursing Benefit

If there is a person in the family that is incapable of unaided existence, he or she usually requires constant care and maintenance. This is often provided by family members of the dependent person. To provide care, they often give up gainful work, in return for which they receive certain benefits. In 2024, a major reform of benefits related to the care of dependent persons was passed. Firstly, a cash benefit was introduced, which dependent persons receive directly if they demonstrate a certain level of need for assistance. The purpose of the support benefit is to provide assistance to persons with disabilities who have a need for support in order to partially cover the expenses associated with meeting their special needs in life. The amount of support benefit in 2024 ranges from PLN 712 to PLN 3920 and is related to the amount of social pension. Such a link will result in an automatic annual valorisation of the benefit, as the social pension is subject to annual valorisation.

Secondly, the reform has changed the benefit system for the caregivers. Previously, the nursing benefit was only addressed to carers who gave up paid work to provide care. The recipients were not allowed to perform any gainful work, even if doing so would not interfere with care. This solution has been heavily criticised in the scientific literature, but also by publicists.<sup>76</sup> The benefit could then be considered as an income replacement benefit, as this was a source of livelihood for the caregiver. In this way, the state supported those who, by taking care of persons with disabilities,

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<sup>76</sup> For more about these provisions, see: A. Przybyłowicz, ‘The Legal Position of Persons Dependent on Long-Term-Care in the Republic of Poland’, in: U. Becker and H. Reinhard (eds.), *Long-Term Care in Europe. A Juridical Approach* (Springer 2018), pp. 400 f.

assume the obligations actually imposed on the state.<sup>77</sup> Since 2024, the requirement to give up gainful employment has been removed and carers can combine earning and care work. However, the nursing benefit is only available to carers of children under the age of 18 who have a certified, significant degree of disability or a certificate of disability together with the following indications: the need for permanent or long-term care or assistance from another person in connection with significantly limited possibilities of independent existence and the need for permanent participation of the child's guardian in the child's everyday life in the process of treatment, rehabilitation and education. Special benefits for caregivers of older persons, which existed prior to the reform, are no longer available. However, a recipient of support benefit him/herself or his/her family can decide how to spend the support benefit, and it can also be given to the caregivers.

Both nursing benefit for caregivers and especially support benefit for dependent persons should be classified as life-in-dignity benefits, even if obtaining them does not require meeting any income criteria. The caregivers of dependent children often cannot work full-time and the nursing benefit is still an important source of their livelihood, even if they work. The support benefit should secure the required care for dependent persons who need constant support in their daily lives. Professional care services are expensive and even well-off pensioners often cannot afford them. On the other hand, the person in need of support is free to transfer the amount of the benefit to the family members who actually provide care (in Poland, in practice, care is usually provided by family members, and most often by the daughters of dependent persons). The benefits provided are available to both Polish citizens and foreigners living in the territory of Poland based on the legal residence permits indicated in the Act.

#### IV. Conclusions

The Polish legislator is obliged to create a legal system ensuring a standard of living which reflects respect for human dignity. Such an obligation results from several provisions of constitutional rank, although detailed solutions and methods have been left to the ordinary legislator.

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<sup>77</sup> B. Chludziński, 'Komentarz do art. 16', in: P. Rączka (ed.), *Świadczenia rodzinne. Komentarz* (Wolters Kluwer 2021).

In our opinion, the Polish legislator generally fulfills these obligations by creating an extensive and diversified system of social benefits, using various methods to secure the existing needs. The basic framework of the system is a social insurance system that is universal in terms of the benefit recipients. It provides benefits in the event of common social risks. These benefits replace income in the event of the occurrence of typical risks (maternity, incapacity to work, reaching retirement age) at a relatively high level, usually depending on the amount of previous earnings. For selected professional groups, separate systems of securing such risks are created, which also provide benefits at a relatively high level. In this context, important reservations are raised regarding the above-mentioned solutions in the old-age pension system, resulting in the acquisition of the right to even symbolic old-age pensions. There is no doubt that they cannot be a sufficient source of income after ceasing gainful activity upon reaching the retirement age (in more and more cases they are even below the subsistence minimum). Such old-age pensioners are forced to use other benefit systems, primarily social assistance, to meet their basic needs.

The Polish legislator also considers the needs of people who are unable to earn money for reasons other than the occurrence of typical social risks covered by the social insurance system. The legislator provides, for example, certain benefits to caregivers of dependent people or to dependent people themselves who have not had the opportunity to enter the labour market, as well as to unemployed people. When taking into account the criteria of the social minimum or the subsistence minimum, the amount of these benefits (social pension, nursing benefit, unemployment benefit) basically allows us to think that in most typical life situations these benefits should ensure life at least at the level of the subsistence minimum (which allows biological surviving), and in most cases at the level of the social minimum. Valorisation mechanisms are provided for most of these types of benefits, which allows them to maintain their actual value. Where this mechanism is automatic, with the conditions of indexation specified, it generally fulfills its role.

In addition to the benefits that are an essential source of livelihood, we cannot forget the benefits of a supportive nature. Their purpose is to equalise opportunities or meet a larger spectrum of needs so that a more decent standard of living is ensured. These include family benefits, benefits from the maintenance fund, the “500+/800+” child benefit, and to some extent social assistance benefits. These benefits mostly depend on meeting income criteria, although there are some exceptions (e.g. concerning child

support benefit). As regards these benefits, although certain valorisation mechanisms or verification of income thresholds are provided for, they usually require specific legislative actions (issuing a regulation or amending the Act). Even if certain authorities are obliged to verify the number of benefits or income thresholds during certain periods of time, in practice this is not always the case. This is of significant practical importance, especially in recent years, with the rapidly growing minimum and average remuneration for work and high inflation. In many cases, even receiving the minimum remuneration from work will exclude the possibility of obtaining such benefits due to exceeding the income thresholds (although introducing the “PLN 1 for PLN 1” mechanism in some acts should be considered a positive change).

However, as we indicated above, although such mechanisms are provided for, in practice they do not always fulfil their role. An example is the solutions adopted in social assistance and family benefits. Income thresholds and benefit amounts are not subject to automatic annual valorisation in these benefit systems. The statutory provisions provide for a mechanism of their verification every 3 years, taking into account the value of the social intervention threshold (PIS) and the income support of families (WDR). The increase takes place by means of executive acts – i.e. regulations passed by the relevant minister. With the rapid growth of wages in Poland and high inflation in the years 2022-2024, it turns out that these mechanisms are not sufficient. Income thresholds and benefit rates set on the basis of amounts in force many years earlier are in force. This results in the exclusion, in practice, of the possibility of applying for social assistance benefits (which are aimed at helping those most in need) by people who have incomes even below the current values of the subsistence minimum and thus live below the lower poverty line (i.e. in extreme poverty). Their physical existence is even threatened. The mechanism in use in these systems therefore needs to be rethought and amended so that social assistance in particular can fulfil its function in practice. Social assistance provides benefits aimed at meeting the basic needs, mostly by ensuring benefits that allow people to live at the minimum subsistence level, which allows them to survive biologically, but not necessarily to participate in social life. When these benefits are not available for people who live below the subsistence minimum, social assistance is not fulfilling its primary task. It is worth adding here that the Social Assistance Act actually provides that if, in a particular calendar year, the amount of the income criterion is equal to or lower than the subsistence minimum, the Social Dialogue Council may apply to the Council of Minis-

ters to verify the amounts of the income criteria also before the expiry of the 3-year period of the income thresholds. So far, this solution has not been applied in practice, even in 2023-2024.

Another thing is that, in our view and according to the definition of a social minimum, living a life in dignity is not only about biological survival, but also about participation in social life. This means that people receiving social assistance who are not granted the social minimum often live in poverty and are socially excluded. This comment is particularly important in the context of two years of high inflation (in 2022, the average annual inflation rate was 14.4%), as the social assistance income criteria in force from 2022, based on the social intervention threshold calculated in 2021 based on 2019 prices, now seem inadequate and exclude the possibility of receiving benefits even with a view to persons living in poverty who were previously managing financially.

It should also be added that since 2015, there has been a significant increase in the instrumental treatment of social legislation for election purposes. Depending on the political election cycle, the government makes numerous social transfers, often without objective justification, which only partially achieve social objectives (e.g. the 800+ benefit for each child regardless of family income; the so-called 13th pension for each person entitled to a pension, regardless of the amount of pension). Although the declared goals are poverty reduction, it is obvious that the real goal is to 'buy' electoral votes. An example is the granting of the 500+ benefit for the first child a few months before the 2019 elections, retroactively, and its payment literally a few weeks before the elections with compensation for 3 months. At the same time, there is a lack of reflection on a rational and comprehensive system for supporting Polish families that could encourage people to have children (the issue of the system of family allowances, dependent on income thresholds, which have remained unchanged since 2018, is the best example here).

