

Dr hab. Katarzyna Małysa-Sulińska, prof. UJ

Uniwersytet Jagielloński
ORCID: 0000-0002-6406-8851
e-mail: k.malysa-sulinska@uj.edu.pl

Dr hab. Przemysław Kledzik, prof. USz

Uniwersytet Szczeciński
ORCID: 0000-0003-2376-5092
e-mail: przemyslaw.kledzik@usz.edu.pl

Legal aspects of taking up remote employment by carers of persons with disabilities

Prawne aspekty podjęcia pracy zdalnej przez opiekunów osób z niepełnosprawnościami

Abstract

The discussion on the possibility of combining professional work with caring for a person with disabilities has been carried out for years now. Very often the carer has high competences, qualifications and potential to work or carry out other gainful activity in a way that does not make it difficult to support a person with disabilities.

The Polish Labour Code was amended on 7 April 2023 to introduce the institution of remote work. This amendment also offered regulations on caring for persons with disabilities. On 1 January 2024 regulations on the situation of the legal position of persons with disabilities that require assistance and of their carers were amended.

Given the above, it is necessary to analyse normative measures that pertain to the possibility of combining remote work with caring for a person with disabilities. Results of this analysis are presented in this study.

Key words

caring for a person with disabilities, care benefit, support benefit, remote work

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Streszczenie

Od lat prowadzona jest dyskusja na temat możliwości łączenia pracy zawodowej ze sprawowaniem opieki nad osobą z niepełnosprawnością. Często bowiem opiekun ma wysokie kompetencje, wykształcenie oraz potencjał do wykonywania pracy lub innej działalności zarobkowej w sposób, który nie utrudnia wspierania osoby z niepełnosprawnością.

Z dniem 7 kwietnia 2023 r. weszła w życie nowelizacja polskiego Kodeksu pracy wprowadzająca instytucję pracy zdalnej, obejmującą także unormowania związane ze sprawowaniem opieki nad osobami z niepełnosprawnościami. Z dniem 1 stycznia 2024 r. uległy zmianie także przepisy regulujące sytuację prawną osób z niepełnosprawnością wymagających wsparcia, a także ich opiekunów.

Konieczna jest zatem – przeprowadzona w oparciu o metodę dogmatyczno-prawną – analiza rozwiązań normatywnych odnoszących się do możliwości łączenia pracy zdalnej ze sprawowaniem opieki nad osobą z niepełnosprawnością. Jej wyniki ujęto zaś w niniejszym artykule.

Słowa kluczowe

opieka nad osobą z niepełnosprawnością, świadczenie pielęgnacyjne, świadczenie wspierające, praca zdalna

Introduction

Combining gainful employment with caring for a person with disabilities has been a subject of a heated debate for a few years now, which is being reflected in current legislative works. It is flagged up in this that normative

regulations pertaining to support given by the State to carers of persons with disabilities must be modified. It is thus argued that such carers often hold competences, qualifications and potential to perform work or to carry out other gainful activity in a way that does not hinder proper delivery of the care in question. Moreover, it is

argued that the changing conditions of performing work, and in particular the dynamic development of modern technologies that allow remote work, encourages combining responsibilities of a carer of a person with disabilities with gainful activity (Explanatory memorandum to the legislative initiative of the Senate of the Republic of Poland of the 10th term on the draft act on amending the Act on family benefits, Document no. 273) and also, work has a social dimension (Żołyński, 2023, 28–29).

The legislator intended that that benefits offered to carers of persons with disabilities was supposed to grant material support to persons who resign from gainful activity because they need to provide care to a relative who requires assistance. When laying down relevant provisions, the legislator assumed that there is no real possibility to combine caring for a person with disabilities with gainful employment. Two decades have passed since the introduction of benefits addressed to carers of persons with disabilities and the circumstances in which these carers function have changed significantly throughout these years. This also applies to gainful activity taken up by them.

Examples of European countries show that forcing carers of persons with disabilities to reduce their working hours or to resign from work completely is a reason for poverty (Joseph Rowntree Foundation 2023). Researchers points to poverty of households with a person with disabilities compared to households without such a person that results from this lower employment index and also from often having to bear additional costs due to the disability. This is true for developing and highly-developed economies alike (Maudie Johnson-Hunter 2023, 2). Given the above, scholars emphasize the need to radically re-design how we see the role of carers of persons with disabilities and their work. The necessary condition here is the purposefulness of systemic support which will guarantee carers of persons with disabilities the possibility to combine work with caring for them, to mitigate the effects of financial loss or reduction of work and to prevent resignation from employment in the event where their care-related responsibilities increase (Thompson, Jitendra, Woodruff, 2023, 2).

The analysis of sums of care benefits and their comparison with the amount of minimum remuneration in Poland yields similar conclusions. The highest care benefit in Poland is PLN 2,988 net per month (Article 17(3) of the Family Benefits Act (hereinafter FBA), Announcement regarding the amount of the care benefit in 2024, 2023) and the other benefits are paid in the amount of PLN 620 net per month (Section 1(14) and (16) of the Regulation on the income of a family or the income of a person in education which is a basis for applying for a family benefit or a special care benefit, the amount of family allowances and the amount of carer's allowance, 2021). Since 1 January 2024 the net amount of the minimum pay in Poland is PLN 4,242 per month (§ 1 of the Regulation of the Council of

Ministers of 14 September 2023 on the amount of minimum remuneration and on the amount of minimum hourly rate in 2024, 2023)

It needs to be noted at the same time that when amending the Labour Code (1974, hereinafter LC) on 7 April 2023, the institution of remote work was regulated too¹, which also included provisions for caring for a person with disabilities (Jaśkowski 2023, 15 ff.; Tomaszewska, 2023, 217). Moreover, a new benefit was introduced to the Polish legal order on 1 January 2024, stipulated directly for persons with disabilities who require assistance. It is a support benefit whose essence was defined as partial coverage of expenses related to the satisfaction of special livelihood needs of these persons. The introduction of this benefit to legal transactions goes hand in hand with essential changes in the existing system of benefits which so far have been directed at carers of persons with disabilities, including changes pertaining to the possibility for carers of persons with disabilities to take up gainful employment (Act on the support benefit, 2023, hereinafter SBA).

The above provides a justification to take up research in this study on legal determinants of combining remote work with caring for a person with disabilities. The discussion takes into consideration regulations of the Polish labour law and also regulations that are the basis for determining benefits for carers of persons with disabilities, taking into account the amendments introduced on 1 January 2024.

The adopted research methodology involves an analysis of the normative material of Polish law. Special focus is given to selected institutions of Polish labour law and Polish administrative law.

The research relies on the method of interpretation of laws in force. Its framework includes an analytical discussion of: the basis, kinds and forms of certifying disability, the care benefits system and relevant amendments confirmed with SBA provisions, personal and material premises that determine the granting of a benefit for caring for a person who has severe disabilities and premises of working remotely in the context of caring for a person with disabilities.

The objective of the research is to formulate general conclusions as a voice in the discussion on the functioning in the Polish legal order of solutions that allow carers of persons with disabilities to combine professional work with caring for a relative. These solutions may be classified as systemic support.

Legal basis, kinds and forms of confirming disability

Given the subject matter and the framework of this study it seems reasonable to present only the key questions in this context. It is even more logical because both the LC regulations on remote work and those on the existing system of benefits for carers of persons with disabilities and the system introduced on 1 January 2024 include stipulations only for carers of persons who hold

a certificate of severe disability or persons with a disability certificate who at the same time require permanent or long-term care or assistance of another person due to significantly limited possibility of independent existence and due to the need for permanent participation on a daily basis of a child's carer in the process of their treatment, rehabilitation and education. Given the above, the discussion here will be based on these two categories and the other threads will only serve as a reference point helpful in formulating conclusions.

The Act on vocational and social rehabilitation and on employment of persons with disabilities is the basic legal act that specifies determinants for declaring disability in Poland (Dz. U. (Journal of Laws) of 2023 item 100 as amended, hereinafter "Rehabilitation Act"). Pursuant to Articles 1 and 3 of the Rehabilitation Act, disability is confirmed by a disability certificate issued before the individual turns 16 and a certificate of classification by relevant authorities to one of the three degrees of disability: severe, moderate or mild (M. Paluszkiewicz, 2023, 25 ff.).

Pursuant to Article 4(1) of the Rehabilitation Act, a severe degree of disability is when a person suffers from impairment of body functions, is incapable of work or capable of work only in the conditions of protected employment and, due to not being able to live independently, requires long-term care and assistance of other people to fulfil social roles. Pursuant to Article 4(4) of the Rehabilitation Act, inability to live independently means impairment of the operation of one's body to a degree that prevents one from satisfying their basis life needs, such as self-care, mobility and communication, without the aid of other persons. Moderate disability means impairment of one's body functions, inability to work or ability to work only in the conditions of protected employment or requiring temporary or partial assistance of other people to fulfil social roles (Article 4(2) of the Rehabilitation Act). Pursuant to Article 4(3) of the Rehabilitation Act, a person with a mild disability means an individual with impaired body functions that causes significant limitation of one's ability to perform work compared to abilities displayed by a person with similar qualifications who enjoys full mental and physical fitness or a person who suffers limitation in fulfilling social roles that may be compensated with the aid of orthopaedic equipment, assisting measures or technical devices (Paluszkiewicz, 2023, 71 ff.).

Regulation of Article 62(1–3) of the Rehabilitation Act also deserves attention. Pursuant to its Article 62(1), those persons who before the entry into force of this act, that is before 1 January 1998, were included in one of the handicap groups, will be treated as persons with disabilities in the understanding of the Rehabilitation Act if their certificate of handicap has not expired. In Article 62(2) of the Rehabilitation Act the legislator classified individual handicap groups according to categories adopted in this act. And thus,

holding a certificate of: 1) I handicap group is treated as a certificate of severe disability, 2) II handicap group is equivalent to a certificate of moderate disability and 3) III handicap group is equivalent to a certificate of mild disability.

The legislation also reserved in Article 62(3) that persons who are permanently or for a long time unable to work on an agricultural farm shall also be considered disabled with the proviso that persons who are entitled to a care allowance shall be treated as persons with severe disability (subsection 1), while other persons shall be treated as persons with mild disability (subsection 2).

The system of benefits for carers of persons with disabilities effective as of 31 December 2023

Under the legal status effective until 31 December 2023 carers of persons with disabilities may apply for one of the following benefits: care benefit (Article 17 FBA), special care allowance (Article 16a FBA), and a carer's allowance (Article 2 on the Act on establishing and payment of benefits for carers, 2014, hereinafter: CBA). The legislator intends that each of these benefits shall be dedicated to a different group of entities with the proviso that they may only be carers of holders of a disability certificate who: require permanent or long-term care or assistance of another person due to significant limitations of independent life and require permanent participation on a daily basis of a carer for a child in the process of their treatment, rehabilitation and education who holds a certificate of severe disability in the understanding of Article 3(21) of the FBA², that is broader than that under the Rehabilitation Act.

The first such benefit to enter into legal transactions was the care benefit. It was intended to provide material support to persons who resign from gainful activity due to caring for a disabled child (explanatory memorandum to draft FBA). In the original wording of Article 17 FBA, the care benefit was to be granted to the mother or the father or the actual carer or legal guardian of the child if they did not take up or resigned from employment or other gainful activity to care for a child-holder of a disability certificate. The family income criterion was the condition for granting this benefit. The circle of addressees of this benefit was then extended³ to include other persons who bear the child support obligation regulated in the Family and Guardianship Code (Małysa-Sulińska, 2023a, 106–107).

A crucial change in the regulation of the care benefit came on 1 January 2010 when the income criterion was removed⁴. This amendment was understood to mean that all persons who resigned from employment to care for a disabled family member could apply for it (Małysa-Sulińska, 2023a, 107).

The regulation of the care benefit was once again amended on 1 January 2023 by adding Article 17(1b) to

the FBA. It stipulated that the care benefit could be granted only where the disability of the person who requires care emerged no later than when they turn 18 or during their secondary or tertiary education, but before their 25th birthday. However, we need to note here that the Constitutional Tribunal, in its judgement of 21 October 2014, K 38/13, deemed Article 17(1b) FBA contrary to Article 32(1) of the Constitution since it discriminates against persons who care for persons with disabilities after the latter reach a certain age specified in this provision due to the moment in which the disability occurs (Małysa-Sulińska, 2023a, 107–108 and 110–112).

With the aim to rationalise the rules for granting the care benefit by adjusting systemic solutions to social needs related to family policy and state's financial capabilities, the legislator amended the FBA on 1 January 2013 and introduced a new type benefit for carers of persons with disabilities, that is the special care allowance. It was regulated in Article 16a FBA. Beneficiaries of the special care allowance were to include persons who so far received the care benefit but did no longer meet the requirements to receive it (stipulated in regulations effective since 1 January 2013), in particular with regard to the requirements under Article 17(1b) FBA. The legislator's intention was for the special care allowance to cover carers of persons whose disability occurred in the mature age (in contrast to what applied to the care benefit) (Małysa-Sulińska 2023a, 108).

At the same time, an interim period was established that lasted until 30 June 2013 during which persons who were entitled to the care benefit granted under regulations in force before 1 January 2013 were to continue to receive it. Decisions that determined the right to the care benefit issued under regulations in force before 1 January 2013 were to expire by operation of law on 30 June 2013 (Article 11(1) and (3) of the amended FBA. However, the Constitutional Tribunal, by its judgement of 5 December 2013, K27/13, declared these decisions contrary to Article 2 of the Constitution and they became ineffective on 16 December 2013 and the legislator was obliged to take measures to restore the legal status compliant with the Constitution (Małysa-Sulińska, 2023a, 109).

A third kind of benefit for carers of persons with disabilities was introduced in the implementation of this judgment, that is a carer's allowance regulated under CBA. This benefit was addressed to carers who hold a decision on granting them the right to receive the care benefit which expired by operation of law on 30 June 2013 under Article 11(3) of the amended FBA. Granting this allowance was conditioned on meeting requirements for the care benefit that were in force on 31 December 2012 (Małysa-Sulińska, 2015, 36 ff.).

The addressees of each of the three kinds of care-related benefits (that is the care benefit, the carer's allowance and the special care allowance) were supposed to represent different groups of carers of

persons with disabilities, where the legislator conditioned the amount of benefits paid to individual groups of carers on the moment of occurrence of the disability. A solution has been worked out according to which the higher amount should be paid to carers of persons whose disability occurred at a young age, that is either before they turned 18 or, if it took place while in secondary or tertiary education – before they turned 25. Therefore, premises to grant individual kinds of care benefits and their amount were specified differently, but, which needs to be stressed, the legislator conditioned the possibility of granting each of these benefits on the carer's refraining from gainful employment (Małysa-Sulińska, 2023a, 110).

Dualism of measures for benefits for carers of persons with disabilities effective as of 1 January 2024

The legislator used the Act on the support benefit to profoundly amend the care benefit system described above and these solutions fundamentally entered into force on 1 January 2024 (Article 71 SBA). By doing so, the existing system of benefits for carers of persons with disabilities was modified, where provisions in the wording effective from 31 December 2023 may be applies also after this date. This depends on meeting premises specified by the legislator. One of them is the requirement that the person that requires care has not been granted a right to the new benefit addressed directly to them, that is the support benefit (Article 63(6) SBA).

Therefore, Article 16a FBA, which is a basis for establishing the right to the special care allowance, became ineffective at the end of 2023. Whereas changes introduced in the Regulation of the care benefit – provided for in Article 17 FBA – profoundly changed the nature of this care benefit on 1 January 2024. It is directed solely to carers of persons with disabilities who did not reach the age of 18 and at the same time this benefit lost the status of an equivalent for a carer of a person with disabilities for refraining from gainful employment (Małysa-Sulińska, A. Kawecka, 2023).

This means that, in line with regulations in force from 1 January 2024, the only benefit that a carer of a person with disabilities is eligible to apply for is the care benefit granted only in the case of caring for a person under the age of 18 who holds a certificate of severe disability or a disability certificate together with requirements specified in FBA (Uścińska, 2023, 37). At the same time, it needs to be emphasized that the carer of a person with disabilities does not need to resign from gainful activity in order to receive this benefit. A carer of a person with disabilities who holds the right to a care benefit established under Article 17 FBA in the wording effective from 1 January 2024 is, therefore, allowed to remain active in the labour market and receive remuneration without limitations (Małysa-Sulińska, 2023b, 120 ff.).

At the same time, the legislator ruled that with the end of 2023, for cases of the care benefit and the special care allowance the right to which emerges before 31 December 2023, the following regulations apply: Article 17 FBA in the wording effective until 31 December 2023 or Article 16a FBA in the wording effective until 31 December 2023 (Article 63(1) SBA). Moreover, persons to whom the right to the care benefit or the special care allowance was granted on 31 December 2023 the latest retain the right to a relevant care benefit also if the person who they care for was issued a new certificate of the degree of disability or a disability certificate (Article 63(2) SBA) (Uścińska, 2023, 38). At the same time, it needs to be emphasized, that the carer of a person with disabilities who holds the right to a care benefit established under Article 16a or Article 17 FBA in the wording effective until 31 December 2023 is still not allowed to take up any gainful activity.

This means that on 1 January 2024 the group of carers of persons with disabilities was divided into those who, while exercising the said care, will be able to work and receive remuneration and those who were limited by the legislator in the possibility to take up any gainful activity⁵.

Premises for working remotely

As a result of the amendments signalled above (Article 1(2) of the Act amending the Labour Code and certain other acts, 2023), a new Chapter IIc "Remote Work" was added to the Labour Code on 7 April 2023.

Despite the fact that, as has been pointed out, remote work is a new institution regulated in the LC, it does not offer new legal measures previously unknown in the Polish law, but presents a certain combination of three models of working remotely that were in operation before, that is the institution of tele-work, the so-called home office and, most of all, remote work which was allowed under measures to prevent, counteract and combat COVID-19 (Mędrala, 2023, 11; Mędrala, 2020, 152–156; Marciniak, 2023, 23–31).

The repealed provisions of Article 67⁵–67¹⁶ LC which refer to tele-work were in force for close to 15 years, yet, as shown in research, few employers were interested in it (Marciniak 2023, 25; Kucharski, 2022, 78–79). In turn, the form of the so-called home office was not reflected in provisions of universally applicable law and was only used occasionally under an agreement between the employer and the employee. Only the COVID-19 pandemic (Makowski 2020, 10; Mitrus, 2020, 8) contributed to popularising remote work and to both parties of the employment relationship noticing its benefits. This inspired signals and postulates from employees and organizations of employers, which were first taken into account by legislative initiators and then the legislator, that regulations on remote work should be permanently introduced to the LC (Sejm Document no. 2335).

The legislator formulated the definition of remote work in Article 67¹⁸ LC (Gersdorf, Ostaszewski, 2024, 571–573, Tomaszewska 2023, 213). It lays down that remote work is work that may be performed in whole and in part at a place designated by the employee and each time agreed with the employer, including also at the employee's place of residence, and this work is to be performed by means of remote communication.

Pursuant to Article 67¹⁹(1) and (2) LC, the arrangements between the parties to an employment contract regarding remote work may be done upon executing the employment contract or during the employment, on the initiative of the employer or the employee (Prasolek 2023).

Pursuant to the regulations of 67¹⁹(3)(1) and (2), the employer may order that work be performed remotely on two occasions (Mitrus, 2023, 41). One of them is the state of emergency, the state of epidemic threat or the state of epidemic and the period of 3 months after they are cancelled and the other is in the period in which the employer is temporarily unable to ensure safe and healthy working conditions in the regular work place due to force majeure. The legislator reserved in this provision a condition for performing remote work by which the employee must declare, on paper or electronically, directly before being ordered to work remotely, that he has adequate premises and technical conditions for remote work.

In turn, Article 67¹⁹(6) LC provides that the employer is obliged to honour a request for remote work from an employee referred to in Article 142¹(1)(2) and (3) LC⁶, a pregnant employee, an employee who has a child under 4 and an employee who cares for another close family member or another person in their household who holds a disability certificate or a certificate of severe disability unless this is not possible for reasons of organization of work or type of work performed by the employee (Mitrus, 2023, 41). Should the employer reject the employee's request, he is obliged to inform the employee about the reasons for the rejection, on paper or electronically, within 7 working days from the date of the employee's filing the request.

Following the analysis above, it needs to be assumed that Article 67¹⁹(6) LC, leaving aside the conditions regarding organization and type of work and within the premises identified within it (Fik, Fik, 2023, 23–24; Makowski 2023, 21–22; Maroń, Matyjasz-Łysakowska, 2022, 381–382), it introduces a general obligation on the employer to honour a request for remote work if it comes from a carer of a person with disabilities (Suchanowska, 2023, 3). However, this applies only if the employee cares for a close family member or another person in the same household who holds a disability certificate or were issued one before they turned 16 or a certificate of severe disability issued to them after they turned 16.

This interpretation of Article 67¹⁹(6) is confirmed in the explanatory memorandum to the amending act by

which this provision was added to the regulation of the Labour Code in the same wording as stood in the draft. It lays down that this provision "will apply to persons who care for an underage person with disabilities who holds a disability certificate (such certificate is issued for persons under the age of 16) and who holds a certificate of severe disability (a certificate of the degree of disability is issued to persons over the age of 16). As a consequence, this provision will not apply to those who care for a holder of a certificate of mild or moderate disability (Sejm Document no. 2335). Thus, carers of such persons will be able to file requests for remote work only on general terms laid out in Article 67¹⁹(1) LC, with consideration to the regulation of Article 67²⁰ LC (Baran, 2022, 22–25).

In the context of regulation of Article 67¹⁹(6) LC, it is also worth noting that this Article, as well as other LC provisions, lack a direct reference to a specific regulation for certification of disability. Such a partial and indirect reference is made by invoking Article 1421 LC. However, this does not apply to carers of persons with disabilities. It may raise doubts and difficulties in interpretation. Besides, terms used in Article 67¹⁹(6) LC are only fully the same as those used in the regulation of the Rehabilitation Act. Consequently, it is not clear whether and to what degree the employer is obliged to honour an employee's request if they care for a person whose inability to work or live independently was declared under regulations on old-age and disability pensions from the Social Insurance Fund, and which was stipulated in FBA.

Given the said absence of additional reservations, including in particular a clear reference to FBA, Article 67¹⁹(6) LC may provide a basis to a conclusion that for carers of persons under the age of 16 who hold a disability certificate remote work should be granted despite the lack of additional premises in this certificate that determine the granting of a care benefit. This would expand entitlements of parents of children referred to in Article 142¹ LC. Besides, the absence of a clear connection with the regulation of FBA will mean that a request for remote work will be binding on the employer also in the case of an employee who is a carer

for a holder of a relevant certificate with whom he lives in the same household and for whom he is not obliged to provide child support.

Conclusions

The introduction of systemic solutions for remote work in the LC is certainly a positive example where the legislator, listening to and honouring the stance of individual social groups, introduces measures which as a rule were supposed to be accidental. Even greater credit should be given to the introduction of solutions, binding on the employer in certain aspects, that allow carers of persons with disabilities to combine work with caring for their relatives. Importantly, these solutions do not prevent such carers, upon meeting additional requirements resulting from separate provisions, from receiving additional allowances in the form of a care benefit under the provisions effective from 1 January 2024. This means that the legislator did not only take note of the arguments of the community of carers of persons with disabilities, raised for some time now, but also introduced relatively coherent systemic solutions in this regard. However, these solutions should be made more coherent by unequivocal mutual references between the provisions of the LC and separate regulations that apply both to the carers and to persons with disabilities.

In the context of the above, we need to express an expectation that the legislator will introduce analogical solutions for requesting remote work for persons with disabilities, irrespective of the certified degree of disability. Even more so since the legislator used the same amending act with which it amended the LC to modify Article 4(5)(2) of the Rehabilitation Act. The law-maker used it to replace existing tele-work provisions with the reservation that classification to a severe or moderate degree of disability does not prevent such a person from being employed by an employer who does not ensure conditions of protected work in remote working. The above could even better encourage persons with disabilities to overcome barriers, which certainly is a challenge for contemporary societies (Breczko, 2021, 95 ff.; Naumowicz, 2023, 145 ff.).

Przypisy/Notes

¹ As a result of the amendment, Book II of the LC – "Employment relationship" was extended to include Chapter IIc – "Remote work", which includes provisions of Article 67¹⁸–67³⁴ LC.

² Pursuant to Article 3(1) FBA, whenever the act refers to severe disability it shall mean: a) disability in severe degree in the understanding of regulations on vocational and social rehabilitation and employment of persons with disabilities, b) complete inability to work and independent life certified under provisions on old-age and disability pensions from the Social Insurance Fund, c) permanent or long-term inability to work on an agricultural farm and to independent life or permanent or temporary complete inability to work on an agricultural farm and to independent life, certified under provisions on social insurance for farmers in order to receive benefits specified by law, d) holding a certificate on being classified to handicap group I, e) inability to live independently certified under provisions on old-age and disability pension from the Social Insurance Fund and provisions on social insurance of farmers.

³ This was related to the enforcement of judgments of the Constitutional Tribunal: of 18 July 2008, P 27/07, OTK-A 2008, no. 6, item 107; of 22 July 2008, P 41/07, OTK-A 2008, no. 6, item 109.

⁴ Article 17(2) FBA was repealed by Article 13(1)(c) of the amended budget expenditure act.

⁵ At that, it needs to be noted that normative measures that differentiate – based on the criterion of the age of the person cared for – the group of carers of persons with disabilities into those that may be gainfully employed while caring for a person with disabilities and those who cannot combine this care with any gainful activity, may raise doubt concerning their compliance with provisions of the Polish Constitution. However, it needs to be pointed out that the Constitutional Tribunal – in its reasoning for its judgement of 21 October 2014, K 38/13 (OTK-A 2014, no. 9, item 104) that concerned the differentiation of the situation of carers of persons with disabilities when the latter have attained an age specified in Article 17 FBA – pointed out that "it is admissible in such a group of entities (...) to treat persons who care for children with disabilities differently. At the constitutional level, the basis of special treatment of children lies in Article 68(3) of the Constitution that deals with health care aspects. Protection of the rights of the child by public authorities is also guaranteed in Article 72 of the Constitution. Children are covered with state protection as part of assistance offered to their parents, especially those that are in a difficult financial and social situation (Article 71(1) of the Constitution" (Małysa-Sulińska, 2022).

⁶ That is an employee-parent of a child who holds a certificate of severe and irreversible impairment or incurable disease that is a threat to life, which occurred in the prenatal period of child development or during labour and also an employee-parent of a child who holds a disability certificate or a certificate of moderate or severe disability specified in regulations on vocational and social rehabilitation and employment of persons with disabilities and a parent of a child who has been issued an opinion on the need for early development support, a certificate of the need for special education or a certificate of the need for remedial and educational activities. Pursuant to Article 67¹⁹(7) LC, subsection (6) of this article shall be applied to these categories of employees also after the child reaches the age of 18.

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Katarzyna Małysa-Sulińska, professor of the Jagiellonian University; Faculty of Law and Administration Jagiellonian University; Local Government Appeals Body in Cracow.

Przemysław Kledzik, professor of the University of Szczecin; ORCID no. 0000-0003-2376-5092; Faculty of Law and Administration University of Szczecin; Local Government Appeals Body in Gorzów Wielkopolski.

Katarzyna Małysa-Sulińska, profesor Uniwersytetu Jagiellońskiego; Wydział Prawa i Administracji UJ, Samorządowe Kolegium Odwoławcze w Krakowie.

Przemysław Kledzik, profesor Uniwersytetu Szczecińskiego; ORCID no. 0000-0003-2376-5092; Wydział Prawa i Administracji US, Samorządowe Kolegium Odwoławcze w Gorzowie Wielkopolskim.