

FUNCTIONS AND POWERS OF THE EXECUTIVE AUTHORITIES AND LOCAL SELF-GOVERNMENT IN THE AREA OF SOCIAL ASSISTANCE

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ABSTRACT: THE FOLLOWING ARTICLE PRESENTS A BRIEF OVERVIEW OF THE FUNCTIONS AND POWERS OF THE EXECUTIVE AUTHORITIES AND LOCAL SELF-GOVERNMENT IN THE AREA OF SOCIAL ASSISTANCE. THERE ARE DISCUSSED AND ANALYSED NOT ONLY THE FUNCTIONS AND POWERS OF THE VARIOUS STATE BODIES BUT IS PRESENTED THE STRUCTURE OF THEIR ADMINISTRATIONS, AS WELL AS AN ANALYSIS OF THE DEGREE OF DECENTRALIZATION OF GOVERNMENT IN THE FIELD OF SOCIAL ASSISTANCE.

KEYWORDS: FUNCTIONS AND POWERS OF EXECUTIVE, FUNCTIONS AND POWERS OF LOCAL SELF-GOVERNMENT BODIES, EXECUTIVE, LOCAL SELF-GOVERNMENT, SOCIAL ASSISTANCE, DECENTRALIZATION, DEVOLUTION

The examining of the functions and powers of the executive authorities and local self-government in individual areas of the state government is the task of the special part of administrative law. Unfortunately, due to the numerous amendments to the different legislative acts and the fact that the legal framework of the functions and powers of the administrative bodies is scattered in many different laws and regulations, the Bulgarian administrative law literature lacks in-depth studies on these issues. Most publications in this field are limited to individual analytical reports (most of them produced in the period before the acceptance of the Republic of Bulgaria in the European Union in order to converge the Bulgarian to EU legislation), that reviewed and analysed the legal framework in isolated areas of state government.

The analysis of the various functions and powers and their distribution between the executive authorities and local self-government is an important moment not only for determining the degree of decentralization of the executive but also for determining the future measures to improve the administration's activity.

This article, without being exhaustive, gives a short overview of the functions and powers of the executive authorities and local self-government in the area of social assistance.

The main legislation in the area of social assistance are:

- the Social Assistance Act [1];
- the Implementation of the Social Assistance Act Rules [2];
- the Structure of Social Assistance Agency Rules [3];
- the Structure of Ministry of the Labour and Social Policy Rules [4].

Under those legislation acts the functions and powers in the field of social assistance are carried out mainly by several bodies:

- the Council of Ministers;

- the Minister of Labour and Social Policy;
- the Executive Director of the Social Assistance Agency;
- the district governors;
- the mayors.

The Municipal Councils, as local self-government bodies, also have certain powers in the area of social assistance.

Functions and powers of executive bodies and local self-government in the area of social assistance

Chapter II of the Social Assistance Act (SAA) is titled "Bodies of Social Assistance" and contains provisions regulating the basic functions and powers of the executive authorities in the area of social assistance.

According to art. 4, para. 1 of SAA [1] "The Council of Ministers defines the state policy in the area of social assistance." Therefore, the Council of Ministers has the functions of objective formulation and planning.

The Minister of Labour and Social Policy is central executive authority with special competence that "develops, coordinates and implements the state policy in the area of social assistance" (art. 4, para. 2 of the SAA) [1]. Therefore, he carries out the functions of planning, coordination and organizing.

In the SAA there are no provisions which specify the individual powers of the Council of Ministers and the Minister of Labour and Social Policy in the area of social assistance as they are included in their general powers to develop different strategies, plans, programs and other documents with strategic character.

"To implement the state policy in the field of social support a Social Assistance Agency to the Minister of Labour and Social Policy shall be created" (art. 5, para. 1 of the SAA) [1]. The Agency has the status of an executive agency and is represented and governed by its Executive Director. The latter is a central executive authority with special competence. The main functions and powers of the Executive Director of the Social Assistance Agency are governed by the Structure of Social Assistance Agency Rules (SSAAR) [3]. According to art. 5, para. 1 of the SSAAR [3] the main functions of the Executive Director of the Agency are planning, organising, management, coordination and control. These functions are derived from the provisions that state the main powers of the Executive Director since in the legislation there are no provisions that contain only functions.

According to art. 4, para. 3 of the SAA [1] "the state policy in the area of social assistance is implemented in cooperation with government authorities, local authorities and non-profit purpose bodies operating for the public benefit, which create conditions and contribute to the implementation of programs and projects in this area". Therefore, the functions and powers in the area of social assistance are executed also by other bodies.

Art. 19, para. 1 of the SAA [1] states that the District Governors (who are territorial executive bodies with general competence) have the power to organise the development of and to adopt strategies for the development of social services in the district level. They exercise these powers in coordination with the "Social Assistance" Regional Departments. In the view of this legislative provision it can be concluded that the District Governors have the functions of planning and organising.

Mayors, who are also territorial executive bodies with general competence, have the power to manage social services in the municipality that are delegated by the state activities and local activities (art. 18, para. 1 of the SAA) [1]. The general wording that the legislator

had adopted – “manage social services” suggests that mayors have the most of the managing functions – organising, coordinating, regulating, control and management.

Besides the stated in the SAA powers, the mayors have some other powers:

According to art. 36b, para. 1 of the Implementation of the Social Assistance Act Rules (ISAAR) [2], the mayor organizes the development of a strategy for development of social services at municipal level, based on the approved strategy for the development of social services at district level. This power of the mayor is involved in the planning function.

Moreover, the mayor may assign the management of social services after a competition (art. 37, para. 1 of ISAAR) [2] and may conduct a social assessment of the needs of those who wish to use social services, which are municipal activities (art. 40, para. 4 of ISAAR) [2]. He may also issue an order for accommodation in specialized institutions and for submitting social services, which are municipal activities (art. 40a, para. 3 of ISAAR) [2]. These powers include the function regulation that is provided to the mayor.

As a local self-government authority, the Municipal Council also has certain functions and powers in the field of social assistance:

According to art. 19, para. 2 of the SAA [1] “the Municipal Councils adopt strategies and annual plans for the development of social services at municipal level ...”. These powers are exercised by the Municipal Councils in coordination with the relevant “Social Assistance” Department. Therefore, the primary function of the municipal councils is planning.

Furthermore, by decision of the Municipal Councils public councils are created in the municipalities that “provide assistance and support in carrying out the activities for social assistance and exercise public control over them” (Art. 35, para. 1 of the SAA) [1]. At the suggestion of the mayors the Municipal Councils adopt analysis of the needs of social services in the community (Art. 36a, para. 3 ISAAR) [2], adopt strategies for development of social services at municipal level (Art. 36b, para. 1 of ISAAR) [2] and based on these strategies each year by 30th April adopt the annual plan for the development of social services at municipal level (Art. 36b, para. 4 ISAAR) [2]. All these powers are included in the planning function.

Structure of the administration in the area of social assistance

In executing their functions and powers, the executive authorities are supported by administrative structures. Therefore, in the course of the analysis of the functions and powers of the executive authorities it is very important to consider the activities and tasks that are assigned to the different units of their administrations, as well as the structure of these administrations.

As stated above, the Council of Ministers defines the state policy in the area of social assistance, and the Minister of Labour and Social Policy is the main executive authority responsible for the development, coordination and implementation of state policy in the area of social assistance. To help the Minister in executing these functions, it is stated in art. 28, pt. 5 and 6 of the Structure of Ministry of the Labour and Social Policy Rules (SMLSPR) [4] that in the structure of the specialized administration of the Ministry shall be formed two departments – “Policy for people with disabilities, equal opportunities and social benefits” Department, and “Social Inclusion” Department. The tasks of these two departments are arranged respectively in art. 33 and 33a of the SMLSPR [4].

The main tasks of the “Policy for people with disabilities, equal opportunities and social benefits” Department include development, coordination and monitoring, analysis and evaluation of public policy on integration of people with disabilities, equal opportunities, and social benefits, as well as organizing, coordinating and participating in the development of

various regulations, strategies, programs and action plans, projects and reports in those areas. The "Social Inclusion" Department is entitled with the development, coordination and monitoring, analysis and evaluation of the state policy in the area of social inclusion, support of children and family, and social services. This department has also the duty to organize, coordinate and participate in the development of regulations, strategies, programs and action plans, projects and reports in those areas.

According to art. 5, para. 1 of the SAA [1] the Social Assistance Agency shall be established with the main objective "implementation of state policy in the area of social assistance". The main tasks of the Agency are set out in art. 6, para. 1 of the SAA [1] and are:

1. to implement the state policy on social assistance;
2. to perform the activities for providing social aids and social services;
3. to develop a uniform system for evaluation and control of the activities of "Social Assistance" Departments and to perform specialised control over them by the inspectorate of the Agency;
4. to coordinate and supervise the planning and development of social services;
5. to develop criteria and standards for quality of social services, which shall be approved by the Council of Ministers;
6. to authorise the opening, closing, changing of type and capacity of social services, when they are delegated by the state activities;
7. to register the providers of social services under the terms and conditions determined by the ISAAR;
8. to prepare summarised annual reports and analyses in the area of social aids and social services and provide them to the Minister of Labour and Social Policy;
9. to participate in the preparation of draft legislation in the area of social aids and social services;
10. to keep records of children who can be adopted under the conditions of full adoption, as well as records of foster families;
11. to carry out other activities defined by the law or by the Council of Ministers.

For the execution of these tasks the specialised administration of the Agency is structured in the following departments:

- "Social Assistance" Chief Department, which includes the "Social Assistance" regional departments and "Social Assistance" Departments;
- "Child Protection" Department, and
- "International Cooperation, Programmes and European Integration" Department.

The main activities related to the implementation of the social assistance state policy is carried out by the 147 "Social Assistance" Department (according to Appendix to art. 7, para. 3 of the SSAAR [3]).

Having in mind the abovementioned legal provisions, it should be noted that the existence of territorial structures within the administration of the Social Assistance Agency characterizes its Executive Director as devolved executive authority, as its functions and powers in the area of social assistance are implemented locally by those territorial structures which are under the centralised obedience.

REFERENCES

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