

# Mariusz Wieczorek

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Mariusz Wieczorek, Ph D

Lecturer at the K. Pulawski Technological-Humanistic University in Radom,  
Faculty of Law /Department of Law/

## **The Right to Special Annuity in Regard to the Social Security**

### ***Abstract:***

*The author presents certain legal aspects referring to the regulation concerning the competence of the Prime Minister to grant annuity and pension (special annuity and pension). According to the author, some doubts relating to the subject in question stem from issuing the regulations in reference to the PM's entitlement in the legal act concerning the benefits of social character. The benefits discussed in this dissertation are not of such character, which results in various problems of applying the special annuity/pension regulations. Persons, who due to specific reasons, do not comply with the requirements to be granted the annuity/pension of the social security may groundlessly believe that poorness they live in constitutes reason enough to acquire the right to the special annuity/pension.*

*The author does not undermine the legitimacy of PM's competences functioning in the judiciary system and thus his right to grant special social benefits. However, he advocates that the regulations including the competence in question should be brought beyond the social security law. In his point of view, this will result in avoiding unauthorized conclusions such as the fact that special annuity/pension constitutes one of the benefits of social security. The author also emphasizes that fact that the legislator leaves too much space for the decisive body which predicates the right to special annuity/pension is based on objectively groundless reason.*

***Key words:*** annuity, social security, resolution, general clause

## **The Nature of the Right to Special Annuity**

The PM's competence to grant the right to special annuity and pension is established in the Article 82, section 1 of the Act of December 17, 1998 referring to the annuity and pension of the Social Security Fund . In accordance with the quoted regulation the PM, in unusually justified circumstances may grant annuity or pension on conditions and in amount other than the ones stated in the Act.

The subject concerning the right to special annuity (and pension) as long-term allocation can be acquired on the basis of the decision made by the Central Organs of Administration and it evokes a number of questions concerning its interpretation not only on the part of the applicants but also on the part of the Administrative Courts which supervise the decisions made by the PM. The existing legal conditions implicate some endangerment in respect of groundless competence use to grant the special annuity/pension, emergence of discrepancies in jurisdiction, as well as people applying for the special annuity or pension. People applying for the special annuity or pension normally are not in the position to understand that the function of the PM's right as stated in the article 82, section 1 of the Annuity-Pension Act is not about mere welfare security as such but about implementing non-social aims.

The objective of this article is to present certain sources of these type of controversies as well as to point out specific solutions which may serve to prevent from misunderstandings stemming from the aforementioned benefits. Imperfect legislation laid upon the legal regulation right of the Prime Minister to grant the special annuity remains in opposition to the rule of law-observing state in which the law system should be kept consistent but it also has a negative impact on the social security of the citizens.

The author believes that the main reason for the occurrence of the aforementioned controversies is the context in which the regulations are situated and on the basis of which the special benefits are granted. The name of the type of benefit also brings about some doubts as well as the use of the general clause – “special circumstances” which tends to be another reason for granting the right to special annuity or pension.

Article 1 of the Annuity-Pension Act indicates the range of meaning of this legal act and it implies certain unusual circumstances in which the right to acquire the allocation stemming from the annuity and pension security arises and the rules concerning the amount and the mode of payment. Annuity and pension are both part of the Social Security . That means that, as it is generally accepted and referred to, it is defined as a system of benefits which are guaranteed by law and ascribed to specific work characterized by pretension, and thus covering the needs evoked by some accidental incidents or other alike situations, provided by specific institutions and financed on the basis of direct and indirect balancing of the benefits, in its total or partial amount by a group of people in charge of the matter . Social Security constitutes the most important element of this system which serves to implement the law to secure the society against what is guaranteed by the article 67 of the Constitution of the Republic of Poland , namely in case of disability, sickness, age, and blameless loss of work.

As the definition of the social security implies, the fundamental, although diversified characteristics of the social security are pretensions and dependence of the right to benefits upon participation in collecting the funds from which the benefits are paid out. This type of characteristics are contained in the benefits described in the article 3 of the Annuity-Pension Act: pension, annuity arising from disability to work, family annuity, child benefit, extra benefit for the family annuity in case of absolute orphanage, and death gratuity.

The right to Social Security is granted by respective organs of the Social Security Office in the form of administrative decision of declarative character i.e. without forming new legal situations but stating in binding way that certain situations create specific rights . According to the article 100, section 1 of the Annuity-Pension Act, the right to benefits stated in the Act comes into effect on the day of complying with all the requirements needed to acquire the very right of the Annuity-Pension Act .

Special annuity and pension are of no pretension character and the decision to grant the right to them is not of declarative but constitutional character, namely the one which forms the law. As the hereby mentioned benefits

do not stem from the social security but they come under other regulations, which was duly acknowledged by the Warsaw Law Court on the 7th of November 2007 .

It is worth noticing that although the condition to acquire the right to social security is to pay superannuation, the act of granting annuity or pension by the PM is by no means dependent upon participation of the potential beneficiaries in forming the security funds. They are fully financed by the State budget.

The PM's benefits remain beyond the regulation stated in fact in the article 1 of the aforementioned Act. Therefore, the thesis that by forming the act the employer breached the technique of the employment. According to the § 2 of the annex to the PM's decree dated on the 20th of June 2002 referring to the rules of employment technique, the act should exhaustively regulate the given scope of matter without leaving aside any of the essential elements of the field in question . One may also arrive at the conclusions, based on the complete regulation directive, to postulate regulation of the "specific matter" within the Act. In case of the Annuity-Pension Act, the specific matters are connected with establishing the right to benefits of security character, related to the needs of social character. By issuing the article 82 of the Annuity-Pension Act, the legislator has gone beyond the scope of the aforementioned regulation, beyond the subject-matter which was regulated by the Act.

Social security covers the needs of life incidents. In case of pension, the life incident is old age (reaching the age of pension), and in case of long-term annuity it is long-term disability to work (the so called disability pension) and the death of the person providing for the family (family annuity). As pointed out previously, special benefits are of no insurance character and granting them is not determined by the occurrence of some social needs, which was duly acknowledged by the Tribunal in its verdict dated on the 17th of October 2006 . In the justification of the court, the Tribunal emphasized the fact that the aforementioned benefit is not considered for situations in which older people or people completely unable to work who, at the same time, do not meet the requirements of the benefit stated in the Annuity-Pension Act, which

finally results in their difficult material conditions. For these people the legislator has foreseen benefits granted on the basis of the decision made by the President of the Social Security Office, issued on the basis of the article 83 of the Annuity-Pension Act.

To summarize the above deliberation, one may say that including the article 82 in the Annuity-Pension Act which fundamentally regulates the process of granting annuity and pension has been an unfortunate legislative operation. For there is no substantial connection between the benefits granted in a special mode and the main objective of the regulation stated in the Annuity-Pension Act. This technical operation made by the legislator cannot be regarded as favorable mainly because from the statistic point of view of the person under social security the difference between the right to annuity or pension and the right to special annuity or pension is basically hardly to be seen.

The regulation entitling the Prime Minister to grant special annuity and pension should be rather enclosed in Act of October 20, 2002 which refers to the question of providing for people who have undergone an accident or sickness in extraordinary circumstances . This Act gives right to benefits for people /relatives/ who have undergone an accident which caused serious injury or death while carrying out activities not connected with their work / occupation and happened in circumstances which, due to social reasons, justify the social security coverage. Especially, these are incidents which occurred while:

- 1) Saving other people's life who have been exposed to death causing danger
- 2) Protecting public property from damage
- 3) Assisting government or local authorities when on duty
- 4) Prosecuting or seizing suspects or defending people from them
- 5) On duty as functioning as alderman or member of board in all administrative institutions as well as while being the village representative
- 6) Functioning as court alderman

To sum up the deliberation concerning the context in which the regulations of the annuity are embedded in the judiciary system, I hereby consider the postulate of "moving" them out of the Annuity-Pension Act. I personally

believe that there is only one, however of no great relevance, argument for keeping the aforementioned regulations in the social security code. Parallel solution existed legally before the introduction of the Annuity-Pension Reform in January 1, 1999. The article 64, section 1 of the Pension Security for Workers and their Families Act dated on the 14th of December 1982 also entitled the Prime Minister to give the right to benefits in special mode.

The name of the benefits granted in the special mode by the PM also raise some doubts. It is particularly unclear why the legislator uses the term “pension” in the article 82 of the Pension Act as this term is characteristic and specific for the social security law and it covers the risk of the alleged disability . The use of this term “pension” on the part of the legislator may in fact bear signs of the will to social insurance for old age. Meanwhile, since the legislator did not specifically determine the reason for acquiring the right to the benefit, and especially so that he/she did not render it dependent upon accomplishment of specific age , it becomes groundless that the benefits should be diversified into the types of annuity or pension. The sole argument for the terminological diversification of the types of social benefits granted by the PM is the term “pension” which may be granted for life /perpetually/ . In my opinion, to attain the goals of the special benefits granted by the PM, the term “annuity” will be sufficient. In the Annuity-Pension Act, the term “annuity” means a long-term benefit granted and basically constraint to only specific period of time: valid for a period of time specified in the decision issued in favor of the annuity or constraint to occurrence of an extraordinary incident which will seize the right to the annuity (for example in case of family annuity for a child insured until it attains certain age, or in case of establishing the right to pension - which replaces annuity in a way). It is, however, worth emphasizing that the term “pension” put in the context of the name of benefit surpasses the boundaries of social security law and occurs not only in the act of June 27, 2003 which pertains to social annuity , but it also occurs in the article 444 § 2 of the Civil Code . In the light of the aforementioned legal acts, annuity may be granted for life. Therefore, no argument stands in favor of diversifying the benefits granted by the PM into annuity and pension, and

the entitlement of the PM to grant special social benefits in the form of pension or annuity may evoke, as it has been shown by court verdicts, the feeling that the benefits are to serve the realization of the pension goals of pretentious character.

Another doubt evoked by the issuance of the regulation concerning the special benefits in the Annuity-Pension Act is the problem of cancelling the right to the benefit. According to the article 95, section 1 of the Annuity-Pension Act, in case of co-existence of several rights granted to one person, only one benefit is paid out - the higher one or the one chosen by the person in question. This regulation brings about the question whether in case of co-existence of the right to benefit of social security character and the one granted by the Prime Minister, the rule of cancellation will be applicable. My belief is that there is no impediment to combine the right to special annuity with other benefits defined in the Annuity-Pension Act. I have come to this conclusion based on argument of a rational legislator. Since employer in the article 3 of the Annuity-Pension Act outlined a number of benefits defined in the act and the specification did not enclose benefits granted in special mode, it is implausible to admit that the following statement included in the article 95, section 1 "...co-existence of the right to several benefits granted to one person prescribed in the act" could refer to special pension.

Another doubt-arising aspect of the right to special benefits is the dependence of granting the right to special annuity/pension upon the statement of the occurrence of "particularly justified incident". The general clause applied by the legislator implicates the necessity to assess in each and particular case the grounds to grant the right to annuity. The Prime Minister is entitled to freely but specifically determine whether a given case is particularly justified. The prerogative of the PM to grant certain benefits which are included in the article 82, section 1 has been defined in quite an extensive way. In comparison to the legal conditions from before the implementation of the Annuity-Pension Act, the range of competence of the Prime Minister to determine the right to the aforementioned benefits has even been broadened. In the previous statement of the Act of December 14, 1982 concerning the pension benefits



of employers and their families, which was then replaced by the Annuity-Pension Act, the PM was entitled to grant special pension or annuity on condition and in amount higher than the one determined by the Procurement Act on the basis of a motion carried by the general political and social authorities (directors of central offices). The right to grant these benefits was to be based upon stating extraordinary merits: political, social, economic, scientific, and cultural of persons whom were awarded these benefits. As a result of the amendment to the procurement act implemented by means of the Act of May 24, 1990 concerning the change of some of the regulations in regard to social procurement, the indication of the types of merits was cancelled pertaining to the ones justifying the right to benefits, which may be conceived of as the will to deprive this institution from any “ideology”. Still, the process of granting the right to special benefits could not be carried without the initiative on the part of the Prime Minister himself-his initiative required the Minister’s motion (director of the central office). The general clause of “ the special merits” was replaced by the following clause: “particularly justified cases”.

In the current legal state, from January 1, 1999 –the PM’s prerogative was considerably broadened by making the legal proceedings concerning the right to the special annuity independent from any motion of other administrative organs. One should not, however, disregard a situation in which a specific motion will be carried by the authorities of public administration or social organization indicating the existence of “particularly justified case”. Nonetheless, such motion will not be binding for the PM to make the decision as to carry our legal proceedings to grant the right to annuity.

### **Special Annuity in Jurisdiction**

How big the scale of implementing the clause of “particularly justified case” is, can be reflected by the difficulties in interpreting specific individual cases. It was duly acknowledged in legal literature that in case of lack of indication of the remitter criteria, the person making the decision on the basis of the general clause creates substantial criteria content on the basis of which

he/she declares legal decision rather than remitter itself. The PM's decision is a type of creating a normative basis, especially susceptible to political preferences. In such a situation, making use of rules accepted by the society or individual preferences of some authorities will be of secondary relevance .

In the doctrine of social security law, a view was expressed in regard to the abuse of insurance institutions to attain an objective against the rule according to which the right to benefit from social security funds is granted solely to persons who participated in its creation . This argument seems to be actually pointless - as shown above - as the benefits granted exceptionally by the PM bear no characteristics of social security benefits, and according to the article 84 of the Annuity-Pension Act they are fully financed by the state budget. Nonetheless, one reproach against the entitlement of the PM defined in the article 82 of the Annuity-Pension Act seems to be of current significance: the potential political reasons to overburden the public funds easement for the sake of distinguished politicians . The mechanism of a particular control over the PM's right to implement pension and annuity, which is confined to the obligation of submitting the information concerning the pension and annuity benefits granted on the basis of the article 82, section 1 to the Polish Sejm / Parliament/ until the 31st of January of each calendar year is inefficient.

The herewith shown genesis of the regulations concerning the benefits granted by the Prime Minister in exceptional cases proves that in the current legal conditions the PM's scope of decision is wider than it actually was in the legal conditions functioning before the implementation of the pension reform. This type of regulation formation arose doubts of constitutional nature, for instance by infringement of the rule of democratic state defined in the article 2 of the Polish Constitution. In the motion pertaining to the control of the compliance of the article 82, section 1 of the Annuity-Pension Act with the Constitution, it was emphasized that the rule defined in the article 2 of the Polish Constitution concerning decent legislation and definition of regulations was infringed.

In its decision dated on the 17th of October 2006 the Tribunal admitted that the regulations referring to the special annuity are not at variance with

the Polish Constitution and the application of the general clause is not a flaw of the aforementioned regulation. The Tribunal agreed with the opinion of the Attorney General that in the stated case, due to its exceptionality, blurring that stems from the application of the general clause is not a legislative flaw.

In the aforementioned verdict, the Tribunal admitted that special annuity and pension are of no social character “(...) benefits are not directly dependent upon the occurrence of disability to work due to sickness or disability, nor are they dependent upon achieving the pension age”. By that statement it justified the denial of the control whether the article 82, section 1 is constitutionally grounded as opposed to the people’s right to social security defined in the article 67, section 1 of the Polish Constitution. The Tribunal’s view of the unsocial objective of the social annuity can be vastly found in a number of verdicts stated by /voivodship/ administrative courts .

At the same time, in its verdict the Tribunal admitted that “ratio legis” of the special annuity is to be found in the assurance of “just living standards” (as emphasized by the author) for the people who exhibit extraordinary, individual and unique merits and attainments in the field of specific activity. Indication of the just living standards within the objectives of the special annuity unanimously suggests the view of the Tribunal on the social function of the special annuity, thus suggesting the one defined by the regulations concerning the social security. It is therefore essential to emphasize the logical inconsequence of the Tribunal’s argumentation with regard to the problem presented to it.

A question is therefore raised whether it will be possible for a given person to be granted the right to annuity if he/she shows extraordinary attainments and is in perfect living standards. While assuming that the objective of the benefits granted to people in special mode is to honor them for their special merits in the field of culture, science or economy, one must answer the above question in an affirmative way. Negative answer would, in turn, stem from the thesis stating that special benefits are of social function only, which would then be contradictory to the statement of the Tribunal which refers to placing special annuity/pension beyond the social security system.

The basis of the point of view stated here is the current legal condition as well as the verdict of the Tribunal. It is, however, questionable to grant long-term allocations/benefits in the form of special annuity or pension to certain people. It is medals or distinction that serve the purpose of paying honor to people with special merits. According to the article 1, section 1 of the Act dated on the 16th of October 1992 referring to medals and distinctions, The Republic of Poland insures the continuity of the national traditions in awarding merits, citizen virtue, and extraordinary attainments. Section 2 of the article 1 of the a/m Act states that the most prestigious awards for the civil and military merits achieved in the times of peace or war for the glory and development of the Republic of Poland are medals and distinction.

Nothing – apart from political decisions - hinders that some medals or distinctions should be complemented by financial benefits. One must not, however, accept the fact of granting long-term benefits of non-social function, especially on the basis of such unspecific and imprecise regulation as the one stated in the article 82, section 1 of the Annuity-Pension Act.

## **Conclusions**

From the author's point of view, it is justifiable for the legal system to embed regulations which allow for allocations/financial benefits to be granted for a long period of time in "particularly justified cases". Nevertheless, my belief is that financial benefits coming from the state budget should in such cases meet the requirements of the social function. Medal and other distinctions are meant to be awarded to people of high merits in the field of culture, science, and society. The question remains as to whether some medals or other distinctions should be combined with financial benefits.

In the light of the hereby stated arguments, "eliminating" the regulation which entitles the PM to grant annuity and pension from the Act regulating the right to social security would definitely contribute to lessening of the interpretative doubts. It would also be advisable that the diversification into the special annuity and pension should be eliminated and therefore confined

to the term “annuity” only, which would serve the purpose of achieving the above aim.

It is also worth considering introduction of a different and more effective than the current process of controlling the PM’s implementation of granting the right to special social benefits.

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