

The Finnish Perspective on the Last-Resort Support for Subsistence

Pentti Arajärvi

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1 The Welfare State and Society

It is an essential characteristic of a welfare state that public authorities bear considerable responsibility for the welfare of individuals and families. Welfare and social security are implemented through a policy that is based on legislation, aims at promoting justice in the welfare state and society, and diminishes social risks. The policy also levels out the distortions and imbalance of people's incomes and the losses of income created by markets. A welfare state also attempts to guarantee real freedom and equality.¹

The welfare tasks of the welfare society must on the one hand fulfil the needs of individuals in ways that are acceptable ethically, morally, economically, and socially and on the other hand also be subjectively accepted by the target groups and create and maintain good functional conditions for industries, employment, and public activities. For companies and other industrial actors, welfare tasks create opportunities for productive economic activity by educating the population, providing health care and environmental health care, protecting the environment, providing employment possibilities, and by releasing labour force, for instance, from the care of children and the elderly for the labour market. It is a matter of both preventive and mending measures. The overall goal is a good and functioning society.²

The aims of welfare society - on the one hand economic efficiency, and on the other justice - are partly in conflict. Combining social benefits with paid work encourages people to participate in working life, but the financing required for that may lead to the weakening of expected incentives. Therefore, the goals must include a high employment rate, long careers, and the growth in productivity. Improving the employment situation and achieving a higher employment rate are particularly important. In Finland, the unemployment has decreased fairly rapidly in the last few years. In general, compared with the other member states of the EU, Finland's employment rate is high. Yet, it is lower than the employment rates traditionally have been in Finland, and significantly lower than in the other Nordic Countries. The structure of the unemployment has become more problematic than before, and a remarkable number of people are under-employed, suffer from hidden unemployment, or they must take part in various active labour market measures. Unemployment has polarised, and structural unemployment has increased. Especially for the long-term unemployed, the risk of social exclusion has grown. The development of the employment situation is also regionally uneven, and atypical forms of employment have increased. The importance of training and of adequate professional skills has increased at the labour market.³

1 For the relationship between the welfare state and Constitution, see Scheinin, Martin, *Introduction*, in Scheinin (Ed.) *Welfare State and Constitutionalism – Nordic Perspectives*, Århus 2001, p. 17-19.

2 Arajärvi, Pentti, *Toimeentuloturvan oikeellisuus*, Jyväskylä 2002, p. 23.

3 *Aktiivinen sosiaalipolitiikka -työryhmän muistio*, Sosiaali- ja terveysministeriö, Työryhmämuistioita 1999:20, Helsinki 2000, p. 52-64.

There are many ways of defining and describing the Nordic welfare state. Generally typical characteristics for this model are considered to be influence of intensive social policy reaching out to general policy fields; the goal of full employment and the wide-spreading nature of the employment policy; the high rates of taxation and social protection expenditure; the universality and individuality of the system; the simultaneous existence of minimum security benefits and the guarantees of income; the scheme of public services; equality between men and women; and the small differences of income.⁴

Discussions are going on at the EU level about the European social model. The aim is to modernize the model and to invest in people. Particular focuses include interaction between economic, social, and employment policies and the high quality of these policies, reforming the social security schemes, and paying attention to the costs caused by the defects of social security. The social policy strategy is based on the idea that the member states have to make decisions, which are problematic in the short term, in order to be able to guarantee the long-term sustainability of the European social model, the functioning of the internal market, and the implementation of common values. The ultimate objective is to achieve full employment and equal opportunities for all. More specifically, the aim is to prevent poverty and promote social inclusion (i.e. prevent exclusion).⁵

The blessings of a certain policy are, however, not self-evident. There are several ways of co-ordinating for example the knowledge-based economy required by the Lisbon strategy and the welfare state. The structure of a welfare state is not solely defined by the economy. Similarly, there is no social policy scheme that would inevitably be "the best" for a certain economy; systems adapt to new conditions all the time. The goals of the different social policy schemes vary greatly and may sometimes even be mutually exclusive. Almost always they are in competition. Intended effects of the reforms always bring up some undesired consequences, too. In the worst case, these negative effects exceed the desired ones.⁶

It is not unreasonable to believe that one problem of social policy will – in the course of time – be caused by the fact that the social policy of the EU strongly emphasises encouragement of people and the adaptability of the schemes. The view-points are primarily those of the labour market, activation, and economic success (of the nation and a individual). For instance, the aspects of justice or reasonability are either ignored or discussed only to a slight extent. In itself, employment is of course not a bad means for decreasing poverty.

4 Kautto Mikko, Heikkilä, Matti, Hvinden, Bjørn, Marklund, Staffan and Ploug, Niels, *Introduction: the Nordic welfare states in 1990s*, in Kautto, Heikkilä, Hvinden, Marklund and Ploug (Eds.), *Nordic Social Policy*, London and New York 1999, p. 10-14.

5 COM (2005) 33 final, *Communication from the Commission on the Social Agenda*.

6 On the interrelationship and interdependence of the Lisbon Strategy and social policy see Kari, Matti och Saari, Juho, *Det sociala Europa*. Europeiska unionens socialpolitik, Helsingfors 2005, p. 71-101.

However, if it is the only tool, the variety of choices in social policy becomes narrow.⁷

The European Council has agreed that in the field of social protection the cooperation at the EU includes the use of the Open Method of Coordination. The real innovation – but also a problem – of this method is that it requires extending the functions of the EU into fields in which the Union has no executive power under its Treaties. The Social Protection Committee functions on the basis of article 144 of the Treaty establishing the European Community. With an advisory status, the Committee monitors the social situation and development of social protection policies in the member states and the Union. The aims of the Open Method of Coordination include the creation of indicators that would promote the unification of social policy actions in the member states. Thus, a fairly strong system has actually been created in order to unify the direction of social policy in the member states.⁸

As relates the future of the open method of coordination, the Commission goes quite far and makes requirements concerning even the present time. With regard of future action, the Commission states: “Responsibility for the organisation and funding of the health care and elderly care sector rests primarily with the Member States, which are bound, when exercising this responsibility, to respect the freedoms defined and the rules laid down in the Treaty. The added value of the “open method of coordination” is therefore in the identification of challenges common to all and in support for the member states’ reforms”.⁹ Thus the basic idea is that because of the Open Method of Coordination in this area the member states must commit themselves to the legislation of the Community even in a field in which they themselves have the primary executive power.

In connection with the social policy of the Union, the Finnish policy has been relatively prudent. Because the Commission has the power to make initiatives and due to the fact that fundamental solutions of the social policy schemes of the Nordic Countries differ from the approach taken by particular the biggest member states, the emphasis in Finland has been on implementation, and organisation of social security. Transferring the executive power or the power to make initiatives to the Commission would not be in line with the Finnish goals. Social policy is, however, more and more strongly connected with the employment and economic policies, which to a certain extent restricts the possibilities of social policy or redefines the framework of implementing it. The essential point is economic success. A strong national economy and public economy provide opportunities – among other things – to choices connected with social policy. In this sense, they also benefit welfare.

7 See for example Council of the European Union, 7294/06, *Joint Report on Social Protection and Social Inclusion 2006*.

8 “www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm.” 8.8.2006.

9 COM (2004) 304 final, *Modernising social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the “open method of coordination”*.

The right operating conditions might be created by issuing a directive that would clarify the position of social policy on the internal market and by adopting in the legislation the Charter of Fundamental Rights of the Union. The adopting of the above mentioned legal Act would provide predictability and stability to the decisions of the European Court of Justice. The decisions of the ECJ are based on cases that are fairly arbitrarily brought up for consideration by the Court. The Charter of Fundamental Rights would create a counterbalance constructed on social, educational and cultural rights to the four freedoms of the internal market that are now dominating the interpretations of the ECJ and the content of initiatives of the Commission. After all, the Union exists for people, not for the market.

2 The Human and Basic Right to Last-Resort Support for Subsistence

For the subsistence of families and individuals, the legislation concerning last-resort support for subsistence is of a great social political importance, because the question is by definition of a last-resort safety net. Its most essential characteristic is that the benefit is intended only for those who cannot receive their subsistence in any other way. In a way the last-resort support for subsistence has also character of compensation for costs: it is mainly granted for the purpose of covering the necessary costs of life. The level of the last-resort support for subsistence is always low, a clarification on the need of support is always required, and the support is often at least partially based on the consideration of the authorities.¹⁰

In Finland, the regulation on social rights went through some radical changes at the beginning of the 1990's. The regulations of constitutional rights were reformed to cover also the economic, social, educational, and cultural basic rights and liberties. Even earlier Finland had committed itself to the International Covenant on Economic, Social, and Cultural Rights. The Covenant (hereafter referred to as the CESCR) also includes some provisions connected with subsistence and the adequate standard of living. The European Social Charter is, however, more essential in this context. Afterwards it has been revised. The European Social Charter (revised) (hereafter ESC) became a part of Finnish legislation on 1. August 2002. As far as the adequate assistance is concerned, the revision of the Charter did not change the Finnish commitments.¹¹

2.1 The Human Rights Conventions

In article 2 of the CESCR, each state party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate

10 On the special characteristics of last-resort support for subsistence, *See* Kuivalainen, Susan, *A Comparative Study on Last Resort Social Assistance Schemes in Six European Countries*, Saarijärvi 2004, p. 57-63.

11 Government Bill No. 229/2001 vp, p. 27-29.

means, including legislative measures.¹² The implementation of the duties of the CESCR, more specifically the full implementation mentioned in article 2, is emphasised in the Limburg Principles made by experts and internationally recognised. These principles require ensuring respect for minimum subsistence rights for all and to take steps towards full realisation the rights contained in the Covenant.¹³ Article 9 of the CESCR is rather superficial in relation to social security. It only recognizes the right of everyone to social security including social insurance.¹⁴ Thus the article can be interpreted to cover the fields in which a state party undertakes social security.

In article 11 of the CESCR, the states recognize the right of every family and individual to an adequate standard of living including adequate food, clothing and housing, and the right to continuous improvement of living conditions. This provision is connected with the right to work, which includes the opportunity to gain living by work in article 6 and with remuneration providing fair wages and decent living in article 7. Article 11 of the CESCR also contains particular provision for the states to take appropriate step to ensure the realization of the right to adequate standard of living.¹⁵

In article 12 of the ESC, the states undertake with a view to ensuring the effective exercise of the right to social security to establish and maintain a system of social security, and to maintain it at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security. The states also undertake to endeavour to raise progressively the system of social security to a higher level. Thus, the ESC defines the minimum level of social security. Finland has not ratified the European Code of Social Security. Nor is the reformed Code in force yet. The obligation will be created through article 12 of the ESC, while Finland has not made reservation for article 12. Finland is obligated by all the provisions of the Social Security Code that it fulfils. According to a report made by the Finnish Ministry of Social Affairs and Health, social security in Finland fulfils the criteria of most benefits of the Social Security Code. Problems seem to concern some aspects of health care, maternity benefits, and disability benefits.¹⁶

12 See especially *General Comment no. 3, General Comments of the Committee on Economic, Social and Cultural Rights*, in Eide, Krause and Rosas (Eds.), *Economic, Social and Cultural Rights: A Textbook*. 2. rev. edition, Dordrecht/Boston/London 2001, p. 618-621. See also Alston, Philip, *The International Covenant on Economic, Social and Cultural Rights*, in *Manual on Human Rights Reporting*, United Nations, Geneva 1997, p. 84-88. Both emphasise the actual implementation of rights.

13 *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, in Eide, Krause and Rosas (Eds.) *Economic, Social and Cultural Rights: A Textbook*. 2. rev. edition. Dordrecht/Boston/London 2001, Especially principles 16 and 20-25.

14 *General Comment 6*, p. 640, states that article 9 covers all social risks that are independent of the person him/herself. Although the statement originally concerns aged people, the wording of the article can be applied to the persons of all ages.

15 Also for article 11 of the CESCR see *General Comment 6*, p. 641.

16 Government Bill No. 229/2001 vp, p. 27-29 and Opinion of the Social Affairs and Health Committee of Parliament No. 4/2002 vp, p. 3-4.

The Council of Europe has defined some criteria for cutting social security. This is important especially in relation to the obligation of raising social security by article 12 of the ESC.¹⁷ The provision can be interpreted to prohibit the weakening of social security in cases that do not fill the criteria. The increased affluence of the society raises the level required in order to implement the right. The process of developing the last-resort security is in principle endless.

Minimum security in article 13 of the ESC requires ensuring everybody's right to medical and social assistance. According to the established interpretation, this provision of the ESC creates such a right to the minimum security for subsistence which the state must undertake as a subjective right.¹⁸ As such article 13 (1) of the ESC is not a subjective right in Finland. Nor does the human rights treaty require that the subjective right should be in force as a fundamental right. In Finland, nationally into effect carried international treaties belong to the Finnish legislation. Article 23 of the ESC protects the rights of elderly persons to active and decent lives. Article 30 of the ESC ensures the right to be protected against poverty and social exclusion.

In the human rights conventions, the provisions on the level of social security are superficial and contain significant variations. For instance article 7 of the CESCR mentions decent living and article 11 of the CESCR an adequate standard of living.¹⁹ In article 27 of the Convention on the Rights of the Child, the states recognise the right to an adequate standard of living. In different times and societies, these mean different levels of subsistence benefits to cover the necessities of life.²⁰

2.2 *The Indispensable Subsistence*

In Finland, the basic rights were reformed since 1. August 1995. According to the motivation of the Government Bill on reforming the basic rights, the most fundamental rights of a human being can be seen as independent on the will or the juridical system of the state. As an example, the Government Bill mentions the inviolability of human dignity. The requirement for the inviolability of human dignity expresses the humane foundation of the basic rights.²¹ Further

17 Mikkola, Matti, *Sosiaaliturvan leikkaukset Euroopan sosiaalisen peruskirjan valossa*, in Hellsten, Hidén ja Sakslin (toim.), *Sosiaaliset oikeudet ja sosiaaliturva*, Helsinki 2001, p. 25–26 and Council of Europe, *Conclusions Cycle XIII-4*, Strasbourg, Council of Europe, 1996, p. 143-144.

18 Government Bill No. 309/1993 vp, p. 69 and Government Bill No. 217/1997 vp, p. 16. Scheinin, Martin, *Economic and Social Rights as Legal Rights*, in Eide, Krause and Rosas (Eds.), *Economic, Social and Cultural Rights: A Textbook*. 2 rev. edition, Dordrecht/Boston/London 2001, p. 42-45 describes the development of article 13 of the European Social Charter into a human rights provision requiring a subjective right.

19 Article 11 of the Treaty mainly concerns compensations in kind. See Eide, Asbjørn, *The Right to an Adequate Standard of Living Including the Right to Food*, in Eide, Krause and Rosas (Eds.), *Economic, Social and Cultural Rights: A Textbook*. 2. rev. edition, Dordrecht/Boston/London 2001, p. 133-148.

20 *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, in Eide, Krause and Rosas (Eds.), *Economic, Social and Cultural Rights: A Textbook*. 2. rev. edition, Dordrecht/Boston/London 2001, p. 730-731 mentions the duty to use the resources.

21 Government Bill No. 309/1993 vp, p. 42 and 46.

motivation for human dignity is also provided in connection with the right to life where it is also connected with section 15 a (1) of the Finnish Form of Government Act as a minimum of existence.²² When the basic rights were reformed in 1995, the central part of the Finnish Constitution was called the Form of Government Act (in Finnish “hallitusmuoto”). In 2000, the different constitutional laws were reformed and codified to one law, the Constitution of Finland. The provisions on basic rights discussed in this article were transferred to the new Constitution as such. Section 15 a of the Form of Government Act became section 19 of the Constitution. Hereafter I shall use the numbering of sections existing in the Constitution even if the original reasoning originates the time when the Form of Government Act was still in effect.

Section 19 (1) of the Finnish Constitution reads as follows:

“Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care”.

The right to indispensable subsistence and care is last-resort minimum protection that the society must be able to guarantee in all conditions. In connection with this regulation, the term last-resort means guaranteeing subsistence in cases where the person would otherwise be left without even the most fundamental security.²³ In this provision, the question is not merely of social security but also more generally of the responsibility for fellow people.

The Government Bill does not include motivations for the dimensions of the life of dignity mentioned in section 19 (1) of the Finnish Constitution. Indispensable subsistence and care are defined as such a level of income and services that guarantees the opportunities for living with dignity. This includes for instance arrangements of nutrition and housing necessary for the preservation of health and the ability to live. The security of subsistence required by the provision is organised through the social assistance; the care means for instance child protection, care for the elderly and the disabled, and the first aid provided by health professionals.²⁴

During the drafting of the basic rights reform, the provision of section 19 (1) of the Constitution was originally included in connection with the right to life. However, the Constitutional Law Committee of the Parliament estimated that the provision belongs to social security as it was in the Government Bill. In their respective opinions the Finance Committee and the Social Affairs and Health Committee took also positions on the provision belonging to the right to life. The Finance Committee referred to the fact that the necessities of life also contain other elements than the indispensable subsistence. The Social Affairs and Health Committee mentioned the need to specify the right to life.²⁵ The

²² Government Bill No. 309/1993 vp, p. 46.

²³ Government Bill No. 309/1993 vp, p. 35.

²⁴ Government Bill No. 309/1993 vp, p. 69.

²⁵ Komiteanmietintö 1992:3, *Perusoikeuskomitean mietintö*, Helsinki, 1992, p. 187. Report of the Constitutional Law Committee of Parliament No. 25/1994 vp, p. 10 and Opinion of the Finance Committee of Parliament No. 2/1994 vp, p. 2-3 and Opinion of the Social Affairs and Health Committee of Parliament No. 5/1994 vp, p. 2.

interpretation decided by the Constitutional Law Committee clearly implies that section 19 (1) of the Constitution does not require a mere minimum of existence but a higher level of subsistence.

2.3 *The Charter of Fundamental Rights and the Constitutional Treaty of EU*

Two documents of special importance to the discussion on the last-resort support for subsistence from the view-point of basic rights have been created in the European Union. In this sense, the documents are practically identical by contents. Neither has binding legal significance. However, they illustrate the principles that are likely to be applied for instance in the function of the European Court of Justice. The documents are the Charter of Fundamental Rights of the European Union, which was approved in Nice in 2000 and is valid as a declaration, and the Treaty establishing a Constitution for Europe (hereafter the Constitutional Treaty), in which the Charter of the Fundamental Rights of the Union is included as part II.²⁶

The preamble to the Charter of Fundamental Rights in the Constitutional Treaty states that the Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. The Charter will be interpreted with due regard to the updated explanations.

Article II-94 of the Constitutional Treaty, includes provisions on social security and social assistance.²⁷ Article II-94 (3) is of particular importance to the last-resort support for subsistence. In this provision, in order to combat poverty and social exclusion, the Union recognizes the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices. The field of application of the Charter is prescribed in article II-111. The provisions of the Charter are addressed to the organs of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. Even if the Charter came into force, it might therefore not necessarily play a significant role in national actions, particularly while social security issues are not included in the executive power of the Union. However, one of the goals of the Open Method of Coordination has been to prevent poverty and social exclusion, which may at some point become an important element in the functions of the ECJ even in the application field of the Charter of Fundamental Rights.

26 On the definition of last-resort support in the EU, see *COM (2006), 44 final, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions concerning a consultation on action at EU level to promote the active inclusion of the people furthest from the labour market*, p. 4-5.

27 *Treaty establishing a Constitution for Europe*, Official Journal of European Union C 310 of 16 December 2004.

Declarations concerning the explanations to the Charter of Fundamental Rights²⁸ state that the explanations do not as such have the status on law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter. The explanation concerning social security and the social assistance refers to articles 137 and 140 of the Treaty of the Community, now replaced as articles III-210 and III-213 of the Constitutional Treaty. Further references are made to article 12 of the European Social Charter and to point 10 of the Community Charter on rights of workers. Paragraph 3 of the article 12 is more significant from the perspective of last-resort support for subsistence and its explanations refer to article 13 of the European Social Charter, articles 30 and 31 of the revised European Social Charter, and point 10 of the Community Charter on rights of workers.

Article 34 of the Charter of Fundamental Rights of the European Union (accepted in Nice and in effect as a declaration) includes almost the same wording and the same factual goals on social security and social assistance.²⁹

3 On the Juridical Impacts of the Basic and Human Rights

The basic and human rights are seldom directly implemental or at least these rights have to be defined more specifically through ordinary legislation. Some basic rights create direct rights to people, some are programmatic or contain tasks to the legislator, and some provide competence to the legislators or restrict this competence. When applying legislation, all these rights may influence on the interpretations. The duty of to endeavour to raise the social security in article 12 of the ESC is kept the prohibition of weakening the security. Especially an economic, social, or educational basic right typically contains a mandate to legislator to prescribe the right further by law.³⁰

For the reason of the tasks containing provisions of basic rights and with the general obligations of public authorities, the legislator has – in addition to the material issues involved – three questions that need to be solved by law. The legislator must nominate an actor to implement the regulation. It must ensure that the actor in question actually has the sufficient resources and executive power to fulfil the duty. Legislator and the state in general also have the duty to control the factual realisation of the basic and other rights and fulfilment of the duties of public authorities. This requires at least a functioning system of legal protection, political follow-up of the implementation of rights, and necessary decisions on funding to guarantee the resources.³¹

The methods how the government guarantees the basic and human rights are always considered on a case-by-case basis. For instance, educational and social rights must be primarily implemented by the public sector; economic rights,

28 Official Journal of the European Union 16.12.2004, C 310/424.

29 Official Journal of the European Communities C 364/1, 18.12.2000.

30 Karapuu, Heikki, *Perusoikeuksien tausta ja yleinen sisältö*, in Hallberg, Karapuu, Scheinin, Tuori ja Viljanen (toim.), *Perusoikeudet*, Juva 1999, p. 82-83.

31 Arajärvi 2002, p. 85.

such as the right to work, often depend on measures taken by private actors. Government can usually only support the implementation of the rights, that are at the responsibility of private actors. In addition to this, government protects individuals from arbitrary treatment.

The state prescribes the contents of the basic rights using its competence-competence. Through the provisions on basic rights, the legislator has given itself assignments and restricted its own executive power. Human rights often have similar effects. The legislation implementing a basic or human right is in a way in a primary position compared with the other kinds of laws: the legislator must cover the minimum requirements regardless of the economic resources reserved for the purpose or any other similar factors. According to the government bill on reforming the basic rights, basic rights instruct and direct the legislation in this sense.³² Problems may arise, when the competence belongs to the EU either exclusively or on the basis of the shared competence. There will no longer be at least a full national competence to organise the matters in the way desired. Instead, some provisions that may be completely irrelevant to the point discussed may have to be adopted into norms.³³

One dimension of the basic rights – and to a smaller extent of the human rights – is the question whether they create subjective rights. In such cases they have an immediate juridical impact. Many of the basic and human rights, especially the civic and political ones, have been defined as subjective rights. Of the economic, social, and educational rights of the Finnish Constitution, only the rights to indispensable subsistence and care and to basic education are determined as subjective. Among human rights, article 13 of the ESC, which is its content in line with section 19 (1) of the Finnish Constitution, has a similar position. Even more dependent on the consideration is whether a right based on a basic right and specified or guaranteed through ordinary legislation is a subjective right. Two fairly similar provisions in the Constitution may lead to the creation of either a subjective right or a budget-bound or otherwise discretionary benefit. It seems consistent that pecuniary benefits have been considered subjective rights more often than services. Most of the services which are subjective rights, are determined as subjective rights already in the Constitution, such as basic education, the right to acute medical care, and some services of child protection and disables. However, all the services which might become subjective rights based on the Constitution have not been defined as such rights through the ordinary legislation.

Basic rights are usually individual. However, for instance the last-resort support for subsistence must necessarily be considered as joint support if the persons in question have joint maintenance obligations of a child, even though the criteria for receiving the support and often the financial value of the support are defined individually. Paying attention to maintenance obligations is implied already by the wording of section 19 (1) of the Constitution, which requires that the subsistence of each person involved must be considered extensively.

32 Government Bill No. 309/1993 vp, p. 26-28. See also Hidén, Mikael, *Perusoikeuksien yleisiä kysymyksiä*, in Nieminen (toim.), *Perusoikeudet Suomessa*, Helsinki 1999, p. 1-27.

33 Joutsamo, Kari - Aalto, Pekka- Kaila, Heidi- Maunu, Antti, *Eurooppaoikeus*, Helsinki 2000, p. 190-191.

4 From Supporting a Decent Life to Promoting Activation

4.1 *Some Historical Background of Last-Resort Support*

The society has always assumed responsibilities for taking care of the poorest and most vulnerable members of society. The earliest forms of providing subsistence included the statutory duty to work, begging, caring for orphans, elderly, and disabled people in private households at the cost of the community, poor houses, and charity-based support funds for the poor. In the 19th century, caring for the poor started to develop into a more systematic direction. The first regulation on poor relief was given in 1852. It was based on the duty of congregation to support the poor. People who were able to work were obliged by the law to compensate for the support by doing some work that fitted their capacities. The regulation was the first social political project attempting to create a scheme for guaranteeing subsistence through a set of detailed norms. The goal was to cover all the people in need of help and to guarantee their right to the support. The regulation in question was totally reformed in 1879. Among other things the change was also connected with the increasing freedom of industries and the liberalistic ideology that dominated the society. At the same time, things like the independent activity of the poor were emphasised and the duty to assist the poor was assigned to the municipalities. An attempt to define the limits of this duty was based on the residence right. The importance of institutions as method of poor relief increased.³⁴

The next stage in the development of social security already created other forms of guaranteeing subsistence than the mere care for the poor. The earliest one of these was the accident insurance. Then came the schemes for national pensions and maternity grants. After World War II, family allowance came into effect. The unemployment allowance, earnings-related pensions, sickness insurance, and national survivors' pension were gradually added to the system.

Caring for the poor was reformed by the law on caring for the poor in 1922. The most important changes concerned extending the municipality's duty of assistance to cover all the residents who could not receive appropriate care and subsistence through their own property, work, or other means. The institution-centred system was strengthened. Municipality were also obliged to assist poor people with capacities to work. Preventative care for the poor formed a new dimension to the system. In 1956, the law on caring for the poor was replaced by the law on social assistance. The foundations of the municipality's duty to assist the poor were not changed. The most important support form brought up by the new law was home allowance. It could be administered as money, products, purchase benefits, or as commitments of the municipality to compensate for certain services. Additional support forms included institutional care and care in private homes. There were remarkable variations in the system between municipalities. The legal protection for the recipients was, however, much better than in the earlier legislation.³⁵

34 Van Aerschot, *Köyhät ja laki*, Vammala 1996, p. 39-116.

35 Van Aerschot, p. 144-165 and 196-231.

The schemes of earnings-related pensions, the parent's allowance, and the sickness insurance were created at the beginning of the 1960's and followed for example by the reforms of basic education, day-care for children, and public health care. Other social welfare services were increased in a more scattered way. Finland changed from an agricultural society into an industrial and service-based one. More and more of the care and assisting tasks of families were transferred to be in charge of the society and the participation of women in the labour market increased. More and more often, the generations lived in different municipalities. Society became urban. Services began to be given regardless of the economic position of the recipient on the basis of his/her need. It was no longer assumed that the need of help was created by some negatively exceptional characteristics of the individual, but the environment and the requirements made by the society were also understood to be influencing factors. The importance of preventative action was perceived. A statement made by sosiaalihuollon periaatekomitea (the Principle Committee of Social Welfare) became the general basis for reforming social welfare services. The Committee wrote down as a particularly basis for developing social welfare services the functional principles of social welfare, which consist of orientation to service, the aim of normality, the freedom of choice, confidentiality, prevention, and the promotion of independence.³⁶ As one step of developing the welfare society, the law on social welfare and the provisions on social assistance included in it, was adopted in 1982.

The goal of adopting the law on social welfare was to improve the possibilities of the social security system to prevent problems, to support independent living, and to implement the other important functional principles of the field. The reform also aimed at improving the economic possibilities of the municipalities to provide social welfare. In implementing social welfare, the idea was to put the individual in the core and to consider all the problems of each individual and family as a whole. Case by case considerations on the needs and the last-resort nature of measures were also essential.³⁷ The social political importance of the social assistance was seen particularly strongly in connection with the development of the primary subsistence benefits. Social assistance was needed, and it was created as a benefit to be used in exceptional situations, when a person is – for some reason or another – not entitled to other benefits or cannot receive his/her subsistence in any other way.

In the program of Prime Minister Paavo Lipponen's first Government (1995-1999), one of the aims was to increase the incentives to work. The idea was also to develop the support schemes into a direction in which working would always improve the person's economic situation. The benefit scheme for the minimum security had to be clarified. The purpose was also to create a unity of social security benefits, client fees, the growth of earnings, and taxation, - unity of which encourages people to work and study and prevents so-called incentive traps. The intention was to implement the necessary measures as soon as

36 Komiteamietintö 1971: A 25, *Sosiaalihuollon periaatekomitean mietintö I*, Helsinki 1971, p. 33–40.

37 Government Bill No. 102/1981 vp, p. 5-6.

possible without weakening the security of people in the most difficult situations.³⁸

A one-man committee was nominated in order to develop the social assistance. In his report he proposed giving a separate law on social assistance and paying more attention to the indispensable subsistence mentioned in section 19 (1) of the Constitution. The general goals of developing the social assistance were to enable individuals and families to cope without social assistance, to lower the average amount of social assistance paid, and to shorten the duration of using the allowance. A further goal was to increase the responsibility of individuals for their subsistence and their own activity.³⁹

The regulation concerning the social assistance was reformed by the law on social assistance (hereafter called the social assistance law). It came into force on 1. March 1998. Adopting the law was based both on the need to reform the social assistance and in order to provide wider understanding of the basic rights. The law has been amended afterwards. The first amending opened the possibility of appeals up to the highest level of the Finnish court system. Earlier the appeals had been possible only in the regional administrative courts. A leave to appeal is required to the Supreme Administrative Court, and the case must have the character of precedent. The government bill referred to statements and opinions made in connection with earlier legislative processes concerning the opening of the appeal system. The Parliament emphasised the importance of the possibility of appeals in unifying the application practices in the law.⁴⁰

One problem was noticed very soon after the law had been adopted. The basic part of social assistance paid to households was precisely enough to cover the costs it was meant to cover. Even then it required well controlled house-keeping and good planning. Long standing depending on the social assistance narrowed the range of possibilities. As a consequence of this, unpredicted costs could cause an unreasonable need to cut even the indispensably consumption. The solution chosen was to attempt to intensify the use of preventative social assistance. Granting preventing assistance if needed, was made more obligatory to the municipalities. The law also included a provision stating that the applications for social assistance must be considered without delays.⁴¹

4.2 Policies of Incentive and Activation

Incentive has been added to the social security system.⁴² The goals of incentive are to make sure that the benefits do not at least tempt people to remain without

38 valtioneuvosto.fi/tietoavaltioneuvostosta/hallitukset/hallitusohjelmat/vanhat/lipponen/Hallitusohjelma_Lipponen112834.jsp.

39 Arajärvi, Pentti: *Toimeentulotuen kehittäminen*, Selvitysmiesraportti, Sosiaali- ja terveystieteiden tutkimuskeskus 1997:18, Helsinki 1997, p. 4.

40 Government Bill No. 166/1998 vp, p. 3-4 and Report of the Social Affairs and Health Committee of Parliament No. 26/1998 vp, p. 2.

41 Government Bill No. 134/2000 vp, p. 1-2.

42 In her work *Suunnanmuutos*, Tampere 2001, p. 171-192 Raija Julkunen describes the discussion on activation and social assistance in the 1990's.

earnings, and that earning a salary is always profitable despite of the consequent lowering of the benefit. Also mean-testing may be problematic, if by increasing of earnings through work through social security benefits received income decreases relatively rapidly. The decrease may even be 100 %, which means that one euro is lost from the security benefit of subsistence for each euro earned. If there are many progressive factors involved, such as the cumulative effects of increased taxation and day-care fees and the lowering of the housing allowance, the loss may in principle even exceed 100 %.

Already before the social assistance law, the problems connected with incentive had been studied for instance from the view-point of the economics. Research had also been made on how more incentive could be added to the schemes of taxation and social security. It had been stated that the goals of social security and of encouraging people to work lead partially to different directions and by co-ordinating them the question is basically of co-ordinating the ideals of efficiency and equality. Providing incentives as such does not call the tasks of social security into question. The goal is to increase people's own activity. The starting point is that working is the primary way of producing economic welfare. Various solutions are needed in order to remove the different kinds of incentive traps. The problem connected with the unemployment trap is relieved by lowering the level of social security or by tightening its criteria and by decreasing taxation. As solution of the income trap there is mainly the relieving of mean-tested social security, the dependence of service fees on income, and the progression of taxation, and at the same time the differences of income in fact increase.⁴³

From the view-point of basic rights, encouraging people to work is acceptable as long as it is not used as an excuse for violating the characteristics of social security defined on the basis of the basic rights. The coverage or level of social security connected with the basic rights must not be reduced through the incentive. When these criteria are fulfilled, the other effects of the incentive on social policy are without juridical significance. However, their importance to the social policy may be great in other ways, and the results may not always be positive to the Nordic model of social security.

The idea of encouraging people to work is reflected in the amending of the social assistance law: when a person is receiving social assistance, 20 % of the income – but no more than 150 euros – does not lower the level of the assistance. In practice this means that a recipient of the social assistance may earn up to 750 euros a month so that the assistance decreases 80 cents per each euro earned. If the 750 euros limit is exceeded, the assistance decreases by the same sum as the person earns. This procedure encourages people to earn small amounts of income. The purpose is to encourage a recipient of social assistance who receives some support for the unemployed or no income at all to get involved in labour market even if the income received is small. According to the evaluations, this provision increases the willingness of the recipients of social

⁴³ *Kannustinloukkutyöryhmän loppuraportti*, Valtioneuvoston kanslian julkaisusarja 1996/5, Helsinki 1996, p. 12.

assistance to earn additional income. At least in theory, it lowers the threshold of the assistance recipients to accept employment.⁴⁴

Binding the security of subsistence to activations means requiring that in order to receive a certain benefit the person must commit him/herself to certain action (or in principle also inaction). Activation is connected with the idea that when receiving a certain benefit the person must behave in the way required. In some cases, this belongs to the nature of the benefit: student allowance requires studying and a certain level of success defined by the criteria.

The program of Prime Minister Lipponen's second Government (1995-2003) included increasing the employment rate and preventing poverty and social exclusion.⁴⁵ To achieve these goals, attempts were made to create opportunities to the co-operation between the employment administration and the municipalities to hinder long-term unemployment and exclusion. The idea was to intensify rehabilitative work activities and to provide packages of measures for the long-term unemployed in a form of an individual activation plan.⁴⁶

These were the background aspects leading to the greatest principal amendment of the social assistance law. Changing the law brought up many measures connected with activating people and encouraging them to work. In connection with developing these measures it was noticed that social authorities did not have an unambiguous right to require that before being included in the social assistance the applicant must register as an unemployed job-seeker. Nor had the legislation defined the criteria on which a person applying for social assistance may refuse to register as an unemployed job-seeker.

A new provision was added to the social assistance law. According to it, the authority deciding on the social assistance may require the unemployed applicant to register with the employment office. The reasons by which the person may refuse to register as an unemployed job-seeker were also added to the law. Refusing to register without an acceptable reason leads to the lowering of the basic part of the social assistance. At the same time, social assistance was extended to rehabilitative work activities, and the activation of people in rehabilitation was increased.⁴⁷ Refusing to participate in a rehabilitative work activity was also made a criterion for lowering the social assistance. To promote activation and encouragement, receiving social assistance was thus bound to compensations. The requirement of compensation – registering as unemployed – could be abolished only in individual cases for reasons that are, generally and by the legislation on securing subsistence for the unemployed, seen as obstacles of receiving the support for the unemployed or as situations in which the person's subsistence can be guaranteed by other means. The change of the philosophy was fundamental.

The Constitutional Law Committee of the Parliament found it acceptable to lower the basic part of the social assistance if the person does not register as an

44 Government Bill No. 155/2001 vp, p. 3.

45 ”valtioneuvosto.fi/tietoavaltioneuvostosta/hallitukset/hallitusohjelmat/vanhat/lipponenII/fi.jsp”.

46 Government Bill No. 184/2000 vp, p. 16.

47 Government Bill No. 184/2000 vp, p. 42-43.

unemployed job-seeker, refuses to participate in a rehabilitative work activity, interrupts such a work activity, or has to interrupt it because of problems caused by him/her. The primary argument for this is that the public authorities shall promote employment.⁴⁸ Similar changes to the legislation were made later to concern certain duties of immigrants.⁴⁹

At the background of the changes proposed, there were the following thoughts:

1. working must always be economically profitable
2. everyone with the capacity to work has the right to employment and subsistence based on it
3. within the limits of their capacities, all people have the duty to provide subsistence for themselves and their family members either through work or through some corresponding action
4. long-term unemployment must be prevented so that it will not become a permanent state of certain individuals
5. society has the duty to support the individual in keeping up or reviving his/her capacity to work
6. developing active social policy requires targeting the financial resources spent on social security in a new way
7. it is not active social policy to make a person who is at working age and able to work to retire or even to allow him/her to do so
8. together with the transfers of income, the services – especially training and rehabilitation – must support people in getting included in the labour market, remaining at their jobs, or returning to employment.⁵⁰

The proposals were also connected with the development of social policy in the European Union. In reforming the social security schemes of the Union, the general goals are to guarantee the effectiveness of the system, to improve the characteristics of the scheme that support the growth of the economy and the incentives to work, to increase the employment rate of workers and their ability to adapt, and to make sure that social security can be guaranteed for all those who need it. As the employment guidelines accepted by the European Council recommend, the member states of the EU have committed themselves to move from passive employment policy towards more active measures. The general

48 Opinion of the Constitutional Law Committee of Parliament No. 44/2000 vp, p. 2-3.

49 Government Bill No. 115/2002 vp and Opinion of the Constitutional Law Committee of Parliament No. 46/2002 vp.

50 *Aktiivinen sosiaalipolitiikka* -työryhmän muistio, p. 17-18.

trend in the member states of the EU is to pay attention to the factors at the background of poverty and exclusion, to decrease the dependency on social security benefits, and to encourage all the people with the capacity to work to seek employment. In granting the security of subsistence, activation and obligations have become more and more essential.⁵¹

4.3 *Social Assistance Now*

In Finland today, social assistance consists of four parts. The basic social assistance includes the basic part meant to cover most of the daily costs of living and the other basic costs section covering some of the costs connected with housing and health care if needed. Supplementary social assistance covers some special costs. In preventative social assistance, the goals are to decrease beforehand the long-term use of the allowance and to prevent exclusion.

In practice the cover of the basic part of the social assistance and the criteria for receiving it are defined through individual cases by calculating how much money will be needed when the factual income and property are subtracted from the estimated costs of living. The right to the benefit exists, if the results show that more money is necessarily needed. The right to apply for social assistance belongs to everyone with the legal residence, and the calculation can be made concerning any applicant. The criteria for receiving the allowance also include a requirement of activity or, of a well-grounded reason, to remain outside the labour market. Some level of social assistance is, however, paid regardless of this requirement.⁵² Supplementary and preventative social assistance are based on a case by case consideration of the needs. Thus, the question of coverage does not arise. Supplementary social assistance is a subjective right at least when it is needed in order to guarantee a life of dignity.

When the social assistance law was in reading in the Parliament, the Constitutional Law Committee stated that the level of social assistance is greater than the level of indispensable subsistence in section 19 (1) of the Constitution. The minimum of existence means taking care of the necessary nutrition, clothing, and housing on a level that enables the person to stay alive. Such security is closer to the level of right to life than the indispensable subsistence. Considering the affluence of Finnish society, indispensable subsistence is

51 See for instance COM (2006) 44 final, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions concerning a consultation on action at EU level to promote the active inclusion of the people furthest from the labour market*, p. 4 and 9.

52 Schulte, Bernd, *Social assistance in the member states of the European Union: Common features and continuing differences*, in Marmor and De Jong (Eds.), *Ageing, Social Security and Affordability*, Gateshead, Tyne & Wear 1998 p. 10-14 lists 12 principles for the last-resort support and some other grounds. Social assistance fills them all. In p. 17-20 Schulte also describes the elements of guaranteed subsistence filled by 11 member states of the EU. As elements of the support he considers separation from the other forms of social security, nature of a right, universality, cover of the standard and sometimes special needs, the absence of temporal limits, the consideration of needs, last-resort nature, public tax funding, the absence of the duty to pay back, a requirement of working for those who are capable of doing so, attempting to return people to the labour market, and a connection with charity and voluntary work. Essential elements include the personal, temporal, and mean-tested cover of the right to the benefit.

something more than that. According to the Constitutional Law Committee, the essential point in relation to the Constitution is that the purpose of the social assistance scheme is to protect a socially acceptable standard of living.⁵³

In section 19 (2) of the Constitution prescribes everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child and the loss of a provider. When reforming the basic rights it was stated that the basic subsistence guaranteed by section 19 (2) of the Constitution must be higher than the indispensable subsistence and that it must not be covered by the indispensable subsistence. In reading on social assistance, the Constitutional Law Committee noted that social assistance is also granted in order to supplement the security of subsistence guaranteed by section 19 (2) of the Constitution. The Committee did not, however, question this practice on the basis of the Constitution.⁵⁴ Thus the Committee seems to imply that the security guaranteed by section 19 (2) of the Constitution can, at least temporarily, be supplemented through the social assistance to the extent to which this assistance exceeds the indispensable subsistence required in order to enable the person to live with dignity.

According to section 10 of the social assistance law, the level of the assistance can be individually lowered if the person refuses to participate in employment or an employment policy measure offered individually to him/her or ignores the possibility of being included in such opportunities without a well-grounded reason. The sanctions are stricter for repeated refusal. If a person cannot prove a so-called acceptable reason for not earning his/her subsistence, passivity will lead to a clarification of the possibilities of lowering the assistance. The purpose is to promote the employment or rehabilitation of the person instead of making it easy to him/her to remain permanently dependent on social assistance. An important argument for lowering the assistance in cases of passivity is that the procedure supports the duty of the public authorities to promote employment and work towards guaranteeing for everyone the right to work (section 18 of the Constitution). In all cases of cutting the assistance, however, it must be made sure that the reduction will not risk the indispensable subsistence required by a life of dignity, and that it cannot otherwise be considered unreasonable.

53 Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 3 and 5. Cf. Tuori, Kaarlo, *Sosiaaliset oikeudet (PL 19 §)*, in Hallberg, Karapuu, Scheinin, Tuori ja Viljanen, (toim.), *Perusoikeudet*, Juva 1999, p. 610, the security required by living is less than the security required by a life of dignity.

One possible classification of subsistence consists of three levels: security required by life (Section 7 of the Constitution), security required by life of dignity (Section 19 (1) of the Constitution), and the security for basic subsistence (Section 19 (2) of the Constitution). In addition to these, there is also the concept of a socially acceptable standard of living. Cf. also Komiteanmietintö 1974:32, *Sosiaalihalintokomitean mietintö II, Ehdotus laiksi toimeentulotuesta*, Helsinki 1974, p. 9–10 in the proposal for the law on social assistance defined the level of social assistance on one hand on the basis of a socially acceptable standard of living and on the other hand through consumption.

54 Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 3.

According to section 19 (1) of the Constitution, the essential point is that the person is unable to receive the security required by a life of dignity without help. An individually made job offer or an opportunity to participate in a measure of the employment administration to improve person's possibilities of employment implies that he/she could have gained the security by accepting the job or the measure in question.⁵⁵ The main argument for keeping the lowering of social assistance reasonable is the principle of interpreting the legislation in a way that is positive to the basic rights. Indispensable subsistence must be guaranteed even after the reduction of the assistance. The possibility of lowering the social assistance has clearly been created in order to emphasise the person's own responsibility in connection with the security of subsistence.

5 An Evaluation of the Social Assistance from the View-Point of Basic and Human Rights

Social assistance exists in order to implement the indispensable subsistence guaranteed by the Finnish Constitution and last-resort support for subsistence required by human rights Conventions. In addition to this, it is an independent benefit in the Finnish social security scheme.

Social assistance is a guarantee for the subsistence and care required by a life of dignity to the extent to which such a guarantee can be provided in the form of pecuniary support. It is closely connected with section 19 (1) of the Constitution, but it cannot be identified with the basic right. Social assistance must still be sufficient to provide real opportunities for people to utilise their rights. Legislation must contain the provisions on support forms, the criteria of receiving and mean-testing them, and the implementation procedures.⁵⁶ In principle, social assistance fulfils these requirements. Even in practice, the defects in its cover are mainly caused by the choices and behaviour of the individuals involved. In such cases, the lack of last-resort indispensable subsistence should always be conscious or intentional.

In section 19 (1) of the Constitution the words "those who" have a two-fold meaning. They mean both that every individual might potentially become a recipient of the support and that everyone who fills the criteria of receiving the benefits should in fact get them. A benefit granted on the basis of section 19 (1) of the Constitution is a subjective right defined by an individual consideration of needs.⁵⁷ Although the need for support is studied individually, family-based analysis may lead to an evaluation stating that the individual need is satisfied. The scope of the regulation is universal: it covers everyone with the legal stay in

55 Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 4 and Opinion of the Constitutional Law Committee of Parliament No. 44/2000 vp, p. 2-3.

56 Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 2-3 and Report of the Constitutional Law Committee of Parliament No. 25/1994 vp, p. 10.

57 Arajärvi 2002, p. 220-221. Also see Ilveskivi, Paula, *Fundamental Social Rights in the Finnish Constitution, with Special Reference to their Enforcement by the Administration*, in Scheinin (Ed.), *The Welfare State and Constitutionalism in the Nordic Countries*, Århus 2001, p. 225.

Finland. The scheme is inclusive in the sense that there are no individuals that would fall out of this safety net.

When passing legislation on the economic, social, educational, and cultural basic rights, the decisions on the economic resources used and on the division of costs between different actors must be made through ordinary laws.⁵⁸ At the same time it must also be decided which organ of the public authorities will have the responsibility of implementing the right. The government bill on reforming the basic rights states that attention must be paid to the economic resources of the society and especially to developing the social security on their basis.

According to the opinion of the Constitutional Law Committee, the basic part of the social assistance is meant to cover a wider range of costs than what is required by the indispensable subsistence needed for a life of dignity. The Committee states especially that the level of the social assistance must not be interpreted to mean the minimum level mentioned in section 19 (1) of the Constitution.⁵⁹ Lowering the basic part of the social assistance is acceptable when a person refuses to accept a job or a measure of the employment administration offered individually to him/her without a well-grounded reason or makes such offers impossible by his/her own behaviour. The purpose of the provisions is to promote employment. This goal is in harmony with the nature of the social assistance. This evaluation is also affected by the fact that social assistance partially covers costs that are not included in the indispensable subsistence described by the basic right. However, the Committee requires that when lowering the social assistance an evaluation must be made in order to prevent unreasonable reductions and that the reduction must not risk the indispensable subsistence needed for a life of dignity. It must also be defined how long the reduction will last.⁶⁰

Originally, the last-resort security was created mainly in order to support people in temporary difficult situations. Historically, the legislation of the field has been based on this assumption. Such a notion is also reflected by the provision included in section 19 (1) of the Constitution. The reform of social assistance has been started on the basis and because of the Constitution and the situation has gradually changed so that now the legislation rather activates and encourages people to seek employment than guarantees their last-resort support for subsistence.

Binding the security of subsistence to activations must at least be restricted by the following conditions:

1. It must not at least risk the right defined by the basic rights to receive one's subsistence or support for one's subsistence on the bases of particular criteria or the right to receive a service.
2. It must be connected with the benefit or service which is bound to the activation in order to support the person's attempts to cope without the

⁵⁸ Government Bill No. 309/1993 vp, p. 35.

⁵⁹ Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 2-4.

⁶⁰ Opinion of the Constitutional Law Committee of Parliament No. 31/1997 vp, p. 4-5.

benefit or service in question or to increase the life-management of the individual particularly in relation to the criterion of receiving the benefit or service.

3. The additional requirements it causes must not lead to the loss of the service or benefit caused by any measures taken by an authority or other persons or actors on which the person entitled to the service or benefit cannot influence.
4. The person can be required to perform the action only during the time when he/she is receiving the service or benefit. Measures required before receiving the service or benefit must be normal criteria of entering the system. They may concern for instance the payment of insurance contributions or the working, residence, or waiting time. Similarly, it is not possible to require certain kind of behaviour after the person has stopped receiving the service or benefit.
5. Requiring a activation must not threaten the scheme as a whole by developing into a form of restricting or denying the service or benefit.
6. There is also an additional question of application. The activation required must not be unreasonable in relation to the abilities and characteristics of the person in question. The person must have real possibilities to fill the requirement.⁶¹

The increasing activation seems to change the paradigm of the security of subsistence.⁶² Against that background, there is an idea of a certain kind of social contract, where unemployed, immigrants, and people receiving social assistance are required to compensate for their benefits and services on the basis of an obligation assigned to them in a rather unilateral way. When discussing the reasons why someone is unemployed, the lack of the person's own qualifications is emphasised instead of a lack of a suitable job. In order to get the minimum security of subsistence, a person in rehabilitation must show very active efforts to rehabilitate and get employed. To receive the minimum security of subsistence, a recipient of social assistance must show more reasons than the lack of income and property. There has not been very extensive argumentation for the transfer from a mere right to a right supplemented by an obligation. Nor has it been connected with the discussion on the duties of public authorities except in the case of promoting employment. People in rehabilitation or receiving social assistance often belong to the most helpless or vulnerable

61 Arajärvi, Pentti, *Sosiaaliturvan universaalisuus, kattavuus ja vastikkeellisuus*, in Heikkilä (toim.), *Säädöksiä, systematiikkaa vai ihmisoikeuksia*, Lappeenranta 2004, p. 306–307.

62 Hanesch, Walter, Stelzer-Orthofer, Christine and Balter, Nadine, *Activation policies in minimum income schemes*, in Heikkilä and Keskitalo (Eds.), *Social Assistance in Europe*, Saarijärvi 2001 and Clasen, Jochen and van Oorschot, Wim, *Changing Principles and Designs in European Social Security*, Paper to be presented at the International Conference on European Social Security and Global Politics, European Institute of Social Security, September 27-29, 2001, Bergen, Norway.

members of society. In relation to the equality of justice, the requirements of activation contain complex patterns connected with the questions when the criteria and the compensations required exceed the borderline after which the benefit no longer fills the requirements created by the human and basic right, and what kind of balance can be found between human and basic rights going into different directions in individual cases. For instance in the case of people with mental problems, requiring activation may easily lead to a situation that causes concern about their basic rights.

The regulation on the basic rights in the Constitution and the human rights still play a role in guaranteeing the last-resort or indispensable subsistence. The present social assistance must fill this task in addition to its other functions.