

The Commissioner for Human Rights of the Republic of Poland
Submission to the Eleventh working session, New York, 6-9 April 2020

Guiding Questions for Focus Area: Right to Work and Access to the Labour Market

National Legal and Policy Framework

- 1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?**

These are commonly applicable provisions i.e. those of the Constitution of the Republic of Poland, the Labour Code and e.g. of the *Act of 20 April 2004 on employment promotion and market institutions*, the *Act of 13 July 2006 on the protection of employee claims in the event of insolvency of the employer*, and the *Act of 25 June 1999 on social insurance cash benefits due in cases of sickness or maternity*. The *Social Policy for older persons until 2030*, adopted in October this year, sets out 4 specific objectives of supporting older persons' professional activity.

- 2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?**

In the labour market, older persons face challenges related to the need to increase their qualifications, to digitization, automation, regionalization and the need to use new technologies. Data of the Supreme Audit Office for 2005-2016 shows that despite the overall decrease in unemployment, the number of unemployed persons aged 50+ is still increasing. The decrease in the number of 50+ persons registered as unemployed in the 2017 statistics resulted from the retirement age lowering from 67 to 65 for men, and from 65 to 60 for women. Poland is also among the European countries with the lowest employment rates for persons aged 55-64. Research by the state Central Institute for Labour Protection indicates the scale of experienced stereotypes (1/5 of 50+ employees surveyed) and of their negative impact on older employees (work capacity reduction, increase in stress and depression symptoms occurrence, etc.). A special programmer of employing 50+ staff members is implemented in a small number of private enterprises. The introduction of age management programmes was declared by 49% of the surveyed employers, but only 21% of surveyed 50+ employees indicated their awareness of such programmes.

- 3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?**

We have no knowledge of such research. Such data is not separately collected and presented in the *Information on the Situation of Older Persons in Poland* which, since 2015, has been drawn up on annual basis pursuant to the *Act on Older Persons* and presented to the Parliament. However, the *Information* indicated that in one of the voivodeships i.e. provinces, among the reasons of the lack of organized specialist care services (not provided in 20% of the province's municipalities) was the fact that a close relative ceased to work professionally in order to provide such care. Other data contained in a survey on informal carers (not only seniors) indicates that informal care is most often provided by women aged 50+. A qualitative survey conducted in 2011 demonstrated that such care was usually provided, also because of pressure from people around them, by persons who did not work professionally. Yet, those persons were later left by their close and more distant family members by

themselves, caring for the older relatives.

Availability, Accessibility, Acceptability and Quality

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

Mechanisms to encourage employers have been introduced:

- reduction of contributions to the Labour Fund and the Employees Guaranteed Benefits Fund, applicable for 12 months with regard to persons employed under a contract of employment who are over 50 years of age and who have been registered as unemployed for at least 30 days before starting professional work. The reduction is also applicable to all women aged at least 55 and to men over 60 years of age employed under any type of contract;
- sickness benefit (paid by the employer only up to the 14th day of incapacity for work in a given calendar year if the employee is over 50, and not up to the 33rd day of incapacity for work as in the case of younger employees).

Older persons may also seek employment opportunities through the services of Employment Offices whose effectiveness is, however, close to zero in the opinion of the Supreme Audit Office of 2015. There are also online platforms, job offer portals and advertisements in the media. A reference should be made to the provisions of the *Act of 4 April 2019 on the accessibility of digital websites and mobile applications of public sector entities*, and to the *Act of 19 July 2019 on ensuring accessibility for persons with special needs*. Both Acts are in line with the governmental *Accessibility Plus* programme established in July 2018 with the main goal to improve the quality of life and ensure the independence of citizens who, due to their health condition, age or disability have limitations in the field of mobility and perception in everyday life. The programme seeks to improve, for those persons, the accessibility of the public space as well as of products and services in the areas of architecture, information and communication.

It is necessary to effectively promote solutions that facilitate employment of persons in pre-retirement age and to evaluate the effectiveness of activities in this area, which evaluation is currently lacking. The retirement age lowering in 2017 was not conducive to introducing further mechanisms promoting age management. We have no data either on the number of people using reasonable adjustments at workplace.

5. What steps have been taken to ensure the availability of specialized services to assist and support older persons to identify and find employment?

As regards the state services, reference should be made to services provided by the State Labour Office and to the governmental internet platforms for supporting employment.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

As a bottom-up initiative, a guidebook for employers has been drawn up to facilitate finding out relevant provisions and rules regarding the employment of older persons. Big cities start organizing special job fairs for seniors. There are also guidebooks of the Central Institute for Labour Protection.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

The commonly binding legislative instruments, including the Labour Code, the *Act of 3 December 2010 implementing certain EU regulations regarding equal treatment*, inspections (by the National Labour Inspection and the ZUS Social Security Institution), court proceedings pursuant to the Code of Civil Procedure, as well as administrative proceedings. However, we have no knowledge of data on the effectiveness of these mechanisms. The number of court proceedings conducted pursuant to the aforementioned Act is negligible, and none of them has concerned discrimination on the grounds of age.

Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

Yes, it is. Pursuant to the applicable regulations, employees should be treated equally with regard to establishing and terminating their employment relationships, and with regard to the conditions of their employment, promotion and access to training increasing their professional qualifications, which should be irrespective of age, employment for definite or indefinite period, full-time or part-time employment. Direct and indirect discrimination, including abuse and sexual harassment, is prohibited.

Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

Older persons are not covered by any special mechanisms in this field. They may resort to the commonly binding legislation. Disciplinary proceedings conducted by the National Labour Inspectorate provide solely for penalties imposed on the employer. Redress may be sought by employees concerned through court proceedings. In discrimination-related proceedings, the burden of proof is reversed. However, given the difficulties faced by 50+ persons in staying in the labour market, the state structures should be required to effectively provide to older employees information about their rights and methods of defending them. The state should also be required to ensure simplified court proceedings which would quickly and effectively react to reports of older employees.

Guiding Questions for Focus Area: Access to Justice

National legal framework

- 1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?**

The right to court is guaranteed to everyone (every man and citizen) pursuant to Article 45 of the Constitution. There are no separate legislative instruments applicable to older persons. The rights and guarantees enforceable under the individual codes of procedure (criminal, civil and administrative procedure) are the same for everyone. However, there are examples indicating that the lengthiness of court proceedings has particularly negative impact on older persons who may not live until the completion of such proceedings. Moreover, the Polish legislative system still contains provisions relating to legal incapacitation that may be adjudicated on the grounds of personality disorders caused by old age. An incapacitated person may apply only for the discontinuation of his/her legal incapacitation and has no other rights before a court. The system of guardianship, as a possible alternative to legal incapacitation, is not used on a large scale and remains unknown to most potential users.

Availability

- 2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?**

In the *Act of 5 August 2015 on free legal assistance*, the legislator has guaranteed access to free-of-charge legal assistance e.g. to older persons (over 65 years of age) and persons with disabilities who cannot cover the costs of such aid. Such assistance can be used also out of office or by means of remote communication. As part of such assistance, an application may be drawn up for exemption from court fees, or for providing an ex officio representative for court proceedings. The free legal aid system should inform the beneficiaries about new procedural systems (and their benefits and possible risks) already at the pre-trial stage. Free legal aid financed by the state is currently available (since 1 January 2019) to anyone who cannot afford the assistance of a lawyer or legal adviser, without any age limits. This assistance, however, does not mean free representation before courts and other bodies.

In proceedings under the individual codes of procedure, greater access to mediation is also available to everyone, but public awareness of this fact remains very low.

Accessibility

- 3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?**

Exemption from court fees may be sought by everyone on equal terms. It requires submitting a relevant application and documenting the lack of funds, using a tax return form or bank statements.

Persons with disabilities and seniors should be guaranteed real and largest possible access to public utility buildings. Shortcomings in the regulations (e.g. no obligation to adapt existing buildings to

relevant regulations) now have to be removed, in connection with the new perspective set out by the *Act on accessibility* adopted in 2019.

4. What are the existing provisions to guarantee legal assistance for older persons?

See point 2.

5. What are the specific challenges encountered by older persons in accessing justice and remedy in your country?

The still existing challenges are low legal awareness, lack of internet access and low digital skills. These are major barriers for many seniors in accessing information and professional advice, also about legal instruments that are guaranteed to them. The high costs of court proceedings and legal aid are also a problem. Due to low retirement pensions and disability pensions, older persons cannot afford paying for professional legal representatives and court fees that often exceed their household budget.

Furthermore, certain administrative procedures important for older persons (concerning e.g. refunded stay in a health resort, or resolutions of municipal governments) do not provide for an appeal mechanism, which limits those persons' possibility to exercise their rights.

In smaller towns and rural areas there is a lack of good transport infrastructure that could be used by older persons to travel to places where free legal assistance is provided. Courts are often far away from people's places of residence so seniors have to send court letters by post or make long journeys.

Limitations in access to the system of justice by all citizens, including older persons, have been compounded by the reform of the system of justice, which has been gradually implemented since 2015. Many reservations were raised with regard to the reform, in particular to the amendments to the Acts on the Constitutional Tribunal, the Supreme Court and the National Council of the Judiciary. These reservations pointed to non-compliance with constitutional standards and principles, which destabilized the system of justice and, as a consequence, limited the universal right to a fair court (more at: <https://ruleoflaw.pl/free-courts-free-people-report-by-amnesty-international/>; <https://ruleoflaw.pl/polish-ombudsman-at-the-public-hearing-on-the-situation-of-polands-rule-of-law/>).

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

The possibility to submit certain court documents (regarding civil cases) as well as letters to public administration bodies in the electronic form, e.g. through the e-puap system.

In large cities, at universities, the law clinics are established where older persons can also seek legal aid (yet, this initiative is not a state one). Also, Third Age Universities jointly with the National Chamber of Legal Advisers organized trainings relating to consumer rights and their protection.

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal

proceedings?

The only parliamentary act adopted in this area has been the *Act of 5 August 2015 on free legal assistance* (whose individual aspects are discussed above). There is no legislation focused particularly on older persons.

8. **Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.**

We have no information on such policies or programmes. On the other hand, cases are reported to us regarding judges' insensitivity to special needs of older persons, e.g. those with hearing problems and other problems.

Accountability

9. **How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.**

It would be useful to provide training in this area for employees of the system of justice, in particular for judges.

Possible violations of the rights of older persons through their discrimination in court proceedings may be reported to the judges' disciplinary representative, together with filing a motion to start an explanatory proceeding against the judge in question, and a complaint may be filed with the president of the court concerned.