Commissioners for Human Rights of Poland answers to the Guiding Questions

for the X Session of the Open-ended Working Group on Ageing

Social protection and social security (including social protection floors)

National legal framework

1. What are the legal provisions in your country that recognizes the right to social security and social protection, including non-contributory and contributory old-age benefits? Do they have a constitutional, legislature or executive foundation?

The constitutional framework for social security is provided by article 67 of the Constitution of the Republic of Poland. The scope and forms of social security provision are determined by relevant acts of Parliament. **The right to social security includes social insurance, social benefits as well as social assistance**. The common objective of the combined provisions of article 67 of the Constitution is **to guarantee a level of support necessary for the beneficiaries to maintain the essential standard of living, above the bare minimum**. This sets the limit for acceptable reforms of the social security system. Other constitutional provisions are also relevant in this respect, including those pertaining to the rule of law and the implicit principle of protection of acquired rights, as well as the principles of social justice, equality and social solidarity. The latter principle sets one of the criteria for designing and implementing the retirement pension system by implying **the need to look at the retirement pension model from the perspective of all persons reaching retirement age**. In addition, the duty to ensure an effective social security system must be coupled with the principle of the common good. The **beneficiaries have the right to participate in the shaping of some elements of the retirement pension system, in line with the principle of subsidiarity**, formulated in the Preamble to the Constitution. These principles, and particularly the principle of protection of acquired rights, limit the legislature’s discretion in establishing the scope and form in which social rights, including especially retirement pension rights, are exercised.

Benefits paid under **social insurance schemes** are entitlements based on a system of contributions which means that in **order to be entitled to benefits one is required to pay contributions to the fund in question**, which will, in case of a contingency resulting in inability to work, pay the benefits to the contributor. **Social assistance benefits are entitlements funded out of (non-contributory) public funds**, with the amounts to be paid, as well as the principles and conditions of payment, defined by the law. The social security system as described above is supplemented by social care services provided on a case-by-case basis by social assistance institutions. **Eligibility for the majority of financial forms of social assistance is based on income criteria**.

Availability

1. What steps have been taken to guarantee universal coverage, ensuring that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor old-age pensions, to ensure an adequate, standard of living in older age?

The essence of the right to social security is that every citizen is guaranteed to receive benefits, among others in the event of reaching retirement age which, at present, is set at 60 years for women and 65 years for men.

1. What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health and care and support services for independent living in older age?

The constitutional right to social security is reflected in the corresponding duties of the public authorities, designed to ensure that this right is executed in a sustainable way. These duties include: organizing a system of public institutions (including care centres), creating mechanisms for the collection and management of funds and for the financing of various types of benefits, developing entitlement criteria, defining what the benefits should consist in and creating indexation mechanisms to ensure that the real value of the benefits is maintained.

Social assistance is also a standard established by the Constitution of the Republic of Poland. Social assistance is an element of the state’s social policy. Its goal is to help persons and families through difficult circumstances which they are not able to overcome with the resources, means and entitlements at their disposal.

Adequacy

1. What steps have been taken to ensure the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?

The protection of acquired rights has two aspects. The first is the way in which the benefits are calculated at the outset. When defining the exact scope of the right to a retirement pension, the legislation must take into account the proposition, rooted in the principle of social solidarity, that there should be proportionality between - on the one hand - the level of the retirement pension [“*emerytura*” in Polish], which, as the name itself suggests, is *merited*, and - on the other hand - the weight of the *merit*, determined primarily by the duration of professional activity that is the source of the entitlement and by the income gained as a result of professional activity. In addition, the principle of equality obliges the legislature to treat equally all beneficiaries that share the same features of relevance in this context.

The second aspect of protection of acquired rights is the imperative to maintain the real value of the benefits, which implies the need to create appropriate mechanisms for regular indexation.

Accessibility

1. What steps have been taken to ensure older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?

Social security authorities have pension consultants who will explain what the level of one’s retirement pension depends on and will calculate the forecasted level of the pension depending on the date of retirement.

1. The design and implementation of normative and political framework related to social security and social protection benefits included an effective and meaningful participation of older persons?

The Social Insurance Office has the duty to review the Polish retirement pension system at least once every 3 years. The first such review was carried out in 2013. Between June and September, 2016, during the second review, debates with the participation of organizations representing pensioners and older people were held in 27 branch offices of the Social Insurance Office.

Equality and non-discrimination

1. Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to groups in vulnerable situation?

The general principle of equality is expressed in article 32 of the Constitution. The Act implementing certain European Union regulations regarding equal treatment does not protect against discrimination on the grounds of age in the area of social security.

Accountability

1. What mechanisms are in place to ensure social security and social protection schemes are effective and accountable?

The Demographical Reserve Fund was established in 1998 in order to increase the security of payments to be made in the future under the retirement pension schemes.

1. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?

Any decision denying the right to a benefit may be appealed against before common courts or administrative courts.

The ageing of the population may threaten the financial stability of retirement pension schemes and create additional problems on the labour market. Consequently, the existing pension schemes will need to be adjusted to the demographical trends which seem to require that the retirement age for men and women be equalized and increased over a long-term process.