

## PROSPECTS OF SOCIAL WELFARE IN POLAND SEEN FROM THE EUROPEAN PERSPECTIVE

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Despite the fact that the term *European Social Welfare Model*<sup>1</sup>, coined and adopted by the Scandinavian politicians, propagated globally by the social politicians of the region belongs to the past, the question about the future of social security in Poland against the European experience is still valid. Poland has not implemented the welfare state model. Poland could not afford it<sup>2</sup>. European experiences with their characteristic concept of "social Europe" put an obligation on the Polish government to guarantee social protection for the persons that cannot secure themselves means of subsistence, which is beyond their control. Here not only necessary means of subsistence for the needy and their families are meant but also securing regular source of income to people who due to limited opportunities of entering into gainful employment due to age and/or health condition intend to limit or withdraw from active professional life.

In the social policy the term "*social welfare*" associates with the benefits paid to the poor<sup>3</sup>. Meanwhile old-age pensions, disability pensions, family pensions, sickness benefits, maternity benefits and other social benefits are payable to the eligible persons regardless of their financial position<sup>4</sup>. One has got accustomed to think that the social welfare benefits are payable under the social assistance system. Therefore they do not fall into social insurance benefits, the level of which depends on the level of social insurance contribution brought by the insured. However, the breakdown of social benefits into contributory and non-contributory benefits does not matter from the benefits functional point of view – enabling the eligible persons to receive benefits on a temporary basis or to not being able to be professionally active to upkeep the living standards at the previous level or close to it. Therefore the division of social benefits into benefits paid out from the social insurance system, social security system, social assistance system – depending on the financing techniques for these benefits, plays a secondary role from the benefits' functional perspective. For this reason in the professional literature on social policy, labour law and social insurance the term "social security" was introduced. It was decided that the above term has a broader scope and covers all social benefits based on contributions and paid from the budget, substituting wage and other types of income coming from occupational activity and used to meet financial needs of the eligible persons. At present all members of the society enjoy the right to social security benefits. Only the legal titles under which the above entitlements arise differ from one case to another. These include payments from the funds raised from taxes that have to be paid to all people living in the territory of a certain state and from the contributions collected from the wage earners and people running business or agricultural activities. Depending on the concept of social insurance adopted by the European States' governments, the benefits falling into insurance-based category are funded from the contributions or taxes. As a matter of fact the social security benefit financing techniques play a secondary role for the functions performed by the above benefits. Prior to the last reform of social insurance system in Poland the social insurance

contributions for the persons with employment contracts had been paid by the employers. The employers in turn treated social insurance contributions as a type of tax that was imposed on them by the fiscal authorities. In the social policy terms the employers as the entities obliged to pay systematically the social insurance contributions for the hired workers were obliged to pay a public levy to the fiscal authorities. From the perspective of functions performed by the social benefits funded from contributions or taxes the division of means paid under this levy was not essential in nature. The level of social benefits may depend either on the level of paid social insurance benefits or on taxes. The benefits paid first as old-age pensions to the persons employed by the state entities (administration of justice, armed forces, police etc.), under social insurance and social assistance systems were treated as methods for the distribution of accumulated financial resources by the state amongst the citizens. The distributed financial resources were used directly to upkeep social peace and existing social order. The social policy pursued by separate political regimes aimed at the protection of existing political systems. The above hypothesis is documented by the declaration in the first two indents of the preamble of ILO Constitution dated 1919 "Whereas universal and lasting peace can be established only if it is based upon social justice; whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". The experiences of Russian revolution in 1917 provided sufficient evidence that the absence of means of subsistence in the event of hardship or inability to obtain income from gainful employment may represent a threat to the social order, the maintenance of which was in the interest of individual European states. The "social model" specific to Europe was based on the conviction that the wealth accumulated by the state had to be redistributed in the manner satisfying financial needs of the citizens without any concern about the violation of established peace and social order. One of major acts of redistribution of the wealth managed by the state authorities was the payment of social benefits to the persons that having met the requirements laid down in the domestic social security legislation (on old-age pension, social insurance and social assistance) had a guarantee of sources of income alternative to wages. In this sense the social benefits with the function of maintaining the previous living standards of these members of the society who were not able to earn their living on their own, serve the purpose of upkeeping welfare.

The European social model based on intergeneration solidarity of the persons eligible for social insurance benefits, under which old-age pension benefits were paid from the social insurance system, enjoyed by the elderly and other social benefits were financed from the contributions made by the young people, collapsed when economy was down and it was possible to continue part financing from the state budget to the social benefit funds. The part financing of the funds was necessary due to the ongoing ageing process of European societies. Due to high disproportion between the financial means of insurance funds that paid social benefits and the contributions made to these funds, which was

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due to disproportions between the beneficiaries (the elderly whose number was ever mounting) and the benefit providers (young people whose number was declining) the previous social model collapsed. The resultant hardship had major impact on the level of social benefits that was constantly declining. Given the level of social benefits, the term "welfare" in the crises times for the social security systems was close to the original meaning with which it was used i.e. to call benefits paid to the persons without sufficient means of subsistence. The reactivation of the European Social Model was possible thanks to the economic reforms of the social security system. In the "old" EU Member States the social security system based on the intergeneration principle of social solidarity was abandoned. Direct dependencies were introduced in the social insurance system between the insurance contributions and the social benefits. Individualisation of financing of insurance benefits is not in conflict with the principle of social solidarity of the insured. Risk-based insurance systems protecting against risks and perils are based on the principle of single generation group solidarity of the insured. Everybody covered by the social insurance systems pays contributions that are used to finance social benefits paid only to these insured for whom the threat of losing wage earning ability became tangible. At present in Poland the payment of social benefits to threatened persons is guaranteed by the social scheme "social security through diversity"<sup>5</sup>. It is based on the assumption of fragmentation of social insurance systems, separating as many types of social insurance as the number of risks envisaged by the state authorities, that may lead to a loss or limitation of wage earning ability of the insured. Even in the case of a specific risk, for instance survival until the age at which the insured is not able to secure himself and members of his family the means of subsistence, the social scheme "security through diversity" imposes, on the one hand, an obligation on the insured to participate in the mandatory, universal insurance system providing benefits in the event of the lack of wage earning capacity due to reaching the retirement age; on the other hand enables these participants of the universal mandatory system that have decided that they need an additional insurance against the risk of surviving until a certain age, further payment of contributions guaranteeing additional old-age pension benefits in the second and third insurance pillar in the event of survival until the old age.

In Poland and in other European countries the social security systems are designed according to uniform rules laid down in the European Social Charter of 1961, Revised European Social Charter of 1996<sup>6</sup>, Revised European Code of Social Security of 1990 or ILO Convention No 102 concerning Minimum Standards of Social Security of 1952. The above mentioned international treaties impose on the Member States' governments obligations with regard to establishing and maintaining the universal social security system, define the minimum level of social benefits paid under the national social security systems, put on obligation on the Member States' governments to raise the level of social benefits, prescribe equal treatment of the insured regardless of the citizenship. There are reasons to believe that in all European states the national social security systems develop according to the concepts developed by the Council of Europe or International Labour Organisation. In principle the European Union does not deal with the harmonisation of national social security systems<sup>7</sup>. It limits itself to issuing regulations co-ordinating stand-alone national social security systems<sup>8</sup>.

The harmonisation models for the social security systems in 46 Member States of the Council of Europe I will present using an example of Art. 13 of the Revised Social Charter<sup>9</sup>. Social assistance, social and medical care are the most important sections of social security in addition to social insurance. Art. 13 of the Charter is a standard that introduces the new concept of social assistance in Europe. The intention of the employer boiled down to abandoning the earlier social assistance concept under which the social assistance was identified with the benefits provided by the institutions of higher utility or administrative bodies based on the

charity principle to the poor<sup>10</sup>. Interpreting Art. 13 of the Charter, the Committee arrived at unequivocal conclusion that under the analysed provision the needy persons are granted the subjective right (droit subjectif) to cash benefits and or property benefits<sup>11</sup>. The change of the underlying concept for the rights to benefits under social and medical assistance was driven by the intention to depart from the deeply rooted in the social policy stigmatisation of the persons enjoying the assistance. In Art. 13 of the Charter the word "the poor" was replaced with "persons without adequate resources"<sup>12</sup>. Those persons who are in receipt of assistance benefits must not suffer any diminution in their social and political rights simply (Art.13 § 2 of the Charter)<sup>13</sup>. While analysing the Member States' reports the Committee took a position that the actual subjective right to the social and medical assistance is guaranteed when the social and medical assistance is guaranteed to all needy persons; benefits provided under the assistance are adequate; the persons who were refused the assistance enjoy a right to bring an action against a decision to an independent body<sup>14</sup>.

The right to social and medical assistance has universal coverage. Thus the right should be enjoyed by all eligible citizens of the members states of the Council of Europe legally staying on the territory of another member state. Initially the Committee checked whether the governments of individual Member States fulfilled their obligations laid down in Art. 13 of the Charter vis-à-vis the citizens of other Member States when it was analysis country reports submitted by the Member States' governments that ratified Art. 13 § 4 of the Charter. From thirteenth supervisory cycle onwards the Committee changes its position on this matter and commenced exercising its control over the compliance with the Art.13 § 1, 2 and 3 of the Charter by the Member States that had not ratified Art.13 § 4 of the Charter<sup>15</sup>. Art. 13 § 4 of the Charter imposes an obligation on the Member States' governments of treating on equal footing the citizens of other Member States, "staying legally on their territories" in line with obligations imposed on the states that ratified the European Convention on Social and Medical Assistance of 11<sup>th</sup> December 1953<sup>16</sup>. The annex to Art. 13 § 4 of the Charter stipulates that the states that failed to ratify the above Convention may ratify Art.13 § 4 of the Charter provided that they will treat the citizens of other Member States pursuant to the provisions of the above Convention.

Art. 13 § 1 of the Charter puts an obligation on the Member States to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.

The Committee decisions show that it accepts the practice applied by the Member States under which the right to social and medical assistance is enjoyed by the persons whose income is lower than the minimum wage and do not allow to cover necessary expenses to meet bare life wants. Given different level of living standards in the Member States, the Committee does not require the Member States to provide information about minimum income or costs of living. It demands that data on the applied procedures be submitted in order to determine the standards of living of the inhabitants<sup>17</sup> and criteria used to assess their standards of living<sup>18</sup>. The Committee examines whether the Member States performing the above assessment account for national, regional and local conditions<sup>19</sup>. It follows the Recommendation of the European Union Council No 92/441 that for determining of adequate resources puts an obligation on the EU Member States' governments to consider the protection of human dignity and to determine the minimum standards of living using the cost of living indices and price levels<sup>20</sup>. During subsequent supervising cycles, effective from the sixteenth, the Committee, as a point of reference, for the assessment or the persons that do not have adequate resources enjoy the right to social assistance accepted the half of required

average monthly income in a certain state. Whenever the social assistance benefits are determined at the level lower than half of the average monthly income, the Committee issued a decision about failure to comply with the obligations laid down in the Art. 13 § 1 of the Charter by the Member State government<sup>21</sup>. When determining the level of financial resources of the population the Committee considered also additional benefits that supplement minimum wage, unemployment benefits, other cash benefits under the social security system<sup>22</sup>. If the benefits stayed at the permanent level, the Committee was interested if they were subject to indexation<sup>23</sup>. It required from the Member States data on the level of social assistance expenditures<sup>24</sup>.

The right to social assistance benefits is enjoyed by the persons who are not able to secure adequate resources from other sources than social security. The persons without sufficient resources will not acquire the right to the social assistance benefits, if they can demand effectively the supply of financial resources from the family, which is subject to child support obligation under the family law<sup>25</sup>.

The right to the social assistance is the right, therefore the national social assistance legislation shall lay down the eligibility criteria for the rights to the benefits for persons with insufficient resources, regulate the process of making a decision on granting such rights and define the principles of supervision over the decision on the refusal to grant benefits<sup>26</sup>.

The decisions taken by the body authorised to decide about granting or refusal of social assistance benefits shall be subject to control by an objective appeal body. This implies that the decisions on social assistance benefits may not be arbitrary by nature. Thus the national legislation under the social security law should therefore lay down the decision making criteria in such matters<sup>27</sup>. The criteria should be uniform. The Committee issued judgements about the failure to comply by the Member States with the obligations laid down in art. 13 § 1 of the Charter if the requirements for the administrative bodies have not been regulated precisely so that they could take decisions on the social assistance benefits<sup>28</sup>. The Committee interprets Art. 13 § 1 of the Charter as a standard of international social security law that puts on obligation on the Member States to establish the social assistance system. The national social assistance legislation should cover with its scope all citizens of a certain Member State and citizens of other Member States staying legally on the territory of another Member State. The above obligation to cover all the needy with the social assistance system<sup>29</sup> is not violated if the national social security law will reserve benefits for some categories of people (the elderly, the disabled), if necessary the right to the above benefits could be also used by other persons without sufficient resources<sup>30</sup>. It is not compliant with the international standards to grant rights to social assistance benefits exclusively selected people categories (the disabled; the elderly, without rights to pension benefits; single parents raising their children; people above 65 years of age, not insured) and subjecting the rights of other persons who do not have adequate resources to the resources held<sup>31</sup>. An obligation to lay down in the national legislation eligibility criteria for the rights to the social assistance benefits does not prevent the Member States' governments from formulating general directives and to leave at the discretion of the regional or local governments the question of making the eligibility criteria for the right to the social assistance benefits more specific. However, if it stems from legislation that local government enjoys certain freedom regarding the question of laying down the eligibility criteria for the right to the social assistance benefits by the needy persons, The Committee demands the Member States' governments submit information on the practice of exercising the above decision making freedom by the local governments. In particular the Committee is interested in learning about legal opportunities for bringing claims with an independent body against decisions taken<sup>32</sup>.

The Committee believes that the independent appeal body authorised to process appeals against the decisions on social assistance benefits shall have the following characteristics:

- the appeal body should be empowered to exercise subject matter control over the decisions appealed against;
- should have an objective opportunity to control if the body that issued the decision appealed against acted in compliance with the criteria laid down in the effective legislation on the matters referring to the statement that the person applying for social assistance benefits does not have adequate resources and is not able to secure such resources through its own efforts from other sources and – if a decision on granting a social assistance benefit has been taken – to be able to check the correctness of determining the benefit level<sup>33</sup>.

The Member States may neither limit or condition the exercising of the right to social and medical assistance to the fulfilment of certain conditions. While analysing the reports of Member States' governments the Committee has found out the following irregularities in the national social assistance systems:

- subjecting the rights to social assistance benefits to the condition of a period of residence in a certain Member State or in the territories of certain regions of a single Member State<sup>34</sup>. The Committee decided that there was the lack of compliance of the national legislation on the right to social security benefits with the international standards, if the national legislation conditioned the acquisition of the right to social assistance benefits to the term of residence in the territory of a certain Member State for 6 months,<sup>35</sup> one year<sup>36</sup>, three years<sup>37</sup>, five years<sup>38</sup> or ten years<sup>39</sup>;

- excluding from the population eligible to apply for social assistance benefits the young people below 25 years of age<sup>40</sup> or 30 years of age<sup>41</sup>. A prerequisite to acquire the right to the social assistance benefits is the failure to have adequate resources and being unable to acquire such resources by the person applying for the social assistance benefits. The young people who learn or study may apply for scholarships or loans. Thus, in principle they are not qualified for acquiring rights to the social assistance benefits. Despite the fact that the Committee debated twice on this matter it failed to adopt a position<sup>42</sup>;

- conditioning the above right to the attitude of the persons applying for the social assistance benefits to the employment or training proposal made to them by competent administrative authorities. The Committee believes that the social assistance of the State to people who do not have adequate resources should not be limited to paying them cash benefits. The objective of the social assistance should be to enable the individuals not having adequate resources to participate, to a certain universally accepted extent, in the life of community. For this reason the conditioning of exercising the right to social assistance benefits on the acceptance by the individual not having adequate resources of the employment or vocational training proposal may be recognised as compliant with the international standards, if the proposed employment or vocational training will enable the individual without adequate resources to return to normal life<sup>43</sup>. When analysing the case where a prerequisite to the acquisition of right to social assistance benefits by a person below 24 years of age was an obligation to accept a job indicated by an administrative body<sup>44</sup>, the Committee demanded explanation of the dependence between the right to social assistance benefits and the obligation to accept the job in accordance with proposal made. To this extent it was interested in explaining the dependence between the right to social assistance benefits and an obligation of getting registered as unemployed by the person without adequate resources<sup>45</sup>. The Committee is interested in examining, if, for which purpose and what conditions are set forth by the Member States' governments to the persons applying for social assistance benefits. In particular the Committee strives at finding out the legal consequences of the refusal of the person applying for social assistance benefits to accept such conditions<sup>46</sup>;

– failure to treat own and foreign citizens on equal footing. The decisions on the lack of compliance of national social security legislation with Art. 13 § 1 of the Charter were issued in all cases where the Committee found out that the Member States' governments do not treat the citizens of other Member States on equal footing. At the same time it does not matter whether the diversification of the rights takes place during the acquisition of rights to social assistance benefits or renewal of rights acquired earlier<sup>47</sup>.

Art. 13 § 1 of the Charter puts an obligation on the Member States' governments to provide the needy, without adequate resources, not able to secure such resources through their own efforts from other sources with appropriate assistance. According to the Committee, the social assistance for the people without adequate resources may not boil down to financial benefits – benefits and allowances.

The comments made on the social assistance apply to the medical assistance and care for the sick persons who do not have adequate resources. The implementation of the right to medical assistance and doctor's care may have a legal form of purpose-specific financial benefits that will be used by the needy person to pay for medical services or granting the right of free-of-charge use of doctor's care to a necessary extent<sup>48</sup>.

Poland failed to ratify Art. 13 § 1 of the European Social Charter. Art. 13 § 1 of Revised European Social Charter was not ratified by Cyprus and Slovenia. Vast majority of European States undertook to harmonise the national legislation and legislation application practice with international standards set forth in a separate legal acts established by the legislation under study. Relatively lenient sanctions applied by the European Committee of Social Rights in the event of finding out failure to comply by the Member States' governments with the ratification obligations of Art. 13 of the Charter is the reason why the speed of harmonisation of social security legislation in Europe is not uniform. In the event of Poland the lack of obligation to harmonise national social security legislation with the standards set forth in Art. 13 § 1 of the Charter puts away the prospects of introducing uniform social security standards laid down in the Charter.

Since 1<sup>st</sup> May 2004 Poland has been a fully-fledged Member State of the European Union. However, this fact plays a marginal role for the evaluation of future outlook of social security from European perspective. The European Union is an economic and political community of 25 Member States. Some of the Member States form also a monetary union. The State signatories of the Schengen Treaty form an administrative community. Despite efforts taken by the social politicians to work out a uniform concept for social quality in Europe, so far the efforts to create social community modelled after the remaining four communities: economic, political, monetary and administrative have been futile. The prospects for the social quality concept were first designed using a negative approach. An emphasis was put on the need to counteract such negative phenomena as poverty, social inequality, social exclusion and social anomie. Due to the absence of desirable results the tactics was changed. Discussions on the social quality model in Europe were initiated using this time positive approach. An attempts were made to emphasise such terms as "social security", "social cohesion", "inclusion" and "empowerment". Plans, programmes and social strategies were being developed with the aim to show dependencies between economic and social policies of the European Union. Catchy slogans were developed that referred to the necessity of competitiveness of enterprises as a driver of productivity enhancement ("*We need strong competition between enterprises to improve productivity*"). At the same time attention was paid to the parallel need of stimulating amongst the European Union citizens a feeling of solidarity to improve social quality ("*We also need strong solidarity between citizens to make a better society*"). The outcome of the above activities led to the division of social politicians and lawyers dealing with social

security into two categories. One category claimed that the social progress fuelled essentially by the actions initiated to enhance social protection have been in the focus of the European Union from the beginning of its existence as international organisation and its legal predecessors, viz. European Economic Community, European Communities. The above views were presented in professional literature by the authors who at the same time emphasised the lack of competencies of the Community institutions to deal with social security issues<sup>49</sup>. Others were of the opinion that as long as at the European Union level no institutions competent in the field of social security have been established and the European Union has not become a social community, the social security issues will be tackled by the governments of individual Member States<sup>50</sup>. The Member States in turn will condition, as previously, the level of social benefits on the economic growth and possibility of providing social protection. In the traditionally understood, unilateral dependence between economic growth and widening of the scope and raising the level of social benefits changes slightly occur. An opinion is more and more widespread that social policy may be an important element of economic growth. The above view represents a basis for development of social schemes with the aim to provide equilibrium between strife for maximum economic growth and securing social protection to people that cannot through their own efforts generate income from work. The current relations between labour market and provision of social security are based on the concept of interaction between labour market mechanisms and social security. The combination of two contradictory trends: flexible employment policy with social security raises expectations of the social relationship participants regulated by the labour law and social security legislation. The employers are enabled to run flexible employment policies. The employees made redundant are provided with social protection. The state authorities have a guarantee of maintaining social peace. The interaction between employment and social security boils down to replacing the job security with social stabilisation<sup>51</sup>. The social security in Poland and other European countries has future in the market economy environment to the extent in which the Member States' governments will facilitate for the persons not able to provide through their own efforts means of subsistence to adapt to ever changing situation in the labour market. The above comment applies exclusively to the people at the age of professional activity, able to work, seeking employment. In their case the future of social security depends on the ability to avoid situation where the beneficiaries of social schemes will be "locked" in the social security system established by the state. Permanent dependence on social benefits leads to degrading of the social security system. The future of social security lies in the creating opportunities for persons temporarily excluded from the labour market for changing qualifications and taking gainful employment as quickly as possible.

In the event of persons permanently unfit for work due to the limited body efficiency (disability pensioners) or age (old-age pensioners) the future of social security system depends on the relation between the level of social benefits and the average wage. The European Social Charter demands that social benefits be maintained by the Member States at "appropriate level" (Art. 12 § 2)<sup>52</sup>. The appropriateness of the level of social security benefits is decided by the Social Rights Committee of the Council of Europe. However, negative judgement does not have any direct consequences for the Member States<sup>53</sup>. In the European Union there is no body established to oversee the social security standards. Thus, the future of social security is left at the discretion of authorities of individual Member States of the Council of Europe and/or European Union. It does not depend on the concentration of social security competencies at the supranational level. However, establishing the supranational centre facilitates the standardisation efforts of the Member States' governments in the area of social security. It brings closer the vision of „Social Europe" and makes the concept of "European Social Space"<sup>54</sup> realistic.

- <sup>1</sup> J. Higgins, *States of Welfare. A Comparative Analysis of Social Policy*, St. Martin's Press, New York 1981; *Comparing Welfare States and Their Futures*, ed. Else Øyen, Gower Publishing Company, Brookfield 1986; R. Mishra, *The Welfare State in Capitalist Society. Policies of Retrenchment and Maintenance in Europe, North America and Australia*, *Studies in International Social Policy and Welfare*, Harvester Wheatsheaf, New York, London, Toronto, Sydney, Tokyo, Singapore 1990; N. Johnson, *Reconstructing the Welfare State. A Decade of Change 1980–1990*, Harvester Wheatsheaf, New York, London, Toronto, Sydney, Tokyo, Singapore 1990; A. W. Dobelstein, *Social Welfare. Policy and Analysis*, Nelson-Hall Publishers, Chicago 1992; *European Social Security and Global Politics*, ed. D. Pieters, Kluwer Law International, London-The Hague -New York 2003.
- <sup>2</sup> The most comprehensive picture of the Polish social security system against European standards is presented by G. Uścińska, *European Standards of Social Security vs. Contemporary Polish Solutions*, ILSS, Warsaw 2005.
- <sup>3</sup> F.F. Piven, R.A. Cloward, *Regulating the Poor: The Functions of Public Welfare*, Vintage Books, New York 1971.
- <sup>4</sup> R. Nobles, *Pensions, Employment and the Law*, Clarendon Press, Oxford 1993.
- <sup>5</sup> J. Hausner, *Safety Through Diversity. Key Success Factors for Old-Age Pension System in Poland*, *Studies on the Labour Law and Social Policy*, ed. A. Świątkowski, Cracow 1997/1998, p. 11 and subsequent.
- <sup>6</sup> Texts published in: *European Social Charter. Collected texts* (5th edition), Edition Council of Europe, Strasbourg 2005.
- <sup>7</sup> The exceptions include Council Directives: Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ No L 6, 10.1.1979, p. 24; Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ No L 225, 12.8.1986, p. 40.
- <sup>8</sup> Council Regulations: Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ No L 149, 5.7.1971, p. 2; Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, OJ No L 74, 27.3.1972, p.1. See T. Bińczycka-Majewska, *Co-ordination of the Social Security Systems in the European Union*, Zakamycze, Cracow 1998; A. Świątkowski, *European Social Law*, vol. III *European Social Security Law*, Dom Wydawniczy ABC (ABC Publishing House), Warsaw 2000; A. Giżejowska, A. Świątkowski, *Social Security*, Universitas, Cracow 2003; F. Pennings, *Introduction to European Social Security Law*, 4th ed., Intersentia, Antwerp-Oxford-New York 2003. At present the national social insurance systems of 25 EU Member States are co-ordinated by the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the co-ordination of social security systems, OJ of the European Union L 166/1, 30.4.2004.
- <sup>9</sup> On the topic of regulated right to social security Art.12 of the Charter see A. Świątkowski, *Role and Significance of the European Social Security Standards for the Polish Legislation in 21<sup>st</sup> Century*, *Social Policy*, 2005, vol. 3, p. 9 and subsequent.
- <sup>10</sup> European Social Charter. Committee of Independent Experts, Conclusions I, Council of Europe Publication, Strasbourg 1969–1970, p. 64.
- <sup>11</sup> Conclusions XIII-4, Council of Europe 1996, p. 54.
- <sup>12</sup> idem, p. 64.
- <sup>13</sup> idem; Conclusions XIII-4, pp. 58–59.
- <sup>14</sup> Conclusions XVI-2, vol. 2, Council of Europe 2001, p. 787 (Slovakia).
- <sup>15</sup> Conclusions XIII-4, p. 60 and subsequent.
- <sup>16</sup> *Fundamental Documents of the Council of Europe in the Social Policy Area*, Selection and Preparation R.A. Henczel, J. Maciejewska, Wydawnictwo Naukowe Scholar (Scholar Scientific Publishers), Warsaw 1997, p. 83 and subsequent.
- <sup>17</sup> Conclusions I, p. 66.
- <sup>18</sup> Addendum to Conclusions IX-2, Council of Europe 1986, p. 33 (Hiszpania).
- <sup>19</sup> Conclusions XIII-4, p. 56–57.
- <sup>20</sup> Council Recommendation 92/441 on Common Criteria Concerning Sufficient Resources and Social Assistance in Social Protection Schemes, OJ 1992 L. 245, 46.
- <sup>21</sup> Conclusions XVI-2, vol. 2, p. 788 (Slovakia that provides benefits at the level lower than 25% of the average wage); Conclusions XVII-1, vol. 1, p. 176 (Finland – social assistance benefits amount to 374.92 euros; 50% of the average monthly wage amounts to 619 euros; p. 109 (the Czech Republic – benefits equivalent to 72 euros; 50% of the average monthly wage – 132 euros); p. 76 (Belgium – benefits 550 euros; 50% of the average monthly wage – 645 euros); Conclusions XVII-1, vol. 2, p. 294 (Malta – benefits at the level of 53%); p. 327 (the Netherlands – benefits at the level of 2,452 euros per year; poverty level below 6,663 euros per year); p. 425 (Portugal); p. 524 (Great Britain – benefits equivalent to 690 euros per month; 50% of the average monthly wage – equivalent to 738 euros); Conclusions 2004, vol. 1, p. 70 (Bulgaria – benefits equivalent to 19 euros; 50% of the average monthly wage – 45 euros); p. 177 (Estonia – benefits equivalent to 32 euros; 50% of the average monthly wage – 79 euros); Conclusions 2004, vol. 2, p. 373 (Lithuania – benefits equivalent 39 euros per month; 50% of the average monthly wage – 78 Euro); p. 483 (Romania – benefits equivalent of 4.3 euros per month; 50% of the average monthly wage 19 euros).
- <sup>22</sup> Conclusions XIV-1, p. 85 (Austria); p. 537 (Malta); p. 632 (Norway); Conclusions XVII-1 vol. 1, p. 77 (Belgium); p. 176 (Finland); Conclusions XVII-1, vol. 2, p. 294–295 (Malta); p. 425 (Portugal).
- <sup>23</sup> Conclusions 2002, p. 94 (Italy).
- <sup>24</sup> Conclusions XIII-4, p. 57.
- <sup>25</sup> Conclusions XIII-1, p. 188; Conclusions XIII-2, p. 128 (Greece).
- <sup>26</sup> Conclusions X-1, p. 116 (Iceland); Conclusions X-2, p.121; Conclusions XI-2, p. 119 (Spain); Conclusions XII-1, p. 188–189; Conclusions XIII-1, p. 188 (Greece); Conclusions XV-1, p. 376 and subsequent (Italy); Conclusions XVI-2, vol. 1, p. 432 (Hungary); Conclusions XVII-1, vol. 1, p. 110 (The Czech Republic).
- <sup>27</sup> Conclusions XIII-1, p. 188 (Greece); Conclusions XIII-3, p. 361 (Finland).
- <sup>28</sup> Case of Greece: Conclusions XIII-4, p. 177–179; Conclusions XIV-1, p. 359–360.
- <sup>29</sup> Conclusions IV, Council of Europe 1995, p. 88 (Italy); Conclusions X-2, Council of Europe 1992, p. 121 (Spain); Conclusions XIII-3, p. 362–363 (Portugal); Addendum to Conclusions XIII-3, p. 73 (Luxembourg).
- <sup>30</sup> Case of Spain: Conclusions X-2, p. 121; Conclusions XIII-2, p. 130–132; Conclusions XIII-4, p. 189; Case of Portugal: Conclusions XIII-3, p. 362–363; Conclusions XIII-5, p. 224.
- <sup>31</sup> Conclusions XIII-4, p. 177–179 (Greece).
- <sup>32</sup> Conclusions XIII-4, p. 56; Conclusions 2002, p. 245 (Sweden); Conclusions XVII-1, vol. 1, p. 110 (The Czech Republic).
- <sup>33</sup> Conclusions XIII-4, p. 56.
- <sup>34</sup> Case of Spain: Conclusions XIII-4, p. 189–190; Conclusions XIV-1, p. 710; Conclusions XV-1, p. 531; Conclusions XVII-1, vol. 2, p. 455–456.
- <sup>35</sup> Conclusions XIII-2, p. 127 (Greece; Conclusions XV-1, p. 344 (Iceland).
- <sup>36</sup> Conclusions XIV-1, p. 193 (Denmark); Conclusions 2004, vol. 1, p. 281 (Ireland).
- <sup>37</sup> Case of France: Conclusions XIV-1, p. 272; Conclusions 2004, vol. 1, p. 236.
- <sup>38</sup> Case of the United Kingdom: Conclusions II, p. 49; Conclusions XIV-1, p. 809; Conclusions XV-1, p. 644–645; Conclusions XVII-1, vol. 2, p. 525–526; Conclusions 2004, vol. 2, p. 374–375 (Lithuania).
- <sup>39</sup> Addendum to Conclusions XIII-3, p. 71–72 (Luxembourg).
- <sup>40</sup> Case of France: Conclusions XIV-2, p. 272; Conclusions 2002, p. 48; Conclusions 2004, vol. 1, p. 236; Conclusions XVII-1, vol. 2, p. 456.
- <sup>41</sup> Case of Luxembourg: Addendum to Conclusions XIII-3, p. 73; Conclusions XIV-1, p. 504 and subsequent; Addendum to Conclusions XV-1, p. 64.
- <sup>42</sup> Case of Finland: Conclusions XIII-5, p. 98; Conclusions XIV-1, p. 123.
- <sup>43</sup> Conclusions XIV-1, p. 52.
- <sup>44</sup> Conclusions XVII-1, vol. 1, p. 177 (Finland).
- <sup>45</sup> Conclusions XVII-1, vol. 2, p. 328 (The Netherlands).
- <sup>46</sup> Conclusions XIV-1, p. 52.
- <sup>47</sup> Case of Denmark: Conclusions XV-1, p. 166; Conclusions XVII-1, vol. 1, p. 148; Case of Spain in the medical assistance component: Conclusions XIII-4, p. 191; Conclusions XIV-1, p. 712; Case of Malta: Conclusions XIII-4, p. 187–188; Conclusions XIV-1, p. 537–538; Conclusions XV-1, p.411; Case of Germany: Conclusions XIV-1, p. 322–323; Addendum to Conclusions XV-1, p. 40–41; Conclusions XVII-1, vol. 1, p. 214.
- <sup>48</sup> Conclusions XIII-4, p. 57.
- <sup>49</sup> B. Schulte, *Juridical Instruments of the European Union and the European Communities*, in: *The Social Quality of Europe*, eds. W. Beck, L. van der Maesen, A. Walker, Kluwer Law International, The Hague-London-Boston 1997, p. 51 and subsequent.
- <sup>50</sup> D. Pieters, *Qualitative European Social Security Legislation*, in: *The Social Quality of Europe*, op. cit., p. 70 and subsequent.

<sup>51</sup> For more details see A. Świątkowski, *Benefits for the unemployed vs. employment promotion policy*, Studies on Labour Law and Social Policy, Cracow 2005.

<sup>52</sup> A. Świątkowski, *Role and Significance of European Social Security Standards...*, op.cit., p. 10–11.

<sup>53</sup> For mechanisms of overseeing the compliance of the Member States' governments with the provisions of the European Social Charter and

Revised European Social Charter see A. Świątkowski, *Social Rights Charter of the Council of Europe*, C.H. Beck, Warsaw 2005.

<sup>54</sup> A. Świątkowski, *European Social Space*, in: *Authority, Identity, Nation. Studies dedicated to Hieronim Kubiak, Prof.*, eds. K. Gorlach, M. Niezgoda, Z. Seręga, Wydawnictwo Uniwersytetu Jagiellońskiego (Jagiellonian University Publishers), Cracow 2004, p. 384 and subsequent.