

# POLISH SOCIAL SECURITY SYSTEM AGAINST INTERNATIONAL ARRANGEMENTS

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## INTRODUCTION

The institution of social security (*sécurité sociale*, *Soziale Sicherung*) is resulted by national legislation in many countries. It is provided for in the legal acts of the United Nations Organisation, International Labour Organisation, the Council of Europe and European Union. It is the sphere of social policy having rich literature on this topic. It has a direct relationship with the social security category.

Amongst the values and human needs the social security (*social safety*, *sûreté sociale*, *Soziale Sicherheit*) occupied leading position in the second half of 20<sup>th</sup> century. The social security is classified in the category of basic civic and social rights. The meaning of this term was formed as a result of historical development process of various forms of assistance, especially in the event of acts of God and other cases.

According to literature, *social safety in the second half of 20<sup>th</sup> century occupied leading position amongst the values and needs of contemporary citizen of civilised world, becoming a permanent item in the catalogue of basic civic rights in democratic systems*<sup>1</sup>.

My research findings show that neither in international nor in the national legislation there is a uniform term "social security". This is true both for legal and non-legal area.

The legal comparative analysis requires precise definitions of terms key to this analysis. Therefore it was assumed that the term "**social security**" will be used with the meaning assigned to it by the **Convention No 102** of 1952 concerning minimum standards in the area of social security<sup>2</sup>. I made an assumption that basic standards were set forth by the Convention 102, whereas higher standards – by international acts enacted later i.e. after 1952<sup>3</sup>.

## BASIC CHARACTERISTICS OF BENEFITS DETERMINED BASED ON THE LITERATURE OF THE SUBJECT, INTERNATIONAL AND POLISH LEGISLATION DISTINGUISHED TYPES OF BENEFITS

The gist of social security is the provision of benefits to persons meeting certain criteria. I distinguish the following types of benefits.

**Health-related benefits** – these include health care benefits and sickness benefits. Diseases are treated as an act of God, risk – requires various actions including the provision of health care benefits (in kind and in cash). These benefits have their specific nature. The health care benefits are provided in relation to mental and physical discomfort (or even social discomfort) of the person who applies for them. This is a subjective element of benefit provision. It is also necessary to distinguish the objective element i.e. provision of preventive benefits in the event of disease threat. Higher level of social consciousness impacts the scope of using them.

Cash benefits are granted in the event of a loss of earnings caused by incapacity to work due to disease. Basically, it is up to

doctor's assessment whether the eligible person may perform his work or has to discontinue to do so. The break in work performance is for a limited period of time, therefore the cash benefits related to the disease are in most cases<sup>4</sup> paid for a defined period of time.

Dragging on of the disease causing incapacity to work may be considered in the health care benefit system as the lengthening of the payment period<sup>5</sup> or be protected under another benefit system with different nature and under another title<sup>6</sup>.

**Maternity and family related benefits** – can be generally defined as the benefits aimed at mitigating family burdens. According to literature the family burdens do not have the symptoms of the act of God, but require a lot of solutions from the State and other competent institutions. Firstly, the maternity should be distinguished, since it requires a special care.

Findings show that pregnancy, childbirth and their consequences stir specific needs. The needs should be satisfied in various forms, mainly through the system of health care and cash benefits (maternity, family, from social assistance), and also appropriate labour law regulations. Under the effective regulations the women giving childbirth are released from a duty to perform work and they are compensated for the lost earnings under set principles. These include maternity leave and maternity benefit. Other benefits (most frequently childbirth allowance) account for partial compensation of additional expenses related to childbirth. The period of further care and raising children due to increased financial and non-financial burdens of the family requires appropriate support – on the one hand to provide cash benefits, on the other hand – the right to appropriate sickness leaves, leaves enabling parents (guardians) to raise children safely. Appropriate employment guarantees are also required including in particular the right to come back to work and also facilitating reconciliation of professional work with children raising<sup>7</sup>.

**Benefits related to disability, old age (retirement age) and death of the breadwinner** – in some countries the protection against the risk of disability (incapacity to work) was combined with the protection against the risk of retirement age and the risk of death of breadwinner. This is justified by various considerations including the relationships and dependencies between the scope of protection set forth for these risk categories, joint principles for determining the eligibility for these benefits and their calculation base. It should be emphasised that these are separate risk categories for which joint or separate solution may exist. The **disability is characterised by** permanent loss of capacity to work typically before reaching retirement age. For this reason the professional activity comes to an end, which requires taking various measures including those that offset the lost (typically for good) income from work. Other arrangements are required that serve occupational and social rehabilitation of people suffering from disability. An essential role is also played by health benefits.

In relation to **becoming of retirement age** it is necessary to secure means of subsistence replacing the permanently lost

earnings<sup>8</sup>. The pension systems include also other eligibility criteria that have to be met to acquire pension rights. Making precise the eligibility criteria (pertaining to the risk of old-age) has to be viewed positively on the entity grounds, which means that the eligible persons know when they may apply for establishing the right to the benefit, which frequently implies that they may withdraw from professional life. This is also crucial from institutional perspective i.e. the institution determining the entitlement to benefit and paying the benefit may get prepared appropriately for the performance of these tasks<sup>9</sup>. The people at retirement age require also appropriate health care, including health benefits and frequently benefits and services related to the performance of ordinary life functions.

**In relation to the death of the benefit right holder** during the period of professional activity, and also the enjoyment of disability or old-age pension a need arises to protect other family members, especially children and the other spouse and sometimes other persons.

Under the Polish system the rights to survivors' pension are the early retirement rights. There are various views in the literature on the question whether these are autonomous or derived rights. According to traditional view these are derived<sup>10</sup> rights<sup>11</sup>. According to another view the traditional approach to the survivors' pension as a benefit derived (from the right to the old-age pension or the right to the incapacity benefit)<sup>12</sup> is not apt. According to the author of this view the death of the insured breadwinner, old-age or disability pensioner is the spontaneous insurance event that triggers the right to survivors' pension that is own entitlement (not derived) under the insurance cover of the breadwinner<sup>13</sup>.

The above view is close to the ongoing discussion in the European literature about individualisation of social rights in the social security system including the survivors' pension payable due to death of breadwinner<sup>14</sup>. The survivors' pension paid after death of breadwinner may be covered not only by pension insurance, but also by family benefit system. Such trend is present in legislation of some European countries<sup>15</sup>.

**Benefits related to injuries at work and occupational diseases** – are related to specific acts of God. The risk of accident at work is complex, involves disease, disability and also death. The benefits paid under accident insurance are basically compensatory by nature, and are based on the liability of the employer for the losses caused by working conditions. These benefits include health and cash benefits. Cash benefits vary and include sickness benefit, incapacity benefit (due to incapacity to work or death), and also funeral allowance to cover the costs of funeral.

The cover related to injuries at work covers accidents that happened while commuting to/from work, and also occupational disease.

**Benefits related to unemployment** – the examination of this risk based on the international and national regulations shows that the scope of unemployment notion may be narrower or broader. The first meaning covers capable persons ready to take a job that they lost against their own will. The second meaning is wider – lack of income due to not being able to find a job by capable persons ready to take a job, which is due to the bad situation in the labour market.

Capability and readiness to take a job are features commonly found in the definition of the unemployed. Entitlement to benefits is, as a rule, dependent on the compliance with the length of service requirement (employment, contribution payment). Under some systems there are arrangements that cover on entity-based grounds the persons failing to meet the above requirement (young persons, after child-care leaves, earlier supported by the other spouse and other).

The unemployment benefits are granted for a set period of time; once the time set has elapsed if the work has not been taken, then the protection may be supplemented with benefits paid under social assistance, which is not a universal solution.

## SOCIAL SECURITY IN THE POLISH LEGISLATION

In the Polish legislation the term of social security has not been defined yet, though it is used in various legal acts with various meanings<sup>16</sup>. The legislation that became effective on January 1, 1999, that represent legal grounds for reformed social security system, use the term social security more consistently than previously<sup>17</sup>, which, however, does not imply that it represents the come back to traditional insurance principles<sup>18</sup>. The Constitution, however, uses the term "right to social security", which gives entitlement to use this term with reference to the Polish system.

According to the 1997 Constitution (The Constitution of the Republic of Poland of April 2, 1997 r.; Journal of Laws No 78, item 483).

**The Citizen** is entitled to social security benefits in the event of incapacity to work due to sickness or disability and after becoming of retirement age. The citizen who does not have a job and it is not due to his will and does not have means of subsistence is entitled to social security, with the scope and forms laid down in the Act (Art. 67). (This Article comprises legal grounds for the right to sickness benefits, disability benefits, old-age benefits and unemployment benefits).

**The citizens**, regardless of their financial position, public authorities provide equal access to the health care benefits funded from the public funds. The criteria and scope of benefits are laid down in the Act (Art. 68). (This Article comprises legal grounds for the health care benefits).

**The State** in its social and economic practice takes into consideration the good of the family. The families in difficult financial and social position, especially families with many children and broken, are entitled to special assistance from the public authorities.

The mother before and after giving childbirth is entitled to special assistance from public authorities with the scope defined in the Act (Art. 71). (This Article contains provisions for the right to survivors' pension, family benefits and other activities in favour of family).

The fact that the Constitution does not regulate in the comprehensive manner the social security issues should not be viewed as reducing the position of the rights holders<sup>19</sup>.

In the Polish social security system one can distinguish – *de lege lata* – the same types of risks that are laid down in the Convention No 102. Most of these benefits are qualified as benefits one is entitled to under social insurance system (pension insurance, sickness and casualty insurance). Meanwhile the unemployment benefits are granted under the principles set forth in appropriate regulations<sup>20</sup>. Such regulation of these benefits does not violate Art. 67 of the Constitution that lays down the entitlement to the social security.

The objective scope of social security covers also the family benefits that perform certain functions in the social policy, partially offsetting financial burdens not only related to child care and raising. The benefits have claim nature<sup>21</sup>, which implies, among others, and in the event of dispute over the type of level of benefit one may appeal against them. Given the current legal status these benefits are funded from the state budget. This term also covers health care benefits with the entitlement guaranteed by the Constitution (Art. 68), though their character is expressed differently<sup>22</sup>. The detailed eligibility criteria for these benefits and conditions of granting them are defined in appropriate legislation<sup>23</sup>.

## INTERNATIONAL LEGISLATION ON SOCIAL SECURITY

Social security legislation is enacted by such international organisations as:

1) **International Labour Organisation** – the legislation includes ILO Convention No 102 concerning Minimum Standards of Social Security of 1952 and Conventions and Recommendations adopted following the Convention, defined as third generation acts;

2) **The Council of Europe** – European Code of Social Security of 1964, Protocol to the European Code of Social Security, Revised European Code of Social Security of 1990. Standards set forth in

the above documents are connected with the exercise of right to social security established in the European Social Charter of 1961, Revised European Social Charter of 1996;

3) **The European Union** that in the area of social security failed to establish uniform financial and legal measures due to, inter alia, too large diversification of national legislation and no consent of the Member States allowing to take such actions. In its activities the EU focuses on the regulation of norms of competence i.e. the norms with the aim to address the issue of conflicting provisions and sometimes contradictions amongst various national regulations. Therefore, these are regulations that perform co-ordinary function<sup>24</sup>. The literature on this topic evaluates that the co-ordination fosters also harmonisation of national systems<sup>25</sup>. The Community bodies encourage Member States to ratify social security standards enacted by the International Labour Organisation and the Council of Europe to approximate national legislative systems. The approximation process may be defined as the harmonisation process in the area of social security<sup>26</sup> with various aims<sup>27</sup> including the approximation of varied national legislative systems.

It has to be remembered that in the European arena the social security system solutions are analysed not only from the harmonisation and co-ordination perspectives, but also from convergence, policy co-ordination and open method of co-ordination perspectives. These terms have not been defined yet. Their meaning can be learnt based on the analysis of legal acts as well as numerous documents accepted as programmes or operational strategies of the European Union. For instance in the Council Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies the term harmonisation is not present, instead the term used is convergence of objectives<sup>28</sup>. Therefore one can say that it applies to convergence<sup>29</sup> of these objectives.

The guidelines set forth in the Council Recommendation No 442 are fairly general and may be implemented in the Member States based on various principles. This implies, inter alia, that implementation principles should be determined in the national social policy with consideration given to national conditions. The Member States are obliged to consult with other states and appropriate EU bodies about the ways of implementing national social policy and achieved results. However, in the literature on this topic the Recommendation itself – due to broad implementation objectives and also the lack of effective control mechanism of its application – was evaluated critically<sup>30</sup>. A few years later the activities of the same nature were termed *Open Method of Co-ordination* (OMC) that is used under the Lisbon Strategy i.e. programme adopted at the meeting of the European Council in March 2000<sup>31</sup>. It is believed – in the literature on this topic and in the Community documents – that Open Method of Co-ordination is at the moment crucial social policy instrument the application of which will make the European Union more active in the social sphere<sup>32</sup>.

The multitude of various instruments is the evidence of seeking new approaches to the European social security standards and also to national solutions. It is hard to foresee now what will be the outcome and whether the proposals of new solutions are developed at the end of the day. A question may be posed whether the European Union will adopt financial and legal legislation on social security modelled after the regulations of the International Labour Organisation and the Council of Europe and whether such regulations are necessary, given that the EU Member States are also Member States of these organisations and take joint decisions about the level of European social security standards.

## EVALUATION THROUGH COMPARATIVE ANALYSIS

The analysis of the Polish social security solutions<sup>33</sup> at the background of the solutions laid down in the European and international legal acts<sup>34</sup> the following assessments can be made.

Polish arrangements to a large extent correspond to the international ones. Some of them, however, require various modifications.

- **Health care benefits.** A need to stabilise regulations on the rights in this area; the regulations should define who is eligible, when and for what benefits. With regard to the share of the entitled persons in the costs of health care benefits it seems to be urgent to make arrangements to allow statistics necessary to meet commitments under Convention No 102, ratified by Poland. The implementation of the above would also facilitate taking a future decision about assuming commitments under Convention No 130, and also Code and Protocol to the Code, since these acts lay down health care and sickness benefit standards in 21<sup>st</sup> century<sup>35</sup>. It is advisable that the recommendations be implemented that are contained in the Recommendation No 442 about necessity to set up health care system at high level, adapted to the ever-changing needs of the general public, and especially at advanced old age (including the necessity to take advantage of the assistance of other people in the performance of life functions)<sup>36</sup>, and a need to develop widely understood preventive measures.

- **Sickness benefits.** Polish arrangements concerning sickness benefits were subject to in-depth evolution at the end of 1990s and at the beginning of the year 2000, characterised by the reduction of the scope of protection in the event of the insured person sickness such as e.g. reduction of sickness benefit and liquidation of some existing arrangements providing for the extension of the payment term of sickness benefit. It was subjected to the organisational and financial liability of employers who pay sickness pays for a set period of time. If a question is posed how, in the light of comparative analysis, Polish arrangements look like, then a reply should be given that most of them meets international requirements. However, changes made in recent years reduced the size of entitlements. A discussion should be started if the change of current arrangements concerning the payment term of sickness benefit is feasible, so that in 21<sup>st</sup> century the minimum requirements are met to this extent i.e. to make the payment term of sickness benefit correspond, at least, to the period set in the Code and in the Protocol to the Code and in Convention No 130<sup>37</sup>. One should also consider whether it still makes sense to keep the arrangement under which the employers share financial liability (and not only) for the social risk of the disease, i.e. payment of sickness pay pursuant to Art. 92 of the Labour Code. The discussion about these regulations should consider to what extent the employers would have to participate in financing the effects of risk of disease, which means that the contribution paid by them would have to be determined – if they were exempted from the duty of payment of sickness pay. It should be emphasised that there is a material argument speaking in favour of keeping current arrangements i.e. co-responsibility of employers for prevention, and also liquidation of the effects of risk of disease<sup>38</sup>.

- **Maternity benefits** provide high level of protection for persons covered by the social insurance system in Poland. Outside the social insurance system this protection is very narrow (in fact it is only single benefit in the family benefit system, i.e. supplement paid pursuant to childbirth payable on one-off basis as a supplement to the family benefit) and does not correspond to international arrangements that mention a need to provide cash benefits to females not eligible to receive them under social insurance system or under another system laid down in the national legislation. This issue requires not only appropriate legal provisions, but primarily the development of the concept of maternity protection outside social insurance system. With regard to health care maternity benefits, one has to postulate about creating their catalogue in clear manner.

- **Family benefits**, and to be more precise their regulations are subject to constant changes. This is driven by social and demographic developments in Poland. However, low level of family benefits proves that there are financial (budgetary) constraints concerning these benefits. Their new concept that

has been implemented since May 2004 is the manifestation of the constraints.

Following the comparative analysis a conclusion was drawn that the expenditures on family benefits should come closer and closer to the standards set forth in the Revised Code, i.e. 1.5% of the Gross Domestic Product<sup>39</sup>, so they would be at the higher level than that in the Convention No 102.

- **Disability benefits.** The conclusions from the comparative analysis concerning the disability benefits should be considered in the efforts taken to determine the direction of changes of the effective arrangements. The arrangements laid down in the Convention No 128 and Recommendation No 131, and also in the Revised Code are characterised by flexibility and strife for as far-fetched as possible protection against social risk; the level of benefits for the incapacity to work was laid down in the Polish system at a low level and does not correspond to international arrangements in a few cases<sup>40</sup>. This should be considered when modifying the principles of assessment base and the level of benefits. The Convention No 102 does not provide for suspension of disability benefits in relation to the income generated by the beneficiaries; the Code treats this issue in the similar manner. However, such option is provided for by the Convention No 128, and also the Revised Code. These settlements should be considered when taking future decision about modification of the Polish law and ratification of these acts. The international arrangements focus on the occupational readaptation of the disabled, and also on the support of social and economic integration processes. Such directions of activities should become a priority in the Polish social security system.

- **Old-age pension benefits.** Legal arrangements concerning old-age pension benefits require stabilisation so that there is feeling of legal safety in such vital field of social insurance. Discussions and new regulations are required for such issues as: retirement age, payment principles of benefits under 2<sup>nd</sup> pillar, payment of benefits for some beneficiaries in the existing system, finally the principles setting minimum benefits in the new system. The legislative efforts should take advantage of conclusions from benchmark studies of legislative systems, viz. the amendments of regulations concerning retirement age may take into account the principles laid down in the Code and in the Revised Code, i.e. equal retirement age for men and women and setting forth in the national legislation flexible principles of retirement for all entitled persons. There is also an urgent need to run in advance comparative studies and calculations in the area of old-age pension benefits under the new system. It is vital to answer the question whether the level of benefits under the new system meets the commitments made in the ratified international acts and whether it will allow in the future to adapt new acts<sup>41</sup>.

- **Survivor's pensions (Benefits payable after the death of breadwinner).** The Polish system of benefits payable after the death of breadwinner is characterised by well-expanded scope of rights of the beneficiaries. In some cases they are at a higher level than that laid down in the international acts. However the analyses carried out by the lady author showed that basic standards concerning the level of benefits payable under the death of breadwinner, laid down in the Convention No 128, Protocol to the Code and in the Revised Code<sup>42</sup> are not fulfilled. This should be considered when modifying the principles of the assessment base and the level of benefits.

- **Benefits related to the injuries at work and occupational diseases.** The Polish system of benefits related to the injuries at work and occupational diseases is characterised by the varied scope of these benefits. However, the scope of entities covered by the system is limited to the persons who are compulsory covered by casualty insurance. The international legal acts have postulated for many years now to widen this scope through laying legal grounds in the national legislative systems for voluntary access to the system.

Proper regulations should define the catalogue of health care benefits as well as principles of granting them<sup>43</sup>. Polish legal arrangements concerning the suspension of casualty cash benefits

differ than those set forth in the Conventions Nos 102 and 121 as well as in the Code and in the Revised Code. The question of tying up the object and scope of protection with the suspendability of benefits in the Polish social security system requires in-depth analysis to reply to the question what scope of protection should be established in such crucial segment of the social security.

- **Unemployment benefits.** Some fields of the Polish social security system look bad in the light of carried out comparative analysis. This applies in particular to the unemployment benefits. The legislation regulating unemployment benefits is subject to constant changes that in fact year by year reduce the protection level of people losing jobs. Making stricter the legislation laying down eligibility criteria for unemployment benefits led to the situation where the number of beneficiaries accounts for 14% of the total number of unemployed.

Polish legislation should define in the clear manner the object and scope of protection in the event of losing one's earnings; it should cover not only full unemployment, but also other events triggering the loss of work and earnings.

The objective scope should not be subject to further retrenchment, otherwise it will not correspond to any international requirements. The Polish arrangements do not correspond either to the set standards regarding the level of unemployment benefit<sup>44</sup>. The difference is quite high, so first and foremost the Polish legislation has to be harmonised with the principles laid down in the Convention No 168 under which the benefit should account for 45% of the minimum wage or the wage of ordinary worker, but may not be lower than the minimum necessary to cover basic costs of subsistence. However, there is lack of statistics, and appropriate studies, that would allow setting minimum vital to cover basic costs of subsistence of the unemployed and his family. Therefore it is necessary to calculate subsistence level for the households of the unemployed and their families. The measures taken to activate various occupational and social categories set forth in the Convention No 168 could be considered in the activation schemes for such people in the Polish labour market.

If we assume that the minimum standards are set by the Convention No 102, then the Polish social security system corresponds to them in many fields. It also meets some higher standards established in later Conventions and Recommendations of the International Labour Organisation, and also in the documents of the Council of Europe. However, some fields of the Polish system do not meet higher standards. It was found out that this applies including but not limited to:

- objective scope (unemployment benefits),
- benefit payment term (unemployment benefits, sickness benefits),
- level of benefits (disability benefits, survivors' pension),
- suspendability (disability benefits, industrial injury benefits).

However, the above analysis does not give grounds to claim that the national legislation must meet all requirements set forth in the international legal acts. The arrangements in these acts can be utilised during the process of modification or amendment of national legislation, if the objective of the national lawmaker will be further progress in the social security area<sup>45</sup>.

<sup>1</sup> L. Dzięwiecka-Bokun, *Bezpieczeństwo socjalne jako podstawa pokoju społecznego (Social Security as Basis for Social Peace)*, in: L. Frąckiewicz, ed., *Bezpieczeństwo socjalne (Social Security)*, Katowice 2003, p. 11.

<sup>2</sup> This implies that it basically applies to the social insurance systems. The social assistance system is regulated in other legal acts issued by ILO and Council of Europe. See G. Uścińska, *Social Security Benefits in International and Polish Legislation. Comparative Study*, Warsaw 2005, p. 37 and subsequent.

<sup>3</sup> This applies to the acts of the International Labour Organisation and the Council of Europe.

<sup>4</sup> This applies to national legislative systems but also to international arrangements.

- <sup>5</sup> Such institution was in the Polish legislation before it was amended in December 2004.
- <sup>6</sup> It may be qualified as a disability benefit or a temporary benefit, if chances to regain capacity to work are positive e.g. rehabilitation benefits under the Polish system (falling into the sickness benefit system).
- <sup>7</sup> This catalogue of family measures should be widened by adding tax allowances for families supporting children and institutional solutions (crèches, kindergartens, common rooms, especially at one's residence and other). See J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody (Social Security. Problems and Methods)*, Warsaw 1966, p. 105; A. Kurzynowski, *Praca zawodowa kobiet w Polsce i jej aspekty ekonomiczno-społeczne (Occupational Work of Women in Poland and Its Socio-Economic Aspects)*, Warsaw 1979, p. 27 and subsequent; B. Balcerzak-Paradowska, *Rodzina i polityka rodzinna na przełomie wieków (Family and Family Policy At the Turn of Centuries)*, Warsaw 2004, p. 192 and subsequent, p. 225 and subsequent.
- <sup>8</sup> Old age as insurance event is characterised by the element of alleged disability and servitude. See W. Szubert, *Ubezpieczenie społeczne. Zarys systemu (Social Insurance. System Outline)*, Warsaw 1987, p. 105.
- <sup>9</sup> This is also important for labour market actors that should account for the fact that a defined number of persons in a certain period may retire.
- <sup>10</sup> T. Żyliński, *Renta rodzinna (Survivors' Benefit)*, Wrocław 1985.
- <sup>11</sup> I. Jędrasik-Jankowska, *Ubezpieczenie społeczne (Social Insurance)*, Vol. 2, Warsaw 2003, p. 73 and subsequent.
- <sup>12</sup> At death there is no entitlement to old-age and incapacity benefit. Meanwhile in Art. 65 of the Pension Act legal fiction was used to indicate necessary premises that at death of an old-age or other pensioner there was survivors' pension relationship, which means that also in the case of death of breadwinner. See J. Jończyk, *Prawo zabezpieczenia społecznego. Ubezpieczenia społeczne i zdrowotne, Bezrobocie i pomoc społeczna (Social Security Law. Social and Health Insurance. Unemployment and Social Assistance)*, Cracow 2001, p. 168.
- <sup>13</sup> *Ibidem*.
- <sup>14</sup> See N. Kerschen, *Towards Individualisation of Social Rights in a European Perspective*, "Social Policy" 2005, Special Issue in English (printing underway).
- <sup>15</sup> Family benefit systems for orphans are included in the Annex VIII to the Regulation No 1408/71 and are present in Belgium, Denmark, France, Ireland, the United Kingdom and Northern Ireland.
- <sup>16</sup> For instance – the Act on Government Administration Sections of September 4, 1997 (uniform text Journal of Laws of 2003, No 159, item 1548 as amended. Pursuant to Art. 31, the social security section (falling under into scope of operations of the minister competent in the area of social security) comprises the following matters: social insurance and social provision, pension funds, social assistance and family benefits, social benefits, employment, social and occupational rehabilitation of the disables, veterans and persecuted persons, co-ordination of social security systems, except for material therapeutical services and public use activities, excluding supervision over rescue operations and population protection).
- <sup>17</sup> Starting from the basic Act on the Social Insurance System of October 13, 1998, and also parliamentary acts concerning individual types of benefits. See also K. Kolasinski, *Konstytucyjne prawo do zabezpieczenia społecznego (Constitutional Right to Social Security)*, „Państwo i Prawo” 1999, No 5, p. 4.
- <sup>18</sup> This system "does not intend to restore traditional principles for this insurance regulated in Poland by the Social Insurance Act of March 28, 1932, on the contrary, it ultimately departs from our and European tradition of social insurance" (K. Kolasinski, *ibid*).
- <sup>19</sup> In the European literature on this topic one may come across an evaluation that in some countries the constitutional acts contain specific commitments on social security (or even more broadly social policy) which, however, remain empty promises. On the other hand in the constitutions of such states as Sweden, France or Austria (and also Belgium and Germany) the right to social security is not mentioned *expressis verbis*, though appropriate legal acts guarantee high level of security including benefits.
- <sup>20</sup> Unemployment benefits are funded from the Labour Fund that has revenues from, inter alia, contributions paid by the employers and State budget. Unemployment benefits are claim type benefits i.e. in case of dispute over the type of benefit or refusal to grant it the beneficiary holds a right of appeal. They are fall into non-insurance system category.
- <sup>21</sup> This implies that "these benefits are paid to the people who hold a statutory entitlement, at a certain level if the eligibility criteria laid down in the act have been met. The benefit-related decisions are subject to control by independent decision-making bodies (judicial bodies) with which the interested party »may appeal in order to pursue his rights «" (W. Szubert, *Ubezpieczenie społeczne... (Social Insurance)*, p. 52). They fall into non-insurance systems.
- <sup>22</sup> Insurance, non-insurance or budgetary. See J. Jończyk, *Prawo zabezpieczenia społecznego... (Social Security Law)*, op. cit., p. 294 and subsequent.
- <sup>23</sup> Effective from October 1, 2004 – the Act on Health Care Benefits Funded From the Public Funds of August 27, 2004 (Journal of Laws No 210, item 2135) and other legal acts.
- <sup>24</sup> Regulations No 1408/71 and No 574/72, and also the most recent one No 883/2004 on co-ordination of social security systems. See A. Świątkowski, *Europejskie prawo socjalne (European Social Law)*, vol. III, Warsaw 1998, 1999, 2000, p. 15 and subsequent.
- <sup>25</sup> Y. Jorens, *Otwarta metoda koordynacji jako standardowy instrument uzgodnieniowy (Open Method of Co-ordination as Standard Adjustment Instrument)*, „Polityka Społeczna” 2005, No 3.
- <sup>26</sup> Harmonisation understood in this manner is necessary to enable and sometimes to secure co-ordination of various national systems.
- <sup>27</sup> On various forms of harmonisation – see A. Świątkowski, *Europejskie prawo socjalne (European Social Law)*, vol. III, p. 102 and subsequent.
- <sup>28</sup> In English language – "on the convergence of social protection objectives and policies".
- <sup>29</sup> Convergence (Lat. *convergere* – converge) – concurrence. *Dictionary of Foreign Words. Europa 2004*, p. 195.
- <sup>30</sup> Y. Jorens, *Zmiana polityki społecznej w Unii Europejskiej (Change of Social Policy in the European Union)*, „Polityka Społeczna” 2005, No 3.
- <sup>31</sup> It is implemented in four phases:  
– agreeing of joint objectives,  
– transfer of these objectives to national or regional programmes, taking into consideration unique ways of attaining these objectives,  
– agreeing of ways of implementing the objectives (measures, benchmarks),  
– monitoring, evaluation, comparison and exchange of best practices. See White Paper 2003, Part VI "New Social Model", Polish Forum of Lisbon Strategy, Gdańsk-Warszawa 2003; S. Golinowska, *Europejski model socjalny i otwarta koordynacja polityki społecznej (European Social Model and Open Co-ordination of Social Policy)*, „Polityka Społeczna” 2002, No 11–12, p. 3 and subsequent; Y. Jorens, *Otwarta metoda koordynacji... (Open Method of Co-ordination)*, op. cit.; Z. Czepulis-Rutkowska, *Otwarta koordynacja w zakresie zabezpieczenia społecznego osób starszych (Open Co-ordination in Social Security or the Elderly)*, in: *Problemy ubezpieczeń społecznych w 70-lecie istnienia Zakładu Ubezpieczeń Społecznych (Problems of Social Insurance on 70<sup>th</sup> Anniversary of the Social Insurance Institution)*, p. 139 and subsequent.
- <sup>32</sup> In the event of social security it applies primarily to pension and health care benefits. See Y. Jorens, *ibidem*.
- <sup>33</sup> Contained in: Act on Pension Benefits Paid From Social Insurance Fund of December 17, 1998 (uniform text Journal of Laws of 2004 No 39, item 353 as amended), Act on Cash Benefits Paid Under Social Insurance System in the Event of Sickness and Maternity of June 25, 1999 (uniform text Journal of Laws of 2005 No 31, item 267), Act on Social Insurance for Injuries At Work and Occupational Diseases of October 30, 2002 (Journal of Laws No 199, item 1673 as amended), Act on Family Benefits of November 28, 2003 (Journal of Laws No 228, item 2255 as amended), Act on Employment Promotion and Labour Market Institutions of April 20, 2004 (Journal of Laws No 99, item 1001 as amended), Act on Health Care Benefits Funded from Public Funds of August 27, 2004 (Journal of Laws No 210, item 2135). More about this G. Uścińska, *Świadczenia z zabezpieczenia społecznego... (Social Security Benefits)*, op. cit., p. 90 and subsequent.
- <sup>34</sup> Specified earlier and covered by the analysis in G. Uścińska, *Świadczenia z zabezpieczenia społecznego... (Social Security Benefits)*, op. cit.
- <sup>35</sup> They are also important for meeting the commitments taken as a result of ratification of the European Social Charter, and also preparatory work for ratification of Revised European Social Charter where Art. 12 not only puts an obligation on the signatory state to preserve the social security system, but also to raise its level, or in broader terms – to undertake measure aimed at the improvement of the national system, including

the measures aimed at the improvement of social protection level. This principle is not implemented in Poland due to, inter alia, the lack of stability of legislation regulating the health care benefits (decision of the Constitutional Tribunal of April 2004).

<sup>36</sup> This postulate is essential in relation to the Open Method of Co-ordination covering health care benefits. See Y. Jorens, ed., *The open method of co-ordination. Objectives of European health care policy*, Baden-Baden, Nomos Verlagsgesellschaft 2003, and also Y. Jorens, *The open method of co-ordination as standard setting instrument*, paper for the seminar titled "European Social Security Standards vs. Contemporary Polish Arrangements", „Polityka Społeczna” 2005, No 3.

<sup>37</sup> Benefit payment for, at least, 52 weeks.

<sup>38</sup> This element was crucial for taking a decision that in many European countries the employers share joint social liability for the risk of disease. It seems that the employers may also execute it through a duty to pay contributions.

<sup>39</sup> At present they are, by all means, at a lower level. See *Addendum. Obliczenia porównawcze (Addendum. Comparative Calculations)*, Warsaw 2005, p. 140

<sup>40</sup> It is lower than established in the Convention No 128 ILO, Code and Protocol of the Council of Europe, and also in the Revised Code of the Council of Europe. See. *Addendum. Obliczenia porównawcze... (Addendum. Comparative Calculations)*, op. cit., p. 64 and subsequent, p. 140 and subsequent, p. 143 and subsequent.

<sup>41</sup> These calculations are important both from the perspective of ratification of the European Social Charter and Convention No 102, and form the assessment of opportunity of assuming obligations laid down in other international acts.

<sup>42</sup> *More in Addendum. Obliczenia porównawcze... (Addendum. Comparative Calculations)*, op. cit., p. 107 and subsequent, p. 152 and subsequent.

<sup>43</sup> It should be added that these benefits should be basically provided free-of-charge and be defined as payable in the event of injuries at work and occupational diseases.

<sup>44</sup> See *Addendum. Obliczenia porównawcze... (Addendum. Comparative Calculations)*, op. cit., p. 36 and subsequent, p. 96 and subsequent.

<sup>45</sup> Detailed analysis of European social security standards against contemporary Polish arrangements was presented in G. Uścińska, *Europejskie standardy zabezpieczenia społecznego... (European Social Security Standards)*, op. cit.