

# 100 years of International Labour Organization. Rights-based social protection in Poland

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**SUMMARY:** Referring to the centenary of the International Labour Organization, and beginning with the assessment of the current state of social security in the world, the article analyses rights-based social protection on the example of Poland. Although social security is a basic human right, half of the world population still has no access to any social protection. ILO is working a lot to improve this. International standards of ILO, Council of Europe and European Union (EU) play important role in the development of comprehensive and rights-based social protection systems around the world. However, mechanisms to enforce these rights need to be strengthened. After the political transformation in 1990s, Poland joined international organisations, including the Council of Europe, the EU, and adopted their considerable acquis. Poland is developing rights-based social protection, including the introduction of non-contributory schemes that provide protection where contributory schemes left a gap. Further challenges are to provide adequate protection for atypical forms of work and to ensure a minimum level of old-age security in the future.

**KEY WORDS:** International Labour Organization, rights-based social protection, social security

## Introduction\*

In the centenary of International Labour Organization it is worth to summarise the current state of social security throughout the world. The statistics show that merely 30% of the world population has access to comprehensive social security coverage. Over half of the population in the world does not have access to any social protection. Still much remains to be done despite social security being a basic human right for a long time.

It has been 72 years since the adoption of the Universal Declaration of Human Rights in 1948. The Declaration provides that every person, as a member of society, has the right to social security. Later, the human right to social security has been re-affirmed and recognised by multiple international legal documents on human rights, such as the International Covenant on Economic, Social, and

Cultural Rights of 1966, which binds 170 states.

The Declaration is important for the standard-setting work carried out in XX century by the International Labour Organization in the area of social security. In order to secure social security as an individual right, ILO does much in order to pursue the responsibility of states to secure proper implementation of its conventions.

Having in mind the still huge gaps in social protection throughout the world, ILO has developed the 2030 Agenda for Sustainable Development. The agenda was agreed in 2015. It affirms social protection as a useful instrument to end poverty, reduce inequality, secure wellbeing, and progress towards decent working conditions. The potential of social protection to reach the 2030 Agenda has been recognised recently by the new IMF approach

\* Based on ILO preparatory materials for the Global Social Protection Week held on 25–28 November 2019 in Geneva.

to social spending, which comprises social protection.

In 2019, ILO adopted a Centenary Declaration for the Future of Work. Its main message was a call to perceive work through human-oriented lens. Countries around the world have started developing and implementing a rights-based approach in their legislation and administration over social security. This approach places the responsibility on states to adopt policy and legal frameworks guaranteeing the right to social security through the prism of internationally established rights as a way to achieve systems conforming to rights-based principles.

Many countries still need to develop a rights-based approach and legal framework for non-contributory schemes. Pursuing a rights-based approach to contributory and non-contributory schemes results in strengthening systemic cohesion, and increases universality and cohesion with other legal frameworks.

A policy grounded in internationally agreed principles and goals should result in rights-based social protection systems that ensure a level-playing field for the protection and implementation of human rights. Rights-based approaches to social protection focus not only on how states realise their human rights obligations, but also assess the results of such systems, including in terms of equality, non-discrimination and responsiveness to special needs.

The heart of the rights-based approach is to anchor the right to social security in legal and policy frameworks. Coupled with a strong and clear policy, law indeed provides solid vehicle to set out the elements necessary to implement social protection systems in a meaningful manner, not only by defining the role, responsibilities and rights of all the parties concerned, but also by constituting a clear framework by which all involved can promptly obtain redress against the violation of their rights. Statutory provisions also offer greater guarantees in terms of transparency, access to information, broader social and public dialogue, due process and sound financing. Sound

and operational legal and policy frameworks grounded in internationally agreed principles and goals are crucial elements to up-scale from charity-based approaches to social protection to rights-based ones.

ILO social security standards add to the human rights framework by providing a sound and tested base to bring national social security systems under the rule of law. Ratifying and implementing these standards plays a critical role in guiding the development of comprehensive and rights-based social protection systems worldwide.

### **Building and implementing policies, legal frameworks and human rights-based social protection systems**

Building human rights-based social protection standards is a XX century achievement of the international community, in particular of the International Labour Organization, the Council of Europe and the European Union. This success should be seen through the prism of these organisations.

The history of the development of the International Labour Organization legislation shows the long and difficult way the world has come through the last 100 years. The first generation of ILO conventions and recommendations has shown that social protection legislation can and should be created. Convention No. 102 concerning Minimum Standards of Social Security of 1952 has established a canon of standards in this field. The third generation represents a new approach and constitutes a revision of the second-generation canon. The fourth generation aims to build a social protection system that would promote the social protection floor and guaranteed income.

Poland has been a member of the International Labour Organization since 1919, that is from the very outset. Poland has ratified 89 conventions, including all major ones. In 2003, Poland ratified Convention No. 102, which is crucial from the point of view of human rights-based social protection. Poland is bound by Part II (Medical Care), Part V (Old-Age

Benefit), Part VII (Family Benefit), Part VIII (Maternity Benefit) and Part X (Survivors' Benefit) of the Convention.

In 1989, Poland initiated a political transformation towards democracy, which allowed it to gradually but consistently become a member of international and European organisations defending human rights. When becoming their member, Poland has implemented the rich acquis of these organisations to its national law.

In 1991, Poland was admitted to the Council of Europe, and in 1993 it ratified the European Convention on Human Rights and recognised the jurisdiction of the European Court of Human Rights, where citizens may address complaints against the state. In 1997, Poland ratified the European Social Charter of 1961, including its Article 12 in its entirety, which deals with the right to social security.

In 1997, Poland joined NATO. And in 1994, it started negotiations on accession to the European Union, which finally took place in 2004. In the pre-accession period, we adopted over 250 laws adjusting Polish legislation to the EU requirements and held a referendum in which as many as 77 percent of Poles opted for the accession.

When implementing social protection system based on economic and social rights, Poland applies both universal contributory systems and non-contributory systems, with the latter filling in the gaps left by the former, and respond to the labour market changes. In March 2019, Poland introduced a supplementary parental benefit, providing the necessary means of subsistence to persons of retirement age who have resigned from employment in the past in order to raise at least four children and, as a result, have not acquired the minimum pension rights. In October 2019, Poland also introduced a supplementary benefit for persons incapable of independent existence, i.e. care-reliant persons who receive benefits financed from public funds in the amount lower than PLN 1,600. *De lege lata* we are building a system of protection against the care-reliance risk, or Long-Term Care system.

## **The added value of international principles, human rights standards and development objectives of social protection**

It can be claimed that human rights standards are currently well developed. On the other hand, the development of mechanisms to comply with these standards is the added value. These include, among others, the interstate and individual complaints to the European Court of Human Rights. Individual actions at the European Court of Human Rights can be brought by any person, non-governmental organisation or group of individuals who believe that they are victims of infringement of rights enshrined in the Convention or its protocols. By the end of 2017, the Court issued 1,145 judgements against Poland, including 958 judgements in which the Court noted that the infringement of the Convention had taken place. Many judgements of the Court, which have been issued in Polish cases, have forced the national authorities to change the law or jurisprudence.

Mechanisms supporting the respect for human rights also include:

- reports on the implementation of the ECHR's judgements drawn up by the Member States and analysed by the Committee of Ministers of the Council of Europe,
- reports on the implementation of the European Social Charter submitted by the Member States to the Committee of Independent Experts of the Council of Europe, which draws conclusions on their basis,
- reports on the implementation of the ratified ILO conventions, as well as on the application of non-ratified conventions, submitted by Member States to the International Labour Office.

In conclusion, it should be noted that the development of the social security rights is the primary added value of international principles, human rights standards and development objectives in the area of social protection. States-Parties to the human rights instruments are required to adopt or adjust their national laws in accordance to international standards.

However, it is worth noting that the control mechanisms for monitoring the fulfilment, by member states, of provisions of these instruments are not too restrictive and sufficiently developed. In practice, a pejorative opinion on a Member State on the European and international arena is the main consequence of negative assessments and analyses of international bodies. The consequences of the Committee's negative conclusions should be more restrictive and control mechanisms should be more developed.

From my perspective, I would also like to point out that in 2003, while preparing for the ratification of ILO Convention No. 102, we carried out in Poland the pioneering calculations of the amount of benefits in order to determine whether we meet the minimum standards set out in that Convention. We have developed a methodology for calculating these standards. It also showed what data we should collect. Collection of this data has, in turn, opened the door to the development of research in the field of social security. It can, therefore, be concluded that the establishment of minimum, economically defined social security standards was also a cornerstone of the development of research, as a result of which the state gained a deeper perspective on whether and to what extent it pursues the social policy objectives.

From my perspective, raising public awareness is also the added value of international standards. Being a specialist, I try not to confine my knowledge to a small university group, but I conduct academic classes in international social law, attract students and listeners, and break through to the media in order to raise the level of human rights awareness.

### **Using the current development impetus to base social protection policies on a human rights perspective**

Social protection standards first of all protect life and work. To a large extent they are dependent on technological progress, globalisation as well as demographic changes. We are facing the longer working life and its greater

variability. The labour force is more diversified, there has been a rapid development of flexible forms of employment, of atypical, marginal and unnamed work. The mismatch between the professional skills and the current labour market needs has become a frequent phenomenon, in spite of the growing level of education of the population. The ageing of the population, a change in the family model, the digitisation of the society and of the economy are all contributing to the emerging inequalities in the European labour market.

The challenge therefore is to use the development impetus to ensure social protection in new economic and demographic conditions, including the extension of this protection to new forms of employment. Another task for the future is to ensure a minimum income for old age. Currently, we usually meet the minimum standards, but what about the next decades? I have in mind the horizon of 2060 and even 2080, when the replacement rates of pension systems will drop – in Poland from the current 55% to less than 30%. I perceive the role of supplementary forms of income security, but also the role of the state in the development of non-contributory systems that supplement income to a certain minimum level where the contributory systems have left a gap.

For example, one of the criteria for receiving a supplementary parental benefit introduced in 2019 is lack of income to provide the necessary means of subsistence. Such regulation complies with the standard set out in ILO Recommendation No. 202 concerning national floors for social protection.

On the other hand, with the supplementary benefit for persons incapable of independent existence, which was also introduced in 2019, we are starting in Poland the process of developing a new risk of care-reliance. The next stage will be a major reform integrating the system of medical certification for the social security purposes, within the framework of which we plan, among other things, to define degrees of care-reliance.

The right course of action to ensure that social protection policies are based on human



rights is also set by the European Pillar of Social Rights, signed jointly by the European Parliament, the Council and the Commission on 17 November 2017 at the Social Summit for Fair Jobs and Growth in Gothenburg. This instrument complements the social protection rights of workers in the EU. It is based on 20 basic fundamental principles of equal opportunities in access to employment, fair

working conditions, as well as social protection and social inclusion.

Finally, I would like to emphasise that the International Labour Organization has great merits and is a leader in the development of the existing civilisation acquis, namely human rights and international standards of social protection. I believe that it will continue this development.

## 100 lat Międzynarodowej Organizacji Pracy. Ochrona socjalna oparta na prawach człowieka na przykładzie Polski

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**STRESZCZENIE:** *Nawiązując do rocznicy 100-lecia działalności Międzynarodowej Organizacji Pracy (ILO) oraz wychodząc od oceny obecnego stanu zabezpieczenia społecznego na świecie, artykuł analizuje ochronę socjalną opartą na prawach człowieka na przykładzie Polski. Choć zabezpieczenie społeczne jest podstawowym prawem człowieka, to nadal połowa ludności na świecie nie ma ochrony socjalnej. Międzynarodowa Organizacja Pracy robi wiele dla poprawy tego stanu rzeczy. Międzynarodowe standardy ILO, Rady Europy i Unii Europejskiej odgrywają istotną rolę w rozwoju kompleksowych i opartych na prawach człowieka systemów ochrony socjalnej na całym świecie. Konieczne jest jednak wzmocnienie mechanizmów egzekwowania tych praw. Po transformacji ustrojowej Polska wstąpiła do organizacji międzynarodowych, m.in. Rady Europy, Unii Europejskiej, dzięki czemu przyjęła ich znaczny dorobek prawny. Polska rozwija ochronę socjalną opartą na prawach człowieka, m.in. wprowadzając bezskładkowe świadczenia uzupełniające, zapewniające ochronę tam, gdzie systemy składkowe pozostawiają lukę. Dalszymi wyzwaniem jest zapewnienie adekwatnej ochrony nowym formom pracy oraz zapewnienie minimalnego poziomu świadczeń na starość.*

**SŁOWA KLUCZOWE:** *Międzynarodowa Organizacja Pracy, ochrona socjalna, zabezpieczenie społeczne, podejście do praw człowieka*