

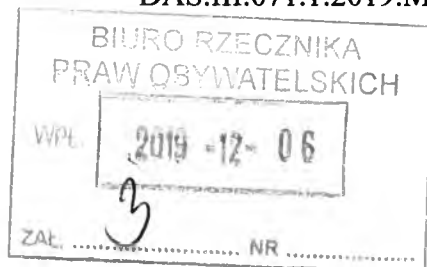


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Warszawa, 4 grudnia 2019 r.

**MINISTER**  
**Rodziny, Pracy i Polityki Społecznej**

DAS.III.071.1.2019.MZ



**Pan**  
**Adam Bodnar**  
**Rzecznik Praw Obywatelskich**

*Franciszek Kwiecień*

w odpowiedzi na pismo Pana Rzecznika z 11 października 2019 r., znak: XI.503.2.2016.ACH dotyczące przygotowania odpowiedzi na pytania Przewodniczącego Otwartej Grupy Roboczej ONZ ds. Praw Osób Starszych, uprzejmie proszę o przyjęcie następujących informacji.

Ministerstwo Rodziny, Pracy i Polityki Społecznej we współpracy z Ministerstwem Sprawiedliwości, w terminie przygotowało i przekazało materiał na potrzeby przygotowania XI sesji grupy roboczej, w zakresie następujących tematów: prawo do pracy i dostęp do rynku pracy oraz dostęp do wymiaru sprawiedliwości. Informacje zostały przygotowane w języku angielskim, nie jest zatem możliwe przekazanie ich polskiej wersji (w załączeniu przedmiotowy materiał).

*Z poważaniem*  
z up. **MINISTER**  
*Stanisław Szwed*  
**Stanisław Szwed**  
**SEKRETARZ STANU**

## Poland's response

### Right to work and access to the labour market

**1.**

There are no specific legal provisions concerning right to work of older persons. Regulations concerning right to work are provided by labour law (Labour Code, other laws and acts specifying the rights and obligations of employees and employers, collective labour agreements and other collective agreements, regulations and statutes based on the law and determining the rights and obligations of the parties to an employment relationship).

According to Labour Code, everyone has the right to choose their work freely. No one, except for the cases specified by the law, can be prevented from exercising their profession.

The Act on employment promotion and labour market institutions guarantees the principle of equal treatment in access to and use of labour market services and labour market instruments, irrespective of gender, race, ethnicity, nationality, religion, religion, belief, disability, age or sexual orientation.

**3.**

Main Statistical Office (GUS) publishes data on labour market, including on unregistered employment, the latest one on this topic is "Unregistered employment in Poland in 2017" (in Polish and English, accessible on GUS internet page). Data are broken down by sex and age, among others.

**4.**

Older people, who register at the powiat labour office as unemployed, can benefit - on general terms - from the support specified in the Act on employment promotion and labour market institutions, such as: job placement, vocational counseling, training, assistance in undertaking subsidized employment, one-off funds for starting a business activity, internships, socially useful work, referral to participate in a special program (persons in a special situation on the labour market, including people aged 50+, have priority). In addition, there are measures dedicated to people over 50 years of age, aimed at promoting the extension of their professional activity period (see question 5).

Older people are less likely to participate in training. Measures have been taken to encourage employers to invest in skills of older employees by dedicating some public funds specifically to training of workers over 45. Any enterprise can apply for an 80% refund of training costs from the National Training Fund (KFS), while micro-enterprises can apply for 100% from the KFS.

People aged 45 years older registered as jobseekers at powiat labour offices are entitled to public support in improving their qualifications, namely they are granted access to trainings organised by powiat labour offices, co-funding of post-graduate studies, exams and licences and training loans.

**5.**

The Act on employment promotion and labor market institutions provides for instruments to encourage employment of older people:

- the employer or entrepreneur who will employ an older unemployed person over 50 years of age may be granted funding of the remuneration of such employee,
- unemployed persons over the age of 50 may be directed to employment as part of intervention works for up to 24 months, reimbursement of their remuneration and social security contributions is made for up to 4 years,
- employers and other organizational units employing the elderly are exempt from the obligation to pay contributions to the Labour Fund and the Guaranteed Employee Benefits Fund (FGŚP) for 12 months and for 30 days prior to employment if the employees were registered as unemployed,
- employers and other organizational units employing persons over 55 years (women) and 60 years (men) are exempt from the obligation to pay contributions for FP and FGŚP for them,
- employers or entrepreneurs may receive co-financing of the remuneration of an employed unemployed person who is over 50 years old, for 12 (if the unemployed person is no older than 60 years) or for 24 months (if the unemployed person is 60 years old).

## 7.

Labour Code provides basic rights for employees, which are applicable to older persons. Employers are obliged to respect the dignity and other personal rights of employees. Employees have:

- equal rights for equal performance of the same duties,
- the right to a fair remuneration for work, to equal remuneration for the same work or for work of an equal value,
- the right to rest, under the provisions on working time, time off and annual leave.

Employers are obliged to ensure safe and healthy working conditions for their employees.

Concerning safe working conditions, there are no specific rules for older persons. Employers have to assess occupational risk resulting from the work at every workstation and undertake the measures to eliminate or reduce that risk. They are obliged to enable employees to improve their professional qualifications.

Polish law provides a pre-retirement protection for older employees. An employer shall not terminate an employment contract of an employee who has no more than 4 years to reach the retirement age if the period of employment enables him to obtain the right to retirement pension with that age. This provision shall not apply if the employee has the right to a disability pension for total incapacity to work.

Older employees have stronger protection against unjustified or illegal termination of a permanent employment contract, than other employees. If such termination concerns an employee who has no more than 4 years to reach the retirement age, the labour court shall obligatory accept the employee's request for reinstatement, unless in case of bankruptcy or liquidation of the employer, in such case the court rules on compensation. After reinstatement, the employee is entitled to remuneration for the entire period of being out of work.

There is also a pre-retirement protection for older employees provided by the Act on specific terms and conditions for terminating employment relationships with employees for reasons not related to the employees. This protection applies if the employer, who employs at least 20 employees, wants to terminate employment relationships with a large group of employees for reasons not related to the employees. Within the period of special protection the employer may only terminate the current working and pay conditions of the employee who has no more than 4 years to reach the retirement age.

Labour Code also provides special regulations for older workers concerning remuneration for the time of incapacity to work. An employee who has reached 50 years of age, is entitled to sickness benefit for the period of incapacity to work lasting in total longer than 14 days (in case of younger workers – 33 days). Such employee retains, for the period of the incapacity to work, regarding:

- illness or isolation due to a contagious disease – the right to 80% of remuneration,
- accident on the way to and from work – the right to 100% of remuneration,
- necessary medical examinations provided for donors of cells, tissues and organs – the right to 100% of remuneration.

For the above periods of incapacity older worker is entitled to sickness benefit under the rules determined in separate provisions.

## 8.

The provisions against discrimination in employment, including on grounds of age, are regulated in Labour Code. Any discrimination in employment, direct or indirect, in particular including on grounds of age - is prohibited. Employees should be treated equally in relation to establishing and terminating an employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications, in particular including regardless of age. However, the principle of equal treatment in employment is not affected by the measures proportionate to achieving the legitimate aim of differentiating an employee's situation, consisting of, among others, applying the criterion of seniority when determining the conditions of employment and dismissal of employees, remuneration and promotion rules as well as access to training in order to raise professional qualifications, which justifies the different treatment of employees due to age.

## Access to justice

### 1.

In the Polish legal system, there are no specific regulations concerning access to justice solely for the elderly. According to the Constitution, all persons are equal before the law, all persons have the right to equal treatment by public authorities, thus access to justice is provided on equal terms. However, the current provisions of civil and criminal procedure contain special provisions allowing the court to conduct proceedings in compliance with the rights of the elderly. In the course of proceedings, the courts have the procedural power to take into account a number of limitations of the elderly which hinder them from appearing in person at the court for the purpose of hearing as a party or witness and to exempt them from this obligation (see: access and accessibility).

Concerning the complaints mechanism, it should be stated that, in line with general principles, the elderly may:

- lodge a complaint against the excessively lengthy preparatory or judicial proceedings in which the court has the possibility to grant adequate redress for the identified lengthiness;
- lodge a complaint in the administrative proceedings against the activity of the court to the president of the court pursuant to *the Act – the Law on the Common Courts System*.

Additionally, the elderly may bring an action to protect personal rights – Article 448 of the Civil Code gives the court the power to grant monetary compensation at the request of the aggrieved party in case of infringement of any of their personal rights or to award an appropriate sum of money for the social cause indicated by them. Thus, where dignity or honour is infringed because of the age of the aggrieved party, the latter may seek appropriate redress from the court.

### 2.

The existing network of courts and newly built facilities take into account the interests of the elderly in small towns and cities in terms of distance to the district court.

In the case of free legal aid outside the court, on the basis of *the Act on Free Legal Aid, Citizens Advice and Legal Education* in the whole country, at specific points in the territory of a given county legal advice is organized by the County Office. Legal aid is provided mainly by advocates and attorneys at law. Such assistance is available to any natural person who, before obtaining it, declares in writing that they cannot afford the cost of paid legal assistance. If necessary, legal aid may be provided in the place of residence. Free legal aid includes, among others, legal advice, drafting a pleading, free mediation.

As far as alternative dispute resolution is concerned, the elderly can, as a general rule, use arbitration or mediation (out-of-court or in-court).

### 3.

The protection of procedural rights of the elderly is ensured by:

- in civil proceedings, among others:
  - provisions of Article 151(1) and (2) of the Code of Civil Procedure, which provides for the possibility of conducting a court hearing outside the court building or in the form of a video conference;
  - provisions of Article 235(1) and (2) of the Code of Civil Procedure, which provides for the possibility of delegating the taking of evidence to a designated judge or another court, or the taking of evidence in the form of a video conference, in a situation where the taking of such evidence before the court adjudicating the case causes major inconveniences (this may be e.g. the state of health of the elderly person to be heard);

- provisions of Article 263 of the Code of Civil Procedure and Article 271<sup>1</sup> of the Code of Civil Procedure (since 7 November 2019), introducing respectively: the obligation to examine a witness who cannot appear on summons due to illness, disability or other irreparable obstacles in their place of residence; the possibility for a witness to give a testimony in writing.
- provisions of Article 547(2) of the Code of Civil Procedure which allow the person whose legal incapacitation is petitioned to be heard by a judge delegated in their place of residence.
- in criminal proceedings:
  - if necessary, hearing a person with the assistance of a sign language interpreter or an expert in the place of residence of a witness who is unable to appear in court by means of a video conference;
  - admissibility of exercising the rights of a person who is incompetent, particularly due to age or health by the person under whose permanent care the incompetent person remains (Article 51 of the Code of Criminal Procedure).

The Polish legal system does not have any special provisions governing the exemption from court fees or the appointment of a legal representative only for the elderly. In view of the constitutionally guaranteed principle of the equal treatment of citizens, the existing solutions apply to all interested parties.

Outside the courtroom, an elderly person, like any citizen, can benefit from free legal assistance (see above). In the course of court proceedings: 1) in civil proceedings, an application for exemption from court fees may be submitted together with a declaration that the applicant is not able to bear them without causing any material inconvenience to themselves and their family and to request the appointment of a professional representative by a court (also a declaration should be submitted before a court stating that the applicant is not able to bear the costs of the fee of an advocate or attorney at law without causing any inconvenience to the necessary subsistence of the applicant and their family); 2) in criminal proceedings, the suspect/accused may demand to appoint a defence attorney *ex officio* and the aggrieved party may demand to appoint a legal representative *ex officio* if they duly prove that they are unable to bear the costs of defence or representation without causing any inconvenience to the necessary subsistence of themselves and their family.

The Code of Criminal Procedure also provides for obligatory defence, which in a specific set of circumstances will also apply to the elderly. Thus, the accused must have a defence attorney if they are deaf, dumb or blind, there is reasonable doubt as to whether their ability to recognize the significance of the act or to direct their conduct was excluded or significantly reduced at the time of the commission of the act, there is reasonable doubt as to whether their mental health allows them to participate in the proceedings or to defend themselves in an independent and reasonable manner. The accused must also have a defence attorney if the court deems it necessary due to other circumstances hampering the defence.

It is facilitated by the progressive digitalization of the justice system consisting of the implementation of systems such as: electronic protocol, e-court, access to information from the National Register of Pledges and the Land and Mortgage Register Database, electronic writ of payment proceedings, court information portals and court websites, which enable conducting certain procedural activities and obtaining information on the status of a case by electronic means, without the need to appear in court in person. However, the elderly person must have computer skills and access to a specific computer system.

#### 4.

Additional procedural instruments that can be applied to elderly people to facilitate their access to justice: 1) the court may, in case of justified need, provide the parties and participants of the proceedings representing themselves without professional support with necessary instructions as to the procedural steps; 2) the possibility of appointing *ex officio* a legal representative in matters concerning the incapacitation of an elderly person, even without the request of the person concerned by the proceedings, if the court considers the participation of the legal representative to be necessary; 3) the possibility of appointing a guardian for a disabled person (who may be an elderly person) if they need help in dealing with a specific matter, a specific type of matters or any other matters; 4) the possibility to establish, in matters specified in the Mental Health Protection Act, *ex officio* or at the request of a person staying in a psychiatric hospital, a guardian, if such a person needs help to conduct their matters during their stay. It also applies to elderly people who are mentally ill or mentally handicapped and stay in a social welfare home; 5) the possibility for the court to notify the prosecutor about any case in which the prosecutor is considered to be necessary (e.g. because of the elderly age of the party acting without a professional legal representative).

Improvement of communication with an interested party is facilitated by services provided by the Customer Service Office to inform the interested parties.

As regards workplace training in the justice sector: 1) in 2017-2019, National School of Judiciary and Public Prosecution organised and cooperated in the organisation of a series of training events on the rights of elderly people, enabled judges, court referendary and assistants to take part in the an international training course entitled *Applying EU Anti-Discrimination Law* (Academy of European Law) in Trier, where the issues concerning age discrimination in the light of the case-law of the Court of Justice of the European Union and the rights of older people in the judicial training were raised; 2) on 24-25 September 2019 in Warsaw, a workshop for the management staff of common courts, entitled *Standardy profesjonalnej obsługi interesanta i ich wpływ na postrzeganie sądu przez obywatela* [*Standards of professional customer service and their impact on the perception of the court by the citizen*], was held.

#### 5.

Pursuant to Article 10 of the Constitution of the Republic of Poland, the system of the Republic of Poland is based on the separation of and balance between the legislative, executive and judicial powers, the latter being exercised by courts and Tribunals. As stated in Article 45 of the Constitution, everyone shall have the right to a fair and public hearing of his case before a competent, impartial and independent court.

As a general rule, an elderly person may lodge an administrative complaint against the activities of the court to the president of the court. The president of the court is competent to hear complaints against the activities of the court, including the activities of customer service offices. Individual complaints of the elderly people participating in court proceedings against the behaviour of court employees are considered by the directors of courts, within the framework of the powers set forth in the Law on the Common Courts System.