

## **Provisions Governing the Right to Widowhood Support, including Reasons and Grounds**

### **Article 1.**

A right to widowhood support is established for all individuals, the granting of which is not dependent on:

1. the age of the widow or widower,
2. whether the widow or widower has entered into a new marriage, another formal relationship, or an informal relationship,
3. residence in the country where the protection is provided,
4. the financial situation of the spouse at the time of death,
5. the circumstances of the spouse's death.

### **Article 2.**

The right as referred to in Article 1 applies equally to women and men. The extent of support granted by this right also includes the individuals who were in a formal relationship other than marriage, as well as those in informal relationships.

## **REASONS AND GROUNDS**

### **1. The Legal Status of the Provisions Governing the Right to Widowhood Support in Selected International and EU Legal Acts**

In the 20th century, the right to social security was recognized as a human right.<sup>1</sup> The Universal Declaration of Human Rights, adopted by Resolution No 217/III A on December 10,

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<sup>1</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze*, Warszawa 2005, p. 40.

1948, in Paris by the United Nations General Assembly, states in Article 22 that ‘Everyone, as a member of society, has the right to social security’<sup>2</sup>. In Article 25(1), it states that ‘Everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control.’<sup>3</sup> Thus, Article 25(1) of the Universal Declaration of Human Rights explicitly refers to the right to security in the event of widowhood, a right granted to every individual.<sup>4</sup>

The regulations governing the right to social security, including in the event of widowhood, may be found in international agreements. However, it seems that those regulations have yet to ensure an equal and satisfactory level of support for widows and widowers to this day.

Social security is governed by conventions of the International Labour Organization (ILO). The ILO Convention No 39, adopted during the interwar period, concerning mandatory death insurance for wage workers employed in industrial and commercial enterprises, liberal professions, as well as home workers and domestic employees, in Article 6, stipulates that death insurance should provide a ‘right to a pension’ for the widow. Article 7 defines the conditions under which this right may be granted to the widow. The ILO Convention No 102, concerning minimum social security standards, adopted in Geneva on June 28, 1952, in Articles 31 and 32(d), provides for the assurance of benefits by member states of the convention in the case of loss of livelihood by the widow or children due to the death of the breadwinner, if this circumstance results from a work accident or recognized occupational disease. Moreover, Article 32(d) further stipulates that, in relation to the widow, the right to benefits may depend on her being considered unable to support herself independently. As noted in the doctrine, ‘Convention No 102 concerning minimum social security standards is regarded as the fundamental international instrument in the field of social security’<sup>5</sup>. The ILO Convention No 128, concerning benefits in the event of disability, old age, and the death of the breadwinner, adopted on June 7, 1967, provides the widow with the right to benefits in the event of the death of the breadwinner, subject to certain conditions (Article 21). The benefits to which a widow is

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<sup>2</sup> The wording of Art. 22 of the Universal Declaration of Human Rights in Polish is provided in: S. Jarosz-Żukowska ed., *Prawa człowieka i system ich ochrony. Teksty źródłowe*, Wrocław 2002, p. 15.

<sup>3</sup> The wording of Art. 25 Paragraph 1 of the Universal Declaration of Human Rights in Polish is provided in: S. Jarosz-Żukowska ed., *Prawa człowieka i system ich ochrony. Teksty źródłowe...*, *op. cit.*, p. 15.

<sup>4</sup> See G. Uścińska, *Standardy zabezpieczenia społecznego Międzynarodowej Organizacji Pracy*, Zabezpieczenie Społeczne. Teoria, Prawo, Praktyka 2018, no 8, p. 43.

<sup>5</sup> G. Uścińska, *Standardy zabezpieczenia społecznego Międzynarodowej Organizacji Pracy...* *op. cit.*, p. 46.

entitled in the event of the death of the breadwinner are also addressed in the ILO Recommendation No 131, concerning benefits in the event of disability, old age, and the death of the breadwinner, adopted on June 7, 1967.

Article 9 of the International Covenant on Economic, Social and Cultural Rights, open for signature in New York on December 19, 1966, states that ‘the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.’ Furthermore, Article 3 of the Covenant stipulates that ‘the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all the economic, social, and cultural rights set forth in the present Covenant.’

The right to social security for workers and all persons dependent on them is addressed in the European Social Charter, drafted in Turin on October 18, 1961, as well as in its revised version adopted in 1996 (the Revised European Social Charter). Additionally, relevant regulations in the field of social security are contained in the European Social Security Code of 1964, as well as in the Revised European Social Security Code of 1990.

The international social security regulations, including those for widowhood, are scattered across various legal instruments. This situation does not promote the harmonization of those regulations within the legal systems of various countries. Furthermore, the provisions of international acts regulating this matter do not always provide consistent solutions, often being of a discretionary nature, and leave the detailed regulation of the right to social security in the event of widowhood to the domestic legislation of the states. As a result, national regulations are influenced by political and ideological factors prevailing in respective countries, contributing to a picture of varied protection levels, and sometimes even gender inequalities in access to social security.

Even within the European Union, the harmonization of member states' regulations on social security has been abandoned in favour of coordinating those regulations.<sup>6</sup> Within the normative acts of the European Union, there are regulations aimed at coordinating social security systems, including the Regulation (EC) No 883/2004 of the European Parliament and Council of April 29, 2004, on the coordination of social security systems, and the Regulation (EC) No 987/2009 of the European Parliament and Council of September 16, 2009, on the

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<sup>6</sup> Coordination of social security systems assumes the maintenance of differentiation among these systems in individual countries, while simultaneously adopting regulations designed to eliminate discrepancies that may arise in the application of social security law in different states (S. Majkowska-Szulc, M. Zieleniecki in: S. Majkowska-Szulc, M. Tomaszewska, M. Zieleniecki ed., *Zabezpieczanie społeczne w Unii Europejskiej*, Warszawa 2012, p. 19-20; see T. Bińczyk-Majewska, *Koordinacja systemów zabezpieczenia społecznego w Unii Europejskiej*, Zakamycze 1999, p. 33-34). See Art. 153 Paragraph 4 Treaty on the Functioning of the European Union (consolidated text) (Journal of Laws of the EU C 326 from 26.10.2012, p. 47).

implementation of Regulation (EC) No 883/2004 regarding the coordination of social security systems. It should be noted that those regulations aim to coordinate the different social security systems in force in the respective member states. The European Union does not harmonize the social security legislation, as this falls under the responsibility of the member states. On December 13, 2016, the European Commission presented a proposal to amend the coordinating regulations in a proposal that included a Regulation of the European Parliament and Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 on the implementation of Regulation (EC) No 883/2004.<sup>7</sup> In the context of the European Union documents, it is also important to mention the 1989 European Social Charter, the 2000 Charter of Fundamental Rights, and the Council Recommendation (EC) No 92/442 on the convergence of social protection goals and policies from 1992.<sup>8</sup> It is also emphasized in the literature that in the area of social security, the EU institutions have left significant discretion to the member states, not striving for the unification of legal solutions, including standards in this area.<sup>9</sup>

The first regulations regarding widowhood benefits appeared as early as the beginning of the 20th century.<sup>10</sup> It is worth noting that, as indicated in the related literature, some of the earliest international regulations concerning women's situation referred specifically to their legal status in the context of labour protection and social security.<sup>11</sup> Today, in the constitutions of only some countries, there are regulations that provide for the right to social security in the event of widowhood.<sup>12</sup> For example, Article 63, Paragraph 3 of the Constitution of the Portuguese Republic of 1976 may be cited<sup>13</sup> or Article XIX, Paragraph 1 of the Fundamental

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<sup>7</sup> Source: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A52016PC0815> (Access 25.10.2024).

<sup>8</sup> It is emphasized that the guidelines contained in Council Recommendation (EC) No. 92/442 are general and, therefore, may be implemented in different ways in the individual member states of the European Union (G. Uścińska, *Europejskie standardy zabezpieczenia społecznego współczesne rozwiązania polskie*, Warszawa 2005, p. 557).

<sup>9</sup> G. Uścińska, *Europejskie standardy zabezpieczenia społecznego współczesne rozwiązania polskie...*, *op. cit.*, p. 503.

<sup>10</sup> See M. Orłowska-Bednarz, M. Bednarz, *Zabezpieczenie społeczne jako forma ochrony warunków życia*, *Studia z zakresu nauk prawnoustrojowych. Miscellanea*, Volume 2, 2012, p. 63.

<sup>11</sup> See A. Przyborowska-Klimczak, *Ochrona praw kobiet w świetle dokumentów międzynarodowych* in: *Divina et humana: Księga Jubileuszowa w 65. rocznicę urodzin Księdza Profesora Henryka Misztala*, A. Dębiński, W. Bar, P. Stanisławski ed., Lublin 2001, p. 179.

<sup>12</sup> See G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 45.

<sup>13</sup> Article 63 addresses, among other things, social security. Paragraph 1 stipulates that everyone has the right to social security, while Paragraph 3 states: “*The social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work*” (source: [https://biblioteka.sejm.gov.pl/wp-content/uploads/2016/03/Portugalia\\_ang\\_010116.pdf](https://biblioteka.sejm.gov.pl/wp-content/uploads/2016/03/Portugalia_ang_010116.pdf); Access 27.10.2024).

Law of Hungary from 2011 may also be cited as an example.<sup>14</sup> The Constitution of the Republic of Poland from 1997,<sup>15</sup> in Article 67, addresses the right to social security in the context of incapacity for work due to illness or disability, as well as after reaching retirement age (section 1), or remaining unemployed through no fault of one's own and lacking other means of support (section 2). Article 68 discusses the right to healthcare, Article 69 addresses assistance for disabled individuals, and Article 71 mentions assistance for mothers (section 2) and families in difficult material and social situations, especially large and single-parent families (section 1). Thus, only in the latter case is there a reference in the Polish Constitution to the support in the event of the death of a spouse, but this is primarily in the context of the economic and social situation of the family. In the context of the Polish law, this issue is particularly relevant, as the Act of July 26, 2024, amending the Act on Pensions and Invalidity Benefits from the Social Insurance Fund and certain other laws<sup>16</sup> puts forward new provisions concerning the so-called widow's pension. The Act will come into force on January 1, 2025.<sup>17</sup> The Act provides, among other things, that a person entitled to a survivor's pension in the event of widowhood, when combined with rights to other pension or disability benefits, will be able to choose to receive one of those benefits in full, while the other will be paid at the amount specified by the law (see the newly introduced Article 95a, Section 1). Additionally, according to the provisions of the Act, the right to receive benefits on those terms is granted to the entitled person in specific situations, such as reaching retirement age (Article 95a, Section 2, Point 1) or remaining in marital union until the spouse's death (Article 95a, Section 2, Point 2). Moreover, the payment of those benefits will cease on the day before the entitled person enters into a new marriage (Article 95a, Section 3).

From the above-mentioned legal acts, primarily international legal instruments, it may be concluded that the right to social security (fr.: *droit de la sécurité sociale*) constitutes one of the human rights and should be granted in accordance with international standards and recommendations.<sup>18</sup> The provision of social security in the event of widowhood cannot be left solely to the arbitrary decision of respective states but should align with internationally accepted

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<sup>14</sup> Article XIX, Paragraph 1 of the Hungarian Constitution states: 'Hungary strives to ensure social security for every citizen. Every Hungarian citizen is entitled to legally prescribed support in the case of maternity, illness, disability, widowhood, orphanhood, and involuntary unemployment.' (translated into Polish by J. Snopek, source: <https://libr.sejm.gov.pl/tek01/txt/konst/wegry2011.html>; Access: 27.10.2024).

<sup>15</sup> The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No 78, item 483 with subsequent amendments).

<sup>16</sup> Journal of Laws item 1243.

<sup>17</sup> See Art. 17 of the Amending Act, although some of the relevant provisions have come into effect.

<sup>18</sup> M. Orłowska-Bednarz, M. Bednarz, *Zabezpieczenie społeczne jako forma ochrony warunków życia...*, op. cit., p. 56.

standards and recommendations. In the context of the solutions adopted within the European Union, the doctrine emphasizes that social security regulations should take into account the changing family structures and the evolving demographic situation.<sup>19</sup>

In 1972 P. Laroque righteously commented that *'the existing systems of social security were conceived and developed in terms of the more or less tacitly accepted notion of the dependent position of women in the family. On the other hand, the present trend of thought in all modern countries is guided by the growing belief in equality between the sexes and by the suppression of discrimination between men and women. It may be asked, then, whether the time has not come to reconsider the principles governing widows' pension schemes.'*<sup>20</sup> Thus, the rationale for adopting provisions of this nature is an attempt to achieve at least partial harmonization of regulations regarding social security in the event of widowhood.

## **2. Differences in Regulations Governing Widowhood Support. Lack of Harmonization.**

National social security systems differ from one another. Regulations concerning widow's pensions, typically linked to survivor benefits,<sup>21</sup> that often constitute a part of the above systems, are subject to continuous changes. It results in a situation where, aside from the declaration of the right to widowhood benefits expressed (directly or indirectly) in many international acts of a universal or regional nature, actual regulations in respective countries follow various paths, ranging from high levels of protection to situations where such protection is virtually nonexistent. Those differences do not solely stem from the wealth levels of respective countries but are largely influenced by cultural and ideological factors prevailing in each state. It is particularly true in societies where the position of women is still seen through the lens of their dependence on men. In those cases, widowhood support is often a purely illusory regulation, and in the event of a husband's death, a woman is frequently left dependent on the deceased's family or male descendants.

Differences in the regulations concerning widowhood support relate to various aspects, such as the requirements that must be met to qualify for benefits (e.g., age requirements, residence in the country where the benefit is granted, having common children, and others), the

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<sup>19</sup> G. Uścińska, *Europejskie standardy zabezpieczenia społecznego współczesne rozwiązania polskie...*, *op. cit.*, p. 540.

<sup>20</sup> P. Laroque, *Women's rights and widows' pensions*, *International Labour Review* 1972, vol. 106(1), p. 2.

<sup>21</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody*, Warszawa 1966, p. 145.

nature of the benefit, and the circumstances under which the benefit may be suspended (e.g., entering a new relationship, even an informal one, starting work, etc.).

In the context of widowhood support, it is rare to find regulations where the right to the support is granted solely by the fact of losing a spouse, without additional requirements. Although an evolution has been made by including widowers alongside widows in the support in case of a spouse's death,<sup>22</sup> the granting of this protection is still often conditional on factors such as reaching a certain age, incapacity to work, disability of the widow or widower,<sup>23</sup> the circumstance that the widow or widower is not employed, or that they are raising minor children of the deceased spouse.<sup>24</sup> In Article 60(1) of the International Labour Organization (ILO) Convention No 102 on Minimum Standards of Social Security, a reservation is made stating that the granting of widow's benefits may be conditioned by national legislation on the determination of whether the widow is unable to support herself independently.<sup>25</sup> The requirements that condition a widow's right to benefits based on reaching a certain age are stipulated in Article 21(2) of the International Labour Organization (ILO) Convention No 128 concerning benefits in the event of disability, old age, and death of the breadwinner. However, according to that convention, age requirements are not permissible if the widow is disabled or if she is raising a surviving child of the deceased (Article 21(3)). According to Article 60(1) of the European Code of Social Security (1964), a widow may be entitled to benefits if, under national law, she is unable to support herself independently. In the case of a childless widow, it is sometimes stipulated that the granting of the right to benefits may be contingent upon the duration of the marriage.<sup>26</sup>

There are regulations that also provide benefits for younger widows or widowers but in those cases the benefit is usually paid for one year or several years. That, in effect, serves only to help them adjust to their new situation or to acquire new qualifications in order to enter the workforce.<sup>27</sup> It is also worth noting the regulations such as those resulting from Article 66(3) of

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<sup>22</sup> It should be noted that in the case of Council Directive (79/7/EEC) of December 19, 1978, on the gradual implementation of the principle of equal treatment of women and men in the field of social security (OJ EU L 1979 No. 6, p. 24), which aims to achieve equal treatment of women and men in the area of social security, its provisions clearly indicate that the directive does not apply to rules concerning benefits in the event of the death of a breadwinner or family benefits (Art. 3 Paragraph 2 of the Directive).

<sup>23</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 241.

<sup>24</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody*, Warszawa 1966, p. 146

<sup>25</sup> See G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 242.

<sup>26</sup> See G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 242.

<sup>27</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, *op. cit.*, p. 147.

the Revised European Social Security Code of 1990 that provides for the payment of the so-called ‘adaptation allowance.’<sup>28</sup> According to the above regulation, a widow is entitled to benefits in cases where the requirements for receiving a benefit in the event of the death of the breadwinner have not been met. In such a situation, the widow is entitled to a benefit for a specified period or to a one-time financial severance payment.<sup>29</sup>

The Convention No 128 of the International Labour Organization concerning invalidity, old age, and survivors' benefits, in Article 22, defines the list of entitled persons, that includes the wife, children of the deceased, and other individuals dependent on the deceased's support. It seems that the last category also includes individuals who were in informal relationships.<sup>30</sup> Some national legislations allow individuals who were not married to the deceased to receive widowhood benefits.<sup>31</sup> It happens that, under certain national regulations, the right to benefits is also granted to partners in cohabiting relationships or to individuals in informal same-sex relationships.<sup>32</sup>

It is most common to encounter regulations whereby only the ‘current spouse, who remained married until the death of the other spouse, is entitled to receive a widow's pension.’<sup>33</sup> The above does not take into account the situation of a former spouse. In such a case, even if the former spouse was married to the deceased for a significant portion of their life, they will not be entitled to participate in the widow's pension scheme.

Some national regulations stipulate that the widow's pension is paid as long as the widow remains unmarried or the widower remains single.<sup>34</sup> Other regulations go a step further, allowing for the suspension of that benefit in the case of the widow or widower entering into a non-formal relationship. Such solutions are permissible within the context of certain international legal instruments. For example, the Convention No 102 of the International Labour Organization (ILO) on minimum standards of social security, in Article 69(1)(j), permits the suspension of the benefit due to the widow upon the death of the breadwinner, ‘for as long as she lives with a man as his wife.’ Similarly, the Convention No 128 of the ILO on benefits in the case of disability, old age, and death of the breadwinner, in Article 32(1)(g), provides for

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<sup>28</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, op. cit., p. 245.

<sup>29</sup> *Ibidem*.

<sup>30</sup> Por. *Ibidem*, p. 244.

<sup>31</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, op. cit., p. 146.

<sup>32</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, op. cit., p. 245.

<sup>33</sup> See D. Molzan, *Military Pensions: What Military Spouses Should Know*, Law Now 1993, 17 no 7, p. 20; N. R. Cahn, J. Carbone, *Redefining Public Benefits*, Rutgers University Law Review 2024, 76 no 3, p. 634.

<sup>34</sup> Por. D. Molzan, *Military Pensions: What Military Spouses Should Know...*, op. cit., p. 20.

the possibility of suspending the benefit granted to the widow in the case of the death of the breadwinner 'for as long as she lives with a man in an unregistered relationship.' Therefore, in the regulations of certain countries, it is possible to suspend the benefit granted to a widow or widower upon remarriage, and in some countries, even upon entering into a non-formal relationship.<sup>35</sup>

There are also regulations under which the right to a benefit granted to a widow or widower may be suspended if they take up employment or reach a certain income level. Such a solution is permitted by Article 60(2) of the European Code of Social Security of 1964.

### **3. Ideological Factors Influencing Regulations Governing Widowhood Support**

The most significant influence on the regulation of widow's benefits continues to be ideological factors. Pierre Laroque, pointing to the factors influencing the regulation of widow's rights, first mentions the position of women in the family and society.<sup>36</sup> That position is predominantly viewed through the lens of prevailing stereotypes of women's dependence on men and beliefs about gender inequality. The related literature emphasizes that the discrimination of women is greater in the field of economic and social rights than in the areas of civil, political, or cultural rights.<sup>37</sup> As noted in the related literature, the fight for women's emancipation began with demands of a social nature, including those related to social benefits.<sup>38</sup>

The provision for widows is often seen primarily as a form of compensation for the loss of the husband's income, sometimes completely overlooking the actual needs of the widow. Those include, in particular, restoring the widow's independence, ensuring a livelihood for her and the children who remain under her sole care, and enabling her to function in society. The widow, having lost her husband, must take on his responsibilities within the household and family care.

For many centuries, the legal status of individuals was shaped through the lens of the family, which was seen as the fundamental social unit.<sup>39</sup> This particularly negatively affected the position of women, as in the family structure dominated by patriarchy, they remained under the control of their fathers in youth, then under the care of their husbands after marriage, and,

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<sup>35</sup> See the examples of the national regulations as referred to in: G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 254.

<sup>36</sup> P. Laroque, *Women's rights and widows' pensions...*, *op. cit.*, p. 1.

<sup>37</sup> E. Pobierowa, *Pozycja kobiet w dokumentach prawa międzynarodowego*, Poznań 1975, p. 111.

<sup>38</sup> *Ibidem*, p. 103.

<sup>39</sup> J. Piotrowski, *Spoleczne problemy rodziny* in: A. Rajkiewicz ed., *Polityka społeczna*, Warszawa 1979, p. 222.

in the event of their husband's death, under the care of their sons.<sup>40</sup> The family, understood as the basic social unit, served as a reference point for many provisions in international legal acts. For example, Article 10, Paragraph 1, of the International Covenant on Economic, Social and Cultural Rights of 1966 states that the family as the natural and fundamental unit of society should be granted the widest possible protection and assistance, particularly when establishing it and during the period in which the family is responsible for the care and upbringing of children dependent on it. Meanwhile, Article 16, Paragraph 3, of the Universal Declaration of Human Rights stipulates that 'the family is the natural and fundamental unit of society and is entitled to protection by society and the State.'<sup>41</sup>

As early as the 19th century, the emancipation of the individual was recognized to be possible only when society moved away from the patriarchal concept of the family.<sup>42</sup> A characteristic feature of progressive societies is the recognition of the individual as the central subject of rights.<sup>43</sup> In regulations that link the granting or amount of social security in the event of a spouse's death to having common offspring or not remarrying<sup>44</sup>, one may observe reflections of an old way of thinking that viewed the individual through the lens of the family. Those conclusions do not, of course, dispute the fact that having children often involves higher expenses for the widow or widower; however, this does not justify the lack of support for individuals who, after losing a spouse, do not have children.

Such an understanding of the dependency of an individual's legal situation also leads to legal solutions that limit women's freedom of movement. A common element in regulations on widow's benefits is the so-called residency requirement, which means that the widow must remain in the country granting the benefit. It implies that if the widow changes her place of residence to another country, she may lose or have her benefit suspended. That solution seems entirely irrational, especially considering that the widow may, for example, find a better-paying job outside her country, which would improve the living conditions for both herself and the children she has raised.

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<sup>40</sup> See S. Dahiya, *Legislation & Social Change Henry Maine's Approach to Progressive Society & Widow's Right to Re-Marriage...*, *op. cit.*, p. 357.

<sup>41</sup> Source: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/polish-polski> (Access 31.10.2024).

<sup>42</sup> S. Dahiya, *Legislation & Social Change Henry Maine's Approach to Progressive Society & Widow's Right to Re-Marriage...*, *op. cit.*, p. 357. See J. Piotrowski, *Spoleczne problemy rodziny...*, *op. cit.*, p. 224.

<sup>43</sup> S. Dahiya, *Legislation & Social Change Henry Maine's Approach to Progressive Society & Widow's Right to Re-Marriage...*, *op. cit.*, p. 357.

<sup>44</sup> It refers to situations in which the right to widow's pension is suspended in cases where a widow enters into a marriage, even if it is an informal union.

Gender equality in the field of economic and social rights means that both women and men should have equal rights in the area of benefits related to widowhood support.<sup>45</sup> In the case of a widower, the right to security was (and sometimes still is) typically conditional on whether he was financially supported by his wife during her lifetime due to being unable to work,<sup>46</sup> for example, as a result of disability.

For many years, it has been argued that the current social security system requires reform. Having been developed in the second half of the 19th century and the early 20th century, it was designed with an industrial society in mind. However, it does not align with the needs of a post-industrial society.<sup>47</sup> In a post-industrial society, where a significant portion of industrial production has been transferred to technology, human involvement in the production process decreases. At the same time, concerns about employment rise, with many individuals remaining unemployed. Even those who are employed often work under short-term contracts, which increases the sense of insecurity for workers. It is coupled with the necessity of constantly being engaged in the job search process and recurring periods of unemployment.<sup>48</sup> In the case of married individuals, when one spouse is searching for a job, the burden of supporting the family and maintaining the household more heavily falls on the other spouse. It may be argued that the situation of individuals during the period between leaving a job and seeking a new one is better for those who are married than for widows or widowers, who cannot rely on the support of another person.

Recognition and guarantee of social security rights constitute one of the conditions for the development of the individual and their full participation in social life.<sup>49</sup> The current social security regulations traditionally reflect the belief, prevalent in many societies, of the central importance of the family as the basic social unit, and are less focused on the needs of the individual in the modern economy. Therefore, there is an emphasis on the need to redesign social security benefits to make them accessible to a wider segment of society, better aligned with the needs of the changing economy,<sup>50</sup> rather than being viewed solely through the lens of the material situation of the family. Moreover, widow's benefits should not be viewed as a mere compensation for the loss of income that the deceased spouse provided for the widow and the

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<sup>45</sup> See E. Pobierowa, *Pozycja kobiet w dokumentach prawa międzynarodowego...*, *op. cit.*, p. 103.

<sup>46</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, *op. cit.*, p. 146.

<sup>47</sup> M. Orłowska-Bednarz, M. Bednarz, *Zabezpieczenie społeczne jako forma ochrony warunków życia...*, *op. cit.*, p. 72.

<sup>48</sup> M. Orłowska-Bednarz, M. Bednarz, *Zabezpieczenie społeczne jako forma ochrony warunków życia...*, *op. cit.*, p. 73-74.

<sup>49</sup> See E. Pobierowa, *Pozycja kobiet w dokumentach prawa międzynarodowego...*, *op. cit.*, p. 104.

<sup>50</sup> N. R. Cahn, J. Carbone, *Redefining Public Benefits...*, *op. cit.*, p. 638.

entire family during their lifetime. That perspective results in most benefits being purely financial. It is important to note that discussions on social security highlight the need not only to ensure adequate living conditions but also to provide real guarantees for the full development of the individual.<sup>51</sup> According to J. Piotrowski, ‘insurance benefits must become more flexible, more diversified due to real needs, and therefore more targeted towards specific situations.’<sup>52</sup> Also, ‘the social insurance benefits system, focused on typical and common situations, must be supplemented with social benefits that have a more individualized character to meet the needs occurring either in specific regions, among certain groups of the population, families, or individuals, or temporarily and at different times.’<sup>53</sup>

#### 4. Legal Factors That Impact Widowhood Support Regulations

Social security regulations, that include widowhood benefits, may be found in various international legal acts, the European Union regulations, and, most importantly, the laws of specific countries. It results in a diversity of standards for the protection of widows and widowers in respective countries.

The concept of the right to social security is based on two factors. On the one hand, it is founded on social solidarity, which means that providing adequate conditions for individuals is a collective responsibility. Ensuring the satisfaction of individual needs is, in fact, in the interest of the community. In the context of social security, it is emphasized that even though it is individual in nature, it also has a social significance,<sup>54</sup> and the failure to meet individual needs may harm the community as a whole.<sup>55</sup> On the other hand, it is based on the state as the entity responsible for ensuring these conditions.<sup>56</sup> This is because it is primarily through the state (its institutions) that specific benefits within the framework of social security are provided. According to J. Piotrowski, social security may be understood as ‘the totality of means and actions of public institutions through which society seeks to protect its citizens from a faultless lack of resources, from the threat of being unable to meet basic needs socially recognized as important.’<sup>57</sup> In light of the above, ensuring effective protection for widows and widowers is also in the interest of society as a whole and should be consistently implemented by the state.

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<sup>51</sup> M. Książopolski, *Bezpieczeństwo społeczne i jego zagrożenia* w: A. Piekara, J. Supińska red., *Polityka społeczna w okresie przemian*, Warszawa 1985, p. 20.

<sup>52</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, *op. cit.*, p. 30

<sup>53</sup> *Ibidem*.

<sup>54</sup> For example, ensuring access to treatment for an individual reduces the risk of the disease spreading to others.

<sup>55</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, *op. cit.*, p. 22.

<sup>56</sup> M. Orłowska-Bednarz, M. Bednarz, *Zabezpieczenie społeczne jako forma ochrony warunków życia...*, *op. cit.*, p. 57.

<sup>57</sup> J. Piotrowski, *Zabezpieczenie społeczne. Problematyka i metody...*, *op. cit.*, p. 7–8.

International agreements containing provisions related to widowhood support often reflect trends in national legislation. The resulting standard of protection for the interests of widows and widowers is considered outdated and inconsistent. Moreover, those provisions often do not impose an obligation on states to adopt specific legal solutions but rather merely advocate for certain desirable outcomes.

The right of widows or widowers to social security is shaped differently in the national legislations of the European Union member states.<sup>58</sup> The European Union does not take harmonizing actions regarding the regulations of member states on social security, limiting itself only to coordinating those regulations.

The lack of harmonization of social security regulations, including those related to widowhood, in the international – universal or regional – sphere leads to differences in the regulations of respective states in this legal area. It results in a variation in the level of protection of the interests of widows and widowers worldwide.

Differences exist in various aspects of widowhood protection regulations. They include age-related issues, where some national regulations grant protection regardless of the age at which an individual loses their spouse, while others impose age limits, sometimes quite high, often linked to retirement age. Furthermore, a common approach is the differentiation between the situations of men and women, with higher age limits often applied to men. That solution lacks justification, considering that the average age of death for men is generally lower than that for women.

Differentiating between the situations of women and men in the context of protection in the event of a spouse's death seems to be a common occurrence. While one of the fundamental principles of social security systems is the principle of equal treatment of individuals and their non-discrimination.<sup>59</sup> Differences in access to protection in the event of widowhood for women and men may raise concerns also in light of the provisions of a document of fundamental importance for the assessment of human rights, including the right to social security, namely the Universal Declaration of Human Rights. According to Article 2 of the Universal Declaration of Human Rights, the rights proclaimed in the document are granted to everyone, regardless of gender differences.<sup>60</sup>

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<sup>58</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 245.

<sup>59</sup> S. Majkowska-Szulc, M. Zieleniecki in: S. Majkowska-Szulc, M. Tomaszewska, M. Zieleniecki ed., *Zabezpieczenie społeczne w Unii Europejskiej...*, *op. cit.*, p. 75.

<sup>60</sup> See A. Przyborowska-Klimczak, *Ochrona praw kobiet w świetle dokumentów międzynarodowych...*, *op. cit.*, p. 183.

A commonly encountered requirement is the condition of reaching a certain age, degree of disability, or raising children. It has long been pointed out that certain age requirements imposed on widows do not produce the desired effects. If a woman loses her husband before reaching a certain age, she remains without support between that time and the point when she reaches the required age.<sup>61</sup> The situation for widowers or widows in the context of age-related requirements is unfavourable. Before reaching the required age, they may receive benefits in certain cases, for example, if they are unable to work or have minor children. In the case of minor children, after they reach adulthood, there is often a gap period when the widow or widower can no longer receive benefits until they reach the required age. During that period, those individuals are generally less competitive in the labour market and often take up their first job after the spouse's death, having previously been involved in childcare.

In the context of social security for the death of a breadwinner, it is emphasized that this type of social security is characterized by the fact that in the event of the insured person's death during their professional activity or while receiving a pension or disability benefit, it is an occurrence that results in the need to extend protection, especially to children and the spouse.<sup>62</sup> Moreover, in many cases, social security for the death of the family breadwinner, including the support in the event of widowhood, is linked to pension and disability insurance.<sup>63</sup> Regulations concerning pensions and disability benefits serve different purposes than those for widowhood support. However, those solutions highlight how much a widow's situation depends on her husband's financial status at the time of his death. As a result, the benefit due under widowhood support is often dependent on the breadwinner's work history, as well as factors such as age and marital status at the time of the breadwinner's death.<sup>64</sup> It is worth adding that pension benefits and family allowances have traditionally been aimed at protecting the interests of the family as the foundation of households.<sup>65</sup> Thus, the protection against widowhood should not be considered as derivative in relation to pension or disability insurance.<sup>66</sup> It requires the establishment of regulations for protection independent of the spouse's financial situation at the time of death.

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<sup>61</sup> See *Old-Age and Survivors Insurance: Employment of Aged-Widow Beneficiaries Before Receipt of First Benefit*, Division of Program Analysis, Bureau of Old-Age and Survivors Insurance, source: Social Security Bulletin 1956, vol. 19, no 8, p. 8.

<sup>62</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 241.

<sup>63</sup> *Ibidem*, p. 244.

<sup>64</sup> N. R. Cahn, J. Carbone, *Redefining Public Benefits...*, *op. cit.*, p. 639.

<sup>65</sup> *Ibidem*, p. 643.

<sup>66</sup> J. Jończyk, *Prawo zabezpieczenia społecznego*, Zakamycze 2006, p. 140-141.

Some regulations allow for the suspension of widowhood benefits if the widow or widower enters into a new marriage or even an informal relationship. Such provisions are difficult to reconcile with international legal instruments that ensure the freedom to marry for anyone once they reach independence. For example, Article 16(1) of the Universal Declaration of Human Rights states: ‘men and women, without any distinction as to race, nationality, or religion, have the right to marry and to found a family upon reaching the age of majority. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.’<sup>67</sup> Solutions that allow for the suspension or loss of widowhood benefits in the event that the widow or widower enters into a new marriage, or even an informal relationship, reflect an outdated view that links widowhood benefits with compensation for the loss of a spouse. The point of reference for such regulations should instead be the situation of the widow or widower, as well as the need to ensure their proper functioning after the death of the spouse, which includes, of course, the possibility of forming a partnership with another person. Therefore, solutions that would effectively force widows or widowers to refrain from entering new relationships for fear of the suspension or loss of benefits are unjustified.

Legal regulations regarding social security still primarily treat the family as the basic social unit and the point of reference for granting benefits to individuals.<sup>68</sup> For example, the granting of a widow's pension, including the amount and nature of the benefit, often depends on having children. It is emphasized that many benefits due under social security constitute a relic of an era when marriage was viewed as an institution serving procreation and child-rearing.<sup>69</sup>

Social security is generally understood as ensuring safety in a narrower sense, namely socio-economic safety.<sup>70</sup> Similarly, the regulation of social security in the event of the death of the breadwinner follows a similar pattern. The benefit in the event of the death of the breadwinner generally takes the form of a cash benefit. This is how it is perceived in certain international acts, such as in the International Labour Organization's Convention No 102 on minimum social security standards, Convention No 128 on benefits in the case of disability, old age, and death of the breadwinner, or the European Code of Social Security from 1964.<sup>71</sup>

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<sup>67</sup> Source: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/polish-polski> (Access: 31.10.2024).

<sup>68</sup> N. R. Cahn, J. Carbone, *Redefining Public Benefits...*, *op. cit.*, p. 645.

<sup>69</sup> *Ibidem*, p. 642.

<sup>70</sup> Inter alia in G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 20.

<sup>71</sup> G. Uścińska, *Świadczenia z zabezpieczenia społecznego w regulacjach międzynarodowych i polskich. Studium porównawcze...*, *op. cit.*, p. 245

In respective countries social security may be covered by various funding sources, such as contributions, taxes, or other forms of public funding.<sup>72</sup> At the same time, it may be partially covered by one source and partially by another. There are also support programs for widows, such as the Indira Gandhi National Widow Pension Scheme launched in India in 2009.<sup>73</sup> It is a programme designed for widows living below the poverty line.

In the related literature, it is noted that the existing regulations regarding the right to widow's benefits have primarily focused on a form of compensation due to the loss of the family breadwinner, traditionally viewed as the man (husband or father). A new perspective on social security regulations requires taking into account the equal position of spouses, both of whom can fulfil those roles to the same extent.<sup>74</sup> It raises questions about the validity of regulations that differentiate access to benefits in the event of a spouse loss based on age or other conditions for women and men. It also leads to the conclusion that the granting of benefits should be linked to the individual rather than their situation within the family structure.<sup>75</sup> That connection should focus more on the needs of a specific household, which, after the death of one spouse, remains dependent on the surviving spouse, rather than the family structure itself. This, in turn, leads to the conclusion that widowhood benefits should not be linked to regulations concerning the loss of the family breadwinner.

Moreover, new forms of social security should ensure that individuals have the means to survive periods of unemployment - between losing and finding new employment - which will be a common occurrence in the post-industrial era. Widows or widowers, who must bear the costs of maintaining a household on their own, will require special support during periods of unemployment.<sup>76</sup>

## **5. Desired Scope of Changes: the Expected Support Standard Defined by the Right to Social Security in the Event of Widowhood**

The proposed regulation aims to harmonize the existing national regulations regarding social security in the event of widowhood, rather than merely coordinating them. The goal of unifying the regulations concerning those security systems should, in principle, lead to the adoption of a new standard of support for widows and widowers.

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<sup>72</sup> *Ibidem*, p. 41.

<sup>73</sup> U. Elango, *A Critical Analysis of Right to Social Security*, *Supremo Amicus* 2022, no 28, p. 611.

<sup>74</sup> N. R. Cahn, J. Carbone, *Redefining Public Benefits...*, *op. cit.*, p. 639.

<sup>75</sup> *Ibidem*, p. 639.

<sup>76</sup> *Ibidem*, p. 658.

In light of the above, the first element of the proposed regulation is to make it mandatory. Therefore, the phrase ‘for everyone, it is established’ used in the beginning of Article 1 is intended to serve as the foundation for the necessity of implementing in national legislations the right to social security in the event of widowhood, at least with the content resulting from the further provisions of Article 1.

Article 1, Point 1 aims to exclude age limits that condition the granting of social security in the event of widowhood. Based on the assumption that this security should be granted simply due to the death of a spouse, introducing age restrictions for access to such security is not justified. Moreover, as evidenced by the above considerations, the requirement to meet a specified age is criticized in the related literature. It is argued that in the period between meeting the age requirement and other events linked by the law to the granting of security to a widow or widower (e.g., reaching the age of majority for children), they often remain without any support. However, during that period, their expenses, related to the necessity of independently maintaining a household, do not change.

Article 1, Point 2 is motivated by the need to ensure the proper functioning of the widow or widower after the death of their spouse. It aims to prevent situations in which, out of fear of losing or suspending the widow's/widower's security, individuals would refrain from entering into new marriages or even informal partnerships. Moreover, maintaining regulations under which the entitlement to this security lasts as long as the widow or widower remains outside any formal or even informal relationship seems to infringe upon basic human rights.

Article 1, Point 3 assumes the abandonment of regulations that aim to force the widow or widower to remain in the country where the support is provided. This solution infringes upon the freedom of movement and the right to seek employment in other countries. It does not serve the interests of the widow or widower who may wish to establish their life outside the state providing the support.

Article 1, Point 4 establishes that the widow or widower's right to security should not be dependent on the financial situation of their spouse at the time of death, including their income or the benefits due from pension or disability insurance. It is crucial that the benefit granted under widowhood support be adjusted to the needs of the widow or widower, who are independently maintaining a household. This approach addresses the changing economic conditions of individuals in a post-industrial society.

Article 1, Point 5 is motivated by the need to ensure that the circumstances of the spouse's death do not affect the right to widowhood support. Based on the assumption that the right to widowhood support should be granted solely due to the fact of the spouse's death, it

should also be focused on meeting the needs of the widow or widower who independently maintains a household. Therefore, the circumstances surrounding the spouse's death should not determine the granting or amount of the benefit.

The proposed Article 2 aims to cover widowhood support regulations equally for both women and men, as well as individuals in relationships other than marriage, including formal partnerships or informal relationships.

#### List of Legal Acts:

- Convention No 39 of the International Labour Organization (ILO) concerning compulsory insurance for the death of wage earners employed in industrial and commercial enterprises, in the liberal professions, as well as home workers and domestic workers, adopted in Geneva on June 29, 1933.
- The Universal Declaration of Human Rights, adopted by Resolution 217/III A on December 10, 1948, in Paris by the General Assembly of the United Nations.
- The Convention No 102 of the International Labour Organization concerning Minimum Standards of Social Security, adopted in Geneva on June 28, 1952.
- The European Social Charter, drawn up in Turin on October 18, 1961.
- The European Code of Social Security, adopted on April 16, 1964.
- The International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on December 19, 1966.

- The Convention No 128 of the International Labour Organization concerning Invalidity, Old-Age and Survivors' Benefits, adopted in Geneva on June 7, 1967.
- Recommendation No 131 of the International Labour Organization concerning Invalidity, Old-Age, and Survivors' Benefits, adopted in Geneva on June 7, 1976.
- Directive 79/7/EEC of the Council of December 19, 1978, on the gradual implementation of the principle of equal treatment for men and women in the field of social security
- The Charter of Fundamental Social Rights of Workers, adopted on December 9, 1989.
- The Revised European Social Security Code, adopted on November 6, 1990.
- The Council Recommendation (EC) No. 92/442 of July 27, 1992, on the convergence of social protection goals and policies
- The Revised European Social Charter, adopted on May 3, 1996, in Strasbourg
- The Charter of Fundamental Rights of the European Union, adopted on December 7, 2000.
- Regulation (EC) No 883/2004 of the European Parliament and Council of April 29, 2004, on the coordination of social security systems
- Regulation (EC) No 987/2009 of the European Parliament and Council of September 16, 2009, concerning the implementation of Regulation (EC) No 883/2004 on the coordination of social security systems

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