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Uniwersytet Łódzki

Maciej Zarzycki

Capital Funded Institutions of the Polish pension system confronted with legal constructions of chosen countries

Instytucje kapitałowe polskiego systemu emerytalnego na tle konstrukcji wybranych państw

SUMMARY

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dr hab. Mirosław Włodarczyk, prof. UŁ

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The issue of creating an optimum pension system is universal. Due to the ageing of most modern countries' population, the growing life expectancy and the falling fertility rate the pay-as-you-go retirement systems created in the 19th and 20th century started to transform. Some of them are being only modified, while others are being revolutionized. Although the pay-as-you-go systems were proven to work for many decades, the declining dependency ratio provoked politicians, lawyers and economists to search for new methods of old age security.

Tens of states implemented capital-based pension funds into their retirement systems. Some of them were mandatory. Therefore the value of future pensions has become dependent on the rate of return of financial markets. This solution was supposed to ensure higher pensions than the pay-as-you-go system and simultaneously improve the economy.

The volume of funded pensions varied in different countries. Some of them, like Chile, created an almost exclusively capital-based retirement system. Others, like Poland, established large obligatory pension funds financed by sizable contributions. Further systems, like the Swedish one, created only modest pension funds with a low contribution, still basing their retirement mainly on the pay-as-you-go method. Mandatory pension funds were treated as an element of the public pension system in Sweden. While in Hungary the mandatory pension funds were from the beginning named as private institutions. These contrary foundations led to different outcomes.

Nowadays, from the perspective of 21 years of functioning of the Open Pension Funds in Poland, it is possible to asses this new idea of social insurance law. It is crucial to determine: the process of establishing Open Pension Funds, their functioning, their disassembly, and to analyze the reasons of this state of affairs, the success or failure of the pension system reform. The dissertation also includes other, less popular, forms of capital pension institutions such as: employee capital plans, employee pension schemes, individual pension accounts, individual retirement security accounts.

The fist chapter of this dissertation has a definitional and introductive character. It provides definitions of key notions, essential for the research on retirement systems, i.e. the pay-as-you-go and the capital (funded) method of financing the pension system; the defined benefit and defined contribution system; pension pillars. Besides that, it contains also doctrinal opinions on the capital pension systems. It is unavoidable to pose a question whether Polish Open Pension Funds where an element of the second (as it was vastly presented by the economists and journalists) or rather the first pillar, due to the contribution being mandatory and public. The division of the pension system on pillars will be used throughout the entire doctoral thesis in order to typify every pension institution.

The second chapter is focused on the analysis of legal structures of retirement systems of the following countries: United Kingdom, United States, Japan, being examples of pay-as-you-go systems with vast and developed capital elements; Germany and Sweden, representing pay-as-you-go systems with modest capital elements; Chile and Hungary, as systems withdrawing from the capital methods. It is vital to understand that most countries with long social insurance traditions, United Kingdom, United States, Japan, Germany, did not create any obligatory capital-based retirement institution. Sweden is an exception. In that country the first pillar pension system has a mixed character, combining the pay-as-you-go and the capital method. By many opinions the Swedish pension system is considered the best in the world.

The book reserve pension plan is a popular capital funded solution in Germany, Japan and the United States. That is why it will be evaluated by determining whether it provides guarantee of sustainability in the long-term investment horizon. The author will consider: the effectiveness of Hungarian non-profit pension funds, which are based on pro bono self-management of the funds by its members; the Chilean competition of pension funds' tariffs, in which citizens that did not choose their pension fund by themselves become automatically members of the fund that offers the lowest fees; the British automatic enrolment mechanism; Swedish obligatory pension funds and their impact on the financial stability of the retirement system as well as the level of pensions.

Every analyzed country has its own history, legal culture, different economy and demographic structure. Hence, it is essential to begin from depicting the socioeconomical background of each state. Lawyers dealing with pension systems must not ignore economical science. Also economists working on retirement systems should not overlook the rules of law. Omitting any of these fields may lead to proposing ideas inadequate for a certain country's economy or law system. In the world there are many concepts on pension systems that influence each other. Usually a country's pension reform is based on the experiences of foreign retirement systems. Because of that it is crucial to resolve which countries were models for Polish pension system reforms.

The third chapter presents the genesis of Polish Open Pension Funds – from the arguments of the authors of the pension system reform of 1999 establishing OPFs in the retirement system, through various amendments, the dispute over the public or private character of OPF's assets, the compliance with Constitution of the amendment act 2014, to the plans of OPFs liquidation. The history of Polish pension funds will be compared with the development of foreign capital pension institutions.

The fourth chapter describes the voluntary capital pension pillar which consists of: employee capital plans, employee pension schemes, individual pension accounts, individual retirement security accounts. There has been a massive and continuous development of voluntary capital-based pension institutions. Different legal forms and character give various consequences for the insured.

The fifth chapter gives suggestions for the legislator, based on the analysis of mentioned pension systems, that the first pension pillar should use mixed pay-as-you-go and capital methods of financing as in the Swedish model. These two methods should not be seemed as contrary but complementary. The first pillar must be mandatory and public. Most of the contribution should finance the pay-as-you-go part and the capital part should receive only a modest part of the obligatory contribution. Whereas the second pillar should consist of voluntary capital institutions and the acquired assets should be considered undoubtedly private.

In order to produce a detailed retirement system model this dissertation answers following questions. Is lowering the contribution to OPFs a proper decision? Is cancelling statutory minimum pension funds return rates effective? What consequences come with changing the participation in OPFs from obligatory to voluntary? Is forbidding to acquire treasury bills by OPFs a proper way to increase its return rates and lower the public debt? Is giving absolute freedom to pensions funds in creating investment portfolios a right decision? In particular, should pension funds be allowed to invest abroad or beyond the stock market, for instance in real estate? Would preserving OPFs in the retirement system have a positive impact on other capital pension forms?

Regarding the second pillar this Ph. D. thesis points at following issues. Should the government's power of affecting the pension funds investment portfolios be excluded? Which entities should finance the second pillar's contribution? Should the state's help appear as a tax relief or rather a direct subsidy? What form should lifetime benefits have? Should the second pillar focus only on securing the retirement or should it also cover over insurance risks?

Assuming pension funds should be given the liberty to create their own investment portfolios, it is vital to consider whether the possibility to acquire treasury bills should be limited or at least the fees differentiated on the basis of the type of investments. Does acquiring treasury bonds by Open Pension Funds create a vicious circle? In order to answer this question it is important to take under consideration, that due to the lack of contribution to public pay-as-you-go retirement system coming from financing Open Pension Funds, the state has to emit obligations to cover its rising debt. Subsequently Open Pension Funds, that caused this debt, buy these obligations charging high fess. Afterwards the state is obligated to rebuy treasury bonds from Open Pension Funds for a higher price. Consequently, it is the state that finances the part of pensions that are based on obligations. Therefore comes the dilemma – whether financial institutions organizing Open Pension Funds are the only beneficiaries of the capital pension system based on treasury bonds. Open Pension Funds collect payments but do not relieve the state from the burden of financing the retirement system. At the same time the insured receive pensions lowered by Open Pension Funds' fees. Lastly, it is crucial to determine if the capital-funded pension system should aim for creating and financing the stock market or should it rather be focused solely on the interest of the insured.

Moreover, this dissertation researches following subjects: the ability of capital method to immunize pension systems against demographic crisises; could allowing investments abroad in mature stock markets of countries with well demographic structures and good economies have a positive impact on return rates? Using historical analysis this Ph. D. also determines which kind of pension system is the most susceptible to economic, political and war crisises.

Maciej Zarzycki 8.05.2021 r.

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