

EUROPEAN SOCIAL CHARTER AND ITS ROLE ON SOCIAL ASSURANCES AT EUROPE COUNCIL CONTEXT

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ABSTRACT

The society development, civilization, and the rapport between young and elderly, and other various factors, affect directly the formation and development of the social institutions. The council of Europe aims to achieve a major unity among its members, in order to sustain their social progress. The existence of several barriers leads to the misbalances of the social assurances scheme. The management of legal migration and of the illegal one is a considerable political challenge. In attempt to realize their right of social protection, the emigrants are confronted to the multiple barriers. This is the reason why, is becoming increasingly important the improvement of the social assurances schemes coordination between host and origin countries. The social protection that includes all measures, the legislations and practices for the protection of individuals against numerous life dangers as: chronic disease or accidents and financial dangers, inability, lost of job, natural disasters, etc. or to facilitate such events. However, in many fields of public political background, leaders tend to think and act for a short-term period, redacting laws that are sustained by a small group of people, who are supporters of their activities. The social assurances are not suitable to these short-term politics. These schemes require another approach, where are foreseen the problems to be solved, before their concrete occurrence. Which are the components of social protection? Which are the regional and bilateral programs, the activities implemented by Europe Council, and which is their target?

Keywords: *social protection, implementation, coordination instruments, reform, cost*

The social assurances are defined by Work International Organization as: protection assured by society to its members, through a set of public measures, aimed directed toward the social and economic problems, that are caused by lost or profits considerable decrease, as a result of diseases, work accidents, and professional diseases, unemployment, invalidity, elderly, and decease; assurance of health care; and support of families with many children.

The institutions of social assurances have to assure the wellbeing of citizen who depend on them. However, many people do not believe to the institutions, and to other organs of public services. They are suspicious to the institution principals, supposing that they consider their own interests and do not take care to much about their clients' wellbeing. The tripartite Government councils have a significant role at war against this unbelief. Their principal role is to provide that the institution acts in an openly and fair manner, placing the clients/customers in the center of attention.

The schemes of social assurances, evidences a great indication to the people economy and wellbeing. Relating to the pensions, the east of entitlements, and their liquidations include a long period, which time initiates from the beginning of the person active life, from the moment the persons begins to work, to his/her decease, or to alive dependant successors, period which can includes 60–70 years old ones, or more. This time period is larger than it could last the existence of a government in power.

Furthermore, the schemes of social assurances have an impact in the life of people during several moments of their professional life and what is happening to a schemes, often affects the other schemes. All these effects are sufficient arguments to make a planning that can be:

- *Long term*– that predicts toward the affected persons; and
- *Inclusive* – that considers all different schemes of social assurances.

However, in many public political fields, the leaders tends to think and act within a short-term time space, drafting laws supported by a group a people, supporters of their activities. The social assurances and particularly the pensions are not suitable to the short-term politics. These schemes require another approach, where the said problems are foreseen and solved, before their concrete occurrence. This is necessary to avoid the crisis and to assure that systems are able to meet their responsibilities, toward those who believe. The insurances of political support for confronting and management of the problems prior their appearance, is always difficult.

On the other hand, the demographic problems are present are present in almost all the countries of Central and Eastern Europe, only some of those countries have created long-term models to previously design the costs and advantages of the social assurances for the future. Generally, there is no person, who is charged with the responsibility to observe and considerate in general the programs and to evaluate which is compatible to the system general overview and to find which population groups are adequately covered or not covered. This is of particular importance for the extension of the social assurances and future costs, i.e. increasing of retiring age, if there is no increase of employment opportunities to the older employers, it can be raised the costs of unemployment payments and work inability.

The fundamental social right as, *social protection*, including all legislation, measures and practices to defend individuals against multiple life dangers, as: chronic disease or accidents and financial dangers, inability, lost of job, natural disgraces, war and rebellions, etc. or to alleviate such events to the affected persons, has five components: programs and politics of work market; programs of social assurances to amortize the dangers associated to the employment, health, inability, work injuring and aging; the social assistance and programs of social wellbeing relating to the most vulnerable groups with no other with no other means of supporting their livelihood; the micro-schemes and other supported in terrain to be addressed and treated the necessities at communitarian level; and protection of children to assure an healthy and productive if the future labor.

In this context, the programs of regional and bilateral activities that are implemented at social assurances field by European Council in the countries of Central, eastern and south-eastern Europe, aim the promotion of European Council legal means and the development of a whole European network to the coordination of social assurances .

The European council instruments on the coordination of national social assurances systems are as follows: tow European temporary agreements, European convention for the social and medical assurances and the European convention of social assurances (as well as its protocols). This paper aims to represent the role of European assurances Charter as one of social assurances coordination means for the Europe council.

The coordination of social assurances schemes relying on these conventions is realized by the committee of experts for the coordination at the field of social assurances. The above instruments are intended to offset some weakness of migration, relating to the long-terms payment, as old age pensions are. The dispositions of these instruments do not oblige the states to modify the content of the social assurances legislation but for example, oblige states not to treat immigrants differently from their nationals.

The reform on the social assurances has to be implemented in conformity to the national conditions and to the minimal standards of social protection, universality and democratic governing, reflected on the conventions of ILO social assurances. The best way to achieve reform through the coordination of social assurances funds and the promotion of best practices for strengthening the governance of social assurances; training and technical support of social partners for their roles on social political process; and the considering of previous experiences relating to the social assurances reforms.

All systems have to comply to several fundamental principles, benefits should be safe and no-discriminating and the schemes should be managed in a logical and transparent way, with administrative costs as low as practicable, wit a powerful role of social partners, which are nothing but employees and employers organizations which agree to make decisions about social and economic issues, particularly those relating to working conditions and workers' rights in the workplace.

On the other hand, public belief on social assurances systems is an essential factor to their success. In order to achieve this belief or reliance, the good administration of these systems is essential.¹ In the countries of contemporary Europe, the country social partners together with the governing representatives, conclude and stipulate collective agreements relating to all social and economic issues that have effects on workers/employees.

¹ ILO (2001). *Social assurances: A new consensus* pg. 2.

European social charter as a juridical instrument for international coordination in the field of social assurances.

European council Member States agreed to improve the life standard and social wellbeing through the European Social charter predictions. The Ministerial conference on Human rights held in Rome on November 5th 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, civil, political, economic, social and cultural ones and on the other hand to give a new impulse to the European social Charter.

European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the member States. It was amended in 1996, which modifications got effective in 1999, replacing the initial charter of the year 1961. These amendments replaced the initial Charter of the 1961 that entered in force 1965². The charter in its entirety contained 19 articles that with the Additional Protocol were 23 articles. To be ratified as member state it should be selected 10 articles including the right of social assurances and social and medical assistance, what is defined by article 20 of the said charter.³

Content of European social Charter

The European social charter and reviewed European Social Charter is addressed to the fundamental social rights:

Housing – The access to housing in suitable and affordable conditions; decrease of homeless number; housing politics targeting the disadvantages; procedures for the restriction of forced etc;

Health – The establishment of effective health care structures; policies to prevent diseases especially with healthy environment guarantee; prevention of risks at work to ensure that health and safety at work are provided by law and guaranteed in practice;

Employment – Prohibition of forced work; Prohibition of employment of children under 15 years; Special working conditions between 15 and 18 years; Everyone's right to make a living in an occupation freely chosen;

Education - Providing free primary and secondary education; free vocational guidance services; access to initial formation (of general and secondary professional formation as well, professional formation including a constant training as well;

Legal and social protection – child legal status, particular treatment Status Special treatment for lawbreakers; protection against maltreating and abuses, Prohibition of all forms of trafficking (sexual or other);

² Signed by Albania 21.09.1998 and ratified on 14.11.2002.

³ Article 20, " *The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex* " . With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without any discrimination because of sex. The Parties undertake to recognize that right and to take appropriate measures to ensure or promote its application in the following fields:

- a) access to employment, protection against dismissal and occupational reintegration.;
- b) vocational guidance, training, re-training and rehabilitation;
- c) conditions of employment and working conditions, including pay;
- d) career development, including promotion .

Free people movement – the right of family join; the right of nationals to leave their country; Protection procedures in case of deportation from the country; Simplification of immigration procedures;

Non-discrimination- The right of women to equality with men, and equal employment opportunity; A guarantee to all nationals and foreign residents with employment or residence permit; All the rights enshrined in the Charter apply regardless of race, sex, color, language, religion, opinions, national origin, social background, state of health or association with a national minority; Prohibition of discrimination on grounds of family responsibilities.

European Convention of Human Rights and the European Social Charter (as well as and the revised Charter) guarantee anyone to get together to defend not only a normal life, not only a life without unwarranted state interference, but also a decent life and possibly an independent one. The revised European Social Charter modifies some of the existent rights provided by European Social Charter and introduces several new rights, among which the right to protection when the job is lost, the right to protection against poverty and social exclusion, as well as the right to housing. It aims to ensure the highest standards and build a policy to combat global problems such as the poverty.

The European Social Charter and the revised Charter as well are equipped with a **control mechanism** that is based on the reports. The **contractual** Parties submit national reports on regular intervals, according to a uniform model. These reports are produced by government authorities; then are communicated to representative organizations of workers and employers, who have the opportunity to make a written warning; the national reports are then submitted to the European Committee of Social Rights. This Committee consists of nine independent experts elected by the Committee of Ministers of the Council of Europe. Committee ascertains whether countries have honored the undertakings set out in the Charter.⁴

The monitoring procedure based on national reports

Each year the member States submit a report indicating how they implement the Charter in law and practice. Each report concerns some of the **accepted provisions** of the Charter. The committee examines the reports and decides whether the situation in the concerned countries is in conformity with the Charter or not. Its decisions, known as "conclusions", are each year published.

If a state does not act pursuant to a decision of the Committee in the sense that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law or practice. The work of Ministers' Committee is prepared by a Govern committee that consists of Charter member states Govern representatives, helped by observers that represent the employers; organizations and European trade unions.

A collective complaints procedure⁵

According to an opened protocol that is signed in 1995, and entered in force in 1998, complaints regarding to the Charter violations may be lodged at the Committee of European

⁴ Article 24 of the Charter, as amended by Torino Protocol of year 1991, provides that: "Its fifteen independent and impartial members are elected by the Committee of Europe Ministers' Council for a period of six years that is renewed only once. The committee establishes if the legislation and national practice of member states are or not in conformity to the Charter"

⁵ The procedure of collective complaints is to be submitted in the Supplement protocol of year 1995 consists in total of 12 articles.

social rights. The complaint can be submitted freely supported as above mentioned or using a form. The committee considers the complaint and if the formal terms are satisfied, it is declared admissible. Once the complaint is declared admissible, is set a written procedure, by letter exchanging between the parties. The committee may decide to hold a public hearing session to this complaint that is submitted by a report to the said parties and to the Committee of ministers, that is to be published within four months after is submitted. In conclusion, the Committee of Ministers approves a **resolution**. If appropriate it may **recommend**⁶ that said state undertake specific measures to stabilize the situation with the Charter.

Relationships between the Charter and the National Right or international agreements are determined by this charter dispositions that will not prejudice the national right dispositions or any other bilateral or multilateral treaty, or any effective convention or agreement, or may be entered in force, according to which to the protected persons is recognized a more favorable treatment.

The European social Charter and revised European social charter have some impact relating to the coordination in the field of social assurances:

- article 12 : the right of social assurances, and
- article 13 : the right of social and medical assistance

The European social charter and the revised European Social Charter establish a distinction between the social assurances, considered at article 12 and social medical assistance, as the object of article 13. Revised European Social Charter has not changed and neither has adapted the basic points of these articles dealing with coordination in the field of social security.

Considering the article 12, that concerns to the contractual parties social assurances content. Firstly it provides that the contractual parties are obliged to establish a social assurances scheme or structure. After, it determines the minimal standards, assigning this way, despite other things, the system covering, the conditions of social assurances profiting and its amount. Further more it provides that each contractual party pursuant to article 12 should try to gradually promote its own social assurances scheme.⁷ Relating to the coordination at the field of social assurances, the article 12 by 4th paragraph provides the fundamental principles of treatment equality, of benefit exportation and of assurance period summering. The contractual parties have to undertake measures to guaranty the implementation of these fundamental principles for achieving bilateral and multilateral agreements of “by other means”.

Prevention of discrimination evidenced on the reviewed one aim to prohibit any kind of discrimination direct or indirect one.⁸. Independently of this very restrictive vision to the treatment equality relating to the citizenship, the European social assurances charter and the

⁶ Article 9, of the charter supplemented protocol of year 1995

⁷ Article 12 (1), (2) and (3) of European social Assurances charter and the revised one, The right to social assurances, the parties are engaged: (1) to create or hold a social assurance system; (2) to hold the social assurance at a satisfying level at least equal to the needed one for the ratification of European social assurance code; (3) trying to raise the social assurance system at a superior level..

⁸ The Prohibition of direct discrimination does not allow the contracting parties to award benefits to their citizens and to not refuse this benefit of the citizens of the other contracting arty. The contracting parties can neither pose other conditions for the foreigners right to benefit when they are covered by European social charter or the revised i.e requiring to all foreigners a supplemented period of social assurance in order to obtain any benefit. Furthermore, the award to the foreigners of lower amount, noting only the fact that they are not citizen of the contracting party, constitutes a case of direct discrimination.

reviewed one allow to the states impose to the foreigners minimal residence periods before they could pretend for non –contributive benefits..⁹ Such conditioned treatment equality is found as well on the temporary agreement and on the Social Assurances European convention.

With regard to the Contractual parties of the European Social assurances charter and to the reviewed one, that require such a residing condition, the European committee of social rights considers if the required period legitimates the reason that indicates the necessity of such a condition. The contractual parties that establish these conditions should argue why this is necessary and why such long period. The European Committee of social rights supports during the periods provided by Temporary Agreements and by European Social assurances Convention, but also it follows closely the condition of each contractual parties considering the available data. It also underlined that restrictions that are provided by Temporary agreements are too hard.

Bearing of benefits: the European committee of social rights concluded that the principle of transfer is implemented concretely on elderly, invalidity and survivors, as well as for the paid royalties in case of accident at work or to professional diseases or allocations in case of decease. By other words, the exportation of these benefits can not be either refused, or conditioned. The implementation of this principle to the other benefits, especially for the unemployment allocations and in case of disease, is considered case by case, taking into account the particularities of these schemes.

Gathering of assurance periods: The contractual parties shall evidence by their report and how much are considered the assurance periods that realized at other parties, especially for the citizens of contractual parties that are covered by the regulation 1408/71 of European Union.

The comparative overview between the European Social Charter and the revised one by other administrative means/organs of European Council.

The European committee of Social rights considers, in term of European social assurances charter and the reviewed one, the European Council coordinating means. Just the fact that one Contractual party has ratified the Temporary agreement or the Social assurances European convention is not sufficient to guarantee this conformity. The European committee of social rights considers attentively the effective condition of each contractual party. Before approval it was concluded and made clear that the temporary agreements are not sufficient for the implementation of the article 12 (4)¹⁰, because are dependent on other bilateral and multilateral conventions and are not approved by all contractual parties of European Social assurance and the reviewed one.

Also, the maximum periods of residence imposed on temporary arrangements to enjoy equal treatment with respect to non-contributory benefits are too high. On the other hand, it is not enough simply to ratify the European Convention on Social assurances to supplement the Article

⁹ Amendment of article 14 (2) of the European social charter /revised European social charter..

¹⁰ Article 12 (4) of European social charter/Revised European social charter underlines : "to undertake measures, to complete appropriate bilateral and multilateral agreements or other arrangements, and in conformity to these agreements provided conditions in order to ensure:

a. equal treatment of their citizens and other countries citizens as well, including awarding of benefits derived from the social assurances legislation, independently the moves that assured persons can do within the members territories. ;

b. award, store and reinitiating of social assurance by means as social assurance period accumulation or employments completed according to the legislation of each Party ."

12 (4): The Convention in question does not actually includes all Contractual parties of reviewed European social assurances charter.

The European committee of Social rights has also drawn attention to the provisions of this Convention are not all directly applicable and that some of them depend on the conclusion of other bilateral and multilateral agreements. This committee scrutinizes the effective state of each Contractual Party before adopting its conclusions. This way the committee made clear are not sufficient for the application of the article 12 (4), as are depended on other bilateral and multilateral conventions and are not approved by all contractual parties of European Social assurance and the reviewed one.

Finally we can say that, the bilateral and multilateral agreements help too much their citizens, who have a period of social assurance in the Country they left and also in the country of their new country of residence, who by these agreements can benefit from the entire social assurance period in both countries, "which means to be born with the right to receive a pension, they join both periods of insurance and full retirement benefit, that is impossible without such an agreement.

Albania has such agreements with Turkey, Hungary and has started the negotiations with Italy, Greece, France, Germany, Belgium, Bulgaria, Rumania, and have expressed interests the Kingdom of Holland and Canada. Soon it is expected the proceeding with other countries mainly countries of UE, Greece and Italy are identified as primary destination countries, followed by United Kingdom, Germany, Canada, United States of America etc.

Relating to the emigration of Albanian citizens for employment reasons, the social assurances of Albanian emigrants, who formally employed, are arranged according to the legislation of Albanian State social assurances and of host country was well, but also of international bilateral and multilateral agreements in this domain, where the republic of Albania is a party.

Pursuant to the engagements that derive from the implementation of Association Stabilization Agreement, the social assurances short-term priorities are as following:

the coordination of social assurances protection with regard to the communitarian employees who are employed within the Albanian territory.

the adapting the social assurances system to the new economic and social development, through collaboration with parties.

The European council aims to realize closer Union between its members, in order to support their social progress. Given that multilateral coordination in the field of social assurances legislation is one of the tools to achieve this objective, it is designed the Social Assurances European Code. According to this code, its the contractual parties will try to solve, by a special mean, the issues related to the foreigners' and emigrants' social assurances, specifically with regard to their equal treatment as locals and recognition of reached or reaching rights.

BIBLIOGRAPHY

- Fultz, E. dhe T. Stanovnik (eds). (2004). *Collection of Pension Contributions: Trends, issues and problems in Central and Eastern Europe*. Geneva: ILO.
- Gillion, C. et al. (2000). *Social Security Pensions: Development and Reform*. Geneva: ILO. Chapter 10.

- Jason Nickless dhe Helmut Siedl, (Qershor 2004) *Coordination of social insurance in the Council of Europe*, Council of Europe Edition.
- Shuke, Anastas.(2003) *The legal basis of the association of third countries to the European Union*. Parliamentary Right and legal policies, Tirana. Ned publications, Nr.XIII.
- The German Society for Technical Cooperation, Projkti "Albanian Legal Practice Support "SUMMARY (August 2001) *European Law in the Albanian justice system*", Tirana.

- European Commision, (2005). *Regional cooperation in the Western Balkans*. A policy priority for the European Union, European Communities.
- ILO. 1998b. *Social Security Management*. Social Security Manual 2.Gjenevë: ILO. f. 89–101.
- Department of the European Social Charter Directorate General of Human Rights and Legal Affairs Council of Europe. (2010) *An overview of the Social Charter*.
- Social Security, (2006) *Practical Guide for Board members to Social Insurance Institutions in Central and Eastern Europe*.
- *European Social Charter, the revised English version in 2007*
- *European Convention on Social Insurance, Paris 1972*
- Act No. 7703, dated 11.05.1993 "*Social Insurance in the Republic of Albania*"
- Act No. 9355, dated 10.03.2005 "Social assistance and social services"
- Act No. 9442, dated 16.11.2005 "*On ratification of Convention no. 102 of the International Labour Organization*" Social Insurance (Minimum Standards)

- <http://www.conventions.coe.int/Treaty/en/Treaties/Html/012.htm>
- <http://www.conventions.coe.int/Treaty/en/Treaties/Html/014.htm>
- <http://www.esiweb.org>