

ASPECTS CONCERNING SOCIAL SECURITY WITHIN THE ECONOMIC SOCIAL CONTEXT

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ABSTRACT: *The transition to the market economy triggers the resolution of countless social issues, for which the state makes the proper efforts to be aware of and to deal with them.*

Social protection aims at domains which involve the efforts of the whole community: health, education, culture, working and holiday conditions, living conditions, etc.

Social protection is conceived to ensure a basic living standard for all the people irrespective of the means they are provided with.

The state, in a democratic regime, does not have only the defensive mission to protect the current rights, but also to promote them, by the corresponding institutions and using the means of the collectivity is provided with, the good wealth of all its members and, especially, of the needy.

KEYWORDS: *Social security, social insurances, social assistance, social protection.*

JEL CLASSIFICATION: *K 22, K 23*

Social security constitutes a large concept which implies social insurances and social assistance. Social insurances take into consideration the following: health assurance, maternity services, death benefit, the unemployment benefit, the right to a pension, assurances for work accidents and professional diseases, and for non-contributive services and the rights granted to invalids, war widows and orphans, war veterans, former political prisoners, martyred heroes, their successors and the wounded during the Revolution of 1989, magistrates dismissed from the judicial system in 1945 – 1952.

As well as the notion of salary, the origin of the notion of social security is Latin.

The significance of the word „security” is that of being secured against harm; the feeling of trust, of peace, protection, defense¹.

Meanwhile, according to the same sources, „social” represents something which is created by society, characteristic to the society, something which is related to people’s life in society, to their social relationships or towards the society and which concerns human society.

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¹ See Dicționarului explicativ al limbii române [www.dexonline.ro](http://dexonline.ro), at <http://dexonline.ro/search.php?cuv=securitate>.

Also, the beneficiary of the social security is applied both legal norms which regulate the legal relationships of social insurance and those of social assistance², because, as we have mentioned above, social security itself, represents a large concept which includes both social insurances and social assistance.

After its accession to the European Union, Romania was forced to comply with the European legislation, including the social security field³, when countless legal documents were issued.

Unfortunately, although it is the main norm in the field of work protection relations, the Labor Law⁴ does not include regulations regarding social security.

According to some opinions in the legal literature⁵, this could be explained by the fact that the right to social security is, mainly, part of the public law, while the legal relationship of right to work would fall both in the area of public law and of private law. As a demonstration of the extreme importance of social security, the Fundamental Law of Romania⁶, in art. 41 entitled „Labor and social labor protection”, enacts the right to social protection measures for the employees, rights which regard employees’ security and health, labor regime for women and youth, enacting a minimum gross salary all over the country, weekly rest, paid holidays, paying work services in unusual or special conditions, in-service training, as well as other specific situations.

As a matter of fact, the notion of social labor security is defined at the international level, by the International Labor Office as the „protection the society grants to its members by a total of public dispositions against public and social poverty, which endangers in case of loss or important wins reduction caused by diseases, pregnancy, childbed or childcare holiday, labor accident, unemployment, invalidity, old age, death and others, as well as granting medical assistance and benefits for families with children”⁷.

The polyvalence of the notion of social security is obvious, as long as it extends or, to put it right, it should extend its protecting umbrella, covering and protecting the individual from the risks social life might bring about.

Equally, the reason behind the measures whose source is social security is that of offering security and guarantee⁸ against unwanted events, which might happen in an individual’s life.

For instance, we may consider ourselves protected against some factors such as psychological factors⁹, as a result of some diseases or even old age; it is also useless to

²Alexandru Athanasiu, *Dreptul securității sociale*, Ed. Actami, București 1995, pag. 29.

³ See Regulation (CE) no. 883/2004 of the European Parliament and of the Council concerning the coordination of the social security systems, published in the Official Journal of the European Union, L 166/1 of 30th April 2004, modified by the Regulation (CE) no. 988/2009 of the European Parliament and of the Council, published in the Official Journal of the European Union, L 284/43 of 30th October 2009. Also see Regulation (CE) no. 987/2009 of the European Parliament and of the Council for establishing the procedure of implementing Regulation (CE) no. 883/2004, published in the Official Journal of the European Union L 284/1 of 30th October 2009.

⁴ See Law 53/2003 concerning Labor Law, republished in the Official Monitor no. 345 of 18th May 2011.

⁵ Ion Traian Ștefănescu, *Tratat de dreptul muncii*, vol.I, Ed. Lumina Lex, București 2003, pag. 107.

⁶ See Romania’s Constitution, published in the Official Monitor no. 767 of 31st October 2003, modified and completed by the Law for review no. 429/2003, published in the Official Monitor no. 758 of 29th October 2003.

⁷ International Labor Office, *La securite sociale*, Geneva 1995, pag. 4.

⁸ Alexandru Țiclea, *Dreptul securității sociale – Curs universitar*, Ed. Gutemberg Univers, Arad 2007, pag. 3;

Alexandru Țiclea, *Dreptul securității sociale*, Ed. Universul Juridic, București 2008, pag. 7.

⁹ Sanda Ghimpu, Alexandru Țiclea, Constantin Tufan, *Dreptul securității sociale*, Ed. All Beck, București 1998, pag. 2.

comment upon the risks that a large part of the inhabitants¹⁰ of Romania may run, on the professional level, as far as the professional diseases and labor accidents¹¹ are concerned.

We may state that, currently, as far as certain legal institutions are concerned, there are certain norms of common right in the area of social security, but also specific norms for certain categories of personnel.

As a result of the multiple legislative regulations, in the field literature¹² they consider that characteristics of the social insurances are the following:

a) the subjects of the insurance report are, on the one side, the natural person (the insured)¹³, and, on the other side, the insurance organization by its competent bodies;

b) the content of the insurance report is made up mainly of the right of the insured at the receipt of the benefit for social insurance and the correlative liability of the insurance institution to pay it, from the liability of the insured to transfer his contribution to social insurances, correlative with the right of the social insurance institution to require the payment of the contribution (legal report of the commutative type);

c) the insurance report usually rises *ex lege*, not having as a basis the volition of its subjects;

d) the contents of the insurance report mainly consists of providing some services which represent income of replacing the professional gain (salary, other forms of professional income).

Social assistance is represented by a unitary system, established according to Law no. 47/2006 concerning the national system of social assistance¹⁴.

According art. 2 alin. 1 of the Law no. 47/2006, the National System for social assistance represents the system of institutions and measures through which the state, by the public central and local administration authorities, local collectivity, civil society intervene by preventing, limiting or stopping the temporary or permanent effects of some situations which might determine social confinement or exclusion of the person, family, groups or communities.

Social assistance, a component of the national system for social protection, comprises social services and social contributions granted for developing individual or collective capacities in order to ensure social needs¹⁵, the growth of the life standard and promotion of the principles of social cohesion and inclusion.

The right to social assistance is granted on request or for free and, a very important fact, it is guaranteed for several categories of persons, irrespective of their status of

¹⁰ See Order no. 138/1995, published in the Off. M. no. 272 of 23.11.1995, on the approval of the Classification of professions in Romania (C.O.R.), published in Brochure no. 0 of 26.01.2000, modified and completed.

¹¹ Martine Meunier – Boffa, Droit sociale, Editions Litec, Paris 1991, pag. 29.

¹² Alexandru Țiclea, Constantin Tufan, Dreptul securității sociale – university course, Ed. Global Lex, București 2005, pag. 19; Alexandru Țiclea, Dreptul securității sociale – university course, Ed. Gutenberg Univers, Arad 2007, pag. 12; George Măgureanu, Dreptul muncii și securității sociale, Ed. Universul Juridic, București, 2010, p. 54 și urm.

¹³ For more details regarding natural and legal persons, see: Ernest Lupan, Ioan Pop Sabău, Tratat de drept civil roman. Persoanele, Ed. CH Beck, București, 2007

¹⁴ Law no. 47/2006 on the national system for social assistance, was published in the Official Monitor, Part I no. 239 of 16th March 2006.

¹⁵ Social necessity represents the system of indispensable requirements of each person for ensuring his life conditions with a view to social integration (art. 5 letter b of the Law no. 47/2006).

contributors, these are all Romanian citizens whose residence is in Romania, without any kind of discrimination, citizens of other states, stateless persons or any kind of person who has acquired some form of protection and who resides in Romania, under the terms of the Romanian legislation, respectively of the agreements and treaties Romania is part of.

In total concordance to the above statements, there are, mainly, the regulations in the matter of social security and assistance of the Council of Europe, transposed in the European Law of social security¹⁶ or in the Convention of the International Labor Organization no. 102¹⁷.

The International Labor Organization¹⁸ uses three criteria for defining social security:

1. the system objectives have to be correlated with the financial support of the medical treatments or of the medical care so that the income could be maintained in case of involuntary loss of the forms of wages or of an important part of the income. At the same time the system objectives refer to the financial support (a series of supplementary revenues) of the families with special responsibilities;

2. the system, with three basic dimensions: public, semipublic or autonomous, has to be supported by a legislation which grants rights to individuals or specific obligations;

3. the administration of the social security system has to observe the values of the public, semipublic or autonomous bodies.

Social insurances represent a special form of protection society offers to its members, supporting those who fight the different effects of the economic risks such as the loss of the income caused by diseases, caused by unemployment or reduced work capacity for elderly people.

That is why, social insurance can be considered a type of social security or it represents a sector of the social policy.

Finally, gathering the above mentioned statements, we can define social security as a system of legal economic norms, with fiscal influences, by which the individual acquires protection of the social nature, by making an effort, in time, as a result of a labor service performed, he is supported by social public and private systems.

Social assistance is the main mechanism by which society intervenes to prevent, limit or stop the negative effects of the events which occur to vulnerable persons or groups, despite themselves or who are hardly influenced by them.

The main objective of social protection represents the reduction or stopping the consequences of the harms to the environment and to the living standard for some segments of the population.

Security and, at the same time, social protection, can often be found in our daily lives, without even realizing that the aggravation of their effects occur before birth (prenatal holiday) and lead up to the unhappy moment of death (the successor's pension)¹⁹.

¹⁶ See the European Law on social security, opened for signature in April 1964 and which entered into force on 17th March 1968.

¹⁷ See Convention of the International Labor organization no. 102, regarding the minimal norms of social security, adopted in 1951.

¹⁸ The International Labor organization was set up in 1919 and has a tripartite organization (governments, employees and employers), having at this moment a number of 181 member countries.

¹⁹ Sanda Ghimpu, Alexandru Țiclea, Constantin Tufan, *Dreptul securității sociale*, Ed. All Beck, București 1998, pag. 3; Biroul Internațional al muncii, *La securite sociale*, Geneva 1995, pag. 13.

In defining social security, we should not omit its transnational component. In this sense, the main European documents²⁰ include, among the fundamental rights, the rights specific to labor, social relations and social security.

Romania is founder member of the International Labor Organization and developed within this organization a fruitful activity, except the period between 1942 and 1956, when, because of the war and of the postwar period, was no longer an active member²¹.

So far Romania has ratified 54 de conventions of the International Labor Organization out of which only 47 are in force.

From these ones, Romania has ratified all fundamental conventions, respectively no. 29, 87, 98, 100, 105, 111, 138 and 182, as well as four priority conventions, respectively no. 81, 122, 129 and 144.

Romania's Constitution of 1991, modified and completed in 2003, expressly establishes in art. 11 that the Romanian state has to fulfill accordingly and in good faith its liabilities of the treaties it is part of. In the event a treaty Romania will be part of comprises dispositions contrary to the Constitution, its ratification will be valid only afret the Constitution revision.

A different article of the fundamental law, respectively art. 20, focuses on the international treaties on human rights, among these, according to the same doctrine interpretation, including the conventions of the International Labor Organization.

In conclusion, if there are any discrepancies²² between the agreements and the treaties on the fundamental human rights Romania is part of, and the internal laws, international regulations come first, except when the Constitution or the internal laws contains more favorable dispositions.

As such, among the international labor norms and human rights there is a certified correlation.

As a matter of fact, as we have previously mentioned, the International Labor Organization is one of the pioneer bodies in the area of the international human rights protection.

Although this constitutional provision was not mentioned in the judicial practice, in the case of the International Labor Organization, it remains referential for its way of resolving²³ in the future a potential legal conflict between the national law and the ILO ratified conventions.

The most important role in coordinating social security in Europe is held by the European Union. Even if it was established for economic reasons, ever since the foundation of the Economic Community social justice was, indirectly, one of its objectives. An

²⁰ The European social Chart revised was adopted in Strasbourg on 03rd May 1996, and ratified by law no. 74/1999, published in the Official Monitor no. 193 of 04th May 1999, being ratified so far by 21 countries.

²¹ Andrei Popescu, *Influența convențiilor internaționale ale muncii supra legislației române a muncii și securității sociale*, article published in *Buletinul de informare legislativă* no. 1/2005 edited by the Romanian Legislative Council, București 2005.

²² Andrei Popescu, *Dreptul internațional al muncii*, Editura Holding Reporter, București 1998.

²³ Andrei Popescu, *Influența convențiilor internaționale ale muncii supra legislației române a muncii și securității sociale*, article published in *Buletinul de informare legislativă* no. 1/2005 edited by the Romanian Legislative Council, București 2005; See for details on the Western European Union, Andrei Popescu, Alina Dinu, Ion Jinga, *Organizații europene și euroatlantice*, Ed. Economică, București 2007, pag 181-190.

important of the European integration represents the promotion of the economic and social progress and the continuous improvement of the living standard and labor conditions.²⁴

The Coordination of the social security systems is an important part of the communitarian *acquis* in the social area. The coordination regulations have become one of the most important instruments of the European social policy.²⁵

Communitarian legislation on the coordination of the social security systems mainly consists of:

- Council Regulation no. 1408/71 on the application of the social security systems for employees, independent workers and family members who travel in the communitarian area;
- Council Regulation no. 574/72 on establishing the implementation procedures of the Regulation no. 1408/71;
- the amendment regulations of the Council Regulation no.1408/71;
- Regulation no. 883/2004, which replaced the Council Regulation no. 1408/71 after the implementation procedures entered into force;
- the decisions and recommendations of the Administrative Commission for Social Security of the Migrant Labors and the jurisprudence of the European Court of Justice.

By these legal instruments they aim at establishing a connection among the national security systems. They want to attain in this way the harmonization of the applicability domain in the communitarian area of the national social security legislations and the coordination of the social security rights according to the legislations of the different Member States.

The European Union capacity to enact supranational regulations in the field of the social security coordination is legally based.

All these aspects were taken into account within the debates which aimed at adopting the Regulation no. 883/2004²⁶, which will replace Regulation no. 1408/71, updating and simplifying the coordination communitarian rules.

Thus, in 1992, the European Council in Edinburgh underlined the necessity of reforming the communitarian legislation in the field of the social security, in order to improve, and especially, simplify it. As a result, by enacting the Communication of the European Commission on the action plan for free circulation of workers, in 1997, the necessity for updating the coordination communitarian regulations is restated.

A communitarian citizen may, in principle, settle on the territory of any other state of the Community to perform his activity, searching for a work place, for his studies or only to spend a part of his life²⁷

The people who travel inside the European Union are integrated into the social security system of the adopting state, so they apply the provisions of that state legislation²⁸.

²⁴ Frans Pennings, Frans Pennings, Introduction to European Social Security Law, third edition, in the series Studies in Employment and Social Policy, Kluwer Law International, Haga, 2001, Chapter 3 "The European Union and the European Economic Area.

²⁵ Eberhard Eichenhofer, A general introduction to Social Security co-ordination in the EC, in the course "European and International Social Security Law, Part II: "EC Social Security Coordination Law", European Master in Social Security 2002 – 2003, Instituut voor Sociaal Recht of the Katholieke Universiteit Leuven, Belgia, 2002.

²⁶ See Regulation (CE) of the European Parliament and the Council no. 883/2004 on the coordination of the social security systems, J.O. 166/2004, of 30th April 2004.

²⁷ Danny Pieters : Basic Principles of Social Security, University of Leuven, 1993

²⁸ C. Garcia de Cortazar y Nebreda, Y. Jorens, B. Schulte, C. Schumacher, B. Spiegel, G. Vonk: Manual on European and International Social Security Law, Ploiești, LVS Crepuscul, 2000

The harmonization of the social security systems of the Member States would be the solution to remove the impediments to free circulation.

The harmonization takes into consideration the direct intervention of the national legislations on social security. This fact implies that the Member States should comply their provisions of the national legislation with the harmonization regulation²⁹.

A solution to this issue could be an intense and improved communication among the responsible institutions in the Member States and the communitarian institutions.

It would also be desirable that the migrant workers should be better informed on the interpretation and evolution of the communitarian coordination rules. Better information of the citizens would determine better implementation of the communitarian rules, enhancing the mobility efficiency in the European Union³⁰. Furthermore, it would increase the role of the networks of de experts in the area of social security coordination systems, created in the Member States, to informally resolve the various issues related to the free circulation people.

The Universal Declaration of Human Rights of 10th December 1948 provides in art. 22 that, any person, as a member of the society, has the right to social security; he is entitled to obtain the satisfaction of his economic, social and cultural rights, inherent to the dignity and free development of his personality, because of the national effort and the international cooperation, taking into account the organization and resources of each country³¹.

The reform objectives in the area of social assistance, that is in a materially supported area, to a large extent by the state, are thus stated and underpinned to ensure the reestablishment and achievement of a balance between the public and private sector, between protection and self-protection, between needs and resources, between human development of the current generation and that of the future generation.

To achieve this purpose, the communitarian legislation on the coordination of the social security systems of the European Union member states represents one of the actual instruments to realize the free circulation of persons³². The aim of the coordination of the national systems is that the persons who avail themselves of the right to circulation in the European Union should not be sanctioned on their social security rights.

²⁹ Dany Pieters, *Towards a radical simplification of the social security co-ordination, in the course "European and International Social Security Law"*, Part II: "EC Social Security Coordination Law", European Master in Social Security 2002 – 2003, Instituut voor Sociaal Recht of the Katholieke Universiteit Leuven, Belgia, 2002.

³⁰ European Commission, COM (2002) 694, Communication from the Commission – Free movement of workers – achieving the full benefits and potential, Bruxelles, 2002.

³¹ Also see in the Universal Declaration of Human Rights, the following: art. 23: any person has the right to work (...) and protection against unemployment (...), that any person has the right to a fair and satisfactory remuneration (...) compensated, if necessary, by any other means of social protection; art. 25 align. 1): any person has the right to a living standard which might ensure their health and good welth of their family, especially in what concerns food, clothing, medical care, as well as the necessary social services; they are entitled to security in case of disease, invalidity, widowship, old age or other cases of loss of subsistence means, as a result of circumstances outside their will; art. 25 align. 2): mother and child have the right to special support and assistance. All the people born or nor outside marriage enjoy the same social protection.

³² Francis Kessler, Jean Phillipe Lhernould, Andrei Popescu, *Securitatea socială a lucrătorilor migranți în cadrul Uniunii Europene*, Editura Lumina Lex, București 2005, pag. 427.

The coordination of the social security systems of the member states protects the respective persons against the negative effects that would be determined by the exclusive application of the national legislation.

Although one of the constant preoccupations of the European Union represents the improvement of the communitarian policy on the matter of social security, a complete harmonization to create harmonized legal rules in the area of social security is neither possible nor desirable in the near future. It is necessary that only a partial harmonization should be achieved and, at the same time, the social security coordination³³ should be extended.

Social protection is conceived for ensuring a basic living standard for all the people, irrespective of the means they are provided.

There are several categories of persons who apply for social protection: the unemployed protection, the protection of the various handicapped people, the child and youth protection, social complementary protection (social protection in case of death, work incapacity, professional disease).

The actual conditions and the different necessities, which have to be fulfilled, require that the ways to achieve social protection should be different.

Thus, the programs are based on differentiated grounds in the area of social insurances, meant to cover personal needs as a result of temporary or final loss of the work capacity or, in case of the worker's protection at the work place, the environment, working conditions and the necessities which pass to the production costs and whose fulfillment should be included in the product price.

Concerning the European Law on social security it should be mentioned that fact that unfortunately it has not yet been ratified in Romania³⁴. Only recently did the Government adopt the ratification of the Bill on the European Social Security Law, even if this is almost identical with the ILO Convention no. 102 of 1952 regarding social security.

On 06.11.1990 a revised Law on social security was open to be signed, because of the changes in the signatory countries of the initial one as well as other factors, such as the changes on the labor market³⁵, labor force migration, the demographic evolution of the population or of the new concepts, like the equal treatment for men and women.

On the occasion of the submission of the ratification instrument, Romania accepted the obligations provided in the European Social Security Law regarding: Parts I (Generic Dispositions), II (Medical Care), III (Contributions provided in case of Diseases), V (Contributions provided for elderly people), VII (Contributions for Families), VIII (Maternity Contributions), corresponding dispositions of Parts XI (Calculation of the Payroll), XII (Common Dispositions) and Part XIII (Various Dispositions).

The right to social security covers the whole system of legal norms which regulate the legal relations of social insurance and those of the social assistance³⁶.

³³ Francis Kessler și Jean Phillippe Lhernould, Code annoté européen de la protection sociale, Ed. Groupe Revue Fiduciare. Paris 2006.

³⁴ On 1.08.2003 the European Social Security Law was ratified by 18 states and other 4 states, among which Romania, had signed it.

³⁵ Andrei Popescu, Nicolae Voiculescu, Drept social european, Ed. Fundației România de Măine, București 2003, pag. 65; George Măgureanu, Dreptul muncii și securității sociale, Ed. Universul Juridic, București, 2010, p. 186 and the next.

³⁶ Ion Traian Ștefănescu, Tratat de dreptul muncii, Ed. Wolters Kluwer România, București 2007, pag. 73.

As compared with the right to work, it is mainly characterized by the fact that its object consists of the legal relations for social insurance and social assistance³⁷.

The regulating method characteristic to the social security right is the direct one, through legislative documents.

The variety and the number of the social contributions and services are dependent on the state of the economy, of the financial resources available at that time, of the necessity to build an administrative application framework, especially in what concerns the personnel training and the cybernation of the activities.

The social protection programs, administered by the state, are financed according to the principle of repartition, compensation among generations, by the resources obtained from contributions, tariffs and taxes, on the basis of the collective responsibility principle.

The structure of the social protection system in Romania is intricate because of the existence of different plans valid for the same social risk, of some of miscellaneous financing and organizational methods, sometimes unsuitable, of some institutional assignments and responsibilities which are overlapped and vague.

The social protection plans in Romania function according to the principle of social insurances, non-contributive plans financed by the state budget, social assistance plans, as well as plans based on financing through subsidies from the state budget of such free goods and services at low prices for certain categories of people.

Social protection aims at areas where there should be made collective efforts, such as: health, training and education, culture, holiday and leisure conditions, the social and political environment, briefly, social living conditions.

Furthermore, there are also material living conditions such as the house and housing environment, the labor force employment and the working conditions or the income and the consumption, family life, respect for the rightful social order.

That is why we should mention the fact that in the doctrine³⁸ they use both the term "social security" and its synonym "social protection".

There should be made a distinction between the two notions, especially taking into account that, since Romania's Constitution use the notion of „social protection”, the international treaties such as the Universal Declaration of Human Rights, the International Treaty on economic, social and cultural rights as well as the revised European Social Chart, uses most of the time the phrase „social security”.

As a result, we adhere to the majority doctrine³⁹ opinion, because in case of a lack of a common denominator, which should underline the importance of an accurate definition of the social security legal relations, the two phrases tend to overlap, which is not at all effective.

It is obvious that the relations which result from the social security norm include those of social protection, for which the reverse cannot be possible.

³⁷ Idem, pag. 73.

³⁸ Ion Imbrescu, Considerații referitoare la sinonimia sintagmelor de "protecție socială" și de "securitate socială", published in the magazine Dreptul no.9 of 2004, pag. 89

³⁹ Ion Traian Ștefănescu, *Tratat de dreptul muncii*, Ed. Wolters Kluwer România, București 2007, pag. 73;

As a proof of what has been mentioned above, and the doctrine made a clear-cut distinction of the social insurance relations, with a more limited area, as compared to those of the social assistance, which have a wider coverage area⁴⁰.

It is obvious that a counterpart at the European level of the social security right, which unfortunately, at least in the field⁴¹, was not treated properly in the least.

We make this statement because the issue of social security has been well regulated and implemented at the communitarian level ever since 1952⁴², by the Convention of the International Labor Organization no. 102 of 1952, which was released at that time, as a consequence of the previous necessities and recommendations on social rights.

The above-mentioned Convention imposed minimal social security norms that the signatory states should apply for the progressive extension of the activities regulated by social protective norms, to the whole range of current work relations.

Also, within the context of constant heavy fiscal and social tasks the world states have to perform, together with the decrease in the number of active, productive persons, there was and there has been debated the solution of outsourcing these services through the public institutions, by transferring them to the private ones, on the whole⁴³.

It seems that such a decision has not been welcome by the experts⁴⁴ and as a consequence, there has been a twofold increase in the public social assistance services with the one offered by the private insurers, which could undertake a part of the social pressure by means of the private insurances contributions.

Regulated according to criteria based on the social services and contributions, they are granted in accordance with the status of the person or of the family.

Thus, according to the art. 10 of the Law 47 of 2006, social services cannot be primary or specialized.

Primary social services represent measures and actions of proximity and prevention granted in the community, with a view to identify and limit risky situations the person, the family or the group might find themselves at a certain moment.

Specialized social services represent support and assistance measures which aim at maintaining, recovering and developing the capacities of the person or of the family, who are in specific vulnerability or risky situations of social exclusion and they are granted to the qualified and specialized personnel.

Providing social services is organized in a decentralized system, at the level of the local communities, to answer as properly as possible the identified social needs, to the typology of the potential beneficiaries and the specific conditions in which they find themselves.

⁴⁰ Cătălin Zamfir, Lazăr Vlăsceanu, *Dicționar de sociologie*, Ed. Babel, București 1993, pag 46-51; Elena Zamfir, Cătălin Zamfir, *Politici sociale. România în context european*, Ed. Alternative, București 1995, pag. 100; Alexandru Athanasiu, *Dreptul securității sociale*, Ed. Actami, București 1995, pag. 175.

⁴¹ Andrei Popescu, *Dreptul internațional și european al muncii*, Ediția a II-a, Ed. C.H. Beck, București 2008, pag. 188.

⁴² See Convention of the International Labor Organization no. 102, on establishing the minimal social security norms, adopted in 1951.

⁴³ See the volume of the European Council and the European Institute for Social Protection, *La privatisation de la protection sociale: renouveau au declin?*, Strasbourg 1994.

⁴⁴ Andrei Popescu, *Dreptul internațional și european al muncii*, Ediția a II-a, Ed. C.H. Beck, București 2008, pag. 256.

The social service providers may organize and grant social services, with or without hosting, in the community, at the beneficiary's residence or in public or private day centers or residential centers.

Day centers and residential centers represent buildings where social services are granted by the qualified personnel and which are provided with the adequate infrastructure for their servicing; in residential centers the person can be hosted more than 24 hours.

Social services are granted by the social services providers who are natural or legal persons, of the public or private right.

Accredited social service providers as well as the social services provided to them are registered in the single electronic register, organized at the national level according to the order of the labor, social and family minister.

Accredited social service providers can conclude partnership conventions or contracts to grant social services.

Social services are organized in a flexible multidisciplinary and coordinated system, and can be provided in an integrated system of health, education, housing, labor force employment services and the like, according to the complexity of the situation.

According to the art. 17 of the Law no. 47/2006, social contributions imply financial transfers and comprise family allowances, social benefits, benefits and facilities.

As a result, family allowances are granted to families and take into consideration birth, education, child support, social benefits and they are granted to persons or families in distress and whose budget is insufficient to cover the minimal life necessities, assessed by social investigation as well as other specific instruments, and the benefits and facilities are granted to persons to favor their social inclusion and to ensure them an autonomous life; the benefits which have a compensatory characteristic are granted to persons and, accordingly, their families, who were damaged as a consequence of socio-political events or of natural catastrophes and hazards, acknowledged by law.

The main criteria on which social contributions are granted are the assessment of the family context, the applicant's budget or of his family's budget, living conditions, health and the dependence degree.

The state grants social benefits, through its central or local specialized institutions, in cash or in barter, from the state budget or the local budget; these relations are regulated by special legislative documents.

Unlike the social insurance relations which cover a small area because of the capacity of the insured person and which depend on a certain legal situation, such as that of an employee, social insurance relations cover a larger area, derived from the notion of necessity⁴⁵.

Legal social assistance relations are characterized, according to a field⁴⁶ opinion, by the fact that they are regulated only by law, their subjects are natural persons in need, on the one hand, and the state, through its specialized bodies, on the other hand, the content of these norms comprise the right of the socially assisted persons to receive the benefits

⁴⁵ Alexandru Țiclea, Constantin Tufan, Dreptul securității sociale – university course, Ed. Global Lex, București 2005, pag. 21; Alexandru Țiclea, Dreptul securității sociale – university course, Ed. Gutenberg Univers, Arad 2007, pag. 15.

⁴⁶ Alexandru Athanasiu, Dreptul securității sociale, Ed. Actami, București 1995, pag. 29.

provided by law as well as the obligations of the state's specialized bodies to grant them, and last but not least, the contributions have a contractual characteristic, not being able to be successive as the social insurance ones.

Currently, the social protection actions focus on several areas where collective efforts are necessary, respectively: health, training and education, culture, holiday and leisure conditions, social and political environment, briefly, social living conditions.

Actually, the above-mentioned actions were more than necessary as long as in this period both Europe and the overseas developed high-ranked projects, especially in the field of civil, industrial and military engineering, which, because of the lack of labor protection, produced material, especially human damage.

We can consider that the state has not only the defensive mission to protect the current rights, but also to promote, through its corresponding institutions using the means of the available collectivity, the good wealth of all its members, and especially the good wealth of the needy.

The Beveridge Report of 1942⁴⁷, called as such after the economist and reformer William Beveridge, supported the active fight against poverty.

Social security takes into consideration the whole population and not only the working class; the author of the report also insists on the preventive aspect of the hazard.

As far as the communitarian regulation is concerned, ever since the foundation of the European Economic Community there has been proved the necessity of enacting the fastest possible coordination rules.

There had to be made efforts for the inconveniences at that time should not be considered an obstacle to the free circulation of workers⁴⁸.

For this reason, article 51 of the Treaty on CEE, which required the Council to adopt, in the social security field, the necessary measures to achieve the free circulation of workers.

Another example of national regulation is that of the French Constitution of 1946⁴⁹, whose preamble said „The nation ensures the individual and his family the necessary conditions for his development. It guarantees to all the people and especially to the child, mother and the old-aged worker health protection, material security, work recessions and holidays. Every person who, because of their age, physical or psychic state, economic state is in the incapacity to work is entitled to obtain from the collectivity the right means of subsistence.”

In conclusion, the principle of fair treatment imposes the application of the national social security legislation of the state to the citizens of the other member states, in the same conditions as for its own citizens. When a state legislation contains discriminatory provisions for foreigners, these provisions cannot be applied to the citizens of other member states.

However, fair treatment does not mean eliminating the discrepancies among the social security systems of the member states. The provisions aiming at achieving the fair treatment

⁴⁷ See the Report of Sir William Beveridge, presented to the UK Parliament in November 1942.

⁴⁸ William Beveridge, “Report on Social Insurance and Aliens Services” London 1942.

⁴⁹ See Constitution of the fourth French Republic, adopted on 13th October 1946.

represent an important part of the communitarian coordination rules and implies the fact that member states are free to determine their own terms for granting benefits, yet observing the principle of non-discrimination based on citizenship.

As a consequence of the free circulation in the European Union, a citizen of a member state may find himself at a certain moment in the position of being applied the rule of the social security system less favorable than the one in his country of origin.

The fair treatment principle does not confer the right to compensations for persons who are in the same position. As the national legislation freely establishes its own conflict rules, the interdiction to citizenship discrimination does not exclude the possible treatment differences, at the communitarian level caused by the discrepancies between the legislations of the member states.

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