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PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN LIGHT OF INTERNATIONAL AND NATIONAL STANDARDS



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INTERNATIONAL AND NATIONAL STANDARDS”**

UNIVERSITY OF PRIŠTINA IN KOSOVSKA MITROVICA
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**PROTECTION OF HUMAN RIGHTS AND FREEDOMS
IN LIGHT OF INTERNATIONAL AND NATIONAL
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Biljana TODOROVA, Ph.D*

THE RIGHT TO SOCIAL SECURITY – NORMATIVE CONTENT AND
CONDITIONS FOR EFFECTIVE ENJOYMENT AND PROTECTION IN THE
REPUBLIC OF NORTH MACEDONIA

Abstract

Social security is developed into one of the main social institutions of today's modern societies. It plays a key role in the human quest for greater protection from uncertainty, disease and deprivation that people in some period of their life are facing. Even in the most economically developed countries, it can be considered as one of the great achievements of today's society. The purpose of this study is to re-examine the issue of the right to social security and its significance. Also, the article aims at illustrating the right to social security in North Macedonia and its interventions and strategies when faced with social change. Taking into account the challenges that the society is facing the study draws some recommendations that need to be referenced at the national level of social security. The method used by the author is to analyze existing documents to collect secondary information on related issues, especially information from the legal acts in the country. The thesis and references are adapted from research works on social security, studies, policies, and activities of the legislator in North Macedonia in the process of following social security.

Key words: social protection, social security, social risk, social law, Republic of North Macedonia.

1. INTRODUCTION

A general prevailing opinion is that one of the biggest burdens in a person's life is the uncertainty that the future brings and the concern whether we will be able to provide ourselves and our loved ones with satisfactory living conditions. The concept of social security is based on that idea, to facilitate that care for existence.¹

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¹ B. Šunderić, *Socijalno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2009, 73.

It ensures a standard of living equal to or close to that which existed before the onset of social risk in the event of unemployment, maternity, accident, illness, disability, old age or other such life circumstances. In more general terms social security is a public system of income protection in case of one's loss or reduction (e.g. due to old age, invalidity, death of a family's income earner, accident at work or occupational disease, sickness, maternity or unemployment) or increased costs (e.g. for health care, raising of children or long-term care services), organized through a process of (broader or narrower) social solidarity. It serves to protect human beings from the life-threatening and degrading conditions of poverty and material insecurity. Therefore, social security is very important for the well-being of workers, their families and the entire community. It is a basic human right and a fundamental means for creating social cohesion, thereby helping to ensure social peace and social inclusion. Social security, if properly managed, enhances productivity by providing health care, income security and social services. It is an indispensable part of governments social policy and an important tool to prevent and alleviate poverty. It can, through national solidarity and fair burden sharing, contribute to human dignity, equity and social justice. It is also important for political inclusion, empowerment and the development of democracy. In conjunction with a growing economy and active labour market policies, it is an instrument for sustainable social and economic development. It facilitates structural and technological changes which require an adaptable and mobile labour force. It is noted that while social security is a cost for enterprises, it is also an investment in, or support for, people. Social security includes systems to maintain a person's income. These are social insurance and social assistance. The first based on performance check (employee labor), the second - universal receipt that is approved without proof of income. The background study illustrates the risk in both traditional social security and in an investment-based system. This study develops the concept of „political risk“ as the possibility that a future legislature will change the tax and benefit provisions of pay-as-you-go social security programs when there are changes in the demographic and macroeconomic variables that support it.²

Today, the question arises as to how justified and to what extent state funds should be spent on the social security system. That was the question of the creator of the social security system - the German Chancellor Bismarck. Attitudes range from complete approval to negative opinions. The Bismarck model of social and health insurance is the reason for the formation of similar health funds that are often common in many countries around the world. With the trend of globalization and

² B. Shoven, John, and N. Slavov Sita, *Political risk versus market risk in Social Security*, NBER Working Paper No. 12135. Cambridge, MA: National Bureau of Economic Research, 2006. Available at <http://www.nber.org/papers/w12135>.

structural adjustment policies, social security becomes more necessary than ever. International Labour Organization believes that the social security system contributes not only to human security but also to dignity, justice, social justice, and the development of democracy. Therefore, this article will first describe the roots of the North Macedonian social security system, then it will take a look at the main changes and reforms aiming at not only preserve but somehow improve the system.

2. HISTORICAL AND THEORETICAL FRAMEWORK OF THE RIGHT TO SOCIAL SECURITY

The first nation in the world to adopt a social security program was Germany. Designed by the German Chancellor Otto von Bismarck the motive was to introduce social insurance both to promote the well-being of workers in order to keep the economy operating at maximum efficiency, and to stave off calls for more radical socialist alternatives. Coupled with the workers' compensation programme established in 1884 and the "sickness" insurance enacted the year before, this gave the Germans a comprehensive system of income security based on social insurance principles.³

Following the First World War, social insurance schemes developed rapidly in several regions, and social protection was included on the agendas of the newly-established international organizations, including the International Labor Organization and the International Conference of National Unions of Mutual Benefit Societies and Sickness Insurance Funds which was launched in Brussels in October 1927 and later became the International Social Security Association (ISSA). At the height of the Second World War, in 1942, the United Kingdom government published the Beveridge Plan, named after its main author, Lord Beveridge, which led to the setting up of the first unified social security system. In France, Pierre Laroque led government efforts to extend social protection to the entire population, and a national social security system was set up in 1946.⁴

In 1944 the ILO's historic Declaration of Philadelphia called for the extension of social security measures, and for the promotion, on an international or regional basis, of systematic and direct cooperation among social security institutions, the regular interchange of information and the study of common problems relating to the administration of social security.⁵

³ Word of work, the magazine of the ILO, *From Bismarck to Beveridge: Social security for all*, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcm_041914.pdf, 16.03.2022.

⁴ Ibid.

⁵ International Labour Conference, *Social security and the rule of law*, 100th Session, 2011, p. 257.

Four years later, the United Nations General Assembly adopted the Universal Declaration of Human Rights dated 1948, whose article 22 recognized that “Everyone, as a member of society, has the right to social security”, and article 25 recognized that „Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and 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 his control.“ In 1952, the International Labour Organization adopted the Social Security (Minimum Standards) Convention (No. 102), and in 2001 it launched a Global Campaign on Social Security and Coverage for all. At its 101st regular session in June 2012, the International Labour Conference adopted a new international standard for social security, the Social Protection Floors Recommendation 2012 (No. 202), which complements the International Labour Organization's strategy for social security. This Recommendation complements existing International Labour Organization standards on social security and represents a flexible but important guide for Member States in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of social protection accessible to all in need. The Social Protection Floors Recommendation complements the existing Conventions and Recommendations. In particular, it assists member States in covering the unprotected, the poor and the most vulnerable, including workers in the informal economy and their families. It thereby aims at ensuring that all members of society enjoy at least a basic level of social security throughout their lives. This instrument opened a new vision of what social justice could mean in a global era, broadening the moral, legal and fiscal space for social protection in the transition to a more sustainable global economy.⁶

In 2008, the United Nations Committee on Economic, Social and Cultural Rights managed to agree on General Comment No. 19 outlining the content, the corresponding duties, as well as the potential violations of the human right to social security outlined in Article 9 of the International Covenant on Economic, Social and Cultural Rights.⁷ Hence the Committee has for the first time adopted a general comment on Article 9, which stresses, from the outset, its concern about the very low levels of access to social security with a wide majority of the world population currently lacking access to formal social security, and also regulates the human dimension to the right to social security. This is presently the most authoritative interpretation of the right to social security within the United Nations human rights

⁶ ILO, *Social protection floor for a fair and inclusive globalization*, Report of the Social Protection Floor Advisory Group, Geneva, 2011, p. xi.

⁷ Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security (art. 9), Thirty-ninth session, 2007, U.N. Doc. E/C.12/GC/19 (2008).

system and reflects the current state of international law. It should be noted that the Committee on Economic, Social and Cultural Rights has finalized two other general comments on thematic issues strictly related to the right to social security, General Comments No. 14 and No. 18, dealing with the right to the highest attainable standard of health, and the right to work, respectively. The general comments should be interpreted in a coherent manner by taking into account the fact that the right to social security cuts across a number of provisions of the International Covenant on Economic, Social and Cultural Rights – e.g. provisions on the right to just and favorable conditions of work, to adequate standard of physical and mental health, adequate standard of living, etc. – even though it is openly indicated only in Articles 9 and 10 of the the International Covenant on Economic, Social and Cultural Rights.

In international⁸ and European Union law⁹ there is a clear distinction between social security and social assistance due to historical differences between subjective and enforceable social security rights and more discretionary right to social assistance. For instance, the International Labour Organization Convention no. 102 contains no provisions on social assistance, but on the other hand, in the European Social Charter Article 12 is regulating the right to social security and article 13 the right to social and medical assistance.

From the abovementioned approach, it is possible to define social security as a network of specific programs and systems of policies from the state or social organizations to support and protect individuals and the whole society, especially those who encounter risks or difficulties in life, ensuring a minimum standard of living and contributing to improving their lives, thereby promoting social development and progress.

⁸ Universal declaration of human rights, article 22 and article 25; International Covenant on Economic Social and Cultural Rights, article 9; European Social Charter (ESC) and the revised ESC, article 12. For defining the content of the right to social security the ILO Convention No. 102 concerning minimum standards of social security has to be applied. Similar obligations arise also from the European Code of Social Security. Source: G. Strban, *Constitutional protection of the right to social security in Slovenia*, Studia z zakresu prava pracy i polityki społecznej, 2016, p. 253.

⁹ The right to social security (and social assistance) is enshrined in Art 34 of the Charter of Fundamental Rights of the European Union, OJ C 83/389, 30. 3. 2010. See also other articles of this Charter which may influence the content of the right to social security, e.g. Articles 1 (Human dignity), 20 and 21 (equality and non-discrimination), 23 (gender equality), 24 (the rights of a child), 25 (the rights of the elderly), 26 (Integration of persons with disabilities), 35 (the right to health care), 36 (access also to social services of general interest). *Ibid.*

3. LEGAL FRAMEWORK FOR ENJOYMENT AND PROTECTION OF RIGHT TO SOCIAL SECURITY IN THE REPUBLIC OF NORTH MACEDONIA

The Republic of North Macedonia has ratified the Convention on Social Security (Minimum Standards), 1952 (No. 102) on 11/17/1991, and adopted the Social Protection Floors Recommendation, 2012 (No. 202). The right to social security is recognised as one of the fundamental human rights in international and European Union law. It is also enshrined in many national constitutions, including the North Macedonian one. As such, it cannot be regulated as a very precise and concrete legal rule. It is one of the basic values and guidance for all legal subjects in a society. Based on the assumption that social security is a human right as well as a social and economic necessity, the Constitution of North Macedonia includes a detailed list of provisions regarding the economic and social protection of the citizens. Under Article 1 of the Constitutional Basic Provisions, North Macedonia is declared as an independent, sovereign, democratic and social state, while Article 8 of the basic provisions, as one of the basic Constitutional values of North Macedonia, is determining the principle of social justice. The social rights can be found in Chapter 2, Part 2 of the Constitution and they include right to health protection, social security (social insurance) and social protection (Articles 32- 42).¹⁰ The citizens have right to social security and social insurance determined with law and the collective agreements. Moreover, everyone has the right to material assistance during temporary unemployment. Every citizen is guaranteed the right to health care. Mothers and children are particularly protected. Based on these guarantees the Constitution plays a very important proactive role in introducing social rights into the national legislation and in fostering their implementation.

The social security system in North Macedonia consists of the following schemes: social insurance (socijalno osiguruvanje), social protection (socijalna zashtita) and family benefits (zashtita na decata) schemes. The social insurance schemes are covering three basic types of insurances, i.e. the health care insurance (zdravstveno osiguruvanje), the pension and invalidity insurance (penziskoinvalidsko osiguruvanje) and the unemployment insurance (osiguruvanje vo slucaj na nevrabotenost). They are primordially financed on the basis of social security contributions and are of a professional nature. They are covering the professionally active persons (employees, self-employed people, farmers and civil

¹⁰ According to the Article 35 of the Constitution of the Republic of Macedonia („Official Gazette of the Republic of Macedonia“ No. 52/1991 as of 22.11.1991) “the Republic provides for the social protection and social security of citizens in accordance with the principle of social justice. The Republic is guaranteeing help to the helpless and to the citizens incapable for work. The Republic is providing special protection to the persons with disability as well as conditions for their active inclusion in the society.”

servants) and their family members.. Although professional of nature, the health care insurance is covering the entire population residing in the country and guarantees equal access to health care regardless of employment and legal status of the citizens. Social protection schemes are taken care of by the state, and focus on prevention and coverage of the basic social needs. These schemes are universal in the sense that they cover all citizens and persons residing in the country and meeting the eligibility criteria determined in the Law. In order a person or a household to be eligible to receive benefits under the social security scheme, the household income is measured against a defined minimum subsistence. Some categorical assistance schemes, providing assistance to specific groups (elderly in need, handicapped) exist as well. The family benefit (child allowance – detski dodatok) schemes are separately organised. Benefits are financed through the State Budget. Although they are universal with regard to their personal scope, they mainly target working families with a low income (below minimum subsistence). Special benefit (poseben dodatok) is provided to children with special needs.¹¹

Individual's access to social rights is guaranteed in a three instance procedure, the last instance is judicial protection. The procedures for attainment the rights and obligations related to health insurance are laid down in the Law on health insurance¹² and Law on general administrative procedure.¹³ The procedure is being initiated upon an application of the insured persons or a member of their family. A regional service of the Health Insurance Fund is obliged to issue a decision regarding the filed application and to deliver it to the applicant thereof.¹⁴ The applicant has a right to a complaint to the minister of health in the capacity of a second instance authority against the aforesaid decision of the Health Insurance Fund.¹⁵ Judicial protection is provided to the insured person against the decision of the minister.¹⁶ The individual can address his/her complaints to the Administrative Court of North Macedonia as the first instance court in accordance with the Law on Administrative Disputes.¹⁷

The rights related to pension and invalidity insurance are different because they are acquired depending on the period and amount of investment in the funds for pension and disability insurance. The procedure is provided through the Pension and

¹¹ T. Kalovska, *Social Institutions Support Programme*, Format For reporting on the present state and future of social security in the countries participating in the SISP, p.2.

¹² „Official Gazette of the Republic of Macedonia“ No. 25 of March 30, 2000, and it's all amendments.

¹³ „Official Gazette of the Republic of Macedonia“ No. 38/2005 of May 26 2005.

¹⁴ Law on health insurance, article 31.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ „Official Gazette of Republic of Macedonia” No. 96 from 17.5.2019.

Disability Insurance Fund, having regional units throughout the country.¹⁸ Applications should be launched with the local branch office of the Pension and Disability Insurance Fund.¹⁹ In case a person wants to launch an appeal against the taken decision, he/she can apply to the State Commission for Resolution of Second Instance Administrative Proceedings and Labour Relation Proceeding.²⁰ This is the second instance, while in a further process against the second instance decision the individual can launch an administrative dispute in front of the Administrative Court as the first instance court.²¹

Proceedings with regard to unemployment benefits are initiated on the basis of application filed by the unemployed (insured) person and the first instance decisions are brought by the administrator of the local Employment Centre (Employment Agency of the Republic of North Macedonia) where the unemployed person is registered. In the second instance, the rights determined by the Law on Employment and Insurance in Case of Unemployment²² are dealt with by the Minister of Labour and Social Policy. In the third instance, the individual can lodge an administrative appeal with the Administrative Court as the first instance court against the decision of the minister of labour.

The Social Work Centre decides upon the rights of social protection and family (child) benefits in the first instance. The competent centre is the social work centre where the individual holds temporary or permanent residence. The Minister of Labour and Social Policy deals with the complaints in the second instance procedures. The third instance is the judicial protection which is provided by means of initialising administrative dispute before the Administrative Court of North Macedonia as the first instance court. Provisions laid down in the Law on Social Protection,²³ Law on child protection²⁴ and Law on General Administrative Procedure apply for administering the aforesaid proceedings.

With regards to the judicial protection, as noted above the Administrative Court decides in the first instance upon lawsuits against administrative acts of the state administration (ministries). The individuals may further file an appeal against the decisions of the Administrative Court to the Higher Administrative Court, as the second instance court. The Supreme Court of the Republic of Macedonia is the last

¹⁸ Law on pension and disability insurance, „Official Gazette of Republic of Macedonia” No. 80/93 article 4, article 8, article 125 and article 126.

¹⁹ Ibid, article 127.

²⁰ Ibid, article 10 and article 134.

²¹ Ibid 135.

²² „Official Gazette of Republic of Macedonia” No. 37/97.

²³ „Official Gazette of RSM“, No. 104 from 23.5.2019.

²⁴ „Official Gazette of Republic of Macedonia” No. 23/13.

instance and decides upon extraordinary legal remedies against the decisions of the Higher Administrative Court.

3.1. Could North Macedonia do more to promote the right to social security?

The legal position of the individual is better protected if the country has to respect not only the principle of social security (which may have a broader sense, touching upon the regulation of taxes, housing benefits, labour and education rights) and fundamental rights of social security but other principles and human rights as well. Among them are the most relevant the equality and the rule of law principles (protecting also legal expectations and preventing drastic changes during the recession periods) and the right to private property. The latter might be important not only in purely internal situations but also when people move to a country with which no social security coordination instrument exists.

It is known that in Macedonian society many of the citizens work in the informal economy. These workers for the most part are not covered by the country's labour and social laws and regulations. Introducing policies support for vulnerable groups in the informal economy will encourage movement away from it. As a matter of equity and social solidarity these should be financed by society as a whole.

Another aspect is immigrations of the working force, specifically the young people that bring uncertainty in the future. North Macedonia is characterized as a distinctive migration area with intensive population emigration in the period following the visa liberalization.²⁵ The age distribution of immigrants, their earnings, taxes they pay, the social contributions they pay, the timing of their retirements, and the benefits they receive can have important implications for the system solvency.

In conditions of high unemployment and low material income, social security should play a vital role to provide income support to workers who have become involuntarily unemployed. The provision of cash benefits to the unemployed is one of the possibilities and should be closely coordinated with training and retraining and other assistance they may require in order to find employment. Finally social security benefits shouldn't be designed so that they create dependency or barriers to employment. Measures to make work financially more attractive than being in receipt of social security had been found effective.

4. CONCLUSION

It seems that during the assessment of the right to social security, the most important role is played by the contents of international instruments and their

²⁵ Ministry of labour and social policy, *Revised economic and social reform programme 2022 - ESRP(r)*, Republic of North Macedonia, p.20.

significance in the system of international legal standards. It should be noted that, many instruments exist at both a global level (the International Labour Organization should be considered the most important organisation creating social security standards), at the European level (the most important international instruments seem to be the European Social Charter established within the legal system of the European Council, along with the European Charter of Fundamental Rights binding for member states of the European Union), and at national level.

The findings of the study indicate that, since the independence of North Macedonia, understanding of social security rights has grown in perfect synchronization with the level of socioeconomic growth in market-oriented economy settings, increasingly approaching international standards in the integration process. Therefore, social security rights may be recognized in the national legal system at a number of different levels. There is an individual right of action before the courts which means that individuals are able to participate actively in the realization of their right to social security.

It can be noticed that social security is largely based on a national social insurance system which is a part of a welfare state. Although its explicit objectives from the beginning were to go toward a universal coverage, the actual roots are the Bismarck model. As a result the whole welfare system was focused on labor, and originally based on the male breadwinner model. Most of the budget came from wages and a turnover was organized amid employers and employees unions as for to run them along with the unemployment benefits or the pension system. However, since this foundation time, many changes have occurred; some of them pushed by internal constraints, others pulled by external conditions. These changes cannot be understood without knowing some actual features of the original system. In fact, reform cannot be successful if it does not take into account what has been historically and socially built before it became necessary.

The promotion of the right to social security requires an integrated policy response involving fiscal, monetary, labour market, and modern social security policies. These choices will reflect our social and cultural values, history, institutions, and level of economic development. The highest priority should be policies and initiatives which can bring social security to those who are not covered by the existing system. As before, the Republic should have a priority role in the facilitation, promotion, and extension of coverage of social security and the system should conform to certain basic principles. In particular, benefits should be secure and non-discriminatory; schemes should be managed in a sound and transparent manner, with administrative costs as low as practicable and a strong role for the social partners. And finally, in terms of the social changes and economic crises we are facing today, it is necessary to act immediately with a plan that will give positive effects to the social security of citizens.

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ПРАВО НА СОЦИЈАЛНУ СИГУРНОСТ – НОРМАТИВНИ САДРЖАЈ И
УСЛОВИ ЗА ЕФИКАСНО УЖИВАЊЕ И ЗАШТИТУ У РЕПУБЛИЦИ
СЕВЕРНА МАКЕДОНИЈА

Резиме

Социјална сигурност је развијена у једну од главних друштвених институција данашњих модерних друштава. Она игра кључну улогу у људској потрази за већом заштитом од неизвесности, болести и ускраћености са којима се људи у неком периоду свог живота суочавају. Чак и у економски најразвијенијим земљама то се може сматрати једним од великих достигнућа данашњег друштва. Сврха овог рада је да се преиспита питање права на социјално осигурање и његов значај. Такође, овај чланак има за циљ да илуструје право на социјалну сигурност у Северној Македонији и његове интервенције и стратегије у суочавању са друштвеним променама. Узимајући у обзир изазове са којима се друштво суочава, студија даје неке препоруке на које је потребно обратити пажњу на националном нивоу социјалне сигурности. Метод који користи аутор је да анализира постојећа документа ради прикупљања секундарних информација о сродним питањима, посебно информација из правних аката у земљи. Теза и референце су преузете из истраживачких радова о социјалној сигурности, студијама, политикама и активностима законодавца у Северној Македонији у процесу праћења социјалне сигурности.

Кључне речи: социјална заштита, социјална сигурност, социјални ризик, социјално право, Република Северна Македонија.