

EUROPEAN STANDARDS OF
COMPULSORY SOCIAL INSURANCE

Moskalenko O.V.,

*Postdoctoral student of Civil, economic and
labor law department of HNPU named after
G.S. Skovoroda*

European standards of compulsory social insurance are captured in various official acts of the Council of Europe and the European Union.

The Preamble of the European code of social security 1964 (revised November 6, 1990) [1] enacts that the aim of the Council of Europe is to secure common values in the field of social cohesion in its member countries. This code contains minimum social standards that should be provided in connection with such social risks as: sickness, unemployment, old age, employment injury, occupational disease, maternity, invalidity, or death of breadwinner; those who have to look after children should be supported by the society also.

For example, the period of persons' life when he or she reach a certain age is the circumstance that conduce the awarding of old-age pension. Such period determines in 65 years, but relevant demographic, economic and social criterions could become the basis for the advancing of abovementioned age. The age of 65 years or more will be reduced accordingly to these terms and conditions in the following circumstances:

- a) if the persons' work, in accordance with national legislation or practice, concerning under the arduous and harmful labor conditions, with the aim of getting old-age pension;
- b) for incapacity to work until and after a certain age;

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- c) in the case of full unemployment for at least one year after a certain age;
- d) after a certain period of contributions' payment, occupational activity and residence.

So, in accordance with certain rules, pension is guarantee to all persons who have a forty-year period of contribution, occupational activity or residence, including any period considered as such.

The European code of social security provides a considerable number of preventive measures focused on loss occurrence preventing and on its social and financial consequences reduction. In the order to ensure a flexible approach concerning with grant the right to social security, there is a certain quantity of permits that makes possible to make amends or to give an equivalent social service in the case of protection level recession.

Charter of the Fundamental Social Rights of Workers was adopted on the ninth of December, 1989 by the Council of the European Union at the suggestion of European Commission after consultations with Economic and Social Committee of European Parliament. This Charter is the first attempt to establish the interstate cooperation in the social service and population protection fields at European Union level. Under the Charter each employee of the EU is entitled to adequate social security regardless of enterprises' size and status whereon such persons works. Individuals who have no possibilities to enter or re-enter to the labor market and have no means of living, should be able to get sufficient means and social care by reference to specific features of particular case. Member states are mainly responsible for the ensuring of the basic social rights that containing in the Charter, as well as for the taking actions that necessary for providing an appropriate functioning of the local market as a component of the strategy of economic and social unanimity

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The main part of the European labor standards covered by the European social Charter (revised), 1996 [3; 4]. Last-mentioned document generally protects 31 rights, while its predecessor - the Charter of 1961 [5] protected only 19 rights. These amendments and additions have substantially improved the efficiency of the Charter as a fundamental European document in the field of social and economic rights protection.

The right of social security envisaged in the Revised Charter and the Charter of 1961 in the article 12. Both Charters impose a duty of the creation of social security system or upholding its functioning on member states.

European social Charter, 1961 contains the state's obligation to uphold a social security system at least at such level that necessary for ratification the Convention №102 of the Labor Organization's Convention On minimum standards of social security». Meanwhile European social Charter, 1996 contains the state's obligation to uphold the social security system at a satisfactory level at least as the level required for the ratification of the European code of social security. The difference between the Convention and the Code is in the requirements for their ratification (in the case of the first document it's necessary to adopt at least 3 parts, in the case of the second – 6 parts). Under the second article of European code of social security each contracting party adheres to at least six parts of the parts II-X, with the understanding that part II considers as two parts and part V considers as three parts. The code includes the following parts: II - medical care; III - sickness benefit; IV - unemployment benefit; V - the old-age benefit; VI - injury benefit; VII – family relief; VIII - maternity benefits; IX - invalidity benefit; X - loss of breadwinner benefit. Thus, the ratification of the European code of social security requires a higher level of social security than it's necessary for the ratification of the

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Convention №102 of the International Labor Organization. Namely, the Revised Charter's, 1996 level of the social security was raised in relation to the Charter, 1961.

These regulations have a substantial not only social, but also political significance. For example, the Committee of independent experts came to the conclusion that such provisions ignored by Cyprus. It stated: «in spite of the presence of social security legislation, that provides for social payments related to certain risks, such legislation has serious problems. It should be mentioned that lots of such payments are small account thereby there are serious doubts that existing measures can be called a social security system» [6, C. 573].

Under the Both Charters, the Contracting parties also undertake such obligations:

- to foster the efforts to raise the system of social security to a higher level;
- , to negotiate bilateral and multilateral contracts or in another way and under the conditions laid down in such contracts, take steps to ensure: (a) an equality in terms of social security rights between their own nationals and nationals from other states, including the retention of benefits arising out of social security legislation. And it doesn't depend on movements of the socially protected persons on the territories of the states. In such a case certain countries, in each reporting cycle, should submit to the Committee of independent experts proof of the continual improvement of such system; b) granting, exercise and renewal of social security rights by such means that were made under the law of each.

It should be emphasized that with ratification of the European social Charter (revised) on 14th of September, 2006, Ukraine didn't assume the obligation to consider binding the provisions of article 12.

It is important to say that because of the significance of this article, it was included in the noun of so-called «mandatory articles».

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The standards of the European social Charter (revised) that were acceded by Ukraine upon the ratification of this document concerning with extremely important social rights. Particularly it's referred to the right of social security; thereby the comprehensive accession of our country to this international document is one of the vital problems. It will set clear guidelines for further social sphere reforming in accordance with generally accepted european standards.

The European Union attends to issues of compulsory social insurance. It's important to note that EU is founded on the values of human dignity and freedom respecting, democracy, equality, the rule of law and respecting of human rights, including persons belonging to minorities. These values are common to all member states in our society that dominated by pluralism, non-discrimination, tolerance, justice, solidarity and equality of women and men (article 2 of the Treaty on European Union [7]).

In the field of social security, the European Parliament and the Council acting in accordance with the ordinary legislative procedure. They adopt the measures necessary to ensure freedom of workers' movement. With this aim they create a system that guarantee to employed and self-employed migrant workers following work conditions:

(a) in accordance with the laws of several countries, compilation of all periods to acquire and preserve the right for social payments and calculation of the volume of these payments;

b) social benefits implementation to persons residing on the territory of member states.

If the Council's member declares that a draft law effects on important aspects of its social security system, including its scope, financial structure or financial disbalance, such member can request for referring such matter to the European

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Council. In this case, the ordinary legislative procedure should be suspended. After discussion, within four months from the suspension the European Council returns draft law to the Council. Then The Council cancels the suspension of the ordinary legislative procedure, or do not take any measures or appeals to the Commission with a demand to submit a new draft law. In this case previously proposed act considered as not adopted.

The goals of EU and member states as follows - the promotion of employment, improving of living and working conditions for making possible their harmonization and sufficient social protection; the dialogue between employer and employees, and human resource development for the sake of achieving a high level of employment and contending against the exclusion. To do this, they take measures involves the diverse forms of national practices, particularly in the field of contractual relations, and the need to support the competitiveness of the economy of the Union. They believe that such development associated with not only the functioning of the internal market, that contributes to the harmonization of social systems, but also with the procedures provided for the Treaties and with the approximation of provisions established by the laws and the regulatory acts.

The EU admits and supports, on its part, the role of the social partners, taking into account the diversity of national systems. The Union promotes the dialogue between the social partners, respecting their independence. Tripartite social summit for growth and employment contributes to social dialogue.

To achieve the above-mentioned goals the Union supports and supplements the activities of member states in the following areas: (a) improvement of the working environment to protect employees' health and safety; b) working conditions; (c) social security of employees; d) employees' protection after the end of the employment contract; e) information and consultation of employees; (f)

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representation and collective defense of employees' and employers' interests, including the right of employees to participate in co-management; (j) the conditions of employment of third-country nationals who legally reside in the territory of the EU; g) the integration of persons excluded from the labor market; i) women's' and men's' equality concerning with theirs opportunities at the labor market; g) the struggle against social exclusion; k) the modernization of social protection systems. With this aim the European Parliament and the Council: may adopt measures designed to encourage the cooperation between member states with the aid of initiatives dealing with knowledge improving, developing of the information and best practices exchanging, innovative approaches and assessment experience dissemination, excluding any harmonization of the laws and regulations of the member states; on the basis of directives, also may adopt minimum requirements for gradual application of the conditions and technical rules prevailing in each member state.

Such directives should avoid the administrative, financial or legal restriction in a way that would keep the creation and development of small and medium-sized enterprises. However, these regulations shouldn't: effect on the right of member states to define the fundamental principles of theirs social security systems and mustn't significantly effect on the financial balance; prevent any member state to maintain or introduce more stringent protective measures.

With the aim to improve the employability of employees in the domestic market and thus contribute to increasing the level of life, according to the following provisions was created the European Social Fund. The purposes of the Fund are to facilitate the employability of employees, to improve geographical and professional employees' mobility within the Union and to facilitate their adaptation to industrial

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changes and changes in production systems, particularly, through vocational training and retraining.

The main document that governs social security payments in the European Union is the Regulation № 1408/71 14th of June, 1971 «On the schemes of social insurance relative to employed persons, and their families during the movement within the Community [8] and the Regulation № 574/72 passed on the 21th March, 1972 [9], that determines the application forms of Regulation № 1408/71. They continue to be in force with significant changes until now.

The Regulation № 1408/71 corresponds to the multilateral agreement on social insurance. If we compare this act with other ordinary agreements regarding social insurance, the Regulation contains much more detailed provisions. This and others acts of the European Union are the highest state law, in other words, they're more powerful than national laws that are contrary to the Regulations' provisions.

This Regulation applies in relation to following areas of social security: (a) material assistance in connection with illness and maternity; (b) disability allowance, including one that is designed to maintain or improve health; C) old-age pension; d) material assistance in the cases of loss of breadwinner; d) material assistance in the cases of occupational accidents and diseases; (e) material assistance in case of death; a) unemployment benefit; g) family support material assistance. This document applies to all general and special social security schemes financing by contributions or without them, including the schemes of the employer's responsibilities concerning with material assistance.

It's guaranteed the accumulation of rights and benefits, but without the duplication of payments, excluding disability, old age, loss of breadwinner pensions and benefits for occupational diseases and injuries. In the case of insurance periods

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duplication, available payments are equated by the largest sum that should be received by interested person.

Disability, old-age, loss of breadwinners pensions, material assistance concerning with accident and other payments covered by legislation of one or more states can't be declined, changed or recaptured in case of change of residential mobility. If person is the subject of compulsory state insurance, all payments will be offset.

The Administrative Commission of social security and the Advisory Committee of social security for migrant employees were created with the purpose of the proper implementation of the Regulation № 1408/71

The Administrative Commission has the following duties: a) deal with all administrative questions and questions concerning with interpretation of the Regulation and subsequent regulations, or of any agreement or arrangement that bases at this document. All these question should be dealing without the prejudice to the rights of the interested bodies, institutions and persons; b) at the request of the competent authorities, institutions and members' states courts, translate all documents related to the implementation of the Regulation; c) to contribute and develop the cooperation between member states in the questions connected with social security, particularly in relation to the health care and social measures of general interest; d) to contribute and develop the cooperation between member states to accelerate the giving of material assistance ; e) summarizes all the factors that should be consider for the preparing the accounts that should to be paid by the members' states institutions under the Regulation; f) confirms annual payments between these institutions and others.

On the request of the Commission of the European Communities or of the Administrative Commission on its own the Advisory Committee authorized: (a) to

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make an inspection of common issues or questions regarding to the principles and problems arising from the application of regulations; b) to elaborate the conclusions of specific issue to the Administrative Commission and proposals for reviewing regulations.

However, as T. Postovalova rightly said, recently Regulations № 1408/71 and № 574/72 increasingly lags for the development of social rights law of the states and doesn't reflect the new risks and new forms of benefits. For example child care or child-rearing benefits. Due to the fact, that the classification of social security payments cannot be challenged, the European Community court had no other alternative but adding the mentioned payments to classic types of payments. Childcare benefits added to the sickness payments and child-rearing benefits – to the family benefits. But specific rules that would take into account all the features of these new kinds of payments are absent in the Regulation № 1408/71 [10, n 156, 157].

As a consequence, at the 21th of December, 1998, were proposed a draft of the new Regulation, that included the following innovations: an open jurisdiction, that could include all future changes of the members' states law and order; open jurisdiction for different individuals and widely regulation for all persons regardless of whether they are employees or not , self-employed persons, students or family members, and without any distinction between citizens of the Union and third countries; equal status of all persons in the right of receiving payments; rationalization of the payments concerning with tangible services for pensioners in the case of health insurance; from the unemployment benefits provided for a 6-month payments' export, and for the persons who regularly migrate over the border, provided for unlimited ensure payments by previously responsible states. However,

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the Regulation was adopted by this time, but it hasn't come into force, because the special regulation on its appliance isn't in force.

Consequently, the development of compulsory social insurance international legal regulation could not happen without the consideration of the regional factors. However, it is important to keep global achievements, relevance and impact of International Labor Organizations' conventions and recommendations. Ukraine's favor to the European choice and adherence to the universal values can be realized only through the consistent formation of the democratic principles of social development, human rights and freedoms of person and citizen, legal state building, civil society formation. In the development process of the relations between Ukraine and the European regional organizations focus increasingly transferred from the political to the economic and, most importantly, social goals. And the depth and degree of interdependence of these partners requires trust and voluntary consent on serious steps towards to achievement the common goals.

The main goals of the European social policy as follows: giving the guarantees concerning with achieving an appropriate level of social protection; contributing in the employment field, professional training field and the employees' rights protection field; ensuring the effective protection of the most vulnerable groups; contributing to equal opportunities; antidiscrimination; strengthening cooperation on migration issues.

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**ЄВРОПЕЙСЬКІ СТАНДАРТИ ОБОВ'ЯЗКОВОГО СОЦІАЛЬНОГО
СТРАХУВАННЯ**

Москаленко О.В.

Встановлено, що основними європейськими стандартами обов'язкового соціального страхування є: взаємозалежність економічного й соціального розвитку; рівність і заборона дискримінації; солідарність; соціальне партнерство; гарантованість прав; заборона перевищення повноважень державами; наявність мінімальних соціальних стандартів

Ключові слова: європейські стандарти, Рада Європи, Європейський Союз, соціальний захист, обов'язкове соціальне страхування

**ЕВРОПЕЙСКИЕ СТАНДАРТЫ ОБЯЗАТЕЛЬНОГО СОЦИАЛЬНОГО
СТРАХОВАНИЯ**

Москаленко Е.В.

Установлено, что основными европейскими стандартами обязательного социального страхования является: взаимозависимость экономического и социального развития; равенство и запрещение дискриминации; солидарность; социальное партнерство; гарантированность прав; запрещение превышения полномочий государствами; наличие минимальных социальных стандартов

Ключевые слова: европейские стандарты, Совет Европы, Европейский Союз, социальная защита, обязательное социальное страхование.

EUROPEAN STANDARDS OF OBLIGATORY SOCIAL SECURITY

Moskalenko O.V.

It is set that the basic European standards of obligatory social security is: interdependence of economic and social development; equality and prohibition discrimination; solidarity; social partnership; assuredness of rights; prohibition of exceeding of plenary powers the states; presence of minimum social standards. In the article legislation of European Union and the Council of Europe was examined. It is set by the European Code of Social Security that the main goal of the Council of Europe is achievement of its parties' unity for the purpose of social progress. The Charter of Association about main social rights of employees was analysed. The author examined European standards of obligatory social security formalised in the European Social Charter. It is set that social insurance benefits are formalised in the Protocol on social security insurance schemes.

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Comparative analysis of current Protocol on social security insurance schemes and the project of new Protocol on social security insurance schemes is given. The necessity of forming of democratic way of social development, establishing of civil society in Ukraine as the main way of universal human values realisation is distinguished. In conclusion the author testified to the fact that the main purposes of the European social policy are providing guarantees on achievement of respective level of social defense, assistance in the sector of employment, dedicated training and employees' rights defense, providing of effective defense of the most disadvantaged social groups, assistance in equal opportunities, antidiscrimination, strengthening of cooperation on the questions on migration.

Keywords: european standards, Advice of Europe, European Union, social defence, obligatory social security