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 ΕΚΔΟΣΕΙΣ ΔΙΟΝΙΚΟΣ

International Society for Labour and Social Security Law (ISLSSL), XI European Regional Congress, Young Scholars Session – European Embryo, Dublin, 17-19 September 2014

Anna Tsetoura

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services, mitigating the impact of money laundering and combating financing of terrorism.

The discussions of the RT 2.2 drawing on recent and on going developments on the issue of Migration and Development, trying to identify the possible role of the Global Forum in migration as its possible place to the institutional architecture of assessment.

The more obvious role that GFMD can play, emanates from its proper nature and its terms of reference, as a platform for sharing experiences and lessons learned on the progress made towards migration related SDG targets, the inclusion and the contribution of migrants in the attainment of SDGs (not felt behind).

Any other option for a more decisive involvement in the GFMD in thematic follow-up and review of migration related SDGs would require changes in its operating modalities and probably with its links with the UN System which for the moment are mediated through the special Representative of the UN secretary General Mr.Sutherland. The discussion has been opened and options have been put on the table for further consideration. Bangladesh, which is the new chair in office of the GFMD will carry out future discussions on the future of the Forum. What is of outmost importance is that the GFMD has survived the economic crisis and remains the most well placed International Forum to explore the Migration-Development nexus and to lead relevant discussions in the field.

The GFMD is above all a reminder to the international community, today more than ever since its establishment, that development remains the only effective and long-term solution for orderly migration out of choice and not out of need as it is the key for ending armed conflicts and the forced displacement of populations all over the world, including the elimination of radicalism and terrorism.

Athanasia Ioannou  
*Ministry of Interior and Administrative Reconstruction*

## **International Society for Labour and Social Security Law (ISLSSL), XI European Regional Congress, Young Scholars Session – European Embryo, Dublin, 17-19 September 2014**

**T**he ISLSSL XI European Regional Congress was held in Ireland (Dublin) on September 2014 and in particular in the University College Dublin (UCD). The main focus of the discussion was put on the reforms in the field of labour law, while the reforms of social security law were examined to a smaller scale. The Young Scholars Meeting took place on the first day of the conference having as a coordinator Professor Stefano Bellomo. When the initiative of the Young Scholars' Session started, each national representative was requested to prepare a report to expose the impact of the economic crisis on the recent evolution of the National Labour Law systems in the European Countries (by the different sides of employment contract law, trade union law and collective bargaining and the social security law). The reports of each national group of young scholars of the European Embryo can be found on the website of the ISLSSL<sup>1</sup>, the results of which were illustrated by the respective national representatives during the Session scheduled. The countries represented by the respective national teams were: Austria, Czech Republic, France, Greece, Hungary, Ireland,

Italy, Netherlands, Lithuania, Poland, Portugal, Slovenia and Spain. Representatives of Israel and South Africa made also an appearance in the meeting at issue by making a brief meddling. Within this report, the attention has been chosen to be drawn to the countries the presentations of which included an analysis of social security law to a larger extent.

To begin with the Austrian representatives<sup>2</sup>, they pointed out that the impact of the crisis in their country has already been diminished and specifically since 2011. Austrian legal system is oriented at the re-integrating and the re-strengthening of social partners. Noteworthy, the 95% of employment contracts fall under the collective sectoral agreements. As it was mentioned, health and accident insurance remain upright and minor changes in social security law can be identified. However, some measures are taken in this regard, such as the partial retirement. Enterprises which employ older workers have the opportunity to reduce their working hours whilst receiving financial support, so that the employees can work until they retire. The partial retirement allowance compensates the employer for the additional burden caused by the wage adjustment and by the payment of social security contributions (which are calculated on the basis of non-reduced working hours). Health and accident insurance were reported to remain upright, while a socialization of economic risks was mentioned to be the main trend recently in Austria.

The representatives of Czech Republic<sup>3</sup> referred to the new law on public service which extended the scope of public service to persons being listed in the register of job seekers longer than two months. On top of many changes in the Czech pension law, there was recorded a pending reform of supplementary retirement insurance systems (the second pension reform phase of 2009). A third phase was also envisaged (the chance for an opt-out of the compulsory system on a larger scale) the new pension savings system has not gained importance. According to data from July 2013, only a small percentage decided to participate in the system of additional pension saving program, divided between 10 pension companies, which creates a product that is economically not self-sufficient. Instead, a mass participation is observed on the supplementary pension insurance scheme that has been partially amended and partially terminated by the reform. Almost the same pattern can be seen in the health care. Insurance regulatory fees (co-payments) paid for visiting a doctor or an emergency room and for a prescription shall be revoked by the end of this year. Nevertheless, the reform of supplementary retirement insurance scheme does not endanger the system of protection against aging as a whole. To the contrary, the annulment of regulatory fees means the closure of another additional source of income for health care providers. According to the Czech Republic's representative, ILO's international conventions, other international agreements covenants and EU rules have proven themselves to be very effective obstacle in Czech's desire to lessen solidarity throughout its social security schemes. In the speakers' view, the process of social stratification is continuing and once almost equal in every aspect of social life, Czech society follows western democracies while it is still searching for a new balance.

The French team<sup>4</sup> focused on the Law adopted in 14.6.2013, the Act for securing employment ("Loi de sécurisation de l' emploi") providing for a new database for employees' representatives and the reduction of a company's social charges. The main axes of the reform attempted had to do with flexicurity and collective autonomy, as well as the combating of unfair social competition and the general obligation of healthcare coverage. The ideas of individual training accounts and the voluntary mobility periods have also developed.

The Greek representatives<sup>5</sup>, highlighted the major reforms of Greek labour and social security law posing in parallel questions about the evolution of Social Europe. In particular, Ioannis Skandalis started the presentation by making some critical remarks about the social

character of the European legal context which seems to stay back in view of the economic aspects and objectives. Dimitris Papadimitriou gave certain examples of the measures that have been introduced due to the crisis such as the Law 3899/2010 for the part-time employment and the Laws 3863/2010, 4024/2011 and 4046/2012 regarding the legal regime of dismissal, as well as the mandatory reduction of minimum wage imposed by Troika and the abolition of "mandatory" arbitration being the most characteristic change the Law 4046/2012 brought in the field of resolution of collective disputes. Anna Tsetoura pointed out that the key-word in social security reform has been sustainability and a trend towards a "financialization" of the social risks. She focused on the major reforms of the pension system that took place from 2010 to 2012, such as the successive reductions of the pension benefits sometimes retroactively, the stricter retirement conditions and the provisions for the new formulae for calculating pensions from 2015 onwards.

The national representative of Hungary<sup>6</sup> was more analytical as far as social security is concerned. At the same time it referred to the erosion of social dialogue. In the new Hungarian Constitution (Fundamental Law) the right to social security is degraded to the level of an abstract state objective. Instead of the previous provision on the right to social protection, in the new Fundamental Law the state only "strives to provide social security". While on the basis of the former Constitution the right to social services guaranteeing a minimum subsistence was enforceable in case of illness, old age, disability, orphanage or involuntarily unemployment, the new Fundamental Law eliminates the reference to the minimally required level of services. Until recently, Hungary had a relatively generous package of social protection benefits. Economic restrictions and budget cuts since 2007 have resulted in a cut in social protection benefits. The aims of the 2010 reform were budgetary saving and stimulation of employment. Furthermore, attending in public work is the basic condition if someone wants to receive social assistance, otherwise there will be no entitlement provided for any benefit from state finances. Private pensions were nationalized at the beginning of 2011, and the assets of the pension funds, among others, were used to cover the revenue shortfall in 2011. Early retirement options in the general pension regime were eliminated. Social benefit was linked to compulsory public work, while various benefits and pension-type supports (early or disability pensions) have been abolished or severely curtailed, with former beneficiaries being channeled into the same program.

The Irish representative<sup>7</sup> mostly questioned the European social model while he parallelized the case of Ireland with that of Greece in terms of measures imposed by the Troika. He referred to the increase of migration of 16.9 % in 2011 and the nature of deprivation within the measures adopted leading to the so-called working poor, as well as the imposition of a pension levy having a tax character. He also presented the role of social partners as controversial posing the question whether they can lead to economic boom or they were marginalized and weakened. According to his opinion, there has been a frontal challenge to the norms underpinning the European social model.

The key-word in the Italian case has been also flexicurity. As mentioned by the Italian speakers<sup>8</sup>, their country had to deal with imbalances of social security inherited from the past, while it needed to be geared to a new public system structured on social integration and active ageing. The Italian team was very analytical as to the changes in social security starting by noting the attempt of the Monti's Government to reform in depth welfare state with the aim of addressing its imbalances and cutting public spending. Fornero's Law (Act n. 92/2012) rationalized and unified unemployment benefits, by creating a new allowance, called ASPI; however, it was not able to limit the scope and duration of salary integrations by concentrating them only on viable businesses, as it had been planned at the beginning. A pension reform took place in 2011

with the Decree Law n. 201/2011 having as a central element the strict relation between social contributions and working life. With the new rules it will be almost impossible in the future to retire before 60 years and in any case the retirement age and the amount of the pension are now strictly linked to social contributions paid and to life expectancies. Only a little was done though in the field of the basic income (Decree Law n. 5/2012). Cost savings were pursued through an immediate increase of the legal age of retirement (which has now reached 66), together with a severe reduction of the options of retiring at an earlier age. As a consequence, the immediate increase of a minimum age was at least 3 to 5 years (6 years in some cases) being slightly slower for female workers, who previously were subject to lower requirements<sup>9</sup>, while this recent reform also raised the contribution requirement. The new framework includes a general rule that links the numerical parameters to the official statistics regarding the expected lifespan of the Italian population. Every 2 years a decree will modify age and contribution requirements in measure equivalent to demographic changes registered by statistics. According to the speakers, Italy still faces formidable challenges in the field of social security: a) establishing a new PES (public employment service), more centralised and able to operate according to a European-style welfare to work approach; b) reducing the duration of salary integrations and banning their use to save businesses that are no longer viable; c) softening some asperities of the pension reform and developing an encompassing strategy of active ageing; d) introducing a safety net for the poor, especially for people whose unemployed benefit duration has elapsed.

In the field of Dutch social security, as it was noted by the Dutch representative<sup>10</sup>, one of the first crisis measures was the (re)introduction of part-time unemployment, while the Dutch Unemployment Act has been changed, to be effective as of January 1<sup>st</sup> 2016 onwards. The reform intends to enhance participation in paid employment by shortening periods of eligibility and tightening criteria defining suitable work. Shorter periods in the receipt of benefits are envisaged to be earned over a longer period. From January 1<sup>st</sup>, 2015, the Participation Act alongside the Act dealing with corrective measures in social assistance seeks to enhance the duty to participate even in unpaid employment. The central aim has been the excessive flexibility, while the recent legislative efforts as a whole activate individuals receiving social benefits or social assistance.

According to representatives of Poland<sup>11</sup>, the economic crisis was accompanied by a crisis of social dialogue, while it coincided with a debate about the dramatically negative demographic trends in Poland. The social security issues were elaborated extensively. The first change was establishment of 'the paternity leave'. The right was introduced gradually by the act of 2008. The new in Polish legal system was a right to combine 'the additional maternity leave' with part-time employment (maximum half-time), while between handing an application and the end of 'the additional maternity leave' dismissal of an employee is prohibited. Revolutionary changes in parental rights were launched by the act of 2013. In general terms the total amount of parental rights with a decent social coverage was doubled. 'The parental leave' is addressed both to mothers and fathers, while the right can be exercised jointly. At the same time the act of 2013 has addressed 'the additional maternity leave' also to fathers (originally the entitlement as a rule was addressed to mothers) and it can be also shared by mother and father. As to the Old Age Pension Schemes Reform, the speakers noted that the changes a prerequisite of the presentation was the description of the social security system reform of 1998. The traditional continental European pay-as-you-go retirement system was combined with a fund method based on defined contribution principle and covered vast group of insured. The retirement system was divided into three pillars and the old-age pension was projected to consist of two or even three diverse parts

financed from different sources. The first and the second pillar were mandatory, the third pillar was voluntary. The mandatory retirement insurance contribution (19, 52% of the contribution basis) was envisaged to finance first two pillars. However, the first pillar (12, 22% of the contribution basis) was realized in the traditional pay-as-you-go system. This part of mandatory contribution was registered at the individual pension insurance account and distributed to cover current system expenses practically in the same month. Registered contributions were valorized annually respect mainly to inflation rate. Destination of those accountant records was calculation of the first part of the old-age pension. The second pillar (7,3% of the contribution basis) was funded. Polish National Insurance Institution (pol. ZUS) transferred this part of contribution to private funds named open pension funds (pol. OFE). Directly after deduction of the OFE's commission, contribution was invested in capital values under statutory framework guaranteeing security of allocated resources. The voluntary third pillar was based on framework regulations on employee pension funds and pension insurance open accounts including various incentives to retirement saving. After the crisis, the first major change was introduced by the act of 2011. The contribution transferred to open pension funds was reduced and the statutory retirement age was started to be gradually raised since 1 January 2013. According to the act of 2012, it was expected reaching 67 years for women in 2040 and for men in 2020. During the crisis a progress was also made in the politically hard field of increasing the retirement age for uniformed services. The last major change in social security law during the crisis was introduced by the act of 2013 providing for the withdrawal from the fund method of financing retirement system and the second pillar. On the basis of the act of 2013 open pension funds were obliged to liquidation, which took place on 3 February 2014, while open pension funds had obligation to transfer to the Polish Social Insurance Institution gigantic amount of 153, 15 billion zlotys. Moreover, the act of 2013 stopped transferring of further parts of retirement insurance contribution to open pension funds since 1 July 2014. Insured who are still interested in locating part of their retirement insurance contribution by open pension funds could apply for it. The act of 2013 also liquidates 'the capital old-age pensions' (the old-age pension from the second pillar).

The Portuguese representative<sup>12</sup> emphasized on the influence that had on his country's policy the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU), which was signed on May 2011 by the Portuguese State, the European Commission, the European Central Bank and the International Monetary Fund. In addition to the measures on budgetary policy, the MoU established a broad set of structural measures. With regard to the labour market it envisaged measures relating to protection in case of unemployment, protection of employment, working time, setting of wages and active labour market policies. In broad terms, the social and political framework of Labour Law was based on two fundamental pillars: to ensure budgetary balance and, at the same time, to promote the competitiveness of the Portuguese economy. Thus, Labour Law emerged as an obstacle to competitiveness and its review as a crucial economic policy instrument. The Portuguese speaker mainly focused on the labour reforms imposed by Troika, elaborating issues such as working time, dismissal, decentralization of collective bargaining, wages reduction or the reduction of the normal working period and suspension of the employment contract in situations of company crisis. As to social security, he referred to unemployment benefit, relating to which the MoU set itself some goals. Decree-Law no. 64/2012, implemented the aforementioned measures: a) Reduction of the maximum duration of the unemployment benefit to 540 days, without prejudice to its extension if the workers have long contributory careers (especially over 50 years of age); b) Reduction of the maximum

unemployment benefit value from 3 times to 2,5 times the Social Support Indexation, that is, from € 1.257,66 to €1.048,05; c) Establishment of a reduction of 10% in the unemployment benefit value after 6 months of unemployment, with the goal of providing an incentive to job seeking; d) Reduction of the minimum period of contributions necessary to access the unemployment benefit from 450 days to 360 days.

The representative of Slovenia<sup>13</sup> stressed that since 2008 when the crisis started, the Slovenian parliament enacted legislative changes of the Employment Relationships Act (ERA) and Labour Market Regulation Act, while the recently enacted Prevention of Undeclared Work and Employment Act and the new Labour Inspection Act tightened the states' relationship towards offenders in the labour market. The main purpose of the changes has been the decreasing of segmentation in labour market and the increasing of flexicurity. In addition to changes enforced by the basic act, regulating individual employment relationships (ERA), other legal regulations were to contribute to resolution of problems concerning the labour market. The pension scheme reform was adopted with a view to increase employment of the elderly population (The Pension and Disability Insurance Act -ZPIZ-2). The same might also be achieved with a modification to the Labour Market Regulation Act which introduced the option of temporary and occasional employment of pensioners. This would enable pensioners to re-enter the labour market and enable their social and individual participation, as well as provide them with additional income.

Finally, the Spanish team<sup>14</sup> analyzed more extensively the reforms in Spain not just reporting the changes but searching for the deeper causes and consequences of them. As far as labour law is concerned, a first reform took place in 2010, which *inter alia* sought to limit access to temporary employment through various measures. A major reform took place though in 2011 leading to the transformation of labour as a result from the EE' guidelines concerning flexicurity and the European Stability and Growth Pact. The traditional job classification system, occupational categories based on "individualized", from the Franco regime, has been legally replaced by the preference of the professional group of a larger size, allowing more flexibility in the rearrangement of workers. However, as to the collective bargaining, the old system remains, while latest labour reforms have affected especially the regulation of collective dismissal. Social Security System has appealed to achieving stability, feasibility and rationality of the system. As it was noted, from the perspective of budgetary stability, pension is one of the most sensitive points in the context of the crisis. Therefore, the first step was to increase the pensionable age, which was raised up to 65-67 years in 2010. In this context the Law 27/2011 on adaptation and modernization of the social security system was approved introducing a reform which begins in 2013 and extends to 2027, involving mechanisms such as staggered raising the age of retirement, or so-called sustainability factor in order to ensure the sustainability of the pension system (medium and long term). The social consequences of these changes are important sacrifices in terms of adequacy of pensions, expected to be manifested more harshly for women. Further, according to the Spanish "reporters", the People's Party entered the Government in December 2011, and started his own reform process affecting the pension system, a process which was reinforced by impulses coming from the European Union. Of particular relevance has been the White Paper, the Agenda of the European Commission for adequate, safe and sustainable pensions (2012), which overwhelmingly prioritizes the financial dimension within pension systems. The Law 23/2013 regulated the sustainability factor and the rate of revalorization of the pension system. The state itself provides a comprehensive average rate-sustainability- which automatically connects the initial amount of pension to life expectancy of pensioners along with the incorporation of the Annual Revaluation

Index, a mechanism that replaces the Consumer Price Index as the criterion for updating pensions. An important reform took place with regard to unemployment due to the high percentage of the unemployed in Spain (25%), as well as of the Spanish migrants. Reforms in this field are driven to seek a balanced budget and therefore, to carry out cuts with significant consequences for citizens. In this sense, derivative constraints were made mainly by Royal Decree-Law 20/2013 (on measures to ensure the budget and promote stability competitiveness). The result of the changes is a restriction of access to the provision of the unemployment benefit, its duration and the amounts received along with the tightening of access requirements. Consequently, the objectives marked by supranational institutions like the European Union, the European Central Bank and International Monetary Fund has been met as indeed spending for unemployment benefits in 2013 has moderated. However, the unemployment benefit has ceased to function as a protective mechanism, leaving to poverty a large part of the population highly vulnerable. As reported, this situation is not corrected in Spain with the strengthening of policies of active employment (RD 1542/2011, which designs the Spanish Employment Strategy 2012-2014). The picture drawn with the focus on the two benefits of greater economic and social burden of Spanish shows the deconstruction of the Spanish public model of Social Security. Two systems also affected by structural value of budgetary stability are the health system and the system of dependency. The health system suffers in territorial structure and functional fragmentation and privatization of management. The latest reform in this sector has been accompanied by a Royal Decree, the 16/2012, on urgent measures to ensure the sustainability of NHS and improve the quality and safety of services, but austerity endangers the content of Article 43 of the Spanish Constitution which recognizes the right to health. In short, the economic crisis has triggered a wider crisis of Welfare State. The economic data that call for austerity are compelling. However, the measures taken so far in Spain are having devastating consequences in terms of inequality and poverty. Social Security System does not seem to be playing the main role in defining a social and democratic state of law and perhaps decisive in this case is the orientation of the process itself.

As a concluding remark, it can be observed that four EU countries, Ireland, Greece, Portugal and Spain that had signed a Memorandum of Understanding with Troika have suffered some serious consequences with regard to social security rights. Therefore, they questioned the European Social Model either explicitly or sometimes implicitly. In all the respective reports, it was highlighted that the financial dimension of the social security systems overshadowed the adequacy of benefits and in general the social function of the state in compliance with the EU' guidelines and objectives concerning sustainability and budgetary discipline. Rationally enough, certain economic measures are to be justified in view of the economic recession. But still, there should not be an underestimation of the need for protecting the vulnerable groups of a society, as well as the right of every citizen to social security. This entails the possibility to be sufficiently depended on pension benefits, unemployment benefits or health care if needed and more importantly in terms of equality. Besides, this is *inter alia* about the solidarity element that is supposed to be inherited in a social security system, along with the protection provided when a social risk materializes. Instead, in Spain for example, the measures taken were reported to create new social risks increasing dependency and poverty. On the other hand, the different perspective of the representatives of other countries should be pointed out. Namely, in countries such as the Czech Republic, it was reported that EU objectives along with ILO's conventions have functioned as solidarity fiduciaries for the social security system. The latter may have to do with the different historical and legal background of most Eastern European countries as far as the perception of

human rights is concerned. In any case, the conference at issue was held with great success. The reciprocation that the call to young scholars had, resulted in fruitful discussions and conclusions regarding the current situation in labour and social security law that provide for future thought.

## Notes

- 1 <http://islssl.org/latest-reports-from-the-young-legal-scholars/>
- 2 Franz Marhold, Professor for labour law and social law, University of Graz; Klaus Poier, Associate Professor for public law and political science, University of Graz; Paula Aschauer; Elisabeth Kohlbacker; Manuel P. Neubauer and Lisa Wewerka are Research Associates at the University of Graz
- 3 Dr. Martin Štefko, Senior Lecturer at the Charles University Faculty of Law, a correspondent both for the Max Planck Institute of International and Comparative Social Security Law in Munich, Germany and for the European Research Institute of Katowice, Poland
- 4 Gwenola Bargain, Maître de conférences à l'Université François Rabelais de Tours Pierre-Emmanuel Berthier, Maître de conférences à l'Université Lumière Lyon 2, Tatiana Sachs, Maître de conférences à l'Université Paris Ouest Nanterre La Défense
- 5 Dr. Ioannis Skandalis DPhil in Law (University of Oxford), Dimitrios Papadimitriou LLM of Labour Law (University of Athens) and Anna Tsetoura, Master of Laws in European Social Security (KU Leuven)/ PhD student (Aristotle University of Thessaloniki)
- 6 Attila Kun, Associate Professor, Head of Department, Károli Gáspár University, Hungary, Budapest, Faculty of Law, Department of Labour Law and Social Security
- 7 Barry Colfer (graduated from University College Dublin), PhD Candidate, Department of Politics and International Studies, University of Cambridge, Researching industrial relations in Europe in the context of the economic and social crisis
- 8 The working group coordinated by Matteo Corti (Catholic University of Milan), Massimiliano Delfino (University of Naples Federico II) and Carla Spinelli (University of Bari Aldo Moro)
- 9 Except for female public workers, in regard to which the Italian Republic had to quickly eliminate any differentiation as compared to men, since it was convicted of gender discrimination by ECJ 13.11.2008 C-46/2007
- 10 Dr. Nicola Gundt, Assistant Professor Labour Law at Maastricht University
- 11 Dagmara Skupień (University of Lodz), Maciej Łaga (University of Gdańsk), Łukasz Pisarczyk (University of Warsaw)
- 12 David Carvalho Martins, Invited Lecturer of the Faculty of Law of the University of Lisbon, Master in Law, doctoral student, vice-president of the Association of Young Labour Lawyers (Associação de Jovens Juslaboralistas –AJJ), member of the Portuguese Association of Labour Law (Associação Portuguesa de Direito do Trabalho – APODIT) and head of the employment area of Gómez-Acebo & Pombo Abogados in Portugal
- 13 Dr. Luka Ticar, Faculty of Law, University of Ljubljana
- 14 Maravillas Espín Sáez, (Universidad Autónoma de Madrid), Adoración Guamán Hernández (Universidad de Valencia), Yolanda Maneiro Vázquez (Universidad de Santiago de Compostela), José María Miranda Boto, (Universidad de Santiago de Compostela)

Anna Tsetoura,  
*Law Faculty of Aristotle University of Thessaloniki*