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**REFORMATION OF THE LEGISLATION ON SOCIAL INSURANCES IN ACCORDANCE TO THE RECOMMENDATIONS OF THE COUNCIL OF EUROPE**

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**Abstract:** In the article with the topic “Reformation of the Legislation on Social Insurance in accordance to the recommendations of the Council of Europe”, some important issues that made possible a coherent adjustment based on the international standards in the field of social protection will be treated. The changes that started with the Organic Law in 1993 and were further developed with essential reforms in the schemes of social insurances, led to the full collapse of the old system and the unification of the new one in compliance to the main recommendations suggested by the international bodies. The article focuses on the presentation of the main issues related to the schemes of social contributes, disabilities, benefits etc. In addition, some unsolved issues will also be treated, which are of great importance for the complete consolidation of the social insurances system.

**Keywords:** reformation, legislation, Council of Europe, law, insurance

**1. INTRODUCTION**

The General Social Insurances System in Albania has been built on the principles laid down in international conventions and agreements issued by important bodies such as the United Nations and the Council of Europe. The establishment of a full legal and institutional structure dates back to 1993<sup>312</sup> when the basic law for regulating legal relations in the field of social security enters into force. Until then, it was a closed system that did not respect any democratic and social principles of distribution of merit contributions to each beneficiary subject. With the new legal arrangements in support of the basic principles of the constitutional package, which deals with the commitment of the state directly to the achievement of social objectives, the aim was to build a complex system of insurance. This system provided for the social insurance of employed people in important branches of social protection, in the case of a reduction of income for various reasons.

These causes relate to the authentication of legal facts that lead to the creation of a disability condition due to illness, work accident and aging. The distribution of income is done in uniformity to the beneficiary groups while respecting the legal conditions set for each benefit scheme. So we are dealing with a legal regulation that provides protection for certain groups of beneficiaries, who in all cases are bound by a mandatory social insurances contract from the moment of the beginning of the legal contract of employment. It is about the protection afforded by the law to people with disabilities, women at the time of pregnancy, family members when they lose their family caretaker, the injured at work.

The protection goes even further to the remaining unemployed due to the reform in the employer's body and job cut as well as those who lose their jobs due to aging. The new social insurance system gradually developed all branches of social insurance that are related to health insurance, unemployment insurance, maternity and child insurance, unemployment insurance, work accident and occupational diseases, as well as the provision of old age pension, family and invalids. These branches serve as a basis and include all social aspects which in a modern society seek the interest of the state.<sup>313</sup>

State intervention in the social security system plays an important role both in terms of guaranteeing the stability and flexibility of the scheme, as well as in the aspect of coordinating social policies with international institutions in the field of social security. In the constitution adopted several years later after the entry into force of the law, the state will affirm its social objectives in the field of social security.<sup>314</sup> Guaranteeing the legal reserve also made it possible for the administration of the social insurance system to be carried out by the body charged by law, which would not be monopolized by the state but would carry out its activity in function of the law. The court in turn will create special mechanisms for controlling legality in collecting contributions and distributing revenues.

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<sup>312</sup> Law No. 7703, dated 11.05.1993, "On Social Insurance in the Republic of Albania" which defines the general system of social insurance based on two important pillars of contributions and benefits. This law, despite completely reforming the system, has been amended many times up to nowadays in order to regulate important issues that have to do with the consolidation of special contributory and benefit schemes. The changes have been made in order to fully coordinate the system with the recommendations of the normative acts issued by the Council of Europe.

<sup>313</sup> Tomas I “Social Insurance Law” Tirana 1997

<sup>314</sup> In the Constitution, Article 59 guarantees the social objectives of the state. The paragraph establishes the state's obligation to provide care and assistance to the elderly, orphans and invalids.

The social security system was built on the basis of the compulsory social security system, supplementary insurance and the voluntary social security system. The field of social insurance is quite complicated as a result of many factors affecting important aspects related to direct and contributory benefit schemes. For this reason, the social insurance legislation itself is very dynamic and we can say that the interventions in law are precisely tailored to the situation that has influenced the progress of the development of the social insurance system itself. Economic and political factors have led to problems with the consolidation of the system, putting security at risk for the sustainability of the basic fund as well. The high level of unemployment has led to certain scheme fluctuations due to limited distances between contributors and beneficiaries. On the other hand, the ongoing movements of the population abroad have accelerated the taking of measures and the drafting of special policies regarding the way of determining benefits and recognizing contributions.

Since Albania is a new country in terms of defining and guaranteeing policies in the area of social security, the path of orientation towards the recommendations of the international institutions and the Council of Europe has been followed. In this framework, disciplinary and guarantee measures affect specific aspects of the law by interfering with some basic criteria of social security benefit. The interventions in the law were followed by important enterprises in the field of social insurance by international organizations.

The International Labor Organization and the International Association of Social Insurances have adopted normative acts which, in principle, became mandatory for the participating countries as well. Albania as a member of these organizations has built up the social security system in full compliance with the recommendations made and this is reflected in the later amendments to the law.<sup>315</sup>

## **2. RECOMMENDATIONS OF THE WORLD LABOR ORGANIZATION IN THE FIELD OF SOCIAL INSURANCE**

The ILO recommendations that have impacted on the redesign of the social security system in Albania represent a two-dimensional strategy for expanding social insurances:

- Defining and maintaining social protection as a fundamental element of the national social insurances system.
- Defining policies and projects for expanding social insurances, increasing the income level for the beneficiaries.

Defining social protection as a fundamental element of national systems promotes benefits from social insurances at guaranteed levels. The guarantees concern the definition of a vital income minima for all and minimal health care. Albania as an adherent country has tried to build the internal system of social insurances by applying recommendations in accordance with national conditions and circumstances. Thus, the expansion of insurance schemes, new legal arrangements related to social pension, maternal incapacity benefits, changes in long-term and short-term benefit estimates are indicative of the coordination of the national social security system with international legal norms. Depending on the specific economic and political conditions as well as the level of economic and social development, much remains to be done in terms of determining the minimum levels of benefit or the minimum of living. In Albania we cannot yet talk about the minimum standard of living at those levels as to guarantee minimum income for the citizens in need. The social pension created as a novelty in the 2014 amendments guarantees a minimum income only for persons unable to provide income due to age.<sup>316</sup> Recommendations given by internationals cannot and should not be considered solely in terms of the national social insurance system. They need to be seen and addressed in complexity with issues that deal with national strategies of social, economic and employment policies.

The right to social insurances and promotion of employment are seen as the basic promoters of economic development in one country. Fostering employment and opening up vacancies will have an impact on the consolidation of social insurances schemes. The state social strategies should aim at the introduction of programs that make it possible to formalize the informal market and to employ all the employees capable of working. This would help increase the sustainability of the contributory scheme and would avoid interventions in the basic social insurances law in order to cover the negative effects that other social aspects of social insurances bring. The system of social insurances itself is a tool to prevent poverty, inequality and social discrimination, to enforce social justice and equal chances as well as to support the transition from informal employment.<sup>317</sup>

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<sup>315</sup> Recommendation no. 202 Convention on Minimum Social Insurance Standards.

<sup>316</sup> Social pension is a benefit granted to any Albanian citizen who has reached the age of 70 and does not meet the conditions for any benefit from the compulsory schemes.

<sup>317</sup> Convention on Minimum Social Insurance Standards, no.102

### 3. INFLUENCE OF INTERNATIONAL LEGISLATION IN THE FIELD OF SOCIAL INSURANCES

Social insurance is mainly governed by the national legislation. A defined benefit plan, the terms of calculations, their duration and other modalities are regulated by the national legislation. However, national legislation has been strongly influenced by international legal acts that have inspired national systems in drafting legal norms for uniform regulation of certain issues related to special insurance schemes. International social insurances laws are divided into two categories: Harmonization instruments and coordination instruments.<sup>318</sup>

Harmonization instruments oblige states to change the content of their social insurance legislation while coordination instruments relate only to migrants, they do not change the content of the national social security system and have no effect on the amount of benefits or the conditions of their provisions.<sup>319</sup> The Albanian social insurance legislation is built in the framework of harmonization with the international social insurances systems. So legal changes that affected the pension scheme benefits set new conditions, others estimate coefficients and included new protection schemes. The social insurance scheme in Albania reflects in itself the economic, political and social inheritance which have influenced the smooth implementation of the international legislation. The specifics of the insurance field relate principally to the periods of insurance at different times for the employed subjects and the immediate transfer to a different benefit regime of the pensioner seeking entities. It should be said that these issues appear more in terms of the international regulation of long-term benefits schemes such as retirement pensions. Unlike these, short-term profit schemes do not present any changes.

Regarding pension schemes, the immediate need to increase the retirement age has encountered resistance to interest groups. The trade union organizations undertook immediate measures and drafted strategies that in collaboration with other partner organizations would modify the changes according to the needs and conditions of the retired pensioners. Yet the philosophy of international legislative acts in the field of social insurances is the increase and expansion of compulsory social insurances schemes, the increase of the level of benefits in function of poverty reduction. Precisely this philosophy has led the construction of profoundly social systems that take care of raising income levels in forms of benefits but by also providing other disability states, unlike the classic insurance schemes. In the Albanian social insurance system, apart from the basic schemes, it is not mentioned any other special insurance scheme. Despite the tendencies to harmonize legislation in line with Western social legislation, interventions have been made in most cases in order to maintain the scheme from continuing flow as a result of the imbalance between contributions and benefits.

The high unemployment rate that has accompanied our country throughout the transitional period almost equaled the number of beneficiaries and contributors. For this reason, intervention in the system was immediately necessary. On the other hand, the International Social Insurances Institutions, the International Labor Organization and the International Social Insurances Association, taking into consideration the global economic crisis, drafted strategies and recommendations for adhering states in the function of protecting state social insurances schemes. Recommendations send a strong message to the decision-makers and politicians from all member states by stating that:

- Social Insurances as a fundamental human right should guarantee to all people regardless of where they live a vital minimum of income and benefits. This is the minimum level of basic social protection that forces countries to establish a system of equality by avoiding discriminatory treatment for foreign nationals and those without citizenship. In this context, the challenges presented to the States are concerned not only with the definition of a minimum benefit package but also with the efforts to recognize the contribution periods for migrant entities that increase the loss of insurance periods in the respective countries that provide for specific criteria for long-term benefits. These criteria relate to periods of insurance, on the condition of residence or the period of exercising the economic activity. Under the conditions where countries have specific arrangements, the risk of exclusion of these entities from the benefit schemes and the risk of losing the contribution period is high. The question is about the concrete possibility of respecting the basic principle of treating and respecting the right to social insurances as a fundamental human right. How willing are the host countries to recognize contributions and to make profits through the national system, should be seen in the context of the policies pursued by the state for the country of the other country or the reciprocity agreements. At this point, the Albanian state through the structures that design and orient the policies in the field of social insurances has signed several agreements with countries such as Turkey, Italy and Greece, where the number of migrants is relatively high. However, these agreements have mainly concluded the provision of procedural requirements for the submission of applications for benefits and the opening of information windows in the context of the recognition of the rights deriving from the Albanian social insurance law. So far, the agreements are far from the basic principles set by the Council of Europe in the field of

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<sup>318</sup> Jason Nickless, Helmut Siedel, Social Insurances Co-ordination at the Council of Europe

<sup>319</sup> Idem

social insurances coordination. These principles essentially aim to maximize the right of citizens to social insurances and the obligation of states to determine the minimum level of life. If we refer to the Albanian state, the determination of the minimum life would have a very high financial cost and under the economic conditions in which Albania appears to be, this seems impossible. It is worth pointing out that the vital minimum is the result of consolidated social schemes and comes as a successful reality of the Benelux countries, where social insurances is a government priority.<sup>320</sup> The principles of the Council of Europe in the field of social insurance are related to equality of treatment, the definition of applicable legislation, the preservation of acquired rights and the export of benefits. The implementation of international recommendations in the framework of system preservation and guarantee in Albania has been accompanied by the establishment of new conditions of benefits from the beneficiary schemes, but on the other hand, the interventions in the contributory schemes and more specifically in defining the modalities regarding the evaluation bodies.

- Social insurance is foreseen as a social and economic need to combat poverty, social discrimination, inequality in the treatment of beneficiaries.<sup>321</sup> The social insurances system itself is conceived as an instrument to develop the concept of equal chances. The Albanian legislation on social insurances finds a special treatment for the protection of certain categories of beneficiaries such as pregnant women, children, and people with disabilities due to various illnesses or work-related accidents. Their protection is specifically foreseen in the constitution and constitutes one of the social objectives of the state.<sup>322</sup> The basic law also determines the way of determining the benefits, the legal conditions for each benefit, the method of calculation etc. The recent amendments to the law have paid special attention to the regulation of the pregnancy and child care period by prolonging pre- and post-natal benefit periods, and by regulating the maternity leave situations even in cases of adoption. With regard to people with disabilities, in addition to the provisions that determine the conditions of the disability pension benefit, its types and other benefits, there is another full package of legal and sub legal acts that enable disability benefits according to the degree of disability.

- Expansion of benefit schemes for invalids is accompanied by the provision of various services in addition to the specific payments. The procedure of commissioning of people with disabilities remains to be discussed. The basic law provides for the commissioning and evaluation of the health status of the invalids by the administrative body, the decision of which is of the final one. The Senior Work Appointment Commission has been rated as a decisive instance of assessing whether or not the subject is invalid. Essentially, the definition set out in Article 27 of the basic law expressly provides a restriction of the right of the subject in the exercise of his subjective right to seek a disability pension. This regulation also contradicts the principles of the European Convention on Social Insurances affirming the rights of citizens for equal treatment in exercising their rights to seek protection from social insurances.<sup>323</sup>

- The minimum level of social insurances as a guarantee for citizens is another recommendation to be implemented. The implementation of this recommendation requires not only a special commitment from the government but also from other partners such as the employer and the employee's representative. These are the representative subjects of the member state at high level meetings at the World Labor Organization, who have also provided the relevant recommendations. However, we can say that the cooperation between these groups is institutionalized in the framework of the promotion of employment through special programs aimed at reducing the level of unemployment and the inclusion of subjects in the compulsory social insurances scheme.

## CONCLUSIONS

>> The social insurance system is a national system that protects the insured citizens in the event of a reduction in income. It is built based on the fundamental social protection principles stated in important international legal acts.

>> The international institutions in the field of social insurances, the International Labor Organization and the International Social Insurances Association have oriented countries in the definition of uniform norms for the regulation of basic social insurances issues.

>> The definition of the minimum social and life insurance is now presented as a key issue for the countries that will join the European Union. The minimum social and life insurance consists of the guarantee that the state provides primarily in the insurance of health care, long-term insurance, and family.

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<sup>320</sup> Igor Tomas, "Social Insurances Law"

<sup>321</sup> Convention on Minimum Social Insurance Standards, no.102

<sup>322</sup> Constitution of the Republic of Albania, art.59

<sup>323</sup> Law No.7703, dated, 11.05.1993 On Social Insurance in the Republic of Albania

>> The International Social Insurance Convention directs the states towards expanding social insurances schemes to reduce poverty. Moreover, social insurances coordination in the Council of Europe determines which legal instruments are necessary in the framework of harmonization and coordination of social insurances policies.

>> The Albanian social insurances system has entered the path of full harmonization with international legislation. Being unique due to economic, political and social conditions, adaptation will need to be progressively made. Harmonization of legislation has affected the internal system both in terms of changing the conditions of the beneficiary and in expanding the benefit schemes for particular categories.

>> Social insurance is foreseen as a social and economic need to combat poverty, social discrimination, inequality in the treatment of beneficiaries. The social insurance system itself is conceived as an instrument to develop the concept of equal chances.

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