



SOCIAL PROTECTION OF THE FAMILY IN INTERNATIONAL AND EU LAW

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Abstract

People and families have been stricken by poverty from the dawn of time. As a result of the tragic events of World Wars I and II, the 20th century became the arena for the development of humanitarian law fundamentals. The most important international organizations, such as the United Nations, the International Labor Organization, and the Council of Europe, started operating in the post-war period. The first declarations and conventions referred to the issue of social protection on the ideological and axiological level and emphasized only a need to provide poor families and their members with social security. Over time, the normative dimension became specialized, both concerning the content and details of the proclaimed regulations. The article, which discusses the issue of social protection of the family from the perspective of basic international and EU laws, has a character of a review. The analysis of the selected legal acts is centered both on the territorial aspect, focusing on the universal, regional (European) and EU trends, and the temporal one – presenting the evolution of social protection programs over almost one hundred years. The study deals also with a question about the normative cohesion of the universal, regional (European) and EU systems, as well as their interrelations, that is to say: competition or mutual reception. The conclusions from the research give a positive answer and emphasize the development and specialization of social institutions, both on the universal and regional levels. Furthermore, the conclusions indicate that, during evolution, social proposals have moved from the ideological level towards detailed pragmatism, harmonizing the three legal protection systems. The dogmatic-legal method and theoretical-legal method have been applied to verify the problems and hypotheses formulated, owing to which it has been possible to carry out normative analyses and corroborate them with the doctrine of human rights and social law.

Keywords: social protection, social security, social welfare, law, human rights, family, poverty

1 INTRODUCTION

The 20th and 21st centuries have become the arena for the development of the fundamentals of

human rights and protection of their axiological values in political, economic, cultural, and social life. The second-generation human rights, centered on social security and eradication of poverty and social alienation, play an extremely important role in the system of human rights.

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The period of development of significant acts concerning human rights relates to a huge humanitarian crisis that emerged because of World War II. The 1940s and 1950s were the time when the great international organizations were founded, such as the United Nations, the International Labour Organization, and the Council of Europe. The accomplishments of these organizations belong to the human rights sphere which has been extended over time with important acts and documents of the European Communities and the European Union. The fundamental and universal international regulations are elaborated further in the legal systems of states.

Consequently, the domain of human rights, including rights of the social character, can be divided, according to the territorial criterion, into international (universal and regional), supranational (EC/EU) and national (domestic) law branches (Banszak & Banaszak, 2003, p. 15 et seq.) (Leszczyński, 2004, p. 63). For the present study, the analysis shall be focused on the international domain of the universal (UN, ILO), regional (Council of Europe), and the EU character.

The objective of the article is to review the human rights system from the perspective of social guarantees, their axiological dimension, and grounds. The analyzed issues include a question about details of the examined guarantees, the direction of their evolution, and possible specialization over time.

Furthermore, it seems important to compare the universal system with the regional (European) and the EU branch of human rights protection from the social perspective. Concerning this thesis, it is worth asking a question not only about the cohesion of these systems but also their interrelation (competition or mutual reception). Considering the development of the international human rights arena, it is claimed that social norms evolve towards specialization of protection and that safeguarding and protective regulations are harmonized in the examined three systems of human rights protection.

2 INTERNATIONAL LAW

2.1 United Nations

Even though the human rights system developed after the end of World War II, the analysis of legal acts should be commenced with the Atlantic Charter of 14 August 1941 drawn up for protective policy during the war. This document, comprising eight clauses, includes a call for collaboration aimed at securing and improving labor standards, economic advancement, and social welfare (clause 5), as well as a life free from fear and want (clause 6). Further guarantees were developed after the end of the war. The first document was the UN Universal Declaration of Human Rights of 10 December 1948.¹ Article 22 of the Declaration proclaims the right of each person to social security. It is emphasized, in a more detailed manner than in the Atlantic Charter, that every human being, as a member of society, is entitled not only to security but also to economic, social, and cultural rights, at a level indispensable for personal dignity and growth. Further guarantees were adopted by the United Nations in the provisions of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966.² Article 9 of the Covenant emphasizes the right of everyone to social security, including social insurance. Furthermore, Article 10 refers in great detail to the protection of the family which should be given the widest assistance possible, both at the time it is started and in the period, it is responsible for care and upbringing of dependent children. Special protection is granted to mothers before and after childbirth, as well as to children and young people who are guaranteed freedom from discrimination and economic and social exploitation (art. 3 section 2). Moreover, Article 11 of the Covenant, calling for “freedom from hunger”, recognizes the right of each person to an adequate standard of living, including food, clothing, housing, and appropriate living (social) conditions for families.

Without a doubt, social protection of the child was greatly enhanced by the Convention on the Rights of the Child adopted by the UN on 20 November

¹ General Assembly resolution 217 A.

² General Assembly resolution 2200A (XXI).

1989.³ This is an extraordinary legal act that provides for the comprehensive protection of children. The catalog of rights comprises also those of the social character. Article 26 of the Convention recognizes the right of every child to benefit from a social security system, including social insurance, considering the resources, and living standards of the child's family or guardians. Furthermore, Article 27 guarantees a standard of living adequate for the physical, mental, spiritual, moral, and social development of every child, as well as support for parents or guardians in the form of financial and material assistance about food, clothing, and housing.

Certainly, the Convention on the Rights of the Child was not the first document concerning the protection of the child (albeit the first one which was legally binding). On 26 September 1924, the League of Nations adopted the first Declaration of the Rights of the Child (Geneva Declaration) which stipulated that the child should be given an opportunity for normal development, proper assistance, and care, while a waif or an orphan must be sheltered and succored. By the Declaration, the child and the family must be helped in times of distress, including a family crisis.

Another declaration referring to the rights of the child was the Declaration of the Rights of the Child, enacted by the United Nations on 20 November 1959.⁴ It contains ten principles, of which Principle 4 refers to the benefits of social security and special protection provided both to the child and the mother before and after childbirth. Appropriate nutrition, housing, and health care are also emphasized. Principle 5 stipulates that handicapped (disabled) children are entitled to special care and assistance. The authorities are obligated by Principle 6 to provide particular care to children without families or raised in poor families, especially large ones (Stadniczenko, 2008, p. 680).

The Convention on the Rights of Persons with Disabilities,⁵ adopted by the United Nations on 13 December 2006, is a particularly important legal action from the perspective of social protection of

the family. Article 26 of the Convention guarantees services and programs of comprehensive rehabilitation, employment, education, and social services. Article 27 refers to the right to earn a living, while Article 28 provides the grounds for the establishment of adequate living standards and social protection. The last of the principles recognizes not only the right to adequate standards of living for people with disabilities, but also their families, including appropriate food, clothing, and housing, and the right to the continuous improvement of living conditions, without discrimination. According to the Convention, actions for people with disabilities and their families should also be aimed at providing women, girls, and senior citizens with special protection, access to social welfare, and programs of poverty eradication. Furthermore, families with a handicapped person, living in poverty, should be able to obtain the state's support in covering expenses connected with a disability, including costs of adequate training, counseling, financial help, temporary care providing respite to regular caregivers, and housing assistance.

2.2 International Labor Organization

Along with the United Nations, the International Labor Organization has also contributed greatly to the social protection of the family. ILO's social conventions include Convention Concerning Forced or Compulsory Labor, 1930 (No. 29), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Convention Concerning the Abolition of Forced Labor, 1957 (No. 105), the Employment Policy Convention, 1964 (No. 122), the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), the Convention Concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971 (No. 135), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (Maj, 2017, pp. 55-56). The most significant to social protection of the family and its members is the Social Security (Minimum Standards) Convention (No. 102) of 28 June 1952

³ General Assembly resolution 44/25.

⁴ General Assembly resolution 1386 (XIV).

⁵ General Assembly resolution A/RES/61/106.

which regulates the following issues: social benefits e.g., in case of unemployment, sickness (sickness benefits), accidents at work and diseases resulting from employment, family and maternity benefits, invalidity benefit, survivors' benefit because of breadwinner's death or disability, and old-age benefit.

2.3 Council of Europe

As far as the European standards are concerned, the Council of Europe specified social security guarantees in the European Social Charter of 18 October 1961, revised in 1996, of which Articles 12 and 13 regulating the right to social security and the right to social and medical assistance are considered the fundamental rights (Jasudowicz, 2005, p. 425). The right to social security is based mostly on the social insurance system, while social welfare service is regarded as an institution competent to provide adequate assistance to people and families living in poverty without their fault. Social protection should be based on social work facilitating adaptation and integration in the social environment (Article 1). On the other hand, Article 16 guarantees social protection of family life, especially with such measures as social and family benefits, fiscal solutions, the building of apartments adjusted to needs of families, benefits for newly married. Apart from these rights, it is worth pointing to the right of employed women to protection of maternity, contained in Article 8. The rights of children and young people to social, legal, and economic protection are regulated separately. By Article 17, the youngest family members are guaranteed assistance, an adequate level of medical care, education, and training, as well as protection against negligence, abandonment, violence, and exploitation. In 1964 the European Code of Social Security was enacted, which comprises the guidelines of the ILO Convention on Social Security (Minimum Standards), 1952 (No. 102) (Jonczyk, 2001, pp. 31-35).

2.4 EU Law

The issues of social protection and social security for the family are noticed and legally guaranteed

also in the EU (Community) law. The discussed issues are referred to in Article 51 of the Treaty of Rome (Article 42 of the Treaty Establishing the European Community / Article 48 of the Treaty on the Functioning of the European Union). However, social security measures mostly concern the free movement of workers and the provision of social benefits to migrant workers and their families in their states of residence (member states). Further provisions are contained in the Regulation EEC No. 1408/71 of 1971 on the application of social security schemes to employed persons and their families moving within the Community⁶ and the Regulation No. 574/72 of 1972 laying down the procedure for implementing the Regulation No. 1408/71⁷ (amended by the Regulation of the European Parliament and the Council No. 647/2005 of 2005 amending Council Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and the Regulation of the Council (EEC) No. 574/72 laying down the procedure for implementing the Regulation (EEC) No. 1408/71⁸) (Szpor, 2011, p. 14).

Nowadays, the Charter of Fundamental Rights of the European Union of 7 December 2000⁹ is an EU regulation of the principal character. Article 33 guarantees the legal, economic, and social protection of the family. Based on Article 34 of the Charter, to combat social exclusion and poverty, the Union contributes to social and housing assistance to ensure adequate existence for people who lack sufficient resources. Furthermore, the Charter recognizes the need to protect in such cases as maternity, illness, accidents at work, dependency, old age, loss of employment. Along with strictly social regulations, Article 24 refers to the child's right to protection and care, Article 25 deals with the right of the elderly to lead a life of dignity and independence and to participate in social life, while Article 26 guarantees people with disabilities the right to use measures ensuring independence, social and

⁶ Official Journal of the European Communities of 1971, No. L 149.

⁷ Official Journal of the European Communities of 1972, No. L 74.

⁸ Official Journal of the European Union of 2005, No. L 117/1.

⁹ Official Journal of the European Union of 2007, No. C 303/01.

occupational integration, and active participation in life.

Detailed terms and conditions of the guarantees ought to be specified by the Member States, provided that they follow the rules of coordination of social security systems.

The basic rules of coordination include the rule of equal treatment of own and foreign citizens, the rule of uniform legislation, the rule of adding up insurance periods, and keeping the acquired rights (Koczur & Rubel, 2011, pp. 245-246).

In the current social system of the EU, coordination rules of national social security systems are governed by Regulation No. 883/2004 of 2004 on the coordination of social security systems, Regulation No. 987/2009 of 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems¹⁰ and the most recent Regulation No. 1231/2010 of 2010 extending Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.¹¹ (Uscinska, 2006, p. 187), (Dzienisiuk, 2004, pp. 14-17).

3 CONCLUSIONS

Even though the development of human rights took place after World War II in response to a great humanitarian crisis in the world, the first legal regulations of the social and protective character were rather scarce. Their development occurred only twenty years later and evolved towards increasingly specialized and detailed instruments of legal protection.

In the initial period of the establishment of the social protection system, regulations had a more ideological (axiological) character, frequently contained in one sentence and lacking details. Over time, general principles concerning the right to social security (1924) became more specialized

and far more detailed (the right to social insurance and social welfare, housing assistance, help for newly married couples – 1961, the right to social insurance, protection and help for the family, adequate living standards for the family, decent living conditions – 1966, financial and material help in the form of food, clothing and housing – 1989, social protection in case of maternity, illness, accidents at work, dependency, old age, loss of employment – 2000).

During the legal evolution, organizations abandoned such a construct of social law which only provided for combating poverty and specified in more detail not only these spheres of life which required protection but also particular mechanisms to ensure effective support. Thus, protective regulations became not only specialized but also their proportions were restructured. While references to social issues had a marginal and ideological character in the earlier documents, in the contemporary legal acts they have a significant place both in terms of specialization and volume.

Another important observation is strong harmonization between legal acts, and certainly lack of competition among them. Considerable similarities of social regulations can be found in the Convention on the Rights of the Child (1989), the Charter of Fundamental Rights of the European Union (2000), or the Convention on the Rights of Persons with Disabilities (2006). It is even possible to notice certain reception of earlier regulations by later acts, irrespective of their territorial scope. Therefore, it should be concluded that the universal, regional, and EU systems are consistent and coherent concerning social protection. Hence, we deal here with a normative symmetry of the temporal (chronological) and territorial character. The human rights system, both universal and regional, has a significant social dimension which, having originated from a source, becomes specialized and detailed unanimously and consistently.

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Legal acts

Atlantic Charter of 1924

Charter of Fundamental Rights of the European Union of 2000

Convention Concerning Forced or Compulsory Labour of 1930 (No. 29)

Convention Concerning the Abolition of Forced Labour of 1957 (No. 105)

Declaration of the Rights of the Child (Geneva Declaration) of 1924

Declaration of the Rights of the Child of 1959

European Code of Social Security of 1964

European Social Charter of 1961

ILO Social Security (Minimum Standards) Convention of 1952 (No. 102)

Regulation EEC No. 1408/71 of 1971 on the application of social security schemes to employed persons and their families moving within the Community

Regulation No. 1231/2010 of 2010 extending Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality

Regulation No. 574/72 of 1972 laying down the procedure for implementing the Regulation No. 1408/71

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The Employment Policy Convention of 1964 (No. 122)

The Invalidity, Old-Age and Survivors' Benefits Convention of 1967 (No. 128)

The Right to Organise and Collective Bargaining Convention of 1949 (No. 98)

The Vocational Rehabilitation and Employment (Disabled Persons) Convention of 1983 (No. 159)

Treaty Establishing the European Community of 1957

UN International Covenant on Economic, Social and Cultural Rights of 1966

UN Universal Declaration of Human Rights of 1948

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