

WITHER THE SOCIAL SECURITY AND THE WELFARE STATE IN THE 21ST CENTURY – A RELIC OR NECESSITY?

Zuzana Macková

Faculty of Law, Comenius University in Bratislava

Abstract: Article provides for an overview of core terms, definitions and recent developments in the area of social rights and social security in context of Central and Eastern Europe, with focus on Slovakia. It advocates for protection of social standards through the universalist, social-democratic model of welfare state, in order to uphold and enhance democracy and human rights in the region, with a view of their genuine, daily realisation and enjoyment by everyone and all.

Keywords: social security, social rights, social justice, models of welfare state, universal social protection

1 INTRODUCTION

The most recent depression that has hit us in 2008 with the financial collapse of the Lehman Brothers seriously challenged the neoliberal paradigm introduced in the late 1980-ties by the US and the UK governments led by the late R. Reagan and M. Thatcher, leading to development of the global financial markets, strengthening the influence of the corporations and the power domination of these over the national economies and the elected governments. The debt crisis spilled over to the crises of the political elites and the system as such.¹ In Europe, even the so-called Third way promoted by social democratic forces led by T. Blair and G. Schroeder as a combination of neoliberal economic and socially oriented social policies proved rather dysfunctional.²

Slovakia has been also a part of the abovementioned processes and developments. With the collapse of the centrally planned economy in 1989, the country entered the path of neoliberal reforms and process of transition to the free market, it opened its space to international and foreign capital, privatised its key industries and deregulated the labour market and weakened the system of labour and social protection in a historically unprecedented way. This included overall liberalisation of the labour relations, with only a fragment of labour contracts being for the undetermined period of time, while the majority of them became time-limited and therefore subject to regular revision; weakening of the trade unionship and reducing the power of trade unions in designing of reimbursement and other social policies, cutting the employees benefits, attracting the foreign investors by tax and social-benefit holidays etc. This came hand in hand with elimination of subventions, subsidies and other forms of aid to public services such as education, health-care and social services as well as introduction of more and more flexible and less protective, and even precarious, forms of labour. But most importantly, being

¹ ŠVIHLÍKOVÁ, I.: Globalizace a krize. Souvislosti a scénáře (Globalization and crisis: Interconnections and scenarios). Všeň: GRIMMUS, 2010, p. 56.

² MACKOVÁ, Z.: Princíp solidarity v práve sociálneho zabezpečenia Slovenskej republiky (The Principle of Solidarity in the Social Security Law of Slovak Republic). Bratislava: UK, 2001, p. 137.

a general feature of the present global system – vastly relying on financial capital, labour became of much less importance to wealth generation and social status, in comparison with the so-called speculative or „quick finance“, taking over not only labour but also the „slow“ – real investment finance.³

In order to respond to the above situation in a systemic and integrated manner, an active multilateral cooperation and interdisciplinarity of approaches are required. However, under the current domination of market and corresponding profit-orientation, even the university education became more of a practical means towards a well-rewarded job and career, than truly universal and human-oriented search for wisdom in an integrated way – both intellectual and moral advancement of a young person who would be driven to work for the public good. The value of human dignity, as elaborated and promoted in the works of Immanuel Kant, shall stand above any material and economic calculations, and grow from human reason and free, moral and responsible being. Each human shall be perceived, respected and treated as unique and immortal. Human dignity is a right, as much as it is value and ideal realised through an entire and constantly growing catalogue of human rights, nowadays enshrined in a number of national and international documents.⁴ **To respect human dignity means respecting of liberty and equality of all human beings, as well as of their human needs and qualities.**

As a result, the prevailing reduction into *homo oeconomicus* – at one hand as economic input in the form of labour and on the other as a consumer, cannot stand the test of time neither create the basis for proper social cohesion. As has been recognised long time ago, by the United Nations Development Program, having introduced the Human Development Index⁵ and other alternative ways of measuring progress, in addition to, if not in paradigmatic competition with the Gross Domestic or Gross National Product (GDP / GNP), the quality of life stems not only from the income levels and level of consumption, but is measured also by strength and coverage of the social security system, aspects of free time and leisure, social trust, feelings of joy and belonging, the quality of environment and possibilities for human development in the broadest possible sense. The bad economy turns the people subject to its profit-only, numerical demands, while the good economy serves the people to enhance their lives.⁶ This certainly includes education, culture, health-care, equality of opportunity and social cohesion. And this is also the reason why **we need the state which is efficient, active, supportive and fair in the social sphere** – in social policies and welfare, that especially in European context, stem from the system of social security.

2 SOCIAL SECURITY

Historically, the roots of social security can be traced back to the ancient times, when it mostly represented charitable, philanthropic protection of the most vulnerable – widows, orphans, the disabled and the foreigners. The philosophical or *quasi*-legal foundations of it were usually linked to religious

³ KORTEN, D.: *Keď korporácie vládnu svetu* (When Corporations Rule the World). Košice: Paradigma SK, 2001, p. 12.

⁴ See e.g. Constitution of the Slovak Republic, Chapter Two: Fundamental Rights and Freedoms (Articles 12 to 54) and JANKUV, J.: *Medzinárodné a európske mechanizmy ochrany ľudských práv* (International and European Mechanisms for Protection of Human Rights). Bratislava: Iura Edition, 2006.

⁵ UNDP, Human Development Report, 2018. Available at: <http://hdr.undp.org/en/2018-update> (accessed on 5th November 2018).

⁶ See SEDLÁČEK, T.: *Ekonomie dobra a zla. Po stopách lidského tázaní od Gilgameše po finanční krizi* (Economy of the Good and Evil: Following the Steps of Human Questioning from Gilgamesh to financial crisis). Praha: 65 Pole, 2009.

texts such The Old and New Testament. From the 17th century, with further division of labour and creation of the so-called fraternities linked to particular crafts and communities, the rudiments of solidarity funds and assistance in case of sickness or accident, appeared. The first compulsory insurance schemes, predominantly covering members of the state bureaucracy, were established during the rule of Otto von Bismarck in Germany in 1883 to 1889, since when we generally speak of social security as a system based on a set of legal rules. This includes various forms of insurance that – under specific, defined conditions – provide for various forms of benefits: typically benefits in sickness, accident, disability or unemployment; social security in old age (pension) and other situations of vulnerability, or social situations.⁷ With more intensive industrial development and corresponding social changes brought by the Industrial Revolution, the vastly voluntary participation in the social security was replaced by an obligatory one. The charitable or passive nature of social support became more of a system of organised and predictable social assistance with a role and a view of uplifting of the needy from the unsatisfactory social situation.

The social security as we know it, came into existence only after the Second World War in democratic conditions of Western Europe, as a matter of realisation of human rights. The Eastern parts of Europe, including former Czechoslovakia, built system with specificities of a centrally planned economy and full employment, but also an obligation to work or participate in the labour market, with exceptions based on public service – such as obligatory military service, care for others – such as maternity leave, or other well-reasoned condition – such as disability or old age, that might have prevented one from work. As of 1989, our social security had to introduce new forms of protection related to new, market-based economic rules, and include a few social situations that were unknown before.

The terminology and system of social security is country-specific, and depends on approaches and ways of organising and financing the system, that can differ. The social security in Slovakia consists of system of social insurance, social support and social assistance.⁸ The social insurance, which serves as the central pillar, covers pensions – which are mostly pensions in the old age or pensions in disability, and sickness benefits – out of which also maternity benefits, above the universal “flat-rate” amount, are paid. The two remaining pillars of social support and social assistance, often also termed as material assistance, are not linked to employment, but to social situation and the actual material need. Especially the system of social assistance, or material assistance, represents direct material provision to secure basic needs, or – as defined in the Article 39 of the Slovak Constitution “basic living conditions” such as food including one warm meal per day and shelter.

Despite the fact that according to Article 7 paragraph 5 of the Slovak Constitution “international treaties on human rights and fundamental freedoms, execution of which does not require the adoption of law, and international treaties which directly establish rights or obligations of physical or legal persons, and which were ratified and promulgated in a manner laid down by law, have supremacy over the national laws” – some of the most progressive provisions of the Revised European Charter, for instance, especially the right to protection against poverty and social exclusion codified in the Article 30, and the right to housing codified in the Article 31, have not yet been adopted.

On a global, world-wide level and more generally, the catalogue of areas and situations falling under the social security was best defined by the International Labour Organisation (ILO) in its

⁷ See MACKOVÁ, Z.: *Právo sociálneho zabezpečenia. Všeobecná časť* (The Social Security Law: General Part). Šamorín: Heuréka, 2009, p. 33-43.

⁸ GAJDOŠÍKOVÁ, L.: *Charakteristika súčasného systému práva sociálneho zabezpečenia* (The Characteristics of the Present System of the Social Security). In: *Právny obzor*, vol. 80, 1997, No. 4, p. 453.

Convention No. 102 on the Minimum Norm of the Social Security, adopted in 1952. It listed: 1) medical care – including preventive and curative care as well as care during the birth and pregnancy; 2) protection in times or in cases of incapacity to work because of morbid condition – such as sickness or accident; 3) protection in case of unavailability of work, or lack of ability to find paid employment – i.e. unemployment benefits; 4) old age; 5) protection in pregnancy and maternity / parenthood – especially in the form of maternity benefits; 6) family protection and maintenance of children – including child allowances; 6) disability or long-term sickness – i.e. inability to engage in gainful activity, which is likely to be permanent or persists after the exhaustion of the sickness benefit; 7) survivors' support of widows and orphans.⁹ The conceptualisation of a subjective, individual right to social security, that has to be fulfilled by the state, together with other human rights, in order to secure human dignity and free development of every human being, has certainly been a great historical achievement.¹⁰ The actual level of social protection is nowadays – at least in context of Europe, considered to be part of regular realisation of fundamental and constitutional rights.¹¹ However, as has been broadly recognised, **the system of social security represents only one, although, a crucial part of the system of social protection.** To genuinely secure human and societal well-being, it must be rooted in sustainable and fair economic system, system of protection and realisation of human rights in their integrity, and be complemented by broader social policies applied nation-wide, region-wide, and – with progressing globalization – one day even world-wide.

3 THE WELFARE STATE

Given that since the industrial revolution, and across the 20th century, it has been the state that represented the fundamental unit of greater societal organisation, it served as the very platform for conceptualisation and realisation of any social aims, including social protection and an array of policies and developments designed for and leading to various social models, including welfare state. **This is the state with the democratically organised power that through its social legislation and corresponding public institutions guarantees 1) the minimum agreed income for every individual and his or her family**, on the level of living or material subsistence; 2) **systemic provision of social security** in order to deal with, and overcome situations of social risk, with a view to secure the minimum social standard and individual social independence; 3) **an adequate standard of social services for all citizens regardless of their social status.**¹² This is in fact the realisation, implementation and institutional framework for the internationally and nationally codified social rights, established in the post-World War II era by the UN Covenant on Economic, Social and Cultural Rights and later on, regionally – by the European Social Charter, the Charter of Fundamental Rights of the EU and other documents.

The level and standard of protection, promotion and fulfilment of social rights – given their positive nature – requiring active and generous policies, depends however, on a particular social contract and a particular model of the state that is being shaped. The highest social value and priority of the

⁹ ILO Convention No. 102 on Minimum Norm of Social Security (1952).

¹⁰ TRÖSTER, P.: *Právo sociálneho zabezpečení* (The Social Security Law). Praha: C. H. Beck, 2005, p. 39.

¹¹ BARANCOVÁ, H.: *Reforma sociálneho poistenia Slovenskej republiky v európskom kontexte* (The Reform of Social Insurance of the Slovak Republic in the European context). Bratislava: SAV, 2004, p. 16 ff.

¹² STANEK, V.: *Sociálna politika* (Social Policy). Bratislava: Vydavateľstvo EKONÓM, 2004, p. 30-31.

liberal model of welfare state is protection of individual liberty that relies on strict separation from the state influence both in the sphere of private life and economic competition. The most important social unit is represented by family. In case of its failure, in situations of social risk, the existing forms of social or state support are to guarantee basic survival. The scope of provision of public services is limited, as is social redistribution and the application of principle of solidarity. Protection of private property dominates the realm of economic rights, and social inequalities are accepted as natural result of competition. The liberal model, in its sharpest form, has been linked to the era of Margaret Thatcher as the Prime Minister of the United Kingdom from 1979 to 1990, encapsulated in her quote that “*there is no society; there are only individuals*”, reducing each and every human to an individual as an isolated unit, that has to rely on him or herself.¹³

The **conservative model of the welfare state**, sometimes also called the Bismarck or continental, German model, is founded on a free-market economy that is being instrumentally combined with planning. It stems from the idea that social needs shall be primarily satisfied from employment and labour, and related to productivity, output and merit. It relies on system of social insurance that is obligatory and dualist – distinguishing between those who are economically active and those who are not. The acquired social standard is therefore directly dependent on economic, labour involvement and particular social contribution. The state generally compensates for the consequences of the social risks, but it does not directly eliminate their root causes.

The third model of the welfare state is the so called **social-democratic model**, known also as **the universal** or universalist one – as it **systemically covers and protects the entire population regardless of the social status and actual need for protection**. The main focus of the policies is on active support of high levels of employment, while the main criteria for the entitlement in relation to existing social benefits is the citizenship, or other legal relationship between an individual and the state (e.g. a refugee status). The financing of the system is provided from general (especially direct) taxation and the redistribution of resources is based on solidarity. The values this system protects are those of high standard of health, quality education for all and equality of opportunity, as well as guarantees of the minimum income for all in order to build a foundation for decent life and dignified standard of living, as basic precondition for people’s participation in social and economic life, including labour market. This model is so far predominant across Europe, and to a great extent embraced by the deeper integration model of the European Union. Its actual realisation and future strength, however, will depend on multilateral commitment to social aspects of integration, and true, genuine devotion to the core values on which the Union was founded, especially equality and solidarity.

4 SITUATION IN SLOVAKIA

After its establishment in 1993, the Slovak Republic also in its new constitution, introduced “socially oriented free-market economy”. In practical terms, this represents the medium, centrist position – also known as modern conservative or German model, which is neoliberal in its very foundation, yet with permitted level of regulation and state intervention that is to serve securing of basic social protection and keeping of corresponding social cohesion. The role of the social state

¹³ PRUSÁK, J.: Teória práva (The Theory of Law). Bratislava: VO PraF UK, 1995, p. 43-44.

is enshrined in the **Article 55 paragraph 1 of the Slovak Constitution** stating that “**the economy of the Slovak Republic is based on socially and environmentally oriented market-economy**”. In principal interpretation of the constitution this means that only the free-market activities that pay due attention to social and environmental needs, and respect social and environmental aspects of life, deserve state and social support. This broader social and public-interest role is, among other, mentioned also in relation to the right to property, codified in the article 20 paragraph 3 of the constitution, stating that “ownership of a private property is binding. It shall not be misused to the detriment of the rights of others, or in contravention to the public interest protected by law. The exercise of this right shall not be at detriment or harm to human health, nature, cultural monuments and the environment.” Further constitutional guarantees of social, economic and cultural rights are listed as integral part of the catalogue of human rights, in articles 35 to 44 of the Slovak Constitution. Whether, and to what extent, it is such principled and enlightened interpretation and application of law, and part of our daily reality – that the free market and private corporate actors, keep social and public interest at the forefront, or at least in fair balance, with their profit-driven activities – remains an open question.

The Constitution, as much as a whole set of international documents, also entails the fundamental definition of Slovak Republic as the state based on the rule of law. This provision is in fact among primary ones, of article 1 paragraph 1 of our constitutional, codified form of social contract. The underpinning philosophical approach is therefore the one of **respecting the liberty and equality before law**, also known as formal equality, as primary and dominant values, that may be adjusted to social needs by adoption of secondary measures in the form of written laws. This has been in fact the main feature of the post-1989 developments, when most of the social legislation has been adopted to balance major inequalities and heal social disruptions often in a responsive, reactive manner. In addition, the law creation in modern societies is subject to various pressures, in which the economic interests of the most powerful corporate actors often play a decisive role. This has, among other, **weakened rather than strengthened the existing standard of labour rights and social protection**. A few examples include substantial shortening of period of extended social protection after the conclusion of employment relationship or end of labour contract – from previously codified 42 days to only 7 days of extended protection; the expiration of insurance (sickness benefit) entitlement after the 11th day of care for a family member or a close person such as minor of age, husband, wife or an elderly parent; the elimination of concept of equity in social security law and corresponding extraordinary mechanism of remedy, from the year of 2004 etc.¹⁴

The actual fulfilment of social rights and realisation of ideal of social justice therefore requires an active employment and balanced combination of various socio-economic means. Except the black-letter law, these include the system of progressive taxation and proportionate distribution of wealth, balance between private and public ownership and equality of opportunity in education, training and access to labour market. In Slovakia – vastly dependent on foreign investment, these systemic aspects and contextual dimensions have been also weakened rather than strengthened, and are likely to remain subject to continuing discussions, complex social struggles and periodically changing political preferences.

¹⁴ See MACKOVÁ, Z.: Právo sociálneho zabezpečenia. Osobitná časť. Poistný systém v SR s príkladmi (The Social Security Law in Slovak Republic: Specialised Part – Social Insurance). Šamorín: Heuréka, 2012, p. 207.

5 CONCLUSION

The last three decades, from 1989 in Central and Eastern Europe including Slovakia, presented us with an opportunity to substantially improve our standard of human rights and the quality of life. However, rather than building an integrated, holistic system, we seem to have switched from formerly “politically prescribed social equality” to short-termism of unlimited – and often harmful freedom and over-consumption of *some*, in parallel to, or even at expense of social exclusion and marginalisation of *others*. And while the rule of law or German *Rechtstaat* is the core principle of modern democracy, it is the embodiment of liberty and formal equality – as equality before the law. **The welfare state or social state, or state with social orientation, shall reach beyond the ideal of equality before law and be seriously concerned with equality of opportunity and justice as fairness.**¹⁵ In designing such state and negotiating such social contract, all members of society should be called and willing to participate in common dealing with life and social challenges, and enhancement of social justice. This includes and in fact also requires “adoption of legislation opposing extreme liberalism – often indifferent to extreme inequalities and social wrongs. **The idea of welfare state is to remind us that the state shall be the guardian of just and fair order, creating the foundation for belief and legitimate expectation that it will protect everyone from social harms and social wrongs**“.¹⁶ Even according to fathers of the liberal school of thought, such as John Stuart Mill – none of us created the Earth and therefore none of us may own it. In less symbolic and more practical, real terms – this means that most of the available resources belong to all of humanity. The state is to serve and promote the public good and protection to the most vulnerable.¹⁷ Every human life depends on solidarity of the society as a shared, common unit.¹⁸

Europe, including former Czechoslovakia as one of the founding countries of the International Labour Organisation, has since its initial years enjoyed strong commitment to social protection, social justice and building of welfare state.¹⁹ Even in comparative numerical terms, the EU state-level of social redistribution is around 20% of the GDP, which is almost tripple to the non-EU average of some 8%. No wonder this comes hand in hand with more than an extensive gap both in standard and quality of social protection, and the scope of coverage, or the proportion of the population with social protection. It is in fact **the principle of universality – reflected in universal social coverage and social inclusion of the entire population, characteristic for the European systems of social security, that embody and reinforce democracy also in economic and social terms.** Facing present challenges such as rising inequalities and social disruption, rise of nationalism and right-wing populism, we had better realise that rather than putting social rights at the altar of global profit-making, **Europe may and should preserve its strong social dimension and serve as living example of positive determination to high quality of life for all, achieved through protection and fulfilment of social rights and the ideal of social justice.**

¹⁵ See RAWLS, J.: A Theory of Justice (revised edition). Cambridge: Harvard University Press, 1990. 560 p.

¹⁶ DOMAŇSKÁ, A.: Pojem a normatívny význam ústavných zásad sociálnej spravodlivosti (The Term and Normative Meaning of Constitutional Principles of Social Justice). In: Právny obzor, 2004, No. 5, p. 415.

¹⁷ MILL, J. S.: Logika liberalizmu (The Logic of Liberalism). Bratislava: Kalligram, 2005, p. 510.

¹⁸ MACKOVÁ, Z.: Princíp solidarity v práve sociálneho zabezpečenia Slovenskej republiky (The Principle of Solidarity in the Social Security Law in the Slovak Republic). Bratislava: Univerzita Komenského, 2001, p. 27.

¹⁹ See e.g. the Act No. 221/1924 of the Collection of Laws of the Czechoslovak Republic – on Insurance of the Employees in case of Sickness, Disability and Old-Age.

Bibliography:

- BARANCOVÁ, H.: Reforma sociálneho poistenia Slovenskej republiky v európskom kontexte (The Reform of Social Insurance of the Slovak Republic in the European context). Bratislava: SAV, 2004, ISBN 80-7179-856-8.
- DOMAŇSKÁ, A.: Pojem a normatívny význam ústavných zásad sociálnej spravodlivosti (The Term and Normative Meaning of Constitutional Principles of Social Justice). In: Právny obzor, 2004, No. 5.
- GAJDOŠÍKOVÁ, L.: Charakteristika súčasného systému práva sociálneho zabezpečenia (The Characteristics of the Present System of the Social Security). In: Právny obzor, vol. 80, 1997, No. 4.
- KORTEN, D.: Keď korporácie vládnu svetu (When Corporations Rule the World). Košice: Paradigma SK, 2001, ISBN 80-968603-0-5.
- JANKUV, J.: Medzinárodné a európske mechanizmy ochrany ľudských práv (International and European Mechanisms for Protection of Human Rights). Bratislava: Iura Edition, 2006, ISBN 80-8078-096-X.
- MACKOVÁ, Z.: Právo sociálneho zabezpečenia. Osobitná časť. Poistný systém v SR s príkladmi (The Social Security Law in Slovak Republic: Specialised Part – Social Insurance). Šamorín: Heuréka, 2012, ISBN 978-80-89122-77-6.
- MACKOVÁ, Z.: Právo sociálneho zabezpečenia. Všeobecná časť (The Social Security Law: General Part). Šamorín: Heuréka, 2009, ISBN 978-80-89122-53-0.
- MACKOVÁ, Z.: Princíp solidarity v práve sociálneho zabezpečenia Slovenskej republiky (The Principle of Solidarity in the Social Security Law of Slovak Republic). Bratislava: UK, 2001, ISBN 80-7160-141-1.
- MILL, J. S.: Logika liberalizmu (The Logic of Liberalism). Bratislava: Kalligram, 2005, ISBN 80-7149-783-5.
- PRUSÁK, J.: Teória práva (The Theory of Law). Bratislava: VO PraF UK, 1995, ISBN 80-7160-080-6.
- RAWLS, J.: A Theory of Justice (revised edition). Cambridge: Harvard University Press, 1990, ISBN 13 978-0674000780.
- SEDLÁČEK, T.: Ekonomie dobra a zla. Po stopách ľudského tázania od Gilgameše po finančnú krízu (Economy of the Good and Evil: Following the Steps of Human Questioning from Gilgamesh to financial crisis). Praha: 65 Pole, 2009, ISBN 978-80-903944-3-8.
- STANEK, V.: Sociálna politika (Social Policy). Bratislava: Vydavateľstvo EKONÓM, 2004.
- ŠVIHLÍKOVÁ, I.: Globalizace a krize. Souvislosti a scénáře (Globalization and crisis: Interconnections and scenarios). Všeň: GRIMMUS, 2010, ISBN 978-80-87461-01-3.
- TRÓSTER, P.: Právo sociálního zabezpečení (The Social Security Law). Praha: C. H. Beck, 2005, ISBN 80-7179-856-8.

Contact information:

JUDr. Zuzana Macková, PhD.
zuzana.mackova@flaw.uniba.sk
Comenius University in Bratislava, Faculty of Law
Šafárikovo nám. č. 6
P. O.BOX 313
810 00 Bratislava
Slovakia