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THE LEGAL NATURE OF SOCIAL INSURANCE IN KOSOVO IN THE SPIRIT OF EU INTEGRATION

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Abstract: *Benefits, according to social insurance funds, have the nature of compensation for lost profits. Hence, the social insurance function has to meet the most important subjective requirements, provide for bare needs, and fulfil minimum standard of living. Contemporary states undertake a series of economic, social, cultural, health, and legal measures to ensure the protection of individuals and family. Various authors define the level of satisfying the needs as the social minimum. Thus, a special law provides the right to material benefit for those in need. Therefore, Kosovo pays special attention to family, mothers, children, martyrs, invalids, veterans and KLA members. The social insurance scheme in the Republic of Kosovo is not defined by a special law, but is defined by a set of laws. Thus, Kosovo has currently legal infrastructure necessary for beneficiaries of the social insurance scheme, though not in the desired form and capacity.*

Keywords: *Social Insurance; Status of Social Need; Special Social Protection; Social Minimum*

INTRODUCTION

Analysing the legal nature of social insurance in the Republic of Kosovo under the current conditions of economic and social development means first of all, identifying the essence, the main features and elements of the benefits of the social insurance system, and future development and perfection trends of social protection.

Can any natural person be subject to social law? Hence, the question is whether this right can qualify as a universal right? That means, do all citizens of a state enjoy this right? In fact, some of the social rights are, or should be, universal.

Thus, for example, the right to life, the right to education and vocational training, the right to health protection, respectively to environmental protection, the right to material and social security, etc. So, here is about the rights belonging to everyone, namely universal rights, which are considered of particular social importance, as opposed to other social rights.

It is difficult to accept that a person can be found who once in his life has not been or who will not be in the future subject to one of the social rights. Care of these people should be especially undertaken by the state. The concept of social insurance was built to this regard, as a system that will protect people from poverty and the uncertainties caused by different events (social risks). Social insurance aims to provide citizens with protection against certain risks that would manifest a reduction or loss of professional ability, would lower their standard of living, or would impose new obligations or burdens.

Social insurance is a constitutional obligation, which guarantees the right to benefit payments from social insurance in the future when an individual becomes disabled for work as a result of old age, illness, etc. Through social services, the state seeks to mitigate the level of poverty and social exclusion for individuals and families and to create opportunities for their integration through the provision of a system of interventions, services and care to improve living.

MATERIAL AND METHODS OF WORK

During the course of the study, various scientific and professional sources were used, including university textbooks, papers and scientific articles, analysis, national and international constitutional and legislative acts of social law.

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DISCUSSION

Needs as part of personal dignity

Need is part of the personality structure, and the state, in which the personality is, does not enable him/her to satisfy in general or fully the needs. This state may be caused by: 1. personal characteristics, or 2. socio-economic and cultural circumstances in society, or 3. natural circumstances.

Being in a state of social need is something that happens regularly to the individual or social group. There are authors who for the "state of social need" find that this is a state characterized by the real effective lack of necessary means for the maintenance of those that make such requirements (Tintić 1977, 125; Šunderić 2009, 118). However, there are also authors who characterize the 'state of social need' as an influence of natural and social circumstances on the life of an individual or group of people who, because of these circumstances, cannot normally meet their biological needs of life and other social needs (Zelenović – Lakičević 1987, 14). The expression "need for social protection" means the need in which families are and whose social security is endangered or threatened, since their income cannot provide the minimum standard of living (Todorović 1990, 4). However, there are authors who with 'social threat' mean certain deficiencies that threaten the performance of their vital functions and their reproduction, as well as their very existence (Lakičević 1983, 2-3). The state of social need is the natural-biological state of the individual, which does not depend on the individual, since this state can neither be created nor can be changed by him/her. Social threat does not create this state, but it leads to it, where the individual or social groups cannot satisfy the needs or, as it is otherwise called, 'the state of social need' (Robaj 2018, 109). Social justice arises from the conflict between the subjective demand for certain benefits and the objective opportunity of the individual to provide them. In this context, the solution is used: "I have the right, if I need something (I am in a state of social need) because of my social state and I can exercise this right if I wish" (Heller 1981, 105).

Contemporary states undertake a series of measures, ranging from economic, social, cultural, health and legal ones, which guarantee the protection of the individual and family (Universal Declaration of Human Rights, European Convention on Human Rights). Benefits in the social insurance system perform the function of replacing professional earnings or the function of supplementing income in the case of benefits that are subject to family obligations (Durand 1953, 270). Benefits in accordance with the social insurance fund have the nature of compensation and represent compensation for lost profits (Dypeyroux 1978, 130). In family benefits, the amount paid is not considered a benefit or replacement of the salary but a supplement to salary (Lyon - Caen 1955, 371).

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Therefore, the social insurance function is to meet the basic survival needs, thus the most important subjective needs (Ravnić 1976, 56). Social insurance performs the function of survival by providing minimum needs or the so-called social minimum.

Persons benefiting from social law

Some authors emphasize that the basic needs of life are human existential needs, the basic needs, and the needs that guarantee basic social security. While other authors also think that human existential needs are: the need for food, clothing, heating, health protection, minimal housing conditions, basic conditions for education and employment, the need for care, custody, service, education and social care (Zelenović - Lakičević 1987, 17). In the opinion of some authors, these needs fall within the fundamental human rights. While different authors emphasize that these are the needs that ensure basic social security, namely the existential need (Šunderić 2009, 123; Robaj 2018, 111). However, there are also authors who define the level of satisfying needs as the social minimum (Tintić 1977, 27).

The social minimum or social security minimum is defined by law. Thus, the special law provides for the right to a material insurance, which is the right of the individual who lives alone, i.e. the family, which provides income below the minimum social security level established by law. Similar to the lawmaker, even in the theory of social law, is concluded that threatened is the family living in the general state of life, a state which is below the level of degree determined by the society (Vrcan 1984, 94). Ancient is the truth that man as a practical creature could not exist if it were not a creature of needs, and if it were not possible for them to satisfy them (Tanović 1975, 12). Therefore, it is about the aspects of legal protection of the fundamental values of human existence. It is about the needs which are considered as certain rights for human life (Miličić 1989, 5-6).

There are several phenomena (air) which the human body during physiological action takes without engaged effort (Pešić-Golubović 1966, 313). It is also implied that there is no motivation for such activity during such taking (Rot 1980, 93). However, there are needs that are supplemented by content such as food and housing, clothing, etc., for the acquisition of which it is imperative for the individual to make efforts. Thus, the relationship between need and content can be defined as the relationship between need and value. The subject of need and value is the individual or social group (Tanović 1975, 12; Marković 1963, 114).

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PERSONS WHO ENJOY SPECIAL SOCIAL PROTECTION

Family, mother and child

Family, mother and children enjoy special social protection and care in every country. Therefore, Kosovo, by virtue of positive law, pays special attention to the family, mother and children (Kosovo Law on Social and Family Services 2012, Article 1). Family enjoys special protection, as in every society, it represents the basic social group, in which important functions are exercised such as: reproduction; care and custody of children. Women (mothers) enjoy special protection, regardless of the nature of their childbearing. Childbearing requires protection during maternity, growth and child care period. Protection function, i.e. some of its forms, under certain conditions, can also be enjoyed by the father of the child (Kosovo Law on Labour 2010, Article 39).

The state, respectively, the society that does not care for the reproduction of the population is threatened by survival, or by existence itself. Plato, 2100 years ago, said: "the issue of children is not just an exclusive family issue and parent concern, but also a general issue of the state-society, since the children are ultimately the future state" (Vidaković 1932, 33). In the sense of the provisions of the Convention on the Rights of the Child (of UN), a child is considered a human being who has not reached the age of 18. Pursuant to this international legal act, UN Member States are obliged to undertake all actions related to guaranteeing and securing the rights of children guaranteed by the Universal Declaration of Human Rights. The child enjoys special family and social care, and protection due to their bio-psychological nature as well as due to the importance of care for the child, the family and the society.

Development of the child protection function derives from the particular interest of the society, namely the social community to ensure the reproduction of the population, which can be achieved in addition to the childbearing function and training of children and youth, for taking over the role in society and work (Milosavljević 1984, 181). Contemporary states undertake a series of measures, ranging from economic, social, cultural, health, and legal ones, which provide for the protection of the family and the child (European Convention on Human Rights, Article 12).

Categories emerging from the war

Martyrs, invalids, veterans and members of the Kosovo Liberation Army, civilian victims of war and their families, are social categories that enjoy special social protection by law. The law aims at defining the status and financial support through pensions and special benefits for categories emerging from the KLA war, who with their sacrifice and contribution were decisive factors for freedom and liberation of the country (Law on the Status and the

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Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families, 2011). According to the law, a National Martyr is considered the member of KLA who has died in war for liberation of the country from 1997-1999. Whereas, KLA Invalid of War is a KLA member, whose body has been damaged over 20% due to a wound, injury or disease that has suffered in the war from 1997-1999. Civilian Invalid of War is the person whose organism has been damaged at least 40% due to a wounds received from weapons during the war. Veteran of KLA is the citizen of Kosovo and the foreign citizen who has become a member of KLA during the period 1997-1999. Civilian Victim of War is the person who was killed or got wounded by the enemy forces, and later died within the period from 27.02.1998 up to 20.06.1999.

SOCIAL INSURANCE SCHEME

The social insurance scheme in the Republic of Kosovo is not defined by a special law, but social insurance is defined by a set of laws. Thus, Pension Funds of Kosovo are provided by a special law (Law on Pension Funds of Kosovo 2012, 2016). According to the same law, these forms of pensions are provided: 1. Basic Pensions provided by the Ministry of Labour and Social Welfare; 2. Individual Savings Pensions provided by the Kosovo Pensions Savings Trust; 3. Supplementary Employer Pension Funds; 4. Supplementary Individual Pensions. Any person who is a permanent resident of the Republic of Kosovo and has reached the retirement age is entitled to receive the basic pension. Whereas, the provision of supplementary individual pensions is provided by the Law on Insurance, whereby each person, according to their will, has the right to get insured for supplementary individual pension at a licensed insurance company (Law on Insurances 2015, Articles 7-8). Social and family services are regulated by a special law (Law on Social and Family Services 2012), which defines and regulates the provision of social and family services to people in need and families in need. While the Law on the Social Assistance Scheme in Kosovo regulates basic age pensions, old age contributors' pensions, disability pensions, early pensions, family pensions and invalidity pensions, as the first pillar pensions funded by the state.

TYPES OF INCOMES THAT CAN BE OBTAINED

Illness income

When we try to define the notion of social insurance risk, we should note that it is a compulsory insurance for persons who perform work, whether they make it in the form of an employment relationship, whether they do it independently with their own means or perform activities in the form of a profession (Bakraçi 2007, 103-104). Based on the social insurance system of the Republic of Kosovo, employer is responsible to employee for damages caused

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by injury at work, professional illnesses or work-related illnesses, according to the principle of objective responsibility of the rights of liabilities (Law on Safety and Health at Work). Benefits for illness fall into the category of short-term benefits and cannot last more than 3 months, but never 12 months.

Maternity income

Social rights, above all, have arisen as a result of the changes that took place in the character of social relations, the changes that conditioned the relationship and the new social practice (Herman 1990, 15). The right to maternity benefits, in addition to domestic acts, is also guaranteed by acts of international law (European Social Charter, Article 17).

Thus, from the maternity benefits, the subjects of the social insurance scheme benefit payment as: 1. income for maternity; 2. income for maternity compensation, when the place of work is changed; 3. compensation for childbearing (Çuçi-Peto 2007, 140-237).

The income for maternity is enjoyed by the woman because of her pregnancy and childbearing. Also, in order to benefit maternity income, a woman must be covered by social insurance for a 12-month period, which means that this woman should have been employed for one year. Every woman who has been employed has the right to benefit 9 months of income on behalf of maternity, the first 6 months of maternity leave are paid by the employer with compensation of 70% of the basic salary; The following 3 months, maternity leave is paid by the Kosovo Government with a 50% compensation of the average salary in Kosovo (Kosovo Law on Labour).

Pension income

Pension is the amount of income that a subject can benefit when incapable of work due to their age, or illness (Çuçi-Peto 2007, 149). Age of retirement is determined by law. Age of old age pension in most countries (states) is 65 years (Kosovo Law on Labour).

According to the applicable law, the categorization of beneficiaries from the pension schemes is as follows: 1. Basic age pension; 2. Old age contributors' pension; 3. Permanent disability pension; 4. Early pension; 5. Work disability pension; 5. Family Pension (Law on Pension Schemes Financed by the State, 2014).

Supplementary pensions

Supplementary pension is the amount of money that persons who perform constitutional functions benefit. The President of the Republic of Kosovo earns the rights set by law after the end of the mandate for which he/she was elected. The President of the Republic of Kosovo, after the end of the mandate in accordance with the law, has the right to

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pension, the amount of which is 70% of the salary received by the President (Law on the President of the Republic of Kosovo 2009). The deputy, after the end of his/her mandate, has the right on supplementary pension, if a deputy has practiced his/her task for at least one mandate and is fifty-five (55) years of age. The deputy, who fulfils the conditions defined by law, realizes a supplementary pension in amount of 50% of the basic salary of the deputy (Law on Rights and Responsibilities of the Kosovo Deputy 2010). For the family members of the supplementary pension user who has died, the family pension is determined in the amount of 70% of that pension on the day of death. The right to family pension has the spouse and children up to the age of 18, respectively up to the age of 22, if they continue the higher education. With the law on the benefit of former high officials, as beneficiaries are defined: former President of the Assembly, former Prime Minister and former President of the Supreme Court of Kosovo. Former high officials who have performed for at least 6 months one of the aforementioned functions shall be entitled the status of the former High Official to receive a monthly payment in amount of 70% of the actual salary of respective function (Law on the Benefit to Former High Officials 2008).

Income for occupational accidents and occupational illnesses

Subjects who suffer from an accident at work, occupational illnesses, are eligible to income, regardless of the years of insurance. The years of insurance constitute the main reason why persons who can become disabled as a result of work accident and occupational illnesses are not treated in the group of biological invalids (Çuçi-Peto 2007, 217-218). Persons who suffer from injuries or illnesses that result from a work accident or occupational illnesses, regardless of their seniority, are entitled to: additional medical care and rehabilitation, disability care, compensation for reasonable damages, and in case of death.

Employer is obliged to cover all medical treatment expenses for employees who have suffered injury at work or professional illnesses, if they are not insured at an insurance company (Law on Safety and Health at Work 2013).

Unemployment income

Creating social security, in fact, means psychological benefit. Social security is a feeling that is formed in people, which is expressed in the pledge that the acquired socio-economic status will not worsen if it comes to change, but surely it can only be improved (Šefer 1974, 177). According to a group of authors, social insurance in the broader sense represents "a comprehensive system as an integral part of the economic and social policies that should establish the most sustainable and reliable basis for a free, sustainable and secure development of everyone" (Nedeljković 1973, 127). In the context of economic life and social conflicts, emerges the "state" which conceptualizes and establishes employer-employee

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relations in the field of relative autonomy (Robaj 2017, 18). If the state takes on the role of taking care of the economically weak, then this care, which is the purpose of this function, actually ensures their existence (Tasić 1938, 111). In essence, this understanding is that the concept of economic freedoms means that the state must protect the individual from social risks and provide every citizen with minimum living conditions (Marković 1982, 579).

Unemployment is an involuntary event that may come as a result of low economic development, or as a consequence of the irresponsibility of the individual. However, unemployment is associated with negative consequences both in the economic state and in the social state of the individuals who are struck by it. The state, in addition to other means utilised to avoid the negative phenomena that this problem has caused, has also created a protection system in the event of unemployment. The unemployment protection system is intended to provide monthly, temporary economic assistance in order to meet the basic needs of life. The unemployment protection system works through the assistance that is part of the social insurance system (Robaj 2018, 138). According to Kosovo legislation in force, unemployment income can only be benefited by a family where none of them is employed (Law on the Social Assistance Scheme in Kosovo 2012).

CONCLUSION

Social insurance through its system is a guarantor for continued financial benefits or other assistance type mitigations towards persons unable to work due to age, permanent disability, temporary disability, maternity, unemployment.

Through social insurance, the state tries to alleviate the poverty and social exclusion for individuals and families as well as create opportunities for their integration through an intervention, service, and care system for the improvement of life. Thus, Kosovo, invoking on the principles of the rule of law and the principles of European jurisprudence has also made concrete efforts and steps in the constitutional and legal guarantee of social rights as inalienable rights. However, it should be borne in mind that the existence of the constitutional and legal framework is only a prerequisite for the rule of law and the social state. Equally important is the functioning of various mechanisms of control of the implementation of constitutional and legal norms, and in particular the creation of a new social mentality for equality and social justice. But, the low level of economic development dictates the quality and form of protection of social rights. The concept of democratic consolidation has to do with the broad and deep legalization of the political system. This implies institutional protection of the economically and socially weaker strata, which have a vital need for the helping hand of the state. The Republic of Kosovo should do even more to build a social and democratic state, based on equality and social peace as universal values.

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