

The Impact of International Social Security Standards
on Social Reforms in New EU Member States:
The Cases of Estonia and the Czech Republic

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ABSTRACT

Since the last two decades, the new post-socialist EU member states have been redesigning their social security systems. Whereas the European Union has no competence to develop legislation on social security matters, the International Labour Organisation and the Council of Europe do set international legal standards in this field. These standards have served as a benchmark for the different insurance branches, especially in Estonia. Both in Estonia and in the Czech Republic, they have played a preserving role by preventing benefits to drop below the given minimum level of protection in the course of the reform processes. Regarding recent trends in social security such as privatisation of pension schemes and the introduction or increase of user fees for health care services, the standards call for extra attention to internationally accepted principles on redistribution and good governance. For these reasons, the international standards are useful tools for national social policy and suitable to contributing to political discussions on the design or adjustment of social security schemes. Moreover, by the absence of harmonising EU legislation in the field of social security, these standards contribute to the convergence of social security systems within the European Union, setting out a minimum level of social protection to be complied with by all contracting parties.

1. INTRODUCTION

After the collapse of the Soviet regime, the Central and Eastern European (CEE) countries faced the need for a major economic and social reform in order to join in with Western Europe and, subsequently, the European Union (EU). The reform included the design of a social security system that would provide adequate protection to the people on the one hand and would be economically feasible on the other. In this paper, the impact of international actors on social security reforms in Estonia and the Czech Republic will be addressed, specifically the influence of the International Labour Organization (ILO) and the Council of Europe (CoE). Since the fall of the Berlin Wall in 1989, several studies have been conducted on the influence of financial organisations such as the World Bank and the International Monetary Fund on the design of, in particular, pension schemes in the new EU member states.¹ However, the position of the ILO and the CoE as regards the social reforms in CEE countries has remained almost unnoticed and the same goes for the impact of their normative instruments on the design of the different social security schemes.² My contribution is an attempt to fill this gap in academic studies on the creation of the CEE welfare systems.

There are several reasons why it is important to shed light on the role of the ILO and the CoE. In the first place, these institutions are the only international standard setting organisations in the field of

Acknowledgements: This contribution stems from research for my PhD thesis and is based on a literature search and qualitative analysis. Policy makers, civil servants, and representatives of social partners have been consulted to obtain specific background information on the influence of international actors during the transition period.

¹ For instance: Deacon 1997; Müller 1999; Orenstein & Haas 2002; Agartan 2004.

² For a study on the impact of ILO social security conventions on national law in five 'old' EU Member States, see Pennings 2006b.

social security. It should be borne in mind in this respect that the European Union does not develop any legislation on social security other than co-ordination rules, facilitating cross-border activities. EU member states are fully autonomous in the design of their social security systems as regards content, which, in practice, allows considerable differences in social protection between countries. These differences are not conducive to the single market the EU advocates, as they may cause competition on employment conditions, often referred to as ‘social dumping’. The ILO and the CoE on the other hand, do develop concrete minimum norms for social security, and they additionally encourage countries to improve their social security measures. Moreover, their legal instruments have a harmonizing effect on the divergent social security systems within the EU, in the sense that they provide a minimum floor to be satisfied by all contracting parties. Therefore, it is particularly relevant to examine the impact of those standards on recently established welfare states. Where the EU is not competent to harmonise, it is of particular interest to observe the converging role of other international actors and to draw conclusions on their effectiveness. These conclusions are useful not only to gain insight into the effects of those standards on national situations so far, but even more in view of any future EU accessions.

The paper is structured as follows. The next section contains a brief introduction on the international social security standards developed by the ILO and CoE. The subsequent two sections deal with the social reforms of Estonia and the Czech Republic, with a focus on the ILO and the CoE. In the fifth section, some problematic points in the social security systems of both countries in relation to the international standards are studied, showing weak points in national social protection as well as in the international provisions. Finally, on the basis of the country studies, conclusions will be drawn on the impact, usability, and drawbacks of international social security standards.

2. INTERNATIONAL SOCIAL SECURITY STANDARDS

The setting of international standards in the field of social security has been one of the main objectives of the International Labour Organisation since its initiation in 1919.³ Based on the idea that social justice is an essential pillar of universal peace, both within and between states, the Preamble to its Constitution sets forth a number of goals, including: the protection of the worker against sickness, disease, and injury arising out of employment; the protection of children, young persons, and women; and provision for old age and injury.⁴ One World War later, the objectives of the ILO were redefined by including the extension of social security measures to provide “a basic income to all in need of such

³ See for instance Bartelomei de la Cruz 1994; M. Humblet & M. Zarka-Martres 2002.

⁴ Preamble to the Constitution of the ILO, adopted by the Peace Conference in 1919.

protection and comprehensive medical care”.⁵ Proceeding from this call for extension of social security from workers to all those in need, which had not yet been advocated in the pre-war conventions, the flagship Convention No. 102 on Minimum Standards of Social Security (ILO C102) was created in 1952. This Convention is considered the main instrument to elaborate the right to social security as led down in human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.⁶

The comprehensive ILO C102 provides for a minimum level of benefits in nine branches of social security, covering the nine ‘classic’ social risks.⁷ For each branch, it contains provisions pertaining to the definition of the risk covered, the personal coverage of the scheme, the rate of the benefit, the duration, and eligibility. The Convention is designed in a flexible way, taking into account different schemes and calculation methods, as well as varying stages of development of countries concerned. Its flexibility becomes visible, for instance, in the calculation of the benefits by reference to national wages, or in the freedom for governments to design insurance schemes covering either employees or residents. To prevent the flexibility clauses from watering down the effective protection, all social security schemes have to comply with a number of common principles on administration and financing irrespective whether the scheme is a public or a private one. ILO C102 constitutes the foundation for five subsequent social security conventions providing higher standards for most of the included risks, of which Convention No. 183 on Maternity Protection (2000) was adopted last.⁸

In 1964, the Council of Europe (CoE), committed to promoting human rights and social justice in the European region, adopted the European Code of Social Security (ECSS).⁹ This instrument is almost identical to ILO C102, but requires more parts to be ratified. Where ILO C102 can be ratified on the basis of compliance with three of the nine parts, the ECSS requires ratification of at least six parts, and thus stands for a higher level of protection. A second important social security instrument of the CoE is the European Social Charter (ESC) adopted in 1961.¹⁰ The ESC is seen as the counterpart of the European Convention on Human Rights,¹¹ protecting a wider range of social and economic rights, including social assistance as well as a number of labour issues such as the right to fair remuneration and collective bargaining. Art. 12 ESC covers ‘the right to social security’ and refers for the required

⁵ Declaration concerning the aims and purposes of the ILO adopted in Philadelphia on 10 May 1944.

⁶ Universal Declaration of Human Rights, UN GA Res. 217A (III), 1948, Art. 22; International Covenant on Economic, Social and Cultural Rights, UN GA Res. 2200A (XXI), 1966, Art. 9; See: Kulke 2007, p. 1; Riedel 2007, pp. 21-22; Korda & Pennings 2008, p. 1.

⁷ Medical care, sickness, unemployment, old age, employment injury, care of children, maternity, invalidity, and death of the breadwinner.

⁸ The conventions are published on the website of the ILO: www.ilo.org.

⁹ The European Code of Social Security was adopted in 1964 and entered into force in 1968.

¹⁰ The European Social Charter was adopted in 1961 and entered into force in 1965.

¹¹ The Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in 1950 and entered into force in 1953.

level of protection to ILO C102. This means that countries that are bound by Art. 12 ESC have to comply with ILO C102 as if they had ratified it as well. In practice, ratification of this Convention follows that of the ESC, if it has not been ratified already. It must be noted, in conclusion, that the Revised European Social Charter (1999)¹² refers to the ECSS instead of to ILO C102, and therefore it constitutes a higher level of protection than the ESC. Estonia, for example, ratified the Revised Social Charter in 2000 and subsequently the ECSS, while the Czech Republic ratified the ESC in 1999 since it was, at that time, already bound by ILO C102.

3. SOCIAL SECURITY REFORM IN ESTONIA

3.1 Introduction

While exploring the impact of these international instruments on the social security reforms in the countries under review, it is important to be aware of the starting position of the social security systems in both countries and of the political sphere in which these reforms have taken place. Although the post-communist states were in the position that they had to redesign their social security schemes based on new paradigms and economic realities, the outcomes would still be path-dependent to a certain extent. Therefore, before elaborating on the international aspects, the history and current developments relating to social security in the two countries will be briefly outlined.

3.2 History

Estonia experienced its first era of independence between 1918 and 1940. During this interwar period, a modest social security system was created according to the ideas of Bismarck and in line with most of Europe, containing a pension scheme and a health insurance system that both covered employees and their family members. However, the period of autonomy was short-lived and came to an end when the country was invaded by the Russians in 1940 and, after a short period of German occupation, incorporated into the Soviet Union in 1945. Subsequently, all Estonian laws were abolished in favour of the Soviet rules and the Soviet social policy. Characteristics of the post-war social security system included low pensionable ages, early retirement and other privileges for workers in specific occupations, and, in the event of invalidity, privileges for war veterans and work injury victims.¹³ Short-term sickness benefits were paid throughout the contingency, without a waiting period, or until permanent invalidity benefits were provided. All these benefits were linked to former wages, which, in view of the socialistic ideals, did not show large differences. This, together with fixed minimum and maximum benefits, made the system strongly redistributive. Maternity benefits were part of family policy and based on citizenship. In conclusion, since unemployment was practically non-existent, the

¹² The European Social Charter (Revised) was adopted in 1996 and entered into force in 1999.

¹³ Deacon 2000, p. 147; Aidukaite 2006, pp. 264-266; Trumm 2006, pp. 2-3; Ginneken 2008, p. 22.

socialist system did not provide unemployment benefits. As far as the financing was concerned, all benefits were paid from the general state budget, which was funded through contributions of the state-owned enterprises only; employees did not pay any contributions. In very broad outlines, this was the social state of affairs at the end of the Cold War when the Soviet Union pulled back.

3.3 Developing a new concept of social security: From 1991 onwards

In May 1991, the Estonian Supreme Soviet, which was the Estonian parliament at that time, proclaimed the restoration of the independent Republic of Estonia, both de jure and de facto. This act was promptly followed by broad international recognition, leaving Moscow no other choice than accept the sovereignty of Estonia and the other Baltic states in September 1991. The newly elected right-wing government, established one year later, faced the task of rebuilding the democratic republic in all its aspects. This was not a simple assignment indeed, all the more since the government consisted of very young members. The first Prime Minister, Mart Laar, was 32 years old and many ministers even younger. As Laar pointed out later: “Like other young people, we did not know what was possible and what was not – so we did impossible things.”¹⁴ Yet, this government faced the challenge of transforming a centrally planned socialist country into a modern democracy with an open market economy. The rapid introduction of Estonia’s own currency in 1992, combined with large-scale privatisation and strict state-budget control, marked the beginning of a radical economic reform.¹⁵ Higher living standards and greater individual freedom, values which people had been deprived from for so many years, was considered top priority. Clearly, Estonia was determined to instantly free itself from the legacy of strict state control and extreme paternalism and to devote itself to Western capitalism.

As a result of the focus on economic growth, social policy was given less attention.¹⁶ It was found that the feasibility of an extensive social security system with high income replacement rates would depend on the success of the economic reform and investments. Furthermore, it was presumed that economic growth would automatically lead to a reduction of poverty; therefore, the right-wing coalition parties did not think redistribution of resources through the introduction of universal elements in the social security system expedient. The huge economic, political, and social changes, however, led to a decrease of well-being of a large number of citizens. As a consequence, social policy became a somewhat more important issue during the late 1990s, but a clear overall view on social reform and an explicit consensus on the principles and goals of the entire social security system that had to be created was lacking. Instead, measures were taken in the shadow of the economic reform process and were

¹⁴ Laar 2007, p. 4.

¹⁵ Saar 2008, p. 425.

¹⁶ Lauristin 2003, pp. 2-3; Bernotas & Guogis 2003, pp. 8-11; Saar 2008, pp. 425-426; Trumm & Ainsaar 2009, pp. 155-157.

directed by conflicting interests between social and political actors. For these reasons, the outcomes of social reform have been disappointing for many people, especially for those who were not able to keep up with the rapidly changing society. It has been shown that the income differences in Estonia have risen sharply, with the elder cohort being “the losers in the process of social transformation”.¹⁷ The increasing income inequality and very low living standard of large groups of citizens have been identified as the downside of Estonia’s economic success story.¹⁸ Growing discontent with the social results of the reform process, especially with the very low level of minimum benefits, has led to an increasing public and political debate on these issues, accentuated by the recent economic downturn.

3.4 International influences on the Estonian reform process

To understand the political choices that have been made in the field of social security, it is of vital importance to point out what forces steered these choices. In general, the influence of international organisations during the post-communist reform process has been put into perspective by Estonian scholars and policy makers, especially in connection with pension reform.¹⁹ Internal factors have been pointed out as the main steering elements for social reform, including the inter-war and Soviet legacies, demographic factors (an ageing population, declining birth rate, higher life expectancy, the presence of ethnic minorities), the economic situation, labour market development, social changes, and right-wing governance. Still, there is evidence to suggest that different global actors have substantially marked the social security reform in Estonia.

The influence of global actors on pension reform has been under scrutiny in several studies.²⁰ It has been found in particular that the World Bank and, to a less extent, the International Monetary Fund have influenced the design of the actual three-pillar pension system. At the same time, these influences have been put into perspective because Estonia had not taken out any loans, as a result of which it was not bound to follow the guidelines of these institutions. Absent in the academic discourse on the development of the CEE welfare states are studies on the impact of the ILO and the CoE. Yet, the influence of these organisations, both promoting social justice through legal instruments, must not be underestimated. Starting with the ILO, Estonia restored its membership in 1992, as a logic step following the renewed association with the United Nations. It was this global actor that was consulted first on social reform by the Estonian government. Since involvement of the World Bank was initially focused on monetary reform and budget balancing only, the ILO was the obvious organisation to apply to for social issues. It is true, however, that in the early 1990s social security was not a priority in Estonia. The practical support by the ILO and several seminars with ILO experts mainly concerned

¹⁷ Saar 2008, p. 437.

¹⁸ Lauristin 2003; Bernotas & Guogis 2003; Saar 2008.

¹⁹ Trumm 2006, p. 2; Tavits 2003, p. 655; Leppik 2006, p. 99; information obtained from experts.

²⁰ Toots 2002; Tavits 2003; Kulu & Reiljan 2004; Leppik 2006, pp. 99-103.

labour reform and tripartism, rather than social security reform. In fact, new labour legislation was heavily based on ILO conventions.²¹

Nevertheless, the topic of social security was not overlooked either, as is demonstrated by the fact that Estonia celebrated the ILO's 75th anniversary with an international conference on "Social Security and Market Economy" in April 1994.²² Discussions during this conference covered the organisation and financing of social protection, tripartism in social security, unemployment insurance and employment problems of vulnerable groups. At the end of the meeting, an ILO delegate and the Minister of Social Affairs signed a letter of intent on cooperation, which clearly showed Estonia's open attitude towards the ILO, also on social security questions. Toots argues that "[t]he main role of ILO in Estonian social policy was to strengthen European way of social thinking and to soften influence of US based monetary organizations".²³ In relation with the pension reform, this may be true, but in other areas, such as labour law and unemployment insurance, the impact of ILO ideas was far more concrete than that. Moreover, as will be shown below, the European Code of Social Security (ECSS), which is totally based on ILO C102, has served as a touchstone for the entire social security system in Estonia. Indeed, through this flagship Convention, the ILO has indirectly marked the social security reform process as a whole.

In the course of the late 1990s, the role of the ILO in Estonian politics has decreased. This is mainly due to the fact that the political focus shifted toward Europe after the application to join the EU in November 1995. Although social policy as such was not really a topic on the agenda during the first years of negotiations on EU accession, the Copenhagen criteria did include the obligation to guarantee human rights. In the annual reports on progress towards accession, the EU Commission monitored which human rights conventions had been ratified and explicitly stated each year whether or not the Social Charter, recognised as a human rights instrument, had been accepted.²⁴ Estonia had already become a member of the CoE in 1993, and had consequently ratified the European Convention on Human Rights in 1996, showing its orientation towards Western Europe. A next step would be to ratify the ESC, which was heavily advocated by the CoE and considered a positive sign in view of EU accession. Moreover, since the EC Treaty refers to the ESC,²⁵ ratification would show the readiness for the EU in social respect. Although the European Commission could not enforce the adoption of the ESC, political pressure towards ratification was clearly felt.²⁶ As a result, the Estonian government

²¹ Muda 1997; information obtained from experts; as an example, between 1992 and 1996 Estonia ratified eight labour conventions.

²² See ILO website: <http://www.ilo.org/public/english/region/eurpro/budapest/info/bul/94-2/nl6_53.htm> (last accessed 09.07.2009).

²³ Toots 2002, p. 9

²⁴ European Commission 1999, p. 12.

²⁵ EC-Treaty, Art. 136.

²⁶ Trumm 2006, p. 3; Schoukens 2007, pp. 74, 90; information obtained from experts.

from then on thought it expedient to concentrate on European instruments more than on ILO standards. In this context, in 2000, it chose to ratify the revised version of the Social Charter, requiring compliance with the ECSS, instead of with ILO Convention 102.

At that time, it was not evident that the Estonian social security system complied with the ECSS. In fact, it was established that the rules on unemployment, old age, invalidity, and employment injury were not sufficient to meet its standards.²⁷ A possibility would have been to exclude Art. 12 – dealing with social security – from ratification in order not to get bound by the standards of the ECSS. Although this was considered as an option, it was not thought politically feasible.²⁸ As a matter of fact, ratification of the ESC (Revised) was made an issue in the elections, especially directed to the older population, since pensions would have to be raised in order to comply with Art. 12 ESC (Revised). Exclusion of this provision would obviously turn the older electorate, which would benefit from the increased pensions, against the ruling government. Taking its political responsibility a step further, although with some delay, the government subsequently ratified the ECSS in 2004, including the parts on pensions and unemployment that could be satisfied at that time as a result of several reform steps. Measures that had been taken to get ready for ratification included the introduction of a fixed indexation formula, the creation of an unemployment insurance scheme, and an annual increase of pensions. The only remaining deficiency was the absence of an employment injury scheme and therefore Part VI on employment injury was excluded from ratification.

Meanwhile, EU interference in the social field was limited to non-discrimination and co-ordination rules and, in a ‘softer’ way, labour policy.²⁹ In contrast, the ECSS gives clear and concrete legal norms for the different social security schemes. For this reason, the instrument has been explicitly used as a benchmark during the subsequent reform steps in relation to the whole range of social security provisions. Even more than that, the unemployment insurance scheme has been created and the level of old age pension has been increased specifically in order to comply with the ECSS.³⁰ It may therefore be concluded that the ECSS significantly and in a very concrete way marked the social security reform, whereas the direct EU influence in this field was very limited. At the same time, the underlying objective to join the EU should be recognised as the driving force for ratification of the ESC (Revised), which again paved the way for acceptance of the ECSS.

The international obligations, however, do have their downside. It must be mentioned that the ECSS standards are not only used as a minimum floor, but at some points also as a ceiling.³¹ Benefits are

²⁷ ESC (Revised) Report 2001-2002, p. 195.

²⁸ Leppik 2006, p. 100; information obtained from experts.

²⁹ For EU influence, see Muda 1996; Muda 1997.

³⁰ Information obtained from experts.

³¹ Information obtained from experts.

kept at a level just above the ECSS norms, to satisfy the international obligations, but at the same time to keep the expenses on social security as low as possible. This is especially the case with respect to pensions and unemployment benefits. This reverse application of conventions has been criticized by the trade unions in relation to the drafting of the new Employment Contract Act (2008), when a proposed reduction of workers' protection was underpinned with the argument that the relevant international standards did not require the existing level of protection. It may be clear that this approach overshoots the purpose of those standards.

4. SOCIAL SECURITY REFORM IN THE CZECH REPUBLIC

4.1 *History*

The history of the Czech social security system goes back as far as the Austro-Hungarian Empire.³² The presence of political social democratic movements in the Czech Lands began with the foundation of the Czech-Slavic Social Democratic Party in 1878. In 1906, the parliament, influenced by Bismarck's conservative corporatist social model, adopted the first mandatory pension insurance scheme for employees. After World War I, when the Czechoslovak Republic was formed, the pension system suffered fragmentation because different pensions schemes existed in different parts of the newly created country. Efforts were made to unify the system, while increasing the quality and coverage of the scheme. Worth mentioning in this respect is that the country was an active member of the ILO from its very inception, and was thus involved in the global discussion about protection of workers. All this led to the creation of a new social insurance law for manual workers in 1924, providing for pensions consisting of two components: a flat rate base supplemented by an earnings-related element, a structure that has been restored again in the present pension scheme.

During World War II, while Nazi occupiers were confiscating the funds of several pension schemes, the Czechoslovakian government in exile became impressed by the Beveridgean model of their host country, the UK. They prepared social reforms in which the old traditions of the Czech Lands as well as modern trends were reflected. In 1948, the Law on National Insurance was adopted covering both pension and health insurance, incorporating the formerly fragmented schemes into one, and providing the same conditions for all workers, including the self-employed. In the same year, however, the communists took over, and started to change the approach to social insurance fundamentally, following the example of the Soviet system. Some important alterations they made were the abolition of contributions together with the introduction of financing from taxation, and the lowering of the retirement age to 60 years for a man and 53 to 57 for a woman, depending on the number of children

³² See for instance Müller 1999, p. 127; Mácha 2002, p. 75; Natali 2004, p. 1; Potůček 2007, p. 23.

she had raised.³³ In conformity with the Soviet ideology, Czechoslovak citizens had the right to free health care, pension benefits, and family allowances, although the benefits were at a very low level. In principle, all social rights were derived from the employment status, but because of the almost non-existence of unemployment, coverage was practically universal. With the Velvet Revolution in 1989, the paternalistic Soviet system in Czechoslovakia came to an end and the reconstruction of the welfare state was to begin.

4.2 Developing a new concept of social security: From 1989 onwards

From the very beginning, important reform steps were taken by the socio-liberal federal government which were widely supported within the political scene as well as in society. These steps mainly concerned the elimination of the social privileges of the former communist establishment and the introduction of an insurance contribution system to be administrated by an autonomous administrative body. In the meantime, the federal government adopted a Scenario of Social Reform (1990), a long-term reform plan in which both social democratic and social liberal ideologies were incorporated. The plan included the creation of a system of social welfare providing universal compulsory health care and social insurance, a means-tested state social support scheme, an active employment policy, and the development of a social safety net.³⁴ This conceptual document became the basis for the Czech social policy reform that turned out to be a slow and lengthy political process because of the weak coalition structure and a series of minority cabinets.

After the election of a neo-liberal government in 1992 and the subsequent split of the Czechoslovak federation on 1 January 1993, the Czech government focused primarily on the division of the federation and on economic reform, which put the social scenario on a backburner. It is true that some of the intended reform steps were taken, most importantly the creation of the compulsory social insurance and the introduction of state social support in 1995, but other reform plans were totally abandoned.³⁵ At the same time, the country faced an economic downturn, which influenced the elections of 1996. Although the neo-liberals won the elections, the social democratic party gained political power. Therefore, proposals of the government towards a radical pension reform, largely abandoning the pay-as-you-go concept and adopting the agenda of the World Bank focused on a compulsory private co-insurance scheme, were not accepted. When the social democrats were able to form a minority government in 1998, they started to re-constitute the initial social reform concept. The first landmark of their policy was the ratification of the European Social Charter, which showed the renewed emphasis on social reform and a willingness to engage in social dialogue. In practice, however, the successive governments were not able to hold a steady course, mainly due to budgetary

³³ Mácha 2002, pp. 75-78; Večerník 2008, pp. 497-499.

³⁴ Potůček 2007, pp. 26-27; Večerník 2008, p. 500.

³⁵ Mácha 2002, pp. 95-97; Potůček 2007, pp. 26-32.

constraints and political deadlock. As a consequence, the Czech Republic has been experiencing a continuous and fragmented reform of its social security system that still has not been completed.

4.3 International influences on the Czech reform process

The moment Czechoslovakia had recovered from the shock of the revolution and prepared for social reforms, global actors from different direction were ready to make recommendations on the design of a new social security system. Similar to the Estonian case, it has been noted that internal factors were decisive forces in the reform process, rather than international interferences.³⁶ This has been mainly attributed to the fact that the Czech Republic was not affected by a deep economic crisis as other CEE countries were at that time and therefore it was not dependent on loans by the IMF and the World Bank. Nevertheless, it will be made clear below that the ILO and the CoE have played a specific role in the reform of the social security system.

Under the first federal government, after the completion of the initial reform plan that included the determination of the different social security benefits, a delegation of experts went to the ILO Office in Geneva to discuss the plan and gather information and advice. As a matter of fact, there was not much concern about the ILO standards as such, since the intended benefits were considered rather high in terms of the level of the benefits as well as their personal scope. Consequently, the government was open-minded towards the ILO and willing to make new commitments in the field of social security, which was demonstrated by the ratification in 1990 of Conventions 102 on Minimum Standards of Social Security and 128 on Invalidity, Old-Age, and Survivors' benefits.³⁷ Furthermore, it has been noted by Orenstein that the idea and implementation of the subsistence minimum as a universal standard for the various benefits was developed and realised with technical assistance of the ILO.³⁸

Although the requirements of the ratified conventions were initially considered low compared to the national provisions, in 2004 the level of the old age pension fell below the norm of C128, stipulating the pension to be at least 45% of the average wage of a skilled labourer.³⁹ To solve this inconsistency, the government took measures to increase the level of the pensions that brought the system in line again with C128 in 2005. This example shows that the conventions had, and still have, a preserving role by preventing the system to drop below the given level of social protection. Important in this respect is also the fact that all new bills are compared with the international standards before they are presented to parliament, in order to prevent any inconsistencies. Similar to Estonia, the active

³⁶ Potůček 2004, p. 259; Mácha 2002, p. 106; Večerník 2008, p. 506.

³⁷ Concerning Convention 102: Part IV on Unemployment and Part VI on Employment Injury were not accepted. Concerning Convention 128: only Part III on Old-Age was accepted.

³⁸ Orenstein 1995, p. 183.

³⁹ Ministry of Labour and Social Affairs 2006, p. 73.

commitment towards the ILO has weakened in view of the preparations of EU accession. Neither new conventions in the field of social security nor the unratified parts of C102 and C128 have been nominated for ratification, although national legislation is considered in line with the requirements of C168 on Unemployment and Part IV of C102. The political will to take up new international obligations in this field seems to be waning in the current era of welfare state retrenchment.

As far as the Council of Europe is concerned, the Czechoslovak Republic became a member in 1993 when also the preparations for EU accession were started up. As mentioned before, the CoE heavily promoted the Social Charter among the CEE countries, stressing its importance in relation with EU accession. In 1999, the Czech Republic took the step to ratify this instrument, and included in its ratification Art. 12 on social security, which requires compliance with the standards of ILO C102. In fact, this step did not imply commitment to higher social security standards as such since this Convention had been ratified already and legislation had been kept in line through time. Nevertheless, on the invitation of the CoE, the social democratic government accepted the ECSS in 2000. This time, the ratification included Part IV on Unemployment, one of the parts that one decade earlier had been excluded when ILO C102 was ratified. Therefore, with the adoption of the ECSS, the floor for social protection was actually broadened, by preventing also the unemployment benefit from dropping below this minimum.

With regard to the influence of the EU on the reform process, roughly the same goes for the Czech Republic as for Estonia. First of all, the preparation for accession was mainly focused on economic reform on the basis of the Copenhagen criteria of 1993.⁴⁰ Social goals in this respect were very limited and only at the bottom of the list of priorities. Besides, the neo-liberal governments from 1992 until 1998 were not so much in favour of joining the EU and therefore not much effort was made in general to adapt to European standards unless it was strictly necessary.⁴¹ And, of course, since the European Commission is not competent to develop legislation on social security matters, the EU did not impose specific standards in the field of social protection. Nevertheless, it has been shown above that, over time, several ILO conventions have been ratified as well as the European Social Charter and the Code of Social Security. Although these ratifications did not follow from EU obligations, the prospect of accession has encouraged the government to accept the international standards, thus communicating that, from a social point of view, the Czech Republic was ready for the EU adventure.⁴²

⁴⁰ Potůček 2004, pp. 263-265.

⁴¹ Potůček 2004, p. 255.

⁴² Schoukens 2007, p. 90; information obtained from experts.

5. OUTCOMES COMPARED WITH THE INTERNATIONAL STANDARDS

5.1 Introduction

In both countries, the social reforms have not yet been completed. Still, it is worthwhile after two decades to evaluate the outcomes of the reforms. For that reason, the different insurance schemes in Estonia and the Czech Republic will be compared in this section with the rules set out by ILO C102 and the ECSS. The comparison brings out the weak points in national social protection, because if national legislation does not meet the international minimum norms it would be fair to state that this indicates a deficiency in protection. Subsequently, while examining these weak points, the guardian function of the international norms or, in other words, their function of minimum harmonisation, will be affirmed. In addition, by comparing the national schemes with the international instruments, possible problems with the application of the treaties will come to the surface as well as shortcomings of the provisions as such, which were basically set out almost 60 years ago.

In broad outlines, the social security systems of both countries comply with the international instruments. This does not come as a surprise, given the facts that ILO C102 constitutes a minimum level of social protection and that, in principle, treaties will not be ratified unless national legislation is in line with the requirements. Nevertheless, for various reasons, several inconsistencies do occur in relation to different social risks. It is not possible to deal with all the problematic issues in this contribution, so three matters of friction between national and international legislation will be elaborated that are not only relevant within the framework of the countries studied, but that also apply to other EU member states.

5.2 Cost-sharing relating to medical care

According to ILO C102, in respect of the medical care branch governments are allowed to require insured persons to share in the cost of medical care, in order to limit any waste of medication and any misuse of medical services. However, it is expressly stated in the Convention that the rules concerning cost-sharing must be so designed as to avoid hardship.⁴³ Moreover, co-payment may not be imposed in relation with pregnancy and delivery and their consequences. Even so, both in Estonia and the Czech Republic, contributions are being levied for certain pregnancy related health care, which is clearly in conflict with the international minimum standards. In fact, in the Czech Republic, medical care has been free of charge until 2008, but that year in- and outpatient fees were introduced to combat the relatively high frequency of doctor's visits by the Czech citizens and the considerable waste of prescription drugs. These measures as such are in line with the international standards, as long as exemptions are regulated for pregnancy-related care. For some services this has been done, but in case

⁴³ ILO C102, Art. 10; ECSS, Art. 10.

of hospitalisation the general rules are applied, thus imposing out-of-pocket payments for each hospital day also on pregnant women. Although the fixed amounts might not be very high, it is against the principles of maternity protection.

In Estonia, out-of-pocket payments are levied to co-finance health care. These payments constitute a considerable proportion of health care expenditure. Apart from the fact that pregnant women are not always exempted, it may be questioned whether the Estonian rules on cost-sharing do actually avoid hardship. Statistics show that the total expenditure on health care increasingly comes from patient fees, from 7.5% in 1995 to almost 24% in 2006.⁴⁴ A survey conducted in cooperation with the World Health Organization on the impact of out-of-pocket payments in Estonia revealed that these payments cause individuals to expend high amounts in relation to their available income.⁴⁵ For instance, the proportion of households bearing a high burden because of patient fees increased from 3.3% in 1995 to 7.4% in 2002 and the burden is greater for low-income groups. To be specific, in 2002, 13% of households in the lower-income group spent more than 20% of their capacity on health care,⁴⁶ which has pushed part of them into poverty. The situation has probably become worse at date, since during the past years the use of drugs as well as the level of patients fees have increased. The figures indicate that the Estonian co-payment rules do not really avoid hardship, especially not for low-income households, and thus they must be considered inconsistent with the international minimum standards.

These examples clearly show the value of the conventions in the sense that rules contravening the minimum standards lead to less social protection in practice. In such cases, the ratified conventions can be used to point out the omissions in national legislation and focus the discussions on the conflicting rules. At the same time, these issues show some weaknesses of the conventions. In the first place, the ratification of an international instrument as the ECSS, apparently, does not guarantee that it will be applied correctly. In fact, neither of the two countries complies with the minimum rules on cost-sharing although they are bound by those rules. This problem should be put into perspective though, since the application of and compliance with international law is a complicated matter in general and the enforcement of social rights in particular.⁴⁷ A second problem to be mentioned in respect of cost-sharing is the vagueness of the norm at stake: “the rules concerning such cost-sharing shall be so designed as to avoid hardship”. There is no special international court to provide legally binding case law filling in the open norms in these conventions, which makes it easier for contracting parties to stretch the rules. The observations of the competent supervising committees on the

⁴⁴ Ginneken 2008, p. 43.

⁴⁵ Habicht et al. 2006, pp. 427-428.

⁴⁶ According to a methodology developed by the World Health Organization, ‘household capacity’ should be understood as the total household expenditure minus the poverty line, Habicht et al. 2006, p. 425.

⁴⁷ For a discussion on supervision and enforcement of international social security standards, see Dijkhoff & Pennings 2007, pp. 151-155; Gomez Heredero 2007, pp. 56-58.

application of the norms in specific situations can be used for interpretation, but those documents are often poorly motivated and not easily accessible.⁴⁸

5.3 Means-tested family benefit

The second issue that draws attention concerns family benefits. As mentioned before, the international instruments set out rules on, among other things, the personal scope of the benefits provided. As regards family benefit, ILO C102 provides that:⁴⁹

[t]he persons protected shall comprise

(a) prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(b) prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(c) all residents whose means during the contingency do not exceed prescribed limits;

Options (a) and (b), which involve roughly the same number of protected persons, do not allow a means or income test, while option (c) refers to a social assistance type of benefit, typically based on a means test. Remarkable indeed, in the ECSS this third option is left out,⁵⁰ which means that it does not allow for a means-tested family benefit. The Czech family benefits, though, are part of the social assistance scheme and as such open to all residents whose means do not exceed certain limits. As a consequence, the Czech Republic does not comply with the ECSS as far as the family benefit is concerned, irrespective of the fact that the total amount of family benefits is twice the amount the ECSS prescribes.⁵¹ It should be noted, however, that, so far, the supervising committee has not paid any attention to this clear matter of non-compliance. The reason for this might be that, firstly, according to the ECSS the total amount expended on family benefits is sufficient and secondly, that in the Revised ECSS the third option has been restored, which indicates that a means-tested family benefit is not contrary to the main principles of the treaty.⁵²

In Estonia, as in several other EU member states, all permanent residents have the right to receive child benefit, without taking into consideration a person's means.⁵³ To assess compliance with the ECSS, neither of the above mentioned options concerning the personal scope fit, because according to Art. 41 compliance can only be assessed on the basis of classes of employees (option a) or economically active persons (option b). In its annual reports on the application of the ECSS, the

⁴⁸ On the subject of interpretation, see Pennings 2006a, pp. 172-177; Nussberger 2007; Pennings 2007; Korda & Pennings 2008.

⁴⁹ ILO C102, Art. 41.

⁵⁰ ECSS, Art. 41.

⁵¹ ECSS Report Czech Republic 2006/2007, Art. 42.

⁵² The European Code of Social Security (Revised), adopted in 1990, has been developed in order to modernise the ECSS and simultaneously increase the level of social protection. However, since no ratifications have followed, it has not come into force yet.

⁵³ State Family Benefit Act, Art. 2.

Estonian government mentioned therefore that this article is not “directly suitable for obtaining statistical data on persons concerned by the State Family Benefits Act.”⁵⁴ At the same time, by covering not only certain classes of economically active persons but the whole population, the aim of the international provision is amply met. This problem has been solved, again, in the Revised ECSS, that gives as a fourth option for coverage “the children of all residents”. Apparently, the difficulties to demonstrate compliance at this point have been recognised and although this does not solve the inconsistencies with ILO C102 and the ECSS, it does indicate that such difficulties do not always effect compliance with the objective of a minimum level of, in these cases, child benefit.

5.4 Private pension scheme

ILO C102 is designed so as to leave flexibility to member states in the method of organising the schemes providing benefits. This implies, among other things, that public as well as private pension schemes may be covered by the Convention. The Convention may, on certain conditions, even take voluntary private pension schemes into account.⁵⁵ This high degree of flexibility has become increasingly important in view of the current trend in many countries to set up private insurance schemes, which are often complementary to a basic public pension provision. The Convention gives a set of basic principles to be complied with by any insurance scheme, public as well as private, in order to guarantee the supply of resources needed to pay out the benefits, to cover administrative costs, and to ensure an equitable distribution of the financial burden.⁵⁶ These principles include in the first place that the costs of the benefits are borne collectively by way of insurance contributions or taxation or both. Secondly, the State must accept general responsibility for the provision of the benefits. Furthermore, where the administration is not entrusted to the government, representatives of the persons protected must participate in the management, at least in a consultative manner, and the government must accept general responsibility for the proper administration of the institutions and services. Thus, in the case of a private insurance, the government must, to a certain extent, still play a role as a financial guarantor in order to safeguard the effective protection of the insured persons.

It has been shown above that Estonia provide pensions at a level just above the minimum standards. Given the way the pensions are calculated, it is foreseeable that these public pensions are likely to drop below this level in the not too distant future. Then the question will arise whether the supplementary private pension scheme, consisting of individual savings accounts, may be taken into account in order to prove compliance with the ECSS. To answer this question, it is necessary in the first place to find out whether these savings accounts are indeed collectively financed by way of insurance contributions or taxation. Although two thirds of the money deposited into the accounts is

⁵⁴ ECSS Report Estonia 2005/2006, Art. 41.

⁵⁵ ILO C102, Art. 6; ILO C128, Art. 6; ILO 1989, pp. 16-17.

⁵⁶ ILO C102, Artt. 71 and 72; ECSS, Artt. 71 and 72; ILO 1989, pp. 95-101; Humblet & Silva 2002, pp. 11-15.

contributed by the state and financed from employers contributions, the idea of individual savings accounts is incompatible with the very insurance principle of risk pooling. The contributions can hardly be called 'insurance contributions', since they are, in fact, payments deposited into the savings accounts of individual employees. This must lead to the conclusion that the costs of the benefits are not borne by way of insurance or taxation, which contravenes one of the principles of the ECSS.

Secondly, regarding the required responsibility of the due provision of the benefits, it is clear that the Estonian government does not accept any responsibility for the provision of pensions. The actual amounts to be paid after the agreed age of the employee largely depend on the financial market at that moment. An economic recession like the current one can seriously reduce the saved amounts, but the government is not bound to take measures to guarantee a minimum remittance. Furthermore, neither the state nor the persons protected participate in the management and administration of the private funds. It may therefore be concluded that, in the Estonian case, the second pension pillar cannot be considered to fulfil the international obligations. It should be noted, however, that this is not because of the private nature of the scheme but because the preconditions for compliance are not met. A private pension insurance can very well be in line with the ECSS or ILO C102, providing that the given principles on redistribution and good governance are taken into account.

6. CONCLUSIONS

The preceding sections have shown the impact, direct and indirect, of the international standards on the Estonian and Czech social security systems. ILO C102 and the ECSS have served as a benchmark for the different insurance branches, especially in Estonia. Furthermore, in the course of the reform processes, the conventions have played a preserving role by preventing benefits to drop below the given minimum level. It has also been demonstrated that recent trends in social security, such as privatisation of pension schemes and the introduction or increase of user fees for health care services, call for extra attention to the international provisions and their underlying principles. Although those principles may sometimes seem to hamper legitimate measures to practice economic restraint or combat misuse of benefits, they are still proved to be valid when it comes to effective social protection, especially to low-income households. Therefore, the international standards are useful tools for national social policy and are suitable to contribute to political discussions on the design or adjustment of social security schemes. Especially in relation with the development of private pension schemes, the conventions inspire the creation of safeguards for the effective provision of pensions. Moreover, the international social security instruments have averted bigger differences in social security legislation within the EU by preventing the accession states from entering the EU with social

benefits below the given minimum floor. The bench mark position of these instrument may become even more important in view of the next accessions.

The study has also brought out aspects of the international social security standards that are open to improvement. As has been noted in relation with patient fees for medical care, the conventions contain certain vague norms that may allow contracting parties to stretch the rules, resulting in an unsatisfactory level of protection. It has been found, in this respect, that the ECSS provision on cost-sharing has not prevented that a relatively high number of low-income households in Estonia have to spend more than 20% of their capacity on health care. The observations of the supervising bodies may fill in the open norms, but they are mostly meant for one specific case only, which makes it difficult to extrapolate them to other situations. Moreover, they are not easily accessible and not grouped by subject. Publishing the observations in an accessible way would contribute to the effective application of norms that are not that clear and concrete. Another point that needs correction concerns family benefits, namely, the fact that the ECSS does not recognise a family benefit scheme based on residency. This gap may be seen as a flaw of the ECSS, given the trends observed in European countries of family benefits being based upon residence rather than employment, increasingly combined with a means test. Nevertheless, the fact that in ILO C102 as well as in the Revised Code the possibility for coverage on the basis of residence is incorporated, whether or not combined with a means test, indicates that this flaw is not a matter of principle. Therefore, means-tested family benefits as provided in the Czech Republic, although inconsistent with the ECSS, may be considered not to contravene the underlying principles of the standards in general.

Overall, the international social security standards are proved to be valuable policy instruments in relation with the creation and adjustment of social security systems. In absence of harmonising EU legislation in this field, the conventions contribute to the convergence of social security systems within the European Union, setting out a minimum level of social protection to be complied with by all contracting parties. Thus, it may be said that promotion of the international social security standards implies promotion of European social coherence.

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