

THE RIGHT TO SOCIAL SECURITY

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INTRODUCTION

The plan for this book was first conceived in 1998, the year of the 50th anniversary of the Universal Declaration of Human Rights, proclaimed by the United Nations (UN) on the 10th of December of that year. For us, the Institute of Social Law at the Catholic University of Leuven, and for all students of social security, this anniversary had a special significance. The Universal Declaration not only solemnly proclaimed and confirmed all recognised fundamental human rights, but it added a new one: the Right to Social Security. This anniversary deserved a special celebration, with an international conference, and a book on “The Right to Social Security”.

For some time, the plan suffered the fate of so many beautiful plans: it waited for the necessary funding to be implemented. By the year 2005 we decided that something had to be done. Your servant was nearing the end of his term of service at the university, after which financing for such plans would become even more difficult to come by. Other people, my friends and colleagues, also became aware of the approaching age of retirement for me. They were obviously glad with this prospect, and they wanted to celebrate the occasion. A number of them are assembled in an organisation, called the “Genootschap voor Sociale Zekerheid” or Association for Social Security (or else: Association pour la Sécurité Sociale). It is this association that finally undertook the task of organising this conference, supposedly as my last wish.

Funding was found with the “Walter Leën Fonds”, a foundation created by our late colleague professor Walter Leën, one of the founding fathers of Belgian social security and for many years the head of the most important social security institution in the country. Additional financing was found with the Flemish Fund for Scientific Research and, surprisingly, with the National Lottery, which must have felt that it had something in common with modern social security.

And so a call for papers was sent out, and a conference was convened in Brussels, in the beautiful Palace of the Academies (which actually houses several Academies of Science) on 17 and 18 February 2006, coinciding nicely but fortuitously with my 65th birthday. It brought together a splendid bunch of internationally renowned specialists of social security in law, economics and political science, most of whom were actually old friends. That comes from spending a long lifetime in international social security.

The result of the conference is this book. It is more than a mere birthday present. The authors have written it from a sincere desire of calling more attention to the recognition of the Right to Social Security in the present-day world, which is dominated by economic problems related to globalisation of the economy, and by neo-liberal economic theories for whom social security sounds as a dirty word. Social security is considered by many as the source of a number of evils in society: excessive costs for enterprises, competitive disadvantages and unemployment, dependence on benefits, a culture of dependency and of benefit abuse, notably in so-called “black” work. Not to forget the attraction exerted by high social benefits in the Western world for the innumerable young men in the Third World, who want to escape the misery of their countries to take advantage of what our social security has to offer. In the eyes of its detractors, social security is a costly and wasteful system, that has to be reduced to the strict minimum of a “social safety net” – being the minimum of social protection necessary to protect society from banditism, social unrest and revolution.

Together with a number of experts, notably of the International Labour Organisation (ILO), we want to react against this reactionary and unjust view. Social security is and remains one of the greatest achievements of modern times. It is a true progress for human society, that the burden of damage of all sorts caused to humans by all kinds of contingencies should no longer remain with those who are hit by misfortune, or by their families, but that it is – up to a point at least – carried in solidarity by the whole of the social group to which they belong. Where such systems are in operation, they produce real freedom for the people, to live their own lives, without (excessive) fear of the future. People can marry and/or constitute all sorts of families for the sake of happiness, not because of the need of financial assistance. Young people can go their own way, and old people can enjoy the company of others, on whom they are no longer a heavy financial burden. For the first time in history, at least in part of the world, human beings are (more or less) equal in the face of disease and death. This has become an essential structure of present-day society, which is of far greater value than the competitiveness of our enterprises in the global market.

Unfortunately, not all of those present at the conference have handed in a paper for this publication. Notably the representative of the World Bank, who gave one of the keynote speeches, could not give us a text within the time set for the publication. The result of this is that the book contains a number of sometimes vociferous attacks against the policy of the World Bank in the matter of social protection, and that the other side of the argument is not presented. This is regrettable. I myself am not in favour of the World Bank's social protection programme, but one has to recognise that it is made with great seriousness and dedication, and that the persons responsible for this programme are convinced that they do the best they can to harmonise social with economic progress for the developing world.

The book starts with a *first part*, containing some general papers on the meaning of the Right to Social Security, as expressed by the Universal Declaration of Human Rights. This meaning has never been very clear, not in 1948 and not now. Is its meaning different now from what it was at the time? And should it maybe evolve in a still different way, towards some form of international social security scheme, on the same scale as the globalised economy?

Michael Cichon, Ursula Kulke and Karuna Pal express the ILO's point of view, which at the conference was contrasted with that of the World Bank, and which considers social security essentially as a right. At the international level, this right is expressed by a number of agreed minimum standards in international conventions. These rights and conventions do not have the same binding power as national laws, but their impact should not be underestimated. The ILO is mandated to defend and to propagate these social security rights in the world. It considers social security as a priority, also at times of economic difficulties.

Alain et Chantal Euzéby, well-known economists and social protection specialists of the University of Grenoble, react against the neo-liberal trend in modern economics and propose to give more real importance to the concept of "human development", as used by the UN in their development programme, including such criteria as health, life expectancy and education, and which should be taken more seriously as a standard for international comparisons, rather than the mere GDP. In this way, the social security systems play a much more important and positive part in development, than is currently recognised. They are essential structures of society if one wants to preserve such values as human dignity, social justice, solidarity, equality and citizenship.

In the *second part* we address the question of the right to social security as what it is: a question of social policy. John Veit-Wilson, of the University of Newcastle-upon-Tyne gives the general paper on this subject, with a discussion of the social policy significance of international declarations and conventions on social rights. To what an extent is the meaning and the implementation of this right dependent on the political system and the political history of every country? Theodoros Sakellariopoulos of the Panteion University of Athens, with his assistant Mrs. Marina Angelaki, examines this question in the case of the pension reforms in Greece, Spain and Portugal. Richard Parry of the University of Edinburgh situates the right to social security in the devolution debate in the United Kingdom: at what level should solidarity be organised? Adrian Sinfield, also of Edinburgh University and world-famous scholar in social policy, presents his views on the relation between the right to social security and other forms of "welfare": tax benefits and occupational benefits.

In a *third part*, the question is asked: if there is a right to social security, what kind of a right is it? Is it the same type of right as is commonly known in civil or common law, e.g. regarding property? Can social security beneficiaries use the same legal remedies as citizens who feel that their “rights” are being violated? These questions are addressed clearly and eloquently by some of the most eminent social lawyers in Europe: Eberhard Eichenhofer of Jena University, Konstantinos Kremalis of the National and Kapodistri-an University of Athens, Asbjørn Kjøenstad of the University of Oslo and Johan Put, of my own Institute at Leuven. To this we add a very original analysis of the legal right to social benefits, using social constructivist theory (Wesley Hohfeld and others) on the change from formal to material right, and from material to “quasi-right” by Lotta Vahlne Westerhäll, Göteborg University.

The *fourth part* is dedicated to international standards in social protection. The attention focuses not so much on the contents of these standards as on their legal value: can they be enforced? Frans Pennings, of the universities of Utrecht and Tilburg, discusses the relevance of international standards in social security. He shows that their impact is not negligible, using among others examples from the Dutch case. And he recommends useful ways for improvement. Matti Mikkola, of the University of Helsinki, concentrates on the role of the European Committee of Social Rights, of which he is a respected member, in the implementation of international standards, more particularly of the first protocol to the European Convention of Human Rights. He interestingly extends his subject to include the recognition of social security as a basic human right in the new –now hypothetical- Constitutional Treaty of the EU. And S. Günter Nagel, head of the department of implementation of decisions of the European Court of Human Rights of the Council of Europe devotes a much appreciated contribution to exactly this not very popular subject.

The *fifth part* addresses the question, asked by many in the industrialised world: can the right to social security be maintained in the same way as before, in a world of globalisation and strong international competition, calling for ever higher efficiency and competitiveness in enterprises? The answer is found in the concept of “flexicurity”, as described and discussed by my colleagues Ingwer Ebsen, of the “Johann Wolfgang Goethe” University of Frankfurt, and Andrzej Swiatkowski, of the “Jagiellonian” University of Krakow, both prominent scholars in both labour law and social security law.

Then there is the *sixth* and largest *part*. It contains what one could call “national reports”, describing the meaning and the implementation of the right to social security in various parts of the world, where the economic, social and cultural environment is totally different.

We start with some different systems from industrialised countries: the U.S.A., with our distinguished colleague Frank Bloch of Vanderbilt University. There should have been a paper on Australia, but unfortunately Deborah Mitchell's text did not reach us in time. We have, however, a very good paper on Japan, by our friend and colleague Mitsuya Ichien of Kansai University, Osaka, and a very interesting paper on Israel, by Hadara Bar-Mor, vice-dean of Netanya College.

Anjuta Bubnov-Skoberne, of Ljubljana, whom I have known for many years as the social security specialist of Slovenia, treats the question from the point of view of her country. Her counterpart in Lithuania, our old friend Teodoras Medaiskis of Vilnius University gives comments on reforms in Lithuania. And Merita Xhumari, of Tirana University, who is her equivalent in Albania, writes, together with Will Bartlett of Bristol University, on the developments in the whole of the Western Balkans.

Then come some papers on the situation in developing or underdeveloped countries. Our good friend Ming-Chen Kuo, of Chengchi University describes in very eloquent terms the Taiwan case. The main social law specialist of South Africa is, of course, Marius Olivier of the University of Johannesburg, and we welcomed very much his paper on the right to social security in South Africa. A similar paper was written on Brazil by our equally good friend Ingo Sarlet, of the University of Porto Alegre. A very warm special paper was presented from the Indian perspective by Mr. J.R. Bangera, Vice-President of the Social Security Association of India. And finally, from one of the countries in the world where social security would be most difficult to achieve: an excellent paper by my old friend Mukadi Bonyi, of the University of Kinshasa, the only real expert in social law in that part of the world.

With all this we will not have covered every aspect of the meaning of the right to social security in the world of to-day. But we will at least, so we hope, have drawn attention to the existence and the importance of this right, which should not be neglected and which should certainly not be sacrificed to economic interests. The degree to which fundamental human rights are respected and implemented is a measure of the cultural development of human society. This applies to the right to social security as well as to any other item of the Universal Declaration of Human Rights.

A final remark: papers presented at the conference are reproduced as such in this book, with only minor alterations, and in their original language. Papers in French are included as such, but have received an English summary at the end. Papers in English reflect the variety in the use of the English language in the world, also by non-native speakers. We have not attempted to edit them as far as the language is concerned. We

have asked authors for corrections or clarifications only where necessary for a good understanding. This may not have improved the literary value of this publication. But it allowed us to remain faithful to the way of expression of the various authors. We are extremely grateful for their co-operation.

Jef Van Langendonck
Leuven,
31 May 2006

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