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Bilateral Social Security Agreements (Protection of Migrants' Social Security Rights)

I. Introduction

Social security is mainly based on national legislation. It means that the legislation, financing and management belongs to the particular state.[1] The national (one-state-one-system) social security system is implemented through the following limitations: a) the principle of territoriality, b) residence requirements, c) benefit conditions of a minimum number of contributions (lacking totalisation), d) no payment of benefits abroad (lacking portability) and e) lacking social security coordination between two or more national social security schemes.[2]

Social security is a basic human rights for everybody,[3] including migrant persons as well.[4] Therefore it cannot be only a national issue. Although they fully contribute to the economies of the destination and origin countries, migrant workers remain in majority excluded from any social security benefits due to their particular situation (employment, residency, nationality etc.). Specific mechanisms are required to overcome the restrictions faced by migrant workers under national legislation. Therefore, the conclusion of bilateral or even multilateral agreements between the various countries in the area of social security emerges from the need for protection of the social insurance (social security) rights of the migrant workers.[5]

The basic objectives of the international (both bilateral and multilateral) agreements are as follow: a) to eliminate dual social security tax/contribution on the same income (applicable legislation), b) to allow for "totalization" of rights and benefits, c) to provide equal treatment for migrant persons in the field of social security.[6]

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1 SIGG, ROLAND (ed.): *Social Security in the Global Village*, Transaction Publisher, New Brunswick, New Jersey, 2002. p. 215.

2 http://www.socialsecurityextension.org (15. 02. 2014).

3 See The Universal Declaration of Human Rights, Article 22.

4 See Charter of Fundamental Rights of the European Union, Article 34.

5 Migration for Employment Bilateral Agreements at a Crossroads OECD, Federal Office of Migration, Integration and Emigration 2004.

6 Social protection for migrant workers http://www.ilo.org/migrant/areas/social-protection/lang--en/ index. htm (17. 02. 2014).

To solve this problem an international legal framework has been set up for the protection of migrant workers with specific instruments.[7] Universal and multilateral instruments provide means to overcome the difficulties faced by migrant workers as regard to social security coverage. Furthermore bilateral (sometimes multilateral) social security agreements between migrant origin and destination countries also have been concluded.[8]

According to *Robert Holzmann* and his colleagues[9] the social protection status of migrants can be classified into four regimes (Holzmann et al. 2005):

1) *Regime I* (Agreement) includes all legal migrants enjoying indiscriminate access to social services in their host country, and the home[10] and the host[11] country have concluded a bilateral or multilateral social security agreement to guarantee full portability of accrued benefits. Regime I is the most favorable regime in terms of formal social protection for migrants.[12]

2) *Regime II* (National) includes all legal migrants who have access to social services and social security in their host country without a bilateral arrangement being concluded between their host and origin country.[13] The extent to which benefits are payable abroad is exclusively subject to national legislation, and host and home country do not cooperate when determining and paying benefits.

3) *Regime III* (No Access) includes all legal migrants who do not have access to social security in their host country - either because they are excluded or because there is no social security system in their host country.[14]

4) *Regime IV* (Informal), finally, includes all undocumented migrants who arguably face the greatest challenge regarding their social protection. They have very limited access to social services and social security and are subject to unchecked and

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[7] See relavant ILO norms (ILO C97-Convention on Migration for employment, C143-Migrant workers Convention); the International Convention on the protection of the Rights of all Migrant workers and Members of their families (1990). Beyond the specific ILO Conventions to protect Migrant workers additional instruments are directly related to the portability of Social Security benefits of migrant workers (C48, C157 and R167.) and The European Social Charter (1961), Article 12 – The right to social security.

[8] However, the protection through private initiatives (private insurance) do not follow the solidarity and collective social security financing principle promoted by the ILO.

[9] HOLZMANN, ROBERT – KOETTL, JOHANNES: *Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, Issues*, Discussion Paper No. 5715, IZA Bonn, 2011. pp. 6–7.

[10] Home country: where the person is a member of social security system and usually he/she reside in there (country of origin).

[11] Host country: where the person reside temporarily and engaged to the host state social security system.

[12] This status can mostly be found within the EU and between many high-income countries with well-developed social security systems.

[13] For example, migrants may receive benefits abroad, but cannot rely on totalization of their contribution periods, i.e. eligible benefits are made exportable but acquired rights are not fully portable.

[14] This is the case, for example, for the Gulf Cooperation Council (GCC) countries in the Middle East.

unregulated labour market conditions. This regime particularly concerns migrants moving between lower-income countries.[15]

II. Typology of international social security agreements

The aim of the social security agreements, in general, is to coordinate the social security programs of two (bilateral) or more countries (multilateral) in order to overcome, on a reciprocal basis, the barriers that might otherwise prevent migrant workers and the members of their families from receiving benefits under the systems of any of the countries in which they have worked (portability of social security entitlement).[16]

The experts of ILO set up three categories of international social security agreements: a) unilateral, b) bilateral and c) multilateral social security agreements. [17]

1. Unilateral social security agreemts

Countries of employment can provide unilateral social security agreements to ensure equality of treatment between nationals and non-nationals regarding social protection as well as extension of benefits abroad protecting family members left behind in the country of origin and ensure the export of benefits when the workers return home. Also, labour-sending countries can assume responsibility for providing basic levels of protection. The unilateral agreements are advantageous for states which have large groups of their nationals working abroad. The administrative burden of these types of agreements is lower than for bilateral or multilateral agreements, since there is no need to coordinate with other countries. Yet, unilateral agreements scope is limited to only a few types of benefits and to schemes that rely on contributions.[18]

2. Bilateral social security agreements

There are various examples of bilateral social security agreements covering from the most basic to the most extended social security provisions. Each agreement is concluded between two countries and includes procedures and forms as well as persons and benefits covered particular to the individual agreement only. Bilateral agreements offer

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[15] HOLZMANN, ROBERT, KOETTL, JOHANNES and CHERNETSKY, TARAS: *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, Social Protection Discussion Paper, No. 0519, 2005. http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0519.pdf

[16] http://www.ilo.org/migrant/areas/social-protection/lang--en/index.htm (03. 02. 2014).

[17] http://www.socialsecurityextension.org/gimi/gess/ShowWiki.action?wiki.wikiId=951 (15. 02. 2014)

[18] BECKER, ULRICH – OLIVIER, MARIUS (eds.): *Access to Social Security for Non-citizens and Informal Sector Workers: An international, South African and German Perspective*, African Sun Media, Stellenbosch, 2008. pp. 30–34.

the advantage of flexibility since the participating countries can choose which benefits they are willing to cover. Also, the administrative burden of this type of agreement is usually limited. Yet, unlike multilateral agreements, they hinder to the principle of equality of treatment by differentiating migrant workers on basis of nationality.[19]

Most agreements refer to long-term benefits like old-age, disability, and survivor pensions and other annuities. Health care benefits are to a much lesser extent subject to social security agreements. Also, purely tax-funded – as opposed to contributory – benefits like medical and social assistance are usually explicitly exempt from portability.[20]

Several EU Member States have bilateral social security agreements with other states which are also members of the EU or EEA (European Economic Area). The bilateral agreements between these countries after joining to the EU will continue to apply where: the provisions of the agreement provide greater (better) social security to a claimant than EU Social Security Regulations Nos. 883/2004 and 987/2009.[21]

2.1. Third-state' totalizing

Even when two countries have concluded a bilateral social security agreement that provides for totalizing, a migrant worker might nonetheless still not have sufficient periods of affiliation with the social security systems of the two countries to qualify for a benefit from either, or the worker might only qualify for a benefit from one country. Such a situation is especially likely to occur if a worker has been employed in several countries during his/her working life and the period of employment in some of those countries has been relatively short. To overcome this problem, some countries have included 'third-state' totalizing provisions in their bilateral social security agreements.

Under third-state totalizing provision, if a worker is not eligible for a benefit even after totalizing periods under the social security systems of the two countries that are parties to the bilateral agreement, but if the worker has completed periods under the social security system of another country (a 'third state'), periods in that third country can be added to periods in the first two countries to determine the worker's eligibility for a benefit under the social security systems of the first two countries. In order for third-state totalizing to apply, the third country must be one to which both of the first two countries are bound by bilateral or multilateral social security agreements that provide for totalizing. [22]

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[19] http://www.migrationpolicy.org/pubs/six_social_security_totalization.pdf (13. 01. 20014).

[20] SABATES-WHEELER, RACHEL: *Social security for migrants: Trends, best practice and ways forward*, Working Paper No. 12, International Social Security Association, Geneva, 2009. pp. 9–10.

[21] SPIEGEL, BERNHARD: *Analysis of Member States' Bilateral Agreements on Social Security with Third Countries*, European Commission, 2010. p. 10.

[22] In an interesting recent Judgment, the European Court for Human Rights (ECtHR) found with respect to the indexation of retirement pensions no discrimination between pensioners living in a country with which the UK has no bilateral social security and pensioners living in a country which is covered by an agreement; see European Court for Human Rights (ECtHR). 2010. Case of Carlson and Others versus the United Kingdom (Application no. 42184/05). ECtHR : Strasbourg, 16. March 2010.

2.2. The ECJ *Gottardo* case and the principle of equal treatment

There is a special ECJ case [*Gottardo* case (Case C-55/00)] relating to this issue.[23] According to the *Gottardo* principle, when an EU Member State concludes a bilateral international convention with a non-member country, the fundamental principle of equal treatment requires that Member State to grant nationals of other Member States the same advantages as those which its own nationals enjoy under that convention unless it can provide objective justification for refusing to do so. When giving effect to commitments assumed under international agreements, be it an agreement between Member States or an agreement between a Member State and one or more non-member countries, Member States are required, subject to the provisions of Article 307 EC, to comply with the obligations that Community law imposes on them. The fact that non-member countries, for their part, are not obliged to comply with any Community-law obligation is of no relevance in this respect.

The competent social security authorities of one Member State are required, pursuant to their Community obligations under Article 39 EC, to take account, for purposes of the acquisition of rights to old-age benefits, of periods of insurance completed in a non-member country by a national of a second Member State in circumstances where, under identical conditions of contribution, those competent authorities will take such periods into account where they have been completed by nationals of the first Member State pursuant to a bilateral international convention concluded between that Member State and the non-member country.[24]

3. Multilateral social security agreements

Most social security agreements are bilateral, involving two countries. However, there are some notable examples of agreements to which many countries are party to. Some examples of good practices in coordinating multilateral social security agreements can be found every regions of the world, in the EU as well as in the Caribbean,[25] the Gulf Region, Latin America[26] and Western Africa.[27]

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[23] The case in nutshell: the competent social security authorities of one member state were required, pursuant to their European Community obligations under art39 of the EC Treaty on the free movement of workers, to take account, for the purposes of acquiring the right to old age benefits, of periods of insurance completed in a non-member country by a national of a second member state in circumstances where, under identical conditions of contribution, those competent authorities would take into account such periods where they had been completed by nationals of the first member state pursuant to a bi-lateral international convention concluded between that member state and the non-member country.

[24] HAJDÚ JÓZSEF: *Szociális biztonsági koordináció, bilaterális megállapodások és a Gottardo elv érvényesülése*, Sapienti Sat Ünnepi Kötet Dr. Cséka Ervin professzor 90. születésnapjára, Acta Juridica et Politica, Tomus LXXIV. Szeged, 2012. pp. 183–194.

[25] http://www.adbi.org/research-policy-brief/2011/11/28/4814.social.security.labor.migration.asean/existing.social.security.and.portability.in.asean/ (10. 02. 2014)

[26] HOLZMANN – KOETTL 2011, 8. p.

[27] *Social Security: A Factor of Social Cohesion*, Euro-Mediterranean Conference, Council of Europe Publishing, 2005. 135-136. pp.

Multilateral agreements on social security offer many advantages because they allow for many countries to coordinate standards and rules for the administration of social security at one time. Also they ensure the equal treatment of workers, unaffected by nationality. Despite the advantages of multilateral agreements, the administrative complexity and weight as well as economic challenges hinder to the scope of their success. The European Union (EU) has the most advanced and complex system of portability of social security benefits (EU coordination of social security systems).[28] Furthermore, with respect to third-country nationals, equality of treatment is granted after a certain period of residence (see EU Regulation 1231/2010).[29]

3.1. The EU coordination of social security systems

The coordination of social security system[30] is a widely spred and accepted concept in the EU. The EU social security coordination means establishing a *supranational mechanisms* through which the social security systems of different countries can work together to achieve mutually agreed objectives - in particular, ensuring that migrant workers have protection that is as complete and continuous as possible - while, at the same time, maintaining and respecting the separate definitions and rules of each system.

Coordination does not involve replacing the different definitions and rules of each system with common definitions and rules, which is usually referred to as harmonization. Hence, the EU social security coordination leaves the rules and definitions of national legislation unchanged. It finds ways in which social security systems can be made to work together, in spite of the differences, in order, for example, to establish eligibility for their respective benefits when a migrant worker has been subject to the systems of two or more countries.

3.2. Nordic Convention on Social Security

Another European example is the Nordic Convention on Social Security.[31] However, the significance of the Nordic Convention on Social Security[32] is slight, since all the Nordic countries apply EC Regulation 883/2004. Norway and Iceland became included among the countries that apply Regulation 883/2004 1 June 2012.

According to the current Nordic Convention on Social Security, workers moving to another Nordic country are subject to the provisions regarding workers in the EC

[28] Also in Eastern Europe and Central Asia there are trends towards greater cooperation between social security agencies. This led in 2005 to the adoption of the so-called Baku Declaration on "Enhancing social protection of migrant labour" (ISSA/IAPSF, 2005), signed by social security directors, administrators and experts from 24 countries.

[29] The 1231/2010 Regulation deals with the coordination rules of the third country nationals in EU. (This regulation replaced the first EU Regulation of 859/2003 on coordination of social security rights of third country nationals.

[30] The main norms of the coordination are Regulation (EC) No. 883/2004 (Basic Regulation) and Regulation (EC) No. 987/2009 (Implementing Regulation).

[31] See more detailes: http://www.nordsoc.org/Sosialforsikringen-i-Norden/ (25. 01. 2014).

[32] The Nordic Convetion covers: Denmark, Finland, Iceland, Norway and Sweden.

Regulations.[33] Under the terms of the Convention, they are covered by the social security system of the country in which they are resident (according to the population register).[34]

III. The types of bilateral agreements: calculation method of benefits

There are different types of bilateral social security agreements: a) territorial-based social policy agreements, b) time-proportionate social security/social policy agreement, c) direct calculation type social security agreement.

1. Territorial-based social policy agreements

Some countries of the Central an Eastern European states were concluded bilateral social policy agreements (during the socialist period: e.g. Hungarian-Soviet Union agreement).[35] The essence of the social policy agreement in that claims are settled by the competent institution of the state in which the applicant resides on the basis of the service/insurance time acquired in both countries. This type of calculation is also called „integration". According to this method, instead of each country paying a partial benefit calculated in relation to the time a worker has been affiliated with its social security (mainly social insurance) system, some agreements employ a method for determining the amount of benefit payable when eligibility is determined through totalizing. Under the „integration principle", the institution of one country pays a full benefit calculated according to its rules and taking into account the periods completed in all the other countries that are parties to the agreement. Consequently, the other country pays no benefits at all. The paying country is usually the one to whose system the worker was last affiliated or the one in which the worker and/or family members are residing at the time of the occurrence of the contingency giving rise to the benefit.

Integration can be an effective solution in the case of short-term benefits (for example, cash sickness benefit). However, for long-term benefits such as old-age and invalidity pension, integration is generally only considered among countries in which the formula for calculating benefits, and hence the resulting amount of benefits, are similar and there is an approximately equal flow of migrant workers between them. If any of these conditions does not apply, integration will likely result in some countries

[33] Freedom of Movement within the Social- and Labour Market Area in the Nordic Countries, Summary of obstacles and possible solutions, Nordic Coincil of Ministers, Copenhagen. 2012. 31-33. pp.

[34] TRIER, ADAM: *The Nordic Social Security Convention*, International Labour Review Vol. 121, No. 3. May-June 1982. 259. p.

[35] http://www.migravalue.net/public/allegati_documenti/Bilateral%20Social%20Security%20Agreement_hu.pdf

incurring far higher costs than others. For this reason, integration is seldom used in relation to long-term benefits.[36]

2. Time-proportionate agreements on social security/social policy

The core concept of the agreements founded on the principle of time-proportionate assumption of burdens is that the service time acquired in the two countries is added up in all cases, however the competent organs of each country only establish and disburse the social security benefit appropriate to the ratio of the service time acquired in the given country to the total service time.

In detailes, the proportional calculation involves first determining the theoretical amount of the benefit that would be payable if the totalized periods under the social security systems of all the countries taken together had been completed under the system of each country alone. In determining the theoretical benefit, the social security institution of each country applies the benefit-calculation rules specified in its own legislation. The actual benefit that an institution pays is determined by multiplying the theoretical benefit by a fraction that represents the ratio of the periods completed under the system administered by that institution and the totalized periods completed in all the countries taken together.[37]

3. Direct calculation type social security agreement

Under the method of direct calculation, as the name suggests, the institution of each country calculates the benefit it will pay using the rules specified in its legislation, without the need for determining a theoretical benefit. Since direct calculation is a one-step process that is simpler to administer than proportional calculation, it is the preferred option for many countries.

Direct calculation works well when the benefit formula provides for a uniform rate of accrual of a benefit for each period of affiliation – for example, two percent of final earnings for each year of contribution. However, it can result in disproportionately large benefits in relation to the period of affiliation when the benefit formula includes a flat-rate amount (an amount that is payable irrespective of the length of previous affiliation) or if the benefit formula involves a variable rate of accumulation (for example, three percent of final earnings for each of the first 10 years of affiliation, and two percent for each of the next 20 years).

[36] *Bilateral Social Security Agreements WP 4* Hungary, April 2008. p. 6. http://www.migravalue.net/public/allegati_documenti/Bilateral%20Social%20Security%20Agreement_hu.pdf (20. 02. 2014.).

[37] NICKLESS, JASON – SIEDL, HELMUT: *Co-ordination of Social Security in the Council of Europe: Short Guide*, Council of Europe Publishing, 2004. 9-13. pp.

The decision whether to use proportional calculation or direct calculation in a social security agreement will depend largely on the way in which benefits are calculated under the systems of the countries that are parties to the agreement.[38]

4. Saving provision

However the provisions of a social security agreement concerning the determination of the applicable legislation have been drafted, unusual cases will, from time to time, inevitably arise. For this reason, social security agreements usually contain specific provisions dealing only with the situations in which questions concerning the determination of the applicable legislation are most likely to arise –, detached workers, self-employed persons, seafarers and, in many instances, government employees.[39]

For all other situations, agreements usually contain a 'saving' provision that allows the competent authorities of the countries concerned to determine the applicable legislation through mutual consultation. The same saving provision can also be used when either the general rule for coverage, or the specific rules for categories of workers such as detached workers and self-employed persons, is not suitable in a particular instance.[40]

IV. Principles and guiding rules of bilateral social security agreements

The general purpose of the international (bilateral) social security agreements which are concluded between the various countries is to coordinate the social security systems of the contracting countries in order to safeguard the following principles: a) principle of reciprocity, b) principle of equal treatment, c) applicable legislation, d) aggregation of periods (totalisation) and maintenance of acquired rights,[41] e) exportation (or portability) of benefits, f) mutual administrative assistance: facilitation of administrative arrangements through liaison bodies to ensure smooth coordination.[42] We shall discuss these priciples here.

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[38] SPIEGEL 2010, 10. p.

[39] International social security agreements increase income for overseas employers. www.questia.com/Online_Library (10. 01. 2014).

[40] Coordination of Social Security - Training Modules - ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe, Budapest, 2010. 41-49. pp.

[41] http://www.migrationpolicy.org/pubs/six_social_security_totalization.pdf (13. 01. 20014).

[42] AOUL-CHAILLOU, SAMIA KAZI: *Migration and social Protection: Exploring issues of portability and Access*, Session 3 Policy frameworks, Strategies for extending social security to migrant workers, MIGSEC Project / ILO Geneva, 2006. http://www.migrationdrc.org/news/reports/migration&socialprotection/Presentations/presentation%20KAZI-AOUL.pdf

1. Principle of reciprocity

According to the majority of the bilateral social security agreements foreigners are granted rights to social security in other countries on a reciprocal basis. This is a contractual obligation of the states which are involved.[43] Reciprocity, which is fundamental to all social security agreements, means that each country which is a party to an agreement undertakes to apply the same mechanisms as every other party to make its social security benefits more accessible to migrant workers. Reciprocity also means that there is a reasonable degree of comparability in the obligations that each party assumes as a result of an agreement.[44]

2. Equal treatment

Many countries[45] base eligibility for social security benefits on a person's nationality. When a country has such nationality-based restrictions[46] in its social security system, a worker or his/her family member who is not a national of the country may not be eligible for any benefit at all, or may be entitled only to a lesser benefit than a national, or may be subject to more stringent eligibility requirements than a national.[47] Whatever reasons a country may give to defend nationality-based restrictions to eligibility, the practical effect is to disqualify migrant workers and their family members from receiving benefits.[48]

A primary objective of social security agreements is to overcome these nationality-based restrictions.[49] Through an agreement, each country, as a party, undertakes to treat

[43] KENICHI HIROSE – NIKAC, MILOŠ – TAMAGNO, EDWARD: *Social Security for Migrant Workers: A rights-based approach*, Budapest, International Labour Organisation, 2011. 49. p.

[44] Determining what constitutes a reasonable degree of comparability of obligations is much more difficult to quantify. Some countries take an 'accounting' approach that focuses primarily on the projected costs of an agreement for each of the parties and whether those costs are approximately the same. Such a narrow view of comparability of obligations can, in particular, preclude agreements among countries that are at different stages of development. Other countries take a broader approach to comparability of obligations that factors in, for example, the levels of economic development among the prospective parties to an agreement and the relative capacity of the social security systems of the different countries to absorb the additional obligations that would result from an agreement.

[45] E.g. Nordic countries.

[46] KACZOROWSKA, ALINA: *European Union Law*, Routledge, 2013. 666. p.

[47] See also case 1/72 Frilli v. Belgium [1972] ECR 457.

[48] JOPPKE, CRISTIAN: *Citizenship and Immigration*, Polity Press, Cambridge, 2010. 167. p.

[49] One of the main international source of equal treatment is Article 3 of the the ILO C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118). The full title of it: Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (Entry into force: 25 Apr 1964). Paragraph 1 Article 3 states: „Equality of treatment as regards the grant of benefits shall be accorded without any condition of residence: Provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory." Furthermore the revised (1996) European Social Charter Article E on non-discrimination states: „The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. „

workers who are nationals of the other parties in the same way it treats its own nationals. Equal treatment is usually also extended to the worker's family members, irrespective of their nationality, in relation to the rights they derive from those of the worker – for example, medical care if they fall ill, or survivors benefits in the event of the death of the worker.[50]

3. Applicable legislation: prohibition of double coverage and exclusion from social security rights

Defines that all the workers should be subject to the social security legislation of the country where they work, so that they shouldn't pay simultaneous contributions to the social security systems of two contracting states. When this happens, both countries generally require the employer and employee or self-employed person[51] to pay social security contributions or taxes. In addition, they avoid the risk of failing to be subject in any insurance system.[52]

Free choice solution. A general misconception about many bilateral agreements is that they allow dually covered workers or their employers to elect the system to which they will contribute. The agreements, moreover, do not change the basic coverage provisions of the participating countries' social security laws - such as those that define covered earnings or work. They simply exempt workers from coverage under the system of one country or the other when their work would otherwise be covered under both systems.[53]

Lex loci laboris principle. The provisions for eliminating dual coverage with respect to employed persons are similar in all agreements. Each one establishes a basic rule that looks to the location of a worker's employment. Under this basic "territoriality" rule, an employee who would otherwise be covered by both social security (home and a foreign system) remains subject exclusively to the coverage laws of the country in which he/she is working (*lex loci laboris*).[54]

The posted worker rule.[55] The bilateral agreements usually include an exception to the territoriality rule (*lex loci laboris*) designed to minimize disruptions in the coverage careers of workers whose employers send them abroad on temporary assignment. Under this "detached-worker" exception, a person who is temporarily transferred to work for

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[50] PENNINGS, FRANS: *Introduction to European Social Security Law*, Intersentia, Antwerp, Oxford, New York, 2003. 10-11. pp.

[51] Most bilateral agreements intend to eliminate dual coverage of self-employment by assigning coverage to the worker's country of residence. (country of residence principle) For example, under the U.S.-Swedish agreement, a dually covered self-employed U.S. citizen living in Sweden is covered only by the Swedish system and is excluded from U.S. coverage.

[52] ILO Monitoring the state of social security coverage, 12-15. pp. www.ilo.org/gimi/gess/Ressource Download.action (20. 02. 2014).

[53] KENICHI - NIKAC- TAMAGNO 2011, 19-24. pp.

[54] MEEUSEN, JOHAN - PERTEGÁS, MARTA – STREATMANS, GERT (eds).: *Enforcement of International Contracts in the European Union*, Intersentia, Antwerp, Oxford, New York, 2004. 326-327. pp.

[55] BLANPAIN, ROGER (ed.): *Freedom of Services in the European Union: Labour and Social Security Law*, Kluwer Law International, The Hague, 2006. 183-185. pp.

the same employer in another country remains covered only by the country from which he/she has been sent.[56]

4. Aggregation of periods (totalisation)

Where the legislation of a contracting state requires certain insurance periods or periods of residence for the entitlement to a benefit, such periods completed in the other contracting state are also taken into consideration.[57] Even if a migrant worker has had a lengthy affiliation with the system, the period of affiliation might have been in the past, so it does not meet the requirement for affiliation at the time of the occurrence of the contingency or immediately before. The result, in any of these cases, is that the worker and his/her family member is ineligible for benefits. Therefore, the social security agreements assist migrant workers and their family members to become eligible for benefits under the systems of the countries in which they have worked through adding together, or totalizing, the periods of affiliation in all the countries that are parties to the agreement in order to meet the requirements of a qualifying period.

Once eligibility for a country's benefit is established through totalizing, the amount of the benefit payable is usually determined in relation to the length of the period of affiliation to the country's social security system. The exact method for making the calculation is set out in the agreement. Two methods are commonly used: proportional calculation (*pro rata temporis*)[58] and direct calculation.[59] In some social security agreements a different calculation method, known as integration, is used.[60]

5. Exportation (or portability) of benefits

A country's social security legislation may prohibit entirely the payment of benefits or the provision of services to persons who reside outside its borders, or it may impose more stringent requirements for receipt of those benefits and services abroad than for receipt within the country itself. One of the objectives of social security agreements is to reduce, and whenever possible eliminate entirely, restrictions on the payment of benefits and receipt of services when a worker who had previously been covered by a country's social security system is no longer in that country.[61]

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[56] CLASEN, JOCHEN - VAN OORSCHOT, WIM: *Changing principles in European social security*, European Journal of Social Security, Kluwer International, Volume 4/2, 2002. 89-115. pp.

[57] JORENS, YVES – HAJDÚ, JÓZSEF: *European Report 2008*, www.tress-network.org/EUROPEAN%20 RESOURCES/EUROPEANREPORT/TRESS_final EuropeanReport.pdf (10. 01. 2014)

[58] *Model provision for a bilateral social securityagreement and explanatory report*, Council of Europe, 1998. http://www.coe.int/t/dg3/sscssr%5CSource%5CModProven.PDF (21. 02. 2014).

[59] AVATO, JOHANNA: *Migration Pressures and Immigration Policies: New Evidence on the Selection of Migrants*, Social Protection Discussion Paper 52449. The World Bank, 2009.

[60] SIGG 2002, 218. p.

[61] PIETERS, DANNY (ed.): *Social Security: An Introduction to the Basic Principles*, Kluwer Law International, The Netherlands, 2006. 47. p.

International portability of social security rights allows international migrants, who have contributed to a social security scheme for some time in a particular country, to maintain acquired benefits or benefits in the process of being acquired when moving to another country. International portability of social security benefits is therefore understood as the migrant's ability to preserve, maintain, and transfer acquired social security rights independent of nationality and country of residence.

Two types of provisions regarding export of benefits are found in social security agreements. One guarantees export to the territories of the other countries that are parties to the agreement, but not to 'third states' (countries not party to the agreement). The other guarantees export to all countries, including third states.[62]

There are some *exceptions* to export of benefits that are commonly found in social security agreements. The most usual exception applies to social assistance benefits, including means-tested benefits. The argument is made that these benefits are intended to alleviate domestic poverty and are set in amounts that are based on the economic and social circumstances of the paying country. According to this argument, export of these benefits is, therefore, not appropriate.[63]

Conclusion

In sum, international bilateral social security agreements are advantageous both for persons who are working currently in two or more states and for those whose working careers are over. For current workers, the agreements eliminate the dual contributions they might otherwise be paying to the social security systems of both the home state and another (host) state, with whom signed an international social security agreement. For persons who have worked both in the home state and abroad in host state, and who are retired, disabled, or deceased, the agreements often result in the payment of benefits to which the worker or the worker's family members would not otherwise have become entitled.

[62] SIGG 2002, 217. p.

[63] HOLZMANN, ROBERT – KOETTL, JOHANNES: *Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, and Issues*, 2014. http://cesifo.oxfordjournals.org/content/early/2014/01/12/cesifo.ift017 (21. 02. 2014); HOLZMANN, ROBERT, KOETTL, JOHANNES and CHERNETSKY, TARAS: *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, Social Protection Unit, Human Development Network, The World Bank, 2005. 24. p.