

JÓZSEF HAJDÚ*

The individualisation of social security rights in Hungary

Introduction

The social protection system of all the member states of the European Union has regulations which attach the individual's social protection to the special family status – single, married, common-law spouse.¹ The same is true for Hungary.

However, by the end of the 20th century the structure of families changed, the number of divorces and one-parent families increased, and the mass employment of women necessarily led to a change in the traditional distribution of tasks between spouses. At the same time social protection schemes did not change, they failed to follow the social changes.

In the background of individualisation there are basically two major factors: one is the dependent position of women, their disadvantageous situation in the labour market, the other is the high expenses of social protection schemes set up at the end of the 19th and at the beginning of the 20th century.

Thus, the objective set forth on the basis of the first argument is to improve women's position in the labour market. In Hungary, the dominant family model is still the one in which, in accordance with the traditional distribution of tasks and roles, men provide for the family and earn the necessary sources for the support of the whole family, while women run the household, bring up the children and possibly look after the old. This is becoming less common, though. During the last century – especially in the socialist regime – women fought for their equality successfully. They gained ground in education, in the labour market and acquired political rights, too. The great proportion of women finding employment, their entry into the labour market upset the previous

* Associate professor, Faculty of Law of Szeged University, Szeged and Faculty of Law of "Károli Gáspár" University, Budapest.

¹ European Commission: Modernising and Improving Social Protection in the European Union, Communication from the Commission, COM (97) 102 p. 15.

balance between the two sexes, and questioned men's almost exclusive role as "breadwinners" within the family. Thus, as it often happens, women have to cope with the double burden of running the household and making a career. Promotion in the workplace is necessarily broken by child-bearing, and in many cases the employment of young mothers after childbirth is hindered by various obstacles, although the Labour Code prescribes that they should be given the so-called legal protection against dismissal [Paragraphs d)–e) of Section (1) of Article 90 of Act XXII of 1992] – it means that their employment relationship cannot be terminated with ordinary notice during the period of child care allowance and child care fee. However, their out-of-date, unimproved professional knowledge and their ever-decreasing motivation often has the result that after the expiry of child care allowance many of them are unable to return to the labour market.

Hungary has faced deep changes in their economic structures as well as in political and social life on the road of transition and labour market restructuring. Consequently, the impact of economic transformation has been different for men and women. As a whole, the most pressing issues for women and gender relations in the world of work in Hungary may be characterized as follows:

- a) Difficulties in securing employment and decent income in fluctuating labour markets
- b) Insufficient coverage and effectiveness of social protection and social services
- c) Inadequate participation of women in social dialogue and decision-making structures concerning the economic and political environment

The unemployment is more often a problem of women than for men, with higher unemployment rates. Unemployed women are also exposed to a greater risk of remaining unemployed for a longer time. In addition, women are affected to a great extent by hidden unemployment and work in the growing informal sector.

Gender segregation in employment still prevails in Hungary. In the labour market, low-paid occupations in the textile industry, office work, health and education, public sector and services are as a rule female dominated. Women are very often paid less for equal work of equal value.

The willingness of women to find employment is also suppressed by the fact that in many cases they continue to be entitled to social insurance benefits based on the so-called derived rights. At the same time they may find themselves defenceless in case their marriage breaks up or the partnership is ceased.²

² European Commission: Modernising and Improving Social Protection in the European Union, Communication from the Commission, COM (97) 102 p. 15–16.

Social protection schemes and services. Due to budget constraints, subsidies and support infrastructure for the provision of social services such as child care have been cut back, thus shifting the responsibility more to the private sector and the family. As a result, social protection has become more precarious, and it has become more difficult for employees to combine their work, family and social responsibilities.

As a rule, Hungary ratified the core ILO Conventions on gender equality and discrimination, thus legally guaranteeing equality between men and women. Nevertheless, in practice women still face marginalization and unequal treatment in the labour market, and especially in decision making.

Reforms have increased formal/legal equality between women and men, but have not promoted substantive gender equality. Reforms have not generally enhanced women's employment and life choices. Labour market transformation has had a negative impact on social security.

The equality was not a driving force of social security reforms in Hungary. Instead, the driving forces of social security reforms were: a) urgent need to assist „losers” from the transformation process; b) fiscal constraints; c) political priorities and d) public priorities. The effects of that process were: a) downsizing of services; b) targeting of benefits; c) „marketization” of social security, d) individualization of pension benefits and e) increase retirement age. The above mentioned individualization has basically been occurred only in the second pillar (obligatory, private pension insurance).

The individualization in pension benefits means: a) all contributions count – positive; b) impact of different life expectancy; c) gender wage gap reproduced; d) negative impact of different employment patterns and e) no „caring credits” in individual pension accounts.

Along this line of thinking one should also mention children, who – as future employees – are often partly insured based on the parents' right. If, however, due to the above-mentioned reasons derived rights are meant to be terminated, the problem arises under what entitlement children possibly without a parent providing for them will be eligible for benefits.

The other reason why social protection systems should be reconsidered is the high expenses of the current structures. In the majority of the cases there is no return service for the coverage of benefits paid on the basis of derived rights, which entails considerable extra expenses for social insurance funds.

The purpose of the present study is to examine derived rights and personal dependency relations as well as to identify cases of entitlement to benefits not covered by contributions in the Hungarian system of social protection, and – if possible – to determine what purpose they serve within the structure. After the review and legal analysis of relevant regulations the cases in which the problem of derived rights is encountered will be highlighted. The present study is focus on health, pension and unemployment schemes.

1. The concept and sources of the Hungarian social security law

According to Article 70/D of the Hungarian Constitution „Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health. The Republic of Hungary implements this right through institutions of labour safety and health care, through the organisation of medical care and the opportunities for regular physical activity, as well as through the protection of the urban and natural environment.” Furthermore, the Article 70/E states, that „Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in the case of sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own. The Republic of Hungary implements the right to social support through the social security system and the system of social institutions.”

In Hungary the substance of social security is regulated by laws, these are supported by government decrees that regulate implementation.

There is no strict definition of social security in Hungary. However, a distinction is often made between three basic forms of social security: social insurance schemes (*társadalombiztosítás*), the social assistance scheme (*szociális segélyezés*) and universal schemes (*állampolgári jogon járó ellátások*).

Social insurance schemes in Hungary cover the risks of sickness, maternity, health care, labour accidents and professional diseases, work incapacity, old age and survival pension. Social insurance schemes are state run, compulsory, pay-as-you-go type, financed by contributions and based on the performance of some kind of professional activity. All persons covered by social insurance (employees, the self-employed etc) belong to the same scheme. There are no special schemes for specific professions, such as farmers or civil servants. However, certain occupations (such as law enforcement agencies, the armed forces, miners and artists) enjoy special additional rules, which can be found in the legislation governing those professions. Although passive unemployment benefits are not officially classified as social insurance, they are still deemed to fall within the ambit of social security and are organised according to social insurance principles.

The social assistance scheme provides means-tested financial assistance, both in cash and in kind, for any individual who cannot support him/herself.

The universal scheme provides benefits, which are not granted under either social insurance or social assistance, but guaranteed by the state and financed out of the general budget (taxation). They are therefore not dependent upon the need of the beneficiaries or the performance of some professional activity. A scheme is defined as „universal”, when every citizen who meets the conditions is entitled to the benefit. The new Hungarian family support scheme, which

covers the majority of child and/or family related benefits, came into force on 1 January 1999 and is managed according to the universal principle.

As a summary, we can say that the main force of the Hungarian social security scheme is the social insurance system. It is supplemented by the social assistance and universal type systems.

2. Administrative organisation

There are five main branches of social security administration in Hungary. These are pension and health (including statutory employment injuries and occupational diseases system) and the rest are the unemployment insurance, the family support system and the social assistance system. As far as the administrative organisation of social security is concerned only the pension and health branches are officially recognised as social insurance, even though the passive unemployment benefits are operated according to social insurance principles.

The Hungarian pension system underwent a comprehensive reform in 1997. This represents a major improvement on the previous systems and should protect pensioners while greatly improving fiscal accounts. It has one mandatory pillar plus two supplementary pillars.

The mandatory pillar is the state pension, which is publicly managed and financed on a PAYG basis from the Pension Insurance Fund. This system is managed by the National Pension Insurance Administration (*Országos Nyugdíjbiztosítási Főigazgatóság*) and its county (capital) branches [*megyei (fővárosi) nyugdíjbiztosítási igazgatóságok*]. There is a special body affiliated to the National Pension Insurance Administration called the Pension Reimbursement Directorate (*Nyugdíjfolyósító Igazgatóság*). The Pension Reimbursement Directorate is responsible for the payment of pensions and in special cases will also calculate the sum of the pension. In addition it distributes benefits other than those falling under social insurance.

The second pillar consists of privately run pension funds and is funded on a capitation basis. This pillar is administered by several independent and authorised private pension funds, which are supervised by the state. Employers, chambers of professionals, unions of employees and employers, voluntary pension funds and the local municipalities (of Budapest and the counties) may set up such pension funds. These funds are non-profit organisations owned by their members and operated according to the relevant regulations and their own bylaws. Insured persons are free in their choice of pension fund. If they are later unhappy with their choice it is possible to transfer to another fund.

The administration of mandatory health insurance is fulfilled by the National Health Insurance Fund Administration (*Országos Egészségbiztosítási Pénztár*, hereinafter the NHIFA), by the county (capital) health insurance

bodies (*fővárosi és megyei egészségbiztosítási pénztár*) and by the workplace-based social insurance pay-offices (*munkahelyi kifizetőhely*).

The National Tax Authority (*Állami Adóhatóság*), its capital and county branches are responsible for collecting, recording and supervising the payment of social insurance contributions. Every insured person and his/her employer must declare and pay regularly the health and pension contributions to the Tax Authority.

The institutional structure of the Hungarian unemployment system can be divided into two main types. One is the self-governing bodies and the other one is the administrative bodies. The National Employment Service (*Állami Foglalkoztatási Szolgálat*) (this is the administrative body of unemployment insurance system) consists of; the National Employment Office (*Foglalkoztatási Hivatal*); County (Capital) Labour Centres (*megyei [fővárosi] munkaügyi központok*) and Labour Force Development and Training Centres (*munkaerő-fejlesztő és -képző központok*). The self-governing bodies are as follows: National Employment Council (*Országos Munkaügyi Tanács*); Governing Body of Labour Market Fund (*A Munkaerőpiaci Alap Irányító Testülete*), and County (Capital) Labour Council (*Megyei [fővárosi] Munkaügyi Tanács*).

The benefits under the family support scheme are universal and financed by the state central budget, but administered by the Hungarian Inland Revenue Office (*Magyar Államkincstár*) and subordinate bodies in workplaces (*családtámogatási kifizetőhely*).

The benefits under the social assistance scheme are means-tested, financed by the state central budget and by the local government's budget, but administered only by the local governments (*helyi önkormányzatok*).

3. *Personal scope of application*

The personal scope of pension and health insurance covers the following categories of people:

I. Insured person (entitled to all social insurance benefits)

II. Partly insured persons (only entitled to certain social insurance benefits) who may be divided into those who are only

- entitled to benefits within the employment injuries and occupational diseases scheme
- entitled to health care benefit, if the health problem derives from employment injury and occupational disease
- entitled to health care benefits

I. The insured person

The insured persons are employees, both public and private sector, who are bound to their employers by a contract of employment, as well as certain categories of people who are treated as such. Thus, the coverage for all employee insurance schemes is extended to (amongst others) apprentices, handicapped persons in occupational training, domestic workers, paid musicians, paid governors and the mandatories of non-profit making organisations. Furthermore, classification as an insured person requires a double link with the Hungarian territory; i.e. the person's place of labour and the location of his/her employer's business must both be in Hungary.

As regards insured persons, the legal regulation concerning *contributing family members* seems to be relevant. A contributing family member is „a close relative of the private entrepreneur, or the natural person member of a private company without legal entity”³ if such close relative is personally performing remunerative services for the business of the private entrepreneur or company – not in the framework of an employment relation – if such relative is not a direct entitlement pensioner, does not receive survivor's pension and if he/she has not reached the pensionable age pertaining to him/her” [Paragraph g) of Article 4 of Act LXXX of 1997 on persons entitled to social security benefits and private pensions, as well as the coverage of these services; hereinafter referred to as Tbj]. The close relative as a contributing family member shall be considered as insured only if the income serving as the contribution base reaches thirty per cent of the minimum wage valid on the first day of the preceding month. [Paragraph g) of Section (1) of Article 5 of Tbj]. If this condition is fulfilled, he/she shall become entitled to social security services on the basis of contribution payment, according to the other categories of the insured. Consequently, this is not the classical category of derived rights as the relative obtains entitlement „in return for” his/her own work and contribution payment and not exclusively through the work performed and contributions paid by his/her relative. The disturbing factor in this relationship is that a special personal dependency relation (being related) is encountered.

II. Partly insured persons

Some groups of persons are only covered by a limited number of health and pension insurance schemes (so called partly insured persons).

There can be several reasons why certain social groups belong to this category. Some persons already receive permanent or temporary social security benefits under other entitlements (pension, benefit, other provisions). Others

³ The concept of close relatives is the same as the one used in civil law [Paragraph b) of Article 685 of the Civil Code].

are classified here due to social, youth protection or life protection considerations (socially needy persons or other endangered groups unprovided for: under-aged children, students at an educational and vocational institution, higher education institution, people who suffer from a mental disease or some kind of addiction and who are undergoing treatment in an institute of socio-therapy, people performing military service, persons detained, etc.).⁴

According to the Hungarian social insurance law partly insured persons are as follows:

- Those entitled to benefits for employment injuries and occupational diseases scheme: Accident benefits, accident-related disability pension and accident-related survivor's retirement benefits are paid to anyone who is considered to be performing supplementary activity. Someone performs supplementary activities when they are a retired person who continues to operate as a private entrepreneur, company member, employee or member of a co-operative, etc.

- Those entitled only to health care benefits for employment injuries and occupational disease: for example, students at an educational and vocational institution, higher educational institution, etc.

They are not directly entitled to services. In their case the classical requirements of social insurance – performing work and paying contributions – are missing. However, these persons receive services on the basis of the principle of solidarity still prevailing in social security, and not as a derived right.

- Those entitled only to health care benefits: covers (inter alia) recipients of various social insurance and social assistance benefits including sick pay, maternity or confinement allowance, accident-related sick pay, accident-related annuity, old-age, disability or survivor's pension, child care allowance and most social assistance benefits. This category also includes Hungarian citizens pursuing full-time studies at a secondary, vocational or a higher educational institution as well as the dependants of an insured person and any under-aged Hungarian citizen residing in Hungary.

Persons entitled to health care services as partly insured [Paragraphs a)-r) of Section (1) of Article 16 of Tbj.] include several groups who are entitled to services on the basis of derived rights. From the point of view of this study the most important of them are the following:

⁴ CzÚCZ, OTTÓ: *ibid*, p 145.

- a) pursuant to paragraph k) of the Act the close relative [Paragraph b) of Article 685 of the Civil Code] or common-law spouse of the insured person or of the partly insured person entitled to health care services,⁵ whose monthly income does not exceed 30 % of the minimum wage in force on the first day of the year under consideration;
- b) pursuant to paragraph p) the *person who concluded an agreement on obtaining eligibility for health care services* and his/her dependents; and pursuant to paragraph r) the close relative or common-law spouse of the person obliged to pay health insurance contribution if his/her monthly income does not exceed 30 % of the minimum wage in force on the first day of the year under consideration. With these categories the major aim of the lawmakers was to prevent the deterioration of health of inactive relatives, who do not have insurance legal relationship.

The services provided for the relatives of persons specified in paragraph k) are covered by the central budget by the transfer of the health tax. [Section (1) of Article 39 of Tbj]

Persons specified in paragraph r), who are not insured and uninsured relatives (dependents) whose monthly income exceeds 30 % of the minimum wage shall pay 11 % health insurance contribution as of January 1, 2003 [Section (2) of Article 39 of Tbj]. In consequence of this the Health Insurance Fund acquires further income from contributions, but no contribution is paid for relatives in this case, either.

At the same time the Act prescribes direct entitlement for under-aged Hungarian citizens residing within the territory of the Republic of Hungary [Paragraph l) of Section 1) of Article 16 of Tbj]. Individualisation is achieved in the case of children, as they become eligible for health care services of their own right, and not of their parents' right.

Nevertheless, some persons are excluded from Hungarian health and pension insurance schemes, such as small-scale agricultural entrepreneurs, diplomats, foreign employees of international organisations, foreign nationals working for foreign employers, etc. These excluded persons may conclude an agreement with the social insurance organisation in order to receive certain social insurance benefits (health care and/or pension). These agreements enable people to purchase entitlement to health care benefits and to buy "years of service" that count towards their pensions (private as well as statutory). Foreign citizens covered by international treaties are entitled to social security as provided for by such treaties.

⁵ Common-law spouses shall be construed as two unmarried persons living together in an emotional and financial community in the same household, irrespective of whether they are or are not of the same sex. [Article 685/a of the Civil Code]

Personal scope of unemployment scheme

Active means promoting employment include two types of support. On the one hand the ones to which any unemployed person may become entitled (promoting trainings, support for intensive job-seeking, support for self-employment), but the awarding of these belongs to the discretionary powers of the employment centre, thus they are not entitled automatically by the law, it is not the case of individualised entitlement. The other group of active means of support can be received by the employers who make steps to promote employment, create new jobs (labour market services, supports to extend employment, support for work in the public interest, etc.). These do not belong to the sphere of the issue discussed here.

The unemployment (passive) benefit scheme covers all Hungarian employees who work under an employment contract. The system does not cover the self-employed or those working under civil code contracts, etc. According to the Hungarian Unemployment Act „*unemployed person*” means a person having the conditions necessary for the establishment of an employment relationship, who is not pursuing studies as a full-time student at any educational institution, who is not entitled to old-age pension, who collaborates with the unemployment office, and declares under penalty of perjury that he/she is neither employed, nor pursues any other income-earning activities, with the exception of temporary employment, and who has been entered in the registry of the employment center as unemployed.

Special rules apply to the supports which are meant to promote the employment of young unemployed persons, to improve their skills and professional expertise and to help them acquire work experience. The „*entry-level job seeker*” shall mean an unemployed person under the age of 25, or under the age of 30 for those with university or college degree, having the potential to establish employment and registered by the employment center, provided that such person did not gain eligibility for unemployment benefits upon graduating from school.

It can be stated that the common feature of passive means for the support of the unemployed is that the unemployed person is considered as an individual and no derived rights are founded for family members and other relatives, and also that the unemployed person’s entitlement to unemployment benefits does not depend on these family relationships either. Unemployment supports can be considered as operating in an individualised system, that is everybody can claim benefits only of his/her own right.

4. Risks and benefits

4.1. Old age

The Hungarian old age pension systems has undergone considerable reform. As from early 1998, the Hungarian old age pension system consists of three components:

- a conventional, pay as you go social insurance pension from the Pension Insurance Fund, (hereinafter the „first pillar“)
- a private pension provided by private pension funds, (hereinafter the „second pillar“)
- a pension service provided by voluntary pension funds (hereinafter the „third pillar“).

Under the new system the first and second pillars were mandatory for all new entrants into the labour force as of 1 July 1998. The new entrants are not obliged to enter the 2nd pillar from January 1, 2002. Workers who had already acquired pension rights under the old system and those who entered the labour market before July 1998, had the option of either staying in the (reformed) first pillar, or switching to the new system comprising of the first and second pillars. The new system began operating on 1 January 1998. Workers were given two years to exercise their right to switch to the new system (until August 1999). Those who initially opted for the new system were free to return to the first pillar until December 2002. After that date, workers will be permanently affiliated either with just the first pillar or with the new, mixed system of the first and second pillars. Those who chose to remain within the first pillar will still receive a full pension from the PAYG fund. Those who join the new system will receive a pension from the first pillar equal to three-quarters of that given to those who decided to stay with the first pillar. Their first pillar pension is then supplemented by their second pillar pension.

The first pillar of old age pension forms the backbone of the social insurance pension system. In this system the retirement age is gradually being increased from 60 (men) or 55 (women) to 62 years for both sexes. This gradual process will be completed by 2009. Until 2009 one has to accumulate 20 years of service record (periods of insurance) to be entitled to a full pension and 15 years to a partial one.

The amount of the pension is calculated according to the claimant's service record and his/her average monthly gross earnings upon which contributions have been paid. The calculation of average earnings takes into account all earnings received between 1 January 1988 and the day of retirement. Earnings

made before the third year preceding retirement have to be adjusted upwards to the level of the second year preceding retirement, and that average has to be taken into account thereafter. Until 2009 the full pension may not be less than the minimum pension (23.200 HUF in 2004), which is set annually. It is a sum that is close to half the average pension. For a service record of 20 years the pensioner will receive 53% of his/her average monthly earnings (up to the contribution ceiling). S/he will receive an extra 2% for each year of service between 21 and 25 years of service record, 1% for each year of service between 26 and 36, 1.5% for each year of service between 36 and 40, and 1.5% for each year s/he works after 40 years of service.

The formerly mandatory private pension component was introduced as an integral part of the statutory social insurance type pension scheme, as the second pillar of a multi-pillar pension. When an insured person pays his/her pension contributions part of these are kept in the first pillar PAYG fund and another part is transferred to a private pension fund. Should disablement occur, an insured person might return to the social insurance pension scheme because the private pension scheme is not prepared to handle the risks of disablement. When a person returns to the social insurance pension system, there are two options: the sum on his/her personal account is either transferred to the Pension Insurance Fund or it is not. If it is, then his/her case is treated as if s/he were an ordinary contributor. Consequently, his/her pension is calculated according to the general rule. If that sum (membership fee plus interest) is not transferred, then the person is entitled to a reduced social insurance pension.

The second pillar pension is derived from the sum that has accumulated from the insured person's contributions plus the interest borne therefrom. Since 2002 there is no minimum guaranteed private pension annuity paid under the second pillar. The Guarantee Fund of private insurance scheme guarantees only the sum which has been accumulated from the insured person's contributions plus the interest of this amount.

The second pillar pension fund provides annuities (pension) and/or lump sum payments for its members.

The annuities available are as follows:

- an annuity paid until the end of the member's life,
- an annuity that is disbursed to a pension fund member until a certain set period and thereafter until the end of his/her life, or
- an annuity that is disbursed to a pension fund member until the end of his/her life and thereafter to his/her for a certain period, or
- a joint-life annuity, beginning on a specified date; paid until both husband and wife have died.

Lump sum payments may be made in the following cases:

- if a pension fund member dies before reaching the retirement age (62); (in such case the designated surviving relatives are entitled to receive the lump sum payment)
- if a member failed to acquire 180 months of membership in one or more pension funds.

Voluntary pension scheme

The program of a supplementary private pension pillar was approved by Parliament in 1993. Since December 1993 Hungarian law has allowed the establishment of voluntary pension funds of the third pillar. They enable the pension fund members to complement their pension with voluntary savings. Their employers usually contribute to these saving (even though they are under no direct obligation to do so) and the pension fund members are entitled to tax reimbursement on their contributions. Anecdotes of the founding period say that legislators wanted to induce a social movement for self-provision for old age hoping that the new funds would also strengthen public awareness of pension issues, self-responsibility and long term calculations (EHPM 1998). This may explain why the legislators opted for special property rights structure of the funds. These funds are not owned by employers or financial corporations but the members themselves like mutual savings associations. This form is also wide spread in Germany, a traditional benchmark for designing social institutions in Hungary.

Despite the limited scope resulting from the high payroll taxes for the compulsory, unfunded public pillar in Hungary's pension system, the early performance of the voluntary private pension funds has been encouraging and in many respects better than expected.

4.2. Death

Survivor's pensions are of outstanding importance in the study of the individualisation of social rights in the Hungarian system of social security. There are three types of survivor's pension: a) widow's or widower's pension; b) Orphan's allowance; c) The parents' (grandparents') pension.

Survivor's pensions will only be paid when the deceased person giving entitlement was either actually in receipt of a retirement or invalidity pension at the time of his/her death or had accumulated a sufficient service record to claim one of these pensions.

A temporary widow's or widower's pension may be paid to the surviving spouse, divorced spouse or partner.

– The widow's or widower's pension is paid to surviving spouse (marriage of different sex) without any special condition. The only condition that they must live together, in fact, when the insured person has died.

– The benefit is paid to *common-law spouses (unmarried partners)* provided that they have a child and have co-habited for at least one year or have no children but have lived together for at least ten years. According to the *Section 685/A* of the Hungarian Civil Code: „Unless otherwise provided by legal regulation, common-law spouses shall be construed as two unmarried persons living together in an emotional and financial community in the same household.” Important to underline that the sex of the partners is indifferent.

– *Divorced and separated spouses* are also entitled provided that they received alimony from their ex-spouse, the amount of their benefit can never exceed the amount of alimony to which they were legally entitled. Temporary widow(er)'s pension is usually paid for one year. However, its duration is extended to 18 months if the survivor cares for a child of the deceased or up until the child's third birthday if that child is disabled.

The temporary widow(er)'s pension is 50% of the pension that was (or should have been) due to the deceased spouse. If the widow(er) is entitled to his/her own pension their permanent survivor's pension equals 30% of the deceased's pension. The temporary widow(er)'s (or widower's) pension may thus be combined with the pension of the widow(er).

Following the expiry of the temporary widow(er)'s pension the surviving spouse is entitled to a permanent pension if s/he has reached retirement age, is disabled or takes care of at least two orphaned children of the deceased. The pension that is paid to widow(er)s who do not receive an old age or invalidity pension in their own right is set at 50% of the pension that was actually (or should have been) paid to the deceased. If the widow(er) is entitled to his/her own pension their permanent survivor's pension equals 30% of the deceased's pension. The permanent widow(er)'s (or widower's) pension may thus be combined with the pension of the widow(er).

Orphan's allowance may be drawn until a child reaches 16 (or 25 for full time students) if the child becomes disabled whilst receiving the pension, it is paid indefinitely. The sum of the orphan's allowance is 30% of the pension of the person who obtained entitlement. If both parents have died, or the remaining parent is disabled this is increased to 60% of that pension. If both of the orphan's parents gave entitlement to a pension, then the higher of the two is used for calculating the benefit. The orphan's allowance never falls below a certain minimum, which is fixed annually.

The parents' (grandparents') pension is also part of the survivor's benefit system and is paid if the deceased person's parents or grandparents were either

disabled before his death or aged 65 years or over and primarily supported by the deceased for at least a year before his/her death.

If the deceased died as a result of an employment injury or occupational disease entitlement to benefits exists even if the insured person did not have a sufficient service record to obtain an old age or invalidity pension. The widow(er) of a victim of an employment injury or occupational disease receives a pension even if she is below retirement age and there are no dependant children.

As a summary it can be stated that the Hungarian old age pension system of dependents operates entirely on derived rights. In every case an insured person has to acquire entitlement, after whose death his/her surviving relatives will receive pension. As concerns the sum of the pension, a certain difference can be seen between widow(er)'s pension and parent's pension. Two possible cases have to be distinguished. One is when the person has direct entitlement to pension and also entitlement to widow(er)'s or parent's pension at the same time. The other case is when the claimant is entitled only to survivor's pension. The basic difference between the two is the following: in the first case survivor's pension is due to the person concerned in addition to his/her direct entitlement pension. Its extent is 30 %. In the second case only survivor's pension is due, the extent of which is 50 %.

As far as I know the idea of making survivor's pensions universal (individualisation of pension rights) was raised neither during the latest pension reform (1998) nor nowadays.

4.3. Incapacity for work

Sickness benefit. An insured person is deemed to be temporarily incapacitated for work due to illness, pregnancy or childbirth (if not in receipt of maternity benefit) or nursing a sick child (the nursing of sick children under the age of one year is restricted to mothers and single fathers). For those who are not nursing sick children the employer is obliged to pay 80% of the employee's normal earnings for a period of 15 days. After this period entitlement to sickness benefits (*táppénz*) under the social health insurance begins. The amount paid by the social insurance scheme depends on the claimant's service record and daily average earnings over the previous twelve months (up to the contribution ceiling). For those who have been insured for less than two years, 60% of the daily average wage is paid. For those with more than two years of service record, 70% of daily average earnings are paid. All those receiving in-patient treatment receive 60% of their previous average earnings regardless of their service record. Victims of employment injuries and occupational diseases are entitled to a periodic benefit equal to 100% of their average earnings for a period of at least one year (with the possibility of an extension to 2 years).

There are strict limits on the amount of time that can be taken off work in order to care for sick children and these depend upon the age of the child. These periods are increased for single mothers. For children less than one year old there is no limit, for children aged between 1 and 3 years a maximum of 84 days is provided, for those aged between 3 and 6 this is 42 days (84 for single parents) and those aged 6 to 12 this is 14 days (28 for single parents). The amounts paid during these periods (*táppénz*) are the same as those paid to insured persons missing work due to sickness.

Sickness benefit is invariably due to the person incapable of work. Derived right does not arise during the enforcement of claim.

Disability pension. A person is classified as permanently incapable of work if s/he has lost at least two-thirds of his/her working capacity, has no regular employment or is only capable of earning a significantly lower wage and no improvement is expected for at least one year. Entitlement to an invalidity pension then depends upon the incapacitated person satisfying the necessary service record (period of insurance). The required service record varies according to the age of the person concerned. Those who began work before 22 years of age must have completed at least two years of service before their incapacity, this amount gradually increases until those aged 55 years and over have to demonstrate 20 years of service.

The size of the invalidity pension depends on the following factors: the average earnings, the measure of disablement, service record (period of insurance) and age. The average earnings that are used for this purpose are usually the same as those applied for retirement pensions. The measure of disability relates to three categories:

- Class III: persons who are disabled but retain a limited measure of working capacity,
- Class II: persons who have lost all their working capacity but do not need to be taken care of by others.
- Class I: persons who have lost all their working capacity and need to be taken care of by others.

Those in Class II receive 5% more than those in Class III and those in Class I receive 10% more than those in Class III.

If a person suffers from a work-related injury or occupational disease (disablement by injury), there is no minimum service requirement, although the level of the pension still depends on the length of service. The categories of accident-related invalidity pensions coincide with those for invalidity pensions. As a rule, pensions payable in cases of accident-related disability are higher than those paid in case of disability.

Sickness benefit is invariably due to the person incapable of work. Derived right does not arise during the enforcement of claim.

4.4. Unemployment

As we mentioned earlier, the Act IV of 1991 (Unemployment Act) makes a distinction between active and passive means of employment policy.

4.4.1. The passive means of unemployment (unemployment benefits)

According to the Unemployment Act the local government and the County (Metropolitan) Labour Centres may conclude an agreement to supervise the persons living in the territory of the local government and entitled to unemployment benefit and to unemployment benefit for young people starting out on a career.

Unemployment benefit is due to the person who is involuntarily unemployed and has worked for at least 200 days over the four years preceding unemployment. The person must also be willing to work and co-operate with an employment agency. S/he must have no entitlements to invalidity or old age pension and cannot be in receipt of sickness benefits. Those who have left their job voluntarily or were subject to summary dismissal have to wait 90 days before they can claim unemployment benefits.

Unemployed persons fulfil their obligation to co-operate if they register with the employment agency and maintain regular relations with that agency. They must give serious consideration to the job opportunities offered by the agency; try to seek suitable employment and/or accept any possibilities for training that may be offered by the employment agency.

The amount of unemployment benefit is 65% of the person's previous average earnings. The minimum amount of unemployment benefit is equal to 90% to the minimum amount of old age pension.

The period of entitlement to unemployment benefit depends on the period of employment in the preceding four years. Long-term unemployment is one of the most serious problems of the unemployment system. The unemployment benefit can be paid up to 270 days, then the unemployed person is no longer entitled to further benefit under Act IV of 1991. Therefore, the social assistance system (Act III of 1993) provides the social assistance benefit for long-term unemployed persons. This allowance is paid to ensure the livelihood of unemployed persons who are no longer entitled to any unemployment benefit. This is a means-tested benefit.

Unemployment cash benefits are invariably due to the person incapable of work. Derived right does not arise during the enforcement of claim.

4.4.2. Active means of unemployment

1. Labour market services: The National Labour Service assists to find a job, to find appropriate employees and to keep the employee status. The forms of labour market service are as follows:

- a) provide information relating to labour force and employment
- b) counselling in employment, career development, job finding, rehabilitation, local (regional) employment issues
- c) employment exchange.

The above mentioned first two (under points a-b) labour market service providers are supported.

2. *Support for labour market programmes*

This is a financial support for labour market programmes which are intended to:

- a) assist regional employment development
- b) influence labour-market trends
- c) enhance the employment rate of persons with disadvantages in the labour market.

The measures of the promotion of employment programmes and the support for labour market programmes can be given simultaneously and can build on each other.⁶

4.5. *Health care*

4.5.1. *Hungarian Health Sector Reform*

The Hungarian health insurance system is based on the principle of a universal service, free at the point of delivery, and the right to health care is established in the constitution.

Although the need for reform was recognised before 1989, and steps had already been taken in reforming the system, the first real step in the reform process was the Local Government Act (1990) which shifted the responsibility for the ownership and management of health/social services to local and municipal governments. In 1993 the Health Insurance Fund was established with the goal of being self-supporting, based on compulsory payroll contributions from both employers and employees and a very limited

⁶ Act IV of 1991 Article 19/B.

investment portfolio. The HIF is designed to fund the running and ongoing costs of the health care system, but a peculiarity of the Hungarian reform is that capital items are funded through general taxation via Local government or the Ministry of Health, Social and Family Affairs.

Private providers have been encouraged and developed in the primary and some of the secondary sectors, however the provision of inpatient care is still state owned and controlled via local governments. These institutions have led a precarious life, with a shortage of funding to continue to maintain the infrastructure, and many of these institutions running into funding problems and incurring large debt burdens.⁷

4.5.2. Health Care Financing

The Hungarian health care system operates on the basis of dual financing. As it was mentioned before the major investments like construction/maintenance, or equipment purchasing are financed by the owner or co-financed from the Ministry of Health, Social and Family Affairs. All expenditures of the daily operations, including salaries of health care professionals, are financed by the Health Insurance Fund, however rates can be too low to cover the real costs of providing the services. The lack of adequate funding has led to the continuation of informal payments and use of public facilities for private practice businesses to enable health care staff to supplement their incomes.

The health care contributions payable by employers and employees are a large burden on salaries and act as a brake on employment, with numerous and widespread schemes to avoid the high level of taxation. This in turn reduces the tax base for health care provision.

The political will to tackle the health care reform agenda has returned with recognition that further reform is required. The current aims are to further liberalise the health care provision sector with private investment and involvement in the inpatient sector, and to increase the funding base for health care by encouraging additional funding mechanisms via supplementary insurance and contributions. If this reform is carried through Hungary will be the first country in the CEE region to realise that a central health care fund is not viable on its own to improve the health care system, but that an additional voluntary method of funding has to be encouraged as well.⁸

⁷ Health Care reform in Hungary
<http://www.medicover.com/DesktopDefault.aspx?TabOrgId=524>

⁸ Health Care reform in Hungary
<http://www.medicover.com/DesktopDefault.aspx?TabOrgId=524>

4.5.3. Health care benefits

According to the Hungarian health insurance law, two types of health care benefits can be distinguished. One is the benefits in kind [health services] (*egészségügyi szolgáltatások*), and the other is cash benefits (*pénzbeni szolgáltatások*), such as maternity-confinement benefit (*terhességi-gyermekágyi segély*) sickness benefit (*táppénz*) and child care fee [*gyermekgondozási díj (GYED)*]. In keeping with the structure of this paper the sickness benefits have already been explained in the section on "Incapacity for work" above and the maternity-confinement benefit and child care fee are excluded from this paper.

Health care services are provided by either physicians who are employed by the local governments or independent doctors who have their own contract with a county level body of the National Health Insurance Fund Administration.

The basic principle is that medical services can be used to the extent justified by the person's state of health. Health care is generally provided free of charge. This means that the prevention, diagnosis and treatment of diseases by family physicians, dentists and hospitals does not usually incur any co-payments by the patient. Rehabilitation (including occupational therapy), maternity care and ambulance transport are also provided free of charge.

Co-payments are required for certain services such as the provision of dental braces to adults. Hungarian health insurance does cover between 50 and 100% of the cost of medicines contained within an official list. The full cost of medicines will be covered for victims of employment injuries and occupational diseases as well as some low-income elderly or disabled persons. The patient will also incur charges if s/he makes unauthorised use of prescription only treatment, uses the services of a non-contracted health care provider or asks for extra services including a better room in a hospital.

The insured person specified in the Act on Social Insurance is entitled to all health care services. With respect to health care services, partly insured persons as well as persons obtaining services on the basis of a special agreement are considered as the insured (see personal scope). For this reason the derived rights discussed there are not going to be mentioned again.

5. Social insurance number and social insurance card

The social insurance number is a personal identification number which is given to each Hungarian citizen at birth and which - in normal cases - will accompany him/her during all his/her life. The social insurance number is issued by the National Health Insurance Fund. A foreign citizen can also get a social insurance number if he/she establishes an insurance legal relationship, or if he/she concludes an agreement for the purpose of obtaining entitlement to health care services, or if he/she is regarded as the close relative of the insured

person or of the person entitled to health care services. Derived rights can also be seen here. It is worth pointing out that although pursuant to the Act on Health Insurance the insured are eligible for health care services, in reality almost everybody with a social insurance number will receive services.

The social insurance number is contained by an official certificate of bank card size, commonly known as the social insurance card. When the social insurance number was introduced, the National Health Insurance Fund issued and sent the social insurance card automatically to everybody who was in the registers. Later one could apply for the card by filling in a form and sending it to the county or capital health insurance fund competent according to his/her residential address or, in the absence thereof, temporary address. For newborns the social insurance number can be applied for by filling in a form available in the newborn departments of hospitals. Health care services can be provided for newborns free of charge even without a social insurance card up to 6 months after birth.

The National Health Insurance Fund is notified of the death of the social insurance number owner by the registry offices of local governments. After the notification the social insurance number is made passive by the Health Insurance Fund, which means that no health care benefits or services can be claimed with the social insurance card in question after that date.

6. Financing

The social insurance systems are mainly managed mainly on a PAYG basis, except for the newly introduced mandatory second pillar statutory pension scheme, which is a fully funded system.

Health care is provided as a social insurance and thus financed from contributions by employers and employees. Employers pay a total of 11 % of each employee's gross salary and employees pay 4% of their gross salary. There is no contribution ceiling. The state guarantees any deficits that may be incurred by the health insurance fund.

Health services are financed according to several principles. The law lists the major sources of revenue but does not state which method is to be used to finance which services or over which periods. Health services can be financed according to the following: norms based on expenditure, tasks to be carried out, number of cases seen to, rate support grant, performance-linked support (or a combination of the above) and price support.

Institutions providing health services are obliged to handle the sums received from social insurance financing separately from their other finances. The financing agreement does not exempt the maintaining organisation of the institution (local governments or other owners) from statutory responsibilities of maintenance and development.

The largest part of pension expenditure is covered from contributions of the employers and employees. In 2004 the pension insurance contribution payable by employers to the Pension Insurance Fund was 18%. The pension insurance contribution payable to the Pension Insurance Fund by those employees who have chosen to remain in the first pillar is 8,5%. Those who belong to the multi-pillar pension scheme pay 0,5% to the Pension Insurance Fund (first pillar) and 8% to the private pension fund of their choice (second pillar). There is no contribution ceiling for employers, but employees pay no pension contributions on earnings above 5 307 000 HUF a year.

The contributions that are diverted from the Pension Insurance Fund to the private pension funds are replenished from the central budget of the state. Moreover, the state grants certain additional support to the Pension Insurance Fund to avoid its running into deficit.

The unemployment scheme (mainly its passive measures) is a typical social insurance type, PAYG system, but managed separately from the social health and pension insurance administrations and budget. The expenditure of passive unemployment measures is covered mostly by the contribution of employers (3% in 2004) and of employees (1% in 2004).

The family support benefits are covered by taxes and paid from the central budget, but practically operated by health insurance administration bodies.

The social assistance is financed from taxes and out of other state revenues. The public social assistance system, according to the law in force, is partly paid by the central budget and partly (majority) from the local governments' own budget. The central taxes are collected by the National Tax Office and local taxes are collected by certain departments of local government.

The National Tax Office and its local branches are responsible for collecting all social insurance contributions for health and pensions, and for forwarding them to the National Health Insurance Fund and to the National Pension Insurance Fund. The unemployment insurance contributions are also collected by the National Tax Office.

The benefits in the family support scheme are financed from the central budget, therefore its source is covered by taxes which are collected by the National Tax Office as well.

Conclusion

It is clear from looking at the scope of protected persons that the Hungarian social protection system contains numerous derived rights.

With respect to social security services, the principle of solidarity is manifested in a prominent manner in addition to the principle of insurance, on the basis of which certain dependent or family ties are considered positively by the lawmakers. Such is the category of the contributing family member, which

entails insurance obligations. The relative of the insured, of the partly insured or of the person concluding an agreement in order to receive benefits is entitled to health care services. Partly insured persons become eligible for certain benefits through the force of the law, against the principle of insurance.

The theory of individualisation, the foundation of individual rights is a daring thought as it would return to the basic structure of systems of provision. The scope of the protected persons could be defined along the principle of insurance, entitlement to services related to contribution payment in the insurance system, while along citizenship entitlements (residential rights) concentrating on individual citizens in the universal system. Those who are left out of the social insurance system, or those for whom the uniform universal benefit does not provide the sources sufficient for subsistence, can receive services with the consideration of their need within the system of assistance.

In my opinion the groups of partly insured persons and the provision of entitlement on universal or assistance basis should be reconsidered in the future in Hungary. However, in order to do so the financing of the system is to be examined and changed accordingly.

The transformation of insurance systems into universal structures is not necessarily a good example as one of the principal purposes of individualisation is to stimulate entry into the labour market. This can be achieved more efficiently by means of insurance than with benefits provided in a universal scheme.

Literature

Prof. Dr. CZÚCZ, OTTÓ: Szociális Jog I. (*Social law I*), Unió Kiadó, Budapest, 2001.

Prof. Dr. Czúcz, Ottó: Társadalombiztosítás a változó világban (*Social security in a changing world*), Közgazdasági és Jogi Kiadó, Budapest, 1989.

Egészségügyi, Szociális és Családügyi Minisztérium: Tájékoztató a Minisztérium szociális, és családügyi feladatainak végrehajtásáról (*Ministry of Health, Social and Family Affairs: Report on carrying out the social and family tasks of the Ministry*), Budapest, 2003.

ESZCSM Szociális Stratégiai Önálló Osztály: A szociális terület helyzetelemzéseinek munkanyaga (*Ministry of Health, Social and Family Affairs, Independent Department of Social Strategy: Evaluation of the situation in the social field*), 1994–2001. A nemzeti Fejlesztési Tervhez, Budapest, 2002.

- European Commission: Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection, Communication from the Commission, COM (2003) 261 final
- European Commission: Directorate-General for Employment and Social Affairs: Social protection in Europe, Office for Official Publications of the European Communities, Luxembourg, 2002.
- European Commission: Modernising and Improving Social Protection in the European Union, Communication from the Commission, COM (97)
- European Commission: European employment and social policy for people, Office for Official Publications of the European Communities, Luxembourg, 2000.
- FERGE, ZSUZSA: Elszabaduló egyenlőtlenségek (*Inequalities breaking loose*), Hilscher Rezső Szociálpolitikai Egyesület, Budapest, 2000.
- KERSCHEN, NICOLE: Individualising rights and maintaining solidarity, in Bulletin Luxembourgeois des Questions Sociales 1997, Vol. 4.
- KERSCHEN, NICOLE: Vers une individualisation des droits sociaux. Approche européenne et modèles nationaux, in. Droit Social No2 février 2003.
- PONGRÁCZ, TIBORNÉ – S. MOLNÁR, EDIT – DOBOSSY, IMRE: Család és munka – értékek és aggodalmak a rendszerváltozás után (*Family and work – values and worries after the change of the regime*), Kutatási Jelentések 62, KSH Népeségtudományi Kutató Intézet (NKI), Budapest, 2000.
- VÉGH, ÁGNES – GULYÁS NÉ SZABÓ, ERIKA: Foglalkoztatáspolitikánk meghatározó folyamatai és ezek hatása a nők munkaerőpiaci pozíciójára (*Decisive processes of employment policy and their effect on the women's position in the labour market*), in. Miniszterelnöki Hivatal, Kormányzati Stratégiai Elemző Központ, Demográfia, foglalkoztatás, női munkavállalás, Grafika Press, Budapest, 2003.
- Az Európai Unió szociális dimenziója (*The social dimension of the European Union*), edited by: Gyulavári, Tamás, AduPrint Kiadó, Budapest, 2000.

<http://www.magyarorszag.hu/ugyintezo/ugyleirasok/munkavallalas/munkanelkuliseg/munkanelkuliellatasok/munkanelkuliellatasok.html>
<http://europa.eu.int/scadplus/printversion/en/cha/c10916.htm>
<http://europa.eu.int/scadplus/printversion/en/cha/c10112.htm>

HAJDÚ JÓZSEF

A SZOCIÁLIS BIZTONSÁGHOZ FÜZÖDŐ JOGOK INDIVIDUALIZÁCIÓJA MAGYARORSZÁGON

(Összefoglalás)

A szociális jogok individualizációja a szociális védelmi rendszerek jogosultsági struktúrájának átalakítására szolgáló elméletet és gyakorlatot jelenti. A probléma egyszerű: mindenkinek saját jogán és nem származékos jogon kell szociális ellátásban részesülnie. A végső a cél a szociális biztonsági rendszerekben kezdetektől fogva mélyen benne gyökerező származtatott jogok megszüntetése vagy legalábbis erőteljes korlátozása. A származtatott jogok alapján, azaz más személy – hozzátartozó – jogán, ellátásra szereznek jogosultságot azok is, akik a tradicionális felfogás értelmében nem jelennek meg személyesen a munkaerőpiacon, hanem otthon végeznek háztartási munkát, vagy nevelik, gondozzák a gyermekeiket, stb. Társadalombiztosítási szempontból őket hosszú ideig a társadalom inaktív tagjainak tekintették. Ez a felfogás és gyakorlat függő helyzetet eredményez az ellátásra jogosult (biztosított) személy direkt joga és az ő jogán jogosultságot szerzett személy – túlnyomó részben nők – származtatott jogosultsága között. Ez alapvető emberi jogi problémákat is felvet. Ezzel a felfogással kapcsolatos további probléma, hogy a származtatott jogok útján szerzett jogosultság nem ösztönzi az ún. inaktív személyeket a munkába állásra.

A tanulmány célja az individualizáció fokának vizsgálata a magyar szociális biztonsági rendszer ellátásai között. Ennek keretében vizsgáljuk a magyar szociális biztonsági rendszer alanyi hatályát és az egyes ellátásokat. Ezen belül is a saját jogú és hozzátartozói nyugellátásokra, munkanélküli ellátásokra és az egészségügyi szolgáltatásokra vonatkozó szabályozást. Ezen kívül még röviden foglalkozunk a társadalombiztosítási kártya (hivatalosan: társadalombiztosítási azonosító jel) és az ellátások finanszírozásának individualizációs vonatkozásaival.