

APPROACHING SOCIAL SECURITY THROUGH THE HUMAN RIGHTS PARADIGM. POSSIBLE JURIDICAL PATTERNS OF ANALYSIS*

*Associate Professor Phd. George MĂGUREANU***
Romanian-American University, Law Faculty, Bucharest, Romania

*Phd. Candidate Maria Beatrice BERNA****
Titu Maiorescu University, Law Faculty, Phd. School of Law, Bucharest, Romania

Abstract

The present paper aims to analyse the concept of social security within the juridical paradigm of human rights, highlighting the peculiarities of this concept. The main hypothesis of our study may be synthesized in the idea according to which, the theory of human rights represents for the concept of social security, a *suis generis* environment of exposure that guarantees an extensive interpretation and application in favor of the right to social security. The cross-sectional assumptions of our study were oriented towards two main ideas: (1) reflecting the concept of social security within the theory of human rights brings into light some peculiarities that generate a comprehensive approach upon social security, overcoming the pure *techniciste* rules that were considered when conceptualizing the term; (2) the juridical models that were chosen in order to illustrate the connection between the human rights theory and the concept of social security are different by structure without disavowing some common features. From a methodological point of view, we opted for the deductive method of research (the study is organized from general ideas to peculiar analytical patterns), the hermeneutics method (the documents that were studied were not presented in a expository manner, they were rather approach in an analytical way) and the Cartesian method (our paper has questioned fundamental aspects – from legitimating the theory of human rights as an expository milieu for the concept of social security, up to the difficulty of conceptualizing the term of social security).

Keywords: the theory of human rights, social security, juridical pattern of analysis, the European Convention Of Human Rights, the Charter of Fundamental Rights of the European Union

Reflecting the concept of social security through the theory of human rights. Peculiarities

Introducing the concept of human rights within the study of social security entails a recalibration of the forces involved and of the perspectives. The theory of human rights applied to the concept of social security brings a visible change in the sense of alienation from the technical field of income and insuring economic sustenance and reaffirming human values. The last mainstream is related to re-assessing the individual by unbinding him from material values and by bringing him near to spiritual values within the

* The article has been supported by scientific research within the project entitled "**PRACTICAL SCHOOL: Innovation in Higher Education and Success on the Labour Market**", project identified as POSDRU/156/1.2/G/132920. The project is co-financed by the European Social Fund through the Sectorial Operational Programme for Human Resources Development 2007-2013. Investing in people!

** george.magureanu@gmail.com.

*** berna.beatrice@yahoo.com.

framework of social security. Thus, we witness a shift of juridical paradigm that sets the priority for the bearers of obligations to make active the individuals who are rights-holders, in order to adopt a decision regarding social security on partnership criteria. So, at the scientific intermission between human rights and social security, we find innovations concerning the manner of perceiving some fundamental social problems like poverty. Regarding this subject, the United Nations Committee responsible for economic, social and cultural rights brings forward an interesting idea according to which *the human rights approach theory of social security determines the fact that poverty is no longer conceived as an abridging of resources but as a lack of personal choice, of personal security and of the possibility to access a minimal civil, political, social or cultural standard*¹. We deem that, in the subliminal plan, the cited opinion discloses other arguments in favor of approaching the concept of social security from the perspective of the theory of human rights: (1) human rights standards represent, for the problems linked to the field of social security, minimal guarantees under which the bearers of the obligation to provide social security cannot fall; (2) as a heuristic tool, human rights point the interrelation between the aspects that are directly connected to the social problems that were analysed (the poverty issue presents the lack of financial resources as a direct dependency) and the aspects that can be developed in extenso (political, cultural or civil implications). Returning to the argument of minimal guarantees brought by applying the theory of human rights in the field of social security, some clarifications are appropriate. Nation-States – as main bearers of the obligation to provide social security in favor of individuals – are bound, by means of international legal instruments, to try to obtain a progressive realization of economic, social and cultural rights even in situations of financial difficulty. We think that, the minimal standard that is pledged by the theory of human rights in the context of ensuring social security must be subject to an extensive interpretation.

First of all, the guarantees detached from the theory of human rights neutralizes the social risk in the sense that, regardless the social losses that were suffered, the individual has the certitude of a compensation (even if it is minimal). Secondly, the minimal standard of human rights ensures the basis for consolidating and developing social protection, reflecting the starting point of the demarche. The dynamic and humanist sense of developing social security is sustained by the United Nations Committee responsible for economic, social and cultural rights² that stated, in regard to this issue, the following: *human rights do not allow that the principle of progressively achieving social security be used as an excuse for the social inconvenients that abide; on the contrary, they endow nation States with minimal obligations – with obligations that are linked to minimal guarantees in favor of economic, social and cultural rights*.

As we have already anticipated in the previous lines, the theory of human rights, applied to the field of social security brings a *pattern of rights and duties* according to which the right holders are the individuals and the duty bearers are the States. From the two mentioned categories (the category of rights and the category of duties) the first one

¹ The Comment of The United Nations Committee responsible for Economic, Social and Cultural Rights, no.12/2001, paragraph 8.

² The General Comment of The United Nations Committee responsible for Economic, Social and Cultural Rights no. 4, paragraph 10.

is extensively developed within the framework set by the human rights pattern (the extensive development is a consequence of the minimal standards guaranteed by human rights) meanwhile the category of duties has a very clear outline. The main guidelines established at Maastricht in the field of combating the violation of economic, social and cultural rights designates in a plain manner the 5 types of duties that are imposed upon nation States: (1) *the obligation to respect* – States are bound not to intervene in problems of social security that would lead to foreclose the achievement of a social right (exempli gratia, the individual's right to housing is violated by the actions of the State to dispose evictions in an arbitrary and forced manner); (2) *the obligation to protect* – implies the prevention and the combat against violations of human rights in the social field made by third parties (exempli gratia, State will verify if work standards are respected by employers who activate in the private sector); (3) *the obligation to fulfill* – entails adopting legislative and administrative measures in order to obtain a specific social right (exempli gratia, ensuring basic health care services through legal instruments); (4) *the obligation to manage* (the guarantee for a quality management oriented towards reaching a certain social objective like adopting and implementing an action plan to stop maternal mortality); (5) *the obligation of result* – whose fulfillment consists in meeting a certain standard³. The relationship between right holders and duty bearers is peculiar because the milieu of its existence (at the conjunction of the theory of human rights and the field of social security) is a special milieu. Hence, adopting and displacing the theory of human rights to the field of social security demonstrates that individuals are made active and accountable in a double sense: (1) States – as duty bearers are made active due to the very well shaped formal outline of actions that they must fulfill; (2) individuals – as right holders are made accountable in the sense that, following the ideology of human rights, they are bound to be a part of the decision-making process that directly affects them in their social prerogatives and to pretend, by special social means, social rights and freedoms. In the words of Amartya Sen, making accountable the right holders individuals within the paradigm of social security can be described as *offering, in favor of all individuals, the possibility to be free actors who, by means of adequate social opportunities may build their own destiny, perpetuating, to this end, the value of solidarity*⁴. Thus, the intervention in the sphere of social security will be obvious in two directions: in the ascending direction (from individuals to States) and in the descending direction (from States to individuals).

In other news, the transfer of the theory of human rights within the field of social security has the consequence of transferring the principles as well. The theory of human rights recognizes, in the traditional manner, 4 main categories of features that are upheld at the level of fundamental principles: *universality and non-alienable character* – criteria that incarnate the jus naturalis approach of human rights according to which all human beings rejoice fundamental human prerogatives by virtue of their humanity; *indivisibility and interdependence* – that abide by the idea according to which there is not a pre-established hierarchical order of human rights given the fact that, the fulfilment of a right conditions the fulfilment of other rights. We must admit that, in the field of social

³ Maastricht Action Guidelines in the field of violating economic, social and cultural rights, The International Committee of Jurists, 1997.

⁴ Sen Amartya, *Development as freedom*, Oxford University Press, Oxford, 1999.

security, the above evoked framework of principles is broadened through other rules like: *equality and non-discrimination*; (2) *participation*; *transparency and access to information*; (4) *accountability*⁵.

The theory of human rights underlines a clear difference between equality and non-discrimination, viewing equality as a principle and non-discrimination as a right. Applied to the sphere of social security, the two values seem synonymous and deprived of any formal differences. Thus, in order for equality and non-discrimination to work in the social sphere, it is pursued an integrative approach so that the right-holders individuals who are also beneficiaries of the social security system, would not be excluded from the social schema of protection advanced by nation State. The values of equality and non-discrimination – by excellence humanities-, can not be resumed to the idea of ensuring an inclusive social protection. The vocation of non-discrimination and equality mainly refers to not excluding the right holders who have limited possibilities to enjoy social security rights (we think of limited direct access to social security schema because of geographical or material limitations or because of the membership of beneficiaries to certain disadvantaged groups). From our point of view, non-discrimination and equality must address in the first place, this category of right holders – fact that does not determine the redundancy of applying the two values. On the contrary, in this sense, the sphere of applying non-discrimination and equality includes the specific case of affirmative actions – which are political-juridical instruments that pursue overcoming artificial inequalities that occurred along time in relation to certain categories (women, old people, people of black color etc.).

We feel that the principle of *participation* is in close connection to the values of non-discrimination and equality as it follows from them. From our point of view, participation means democratizing the access to social security schema by active involvement in the legislative process, respectively in the process of elaborating profile policies. We join the doctrinal opinion expressed by Wouter van Ginneken⁶ which brings into discussion the issue of participation by virtue of a bivalent pattern within which right-bearer individuals do not rejoice the prerogative of being a part of the social security policy-making and programme making process. As we have already stated, in the field of social security, the protection offered to the individual would be extensive, so that, participation also encompasses the individual prerogative of being co-opted in the final process of evaluating the implementation of the created programmes and of correcting deviations. In more plain terms, within the described paradigm, the individual who is the right bearer will have to fulfill a triple function – of author of social security policies, of final assessor and of beneficiary.

Finally, *transparency, the access to information and accountability* may be linked to the criterion of non-hermeticism. We will explain, in the following, our point of view. First, social security policies and programmes seem hermetic due to the formal language that is utilized and to the technical sense attached to it. Hereby, is needed a decoding that

⁵ For further details, see Sepúlveda Carmona, Magdalena, *Note of the UN Independent Expert on the question of human rights and extreme poverty*, Geneva, Commission on Social Development, 49th Session, 11 February 2011.

⁶ Wouter van Ginneken, A rights-based approach to poverty eradication in Europe, Paper presented to the 8th ESPAnet Conference, Budapest, 2-4 September 2010.

would allow, in favor of the right holder individual, both the possibility to have contact with the information (accessibility) and the possibility to understand the content. In the same manner that message encoding of information in the field of social security concerns two aspects – the content and the form-, the decoding will also address the two mentioned frameworks. The individual right bearer will be made responsible to the purpose of reclaiming and protecting his own right only in the hypothesis according to which the individual is made responsible within the proper socio-juridical context – the last being possible to obtain through the reception of the message from the State authorities.

The theory of human rights re-addresses the idea of social security because it advances innovative ways of approaching specific problems, offering the advantage of being comprehensive. It is the essence of comprehensive a multidimensional approach of social security issues so that technical and humanistic aspects become harmonized. In concrete, the theory of human rights brings in the field of social security some advantages: (1) shaping a relevant juridical framework (in this sense it is illustrative the rights-duties pattern) within which the right to social security as a human right is to be affirmed; (2) from a value point of view, the theory of human rights strives for making the individual accountable and involved because he is the beneficiary of the acts of social security in the respective process, maintaining the 5 peculiar obligations – that were distributed to States by virtue of international regulations comprized in international treaties; (3) all the principles that were detached from the theory of human rights – approached in an extensive manner and applied to the social security milieu allows the connection between making the individual responsible (see the principles of equality, non-discrimination, participation, transparency, access to information, responsibility) and the subsequent fulfillment of other rights from the sphere of social security (given the principles of indivisibility and interdependence).

The ambiguity of the meaning of the two concepts security/social protection. The resolution of the theory of human rights

In the international juridical documents there is a difficulty regarding the identification of the right to social security. The difficulty resides, in our opinion, within two distinct situations: (1) the main international documents do not clearly define (beyond any reasonable confusion) the meaning of the right to social security, limiting to drafting some substantial elements; (2) there is not a clear distinction between the concepts of *social protection* and *social security*. Returning to the first situation, the arguments we bring forward are numerous. For instance, article 23, paragraph 3 of the Universal Declaration of Human Rights mentions the right to social protection, without further elaborating the significance of the concept, being stated in simple terms that *Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*

In the same token, The International Covenant on Economic, Social and Cultural Rights mentions the right to social security and social insurance, without proceeding to explaining the two concepts: *The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.* The European legislation does not underline this problem given the fact that, in the Revised European Social

Charter, article 12 develops the right to social security, pointing out the obligations which must be undertaken by State parties in order to exercise the right to social security, without expressly defining it. The European Convention of Human Rights is silent with respect to the right to social security whilst article 34 of the Charter of Fundamental Rights of the European Union entitled *Social Security and Social Assistance*, assimilates by default the right to social security with the right to social security benefits.

We notice that, the legal difficulty regarding the conceptualization and the establishment of the content of the right to social security/social protection is doubled by a doctrinal difficulty. In doctrinaire studies⁷ was advanced the idea according to which, economic, social and cultural rights are closely linked to the commitments that nation States assume in relation with the citizens – thus, due to the fact that, in the relation rights-obligations that is submitted by the general theory of human rights, the right to social security tends to accentuate more the sphere of the obligations that fall into the duty of member States and not the rights that the individuals possess, the right to social security would sooner be a social duty that is imposed upon States and not a genuine right. We feel that, the evoked doctrinal review would be valid if we took into consideration the static perspective upon the degree of individual involvement in achieving social security. As we showed in the previous section of our paper, traditionally, the individual was perceived as a simple beneficiary or addressee of the right to social security, and the provision of social security is a duty that is placed exclusively on the account of the State. Nevertheless, if we approach the modern theory of social security, the individual is made active and responsible with regard to the process of guaranteeing social security, being transformed into a genuine right-holder of the right to social security, overcoming the condition of a simple individual that passively abides the provision of social security.

Returning to the second situation that determines the difficulty of identifying the right to social security – the lack of a strict delimitation between the notions of social security and social protection – we notice a progress brought by the International Labor Organization that makes the distinction in a formal report⁸. Thereby, we acknowledge that, the distinction between social protection and social security resides within the milieu of exposure that is chosen for highlighting the concept: social protection refers to public and private measures of action (for example, the protection of family and the protection of young people, the protection of people with disabilities) meanwhile social security is a concept that may be applied only to the public sector. Nevertheless, this distinction is not unchanging; there are situations in which the concepts social protection and social security were used in an exchangeable manner⁹.

From a personal point of view, the distinction between social security and social protection is fragile but it subsists and is obvious if we turn to the human rights theory. So, if social protection is a remedy against social risk¹⁰, the concept of social security is

⁷ Shivani Verma, *Justiciability of Economic, Social and Cultural Rights*, Relevant Case Law, 2005, International Council on Human Rights Policy, p. 9-10.

⁸ International Labor Organization, World Labour Report, Geneva.

⁹ International Labor Organization, World Social Security Report 2010/2011: Providing coverage in time of crises and beyond, 2010, p. 13-15.

¹⁰ We use the expression *social risk* in order to designate the contingencies to which the individual is daily subjected.

laid in the center of the individual – even if in this situation the individual is not looked upon from the perspective of the risk that he suffers but from the perspective of the degree of individual involvement. We deem that, the theory of human rights has upheld the above mentioned sense of social security by promoting transparency within the decision-making process and formulating mechanisms of involving individuals in the decision-making process.

Overtaking the difficulties related to the conceptualization of the right to social security. New challenges regarding the juridical patterns of analysis

The ideas we expressed in the previous sections of our paper connote the right to social security that has its starting point within the framework of nation State. As we have noticed, the international juridical instruments in the field of social security (especially the International Covenant on Economic, Social and Cultural Rights) establish obligations upon State parties – obligations that have the purpose to achieve in concrete the right to social security. It is not less true that, at present, social security has progressively become a problem that is connected to the European and international juridical framework, the role of nation States being visible when manifesting freedom of action and the margin of assessment concerning the policies of social security that are adopted at the national level. It is a given that, the freedom of action and the margin of assessment cannot be taken away from the sphere of nation States because there still exists social realities that claim social security which have the tendency to be customize based on the criterion of location/the circumstances of manifestation.

At the European level, we observe an interesting situation that will determine us, in the following, to study the European juridical patterns of approaching social security. From the begining, we must state the fact that, we will not analyse the specialized European documents in the field of social security because, in this particular situation, our demarche will be rather descriptive than analytic. Additionally, given the fact that, the subject matter of our paper consists in arguing in favor of an intrinsic connection between the right to social security and the theory of human rights, we will refer, in the subsequent section, to the two European documents that are relevant to the purspose of human rights protection – the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union.

The choice of the two juridical patterns of analysis that approach the right to social security resides within a complex argument: (1) the two European legal instruments advance an interesting approach of the studied issue because, on one hand, they represent real juridical bechmarks in the field of human rights protection and, on the other hand, the two legal tools approach the issue of social security in subliminal; (2) the European Convention of Human Rights offers an unprecedented juridical pattern in analysing the right to social security through the lens of human rights because neither the Convention nor its additional protocols mention in *expresis verbis* the right to social security, nevertheless, the case-law shows that the right to social security is included within the Convention scope of application; (3) The Charter of Fundamental Rights of the European Union expressly mentions social security in article 34 but, in this situation, the surprise appears as a consequence to the strict correlation (from our point of view) of social security with the possibility to reach social benefits and social services, the individual

being presented once again in a passive manner, as a beneficiary of social security services.

Returning to the first juridical pattern of analysis that we advanced in order to demonstrate the cohesion between the theory of human rights (*lato sensu*) and the peculiar problem of the right to social security, some comments are needed. First, the silence of the European Convention and of its additional protocols regarding the right to social security was established on the traditional pathway. If we refer to the segregation made in human rights doctrinal studies according to which there are three generations of rights, we observe that, traditionally, the European Convention of Human Rights was identified as a legal instrument that enshrines within its scope of application civil and political rights, respectively, a category of negative rights that impose upon States the duty of abstention. Despite this limitation, doctrinal studies¹¹ have upheld the theory of *the living instrument*¹² by virtue of which, the Convention may encompass within its sphere of application all those situations that follow from economic, social or cultural prerogatives.

The juridical pattern of protecting the right to social security that is guaranteed by the European Convention of Human Rights is peculiar not only because it is developed by means of jurisprudence but mostly because of *the way* in which it is developed in case-law. It is clear that the applicants cannot invoke before the Court social rights that are prescribed by the Convention because this type of rights is not comprised within the Convention. In this case, the jurisprudential construction of protecting the right to social security was formed upon the claims linked to social aspects but the issue that was brought to the attention of the Court were of procedural nature like the guarantee of the right to a fair trial. The opinion of the European Court of Human Rights regarding the issue of placing under its jurisdiction social security rights was expressed, as expected, in an opened manner, that leaves room for interpretations: *The Convention aims to guarantee practical and effective rights and not rights that are theoretical and illusory*¹³. We feel that, by this expression, the Court admits that there is a socio-economic dimension that is directly connected to civil and political rights – a fact that is equivalent to an extensive and constructive interpretation of the particular category of human rights that is enshrined in the scope of application of the European Convention.

In order to establish if the claims concerning social security may be invoked in direct connection with the right to a fair trial, the European Court stated that, first of all we have to solve the problem of the civil or social nature of the respective rights of social security. More plain, the issue that represents the starting point in the process of evaluating the admissibility regarding the invocation of the violation brought to the right to social security (as a right of civil nature) in a cause whose object are rights of social security consists in the possibility to include the respective claims of social security

¹¹ For further details see Ingrid Leijten, *Social Security As A Human Rights Issue In Europe – Ramaer and Van Wiligen and the Development of Property Protection and Non-Discrimination Under the ECHR*, Zaoerv Journal, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2013, p. 180.

¹² According to this theory, any legal document is subject to amendments concerning the content and the interpretation due to the transformations of those circumstances that initially determined the adoption of the legal instrument in question.

¹³ For further details see Belgian Linguistic Case, Series A, no. 6, 23 July 1968.

within the scope of application of article 6, paragraph 1 of the European Convention based on the argument that this right has a civil nature. Bearing in mind this primordial question, in the case *König versus the Federal Republic of Germany*¹⁴, the European Court of Human Rights showed that, the civil nature of a certain right cannot be decided following a simple domestic assessment. In other words, in the process of establishing the civil nature of a right, we cannot verify only the domestic legislation of the respondent State; the sense and the nature of the civil right represent autonomous concepts which must be appraised considering the *suis generis* framework provided by the European Court.

The *suis generis* legal outline offered by the Convention is the element that determined a lack of cohesion concerning the assessment criteria of the civil character that the right to social security benefits may display. The interpretations originated with the Convention's supervisor bodies regarding the criteria of assessing the civil character of the rights to social security benefits were different so that the Court's position in relation to this issue couldn't be consistent over time. In the onset of the European Court of Human Rights jurisprudence¹⁵, the civil character of the claims connected to social security rights (the right to medical insurance in case of illness and the widow's right to pension) was verified by applying the public/private distinction to the aspects that were highlighted by the rights in question. The Commission's decision was in favor of the private character of the rights that were invoked, by virtue of two arguments: (1) the rights of the plaintiffs have a strong economic and private character; (2) there is an implicit affinity between social security schemes and the private sector of insurance; (3) there is a direct link between the schemes of social security and the individual work contract. Because the civil character of the rights to social security benefits finally prevailed it is obvious that, article 6, paragraph 1 related to the right to a fair trial may be applied.

Going back to the *suis generis* character of the juridical logic adopted by the European Convention of Human Rights, it was stated a favourable climate for affirming a separate review¹⁶. According to the former, the rights whose object consist on social security benefits do not have a juridical nature because they appertain to a specific jurisdiction of administrative authorities. Consequently, these rights enjoy a *suis generis* regime which, despite presenting the peculiarities of civil law – peculiarities that are reiterated in the Commission's decision – encompass also features that are specific for public law if we relate to: (1) the binding character of social performances; (2) the public character of rules that regulate social performances; (3) the duty of States/public authorities to provide social security services. We deem that, the arguments contained within the separate review are lawful nevertheless, they are not comprehensive enough. Noticing the fact that the right to social security benefits comprises both public and private aspects is not a well-founded reason for turning the scale in favor of a special, administrative regime that could be applicable in the subject-matter; this even more so as

¹⁴ The case *König v. the Federal Republic of Germany*, 28 June 1978, Application No. 6232/73.

¹⁵ For further details see cases *Feldbrugge v. The Netherlands* and *Deumeland v. the Federal Republic of Germany*, 1986.

¹⁶ Sustained by judges Ryssdal, Bindschedler-Robert, Lagergren, Matscher, Sir Vincent Evans, Bernhardt and Gersing.

the nature of the personal and economic nature of the content of these benefits turn the scale in favor of the private and civil character of social security benefits.

The case *Zednik against Czech Republic*¹⁷ highlights the admission of the claim of the right to a fair trial in the situation in which the principal object of the litigation consisted in social security benefits. In the previously mentioned case, the plaintiff was deprived of social security benefits that were due for disability reasons by the Czech administrative authorities. The decision of decreasing social security benefits was upheld by the Courts of appeal, thus, the cause was brought in front of the Constitutional Court. The Constitutional Court requested to the plaintiff to complete some administrative forms in order to clear his claims and subsequently rejected the claim on the grounds of tardivity. The plaintiff addressed the European Court of Human Rights invoking the violation of the right to a fair trial stated in article 6, concerning the legal dimension that refers to the right to have access to an independent and impartial tribunal. The European Court deemed that the right to a fair trial is not absolute especially when it is connected to a social security case – that stresses the power of assessment of States. All the same, it was underlined the idea that the limitations applied on the grounds of nation States' margin of appreciation cannot breach the substance of the right to a fair trial.

Reminding the pattern of conceptualizing the right to social security through the theory of human rights advanced by the Charter of Fundamental Rights of the European Union, as we have already noticed in the lines above, the situation is reversed than the situation advanced by the pattern of the European Convention in the sense that social security is mentioned in expressis in the content of the Charter, in article 34. There could be easily anticipated differences between the two European patterns if we began with the fact that, the sphere of protection that is ensured by the Charter is more ample as it reunites civil rights and also economic, social and cultural rights. Under Title IV – Solidarity – is contained article 34 which presents in three paragraphs the concepts of social security and welfare: *The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices. (2) Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices. (3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.*

In the logic of the Charter of the European Union, social security is linked to acts of social assistance – fact that determines a comprehensive understanding of the term, reminding of the position of the European Court of Human Rights that attached, by case law, an extensive sense to the notion of social security (including all social benefits – from performances in the field of health care to performances in the field of maternity care).

¹⁷ The case *Zednik v. the Czech Republic*, judgment of 28 June 2005.

Another common point for the two European patterns result from the role that these patterns assign to nation States. Article 34 mentions as standards used in applying social security, respecting the rules established by the law of the European Union and by the national legislations and practices; in the same sense, the jurisprudence of the European Court of Human Rights acknowledges the role of nation States by affirming the margin of appreciation doctrine by virtue of which, nation States may take measures regarding the limitation of the right to social security as long as this kind of restriction is according to the proportionality principle and has objective justifications.

Conclusions

First, we have to mention that, inserting social security in the construction determined by the theory of human rights represented, above all, a personal and pensive demarche. The theory of human rights was reflected, in our paper, by virtue of the patterns provided by the European Convention of Human Rights and by the Charter of Fundamental Rights of the European Union. The choice of the two legal instruments is not random because it stands for all the difficulties encountered in arguing a pure humanist nature of the concept of social security. The option for researching specialized documents in the field of social security as the European Social Charter or the International Covenant on Economic, Social and Cultural Rights would have impressed ambiguity within our scientific demarche – that of demonstrating the possibility of a peculiar approach of the social security concept which is based upon the human rights theory. The above mentioned documents were certainly included in our analysis but their place is marginal because of the already exposed reason. In our research prevailed the idea of overcoming the technical vision (that approached social security in terms of income and budget allocation for the purpose of granting support in cases of social risk) and of advancing an approach in which the individual-beneficiary of social security is active and responsible, overtaking the role of passive beneficiary of all actions of social security.

Bibliography:

Legislation

1. The Charter of Fundamental Rights of the European Union, proclaimed at Nice, acquiring the equal juridical force of Treaties by means of the Lisbon Treaty.
2. The Revised European Social Charter adopted at Strasbourg on 3 May 1996.
3. The European Convention of Human Rights adopted at Rome on 4 November 1950 and entered into force in 1953.
4. The Universal Declaration of Human Rights adopted and proclaimed by United Nations General Assembly through Resolution no. 217 A (III) of 10 December 1948.
5. The International Covenant on Economic, Social and Cultural Rights adopted and opened for signature by the United Nations General Assembly on 16 December 1976, for all dispositions except for those from article 41; on 28 March the exception was lifted.

Studies and reports

6. The Comment of The United Nations Committee responsible for Economic, Social and Cultural Rights, no.12/2001, paragraph 8.
7. The General Comment of The United Nations Committee responsible for Economic, Social and Cultural Rights no. 4, paragraph 10.
8. International Labour Organization, World Labour Report, Geneva.
9. International Labour Organization, World Social Security Report 2010/2011: Providing coverage in time of crises and beyond, 2010.
10. Maastricht Action Guidelines in the field of violating economic, social and cultural rights, The International Committee of Jurists, 1997.

Jurisprudence

11. The Belgian Linguistic Case, Series A, no. 6, 23 July 1968.
12. The case König v. the Federal Republic of Germany, 28 June 1978, Application No. 6232/73.
13. The case Zednik v. the Czech Republic, judgment of 28 June 2005.
14. The cases Feldbrugge v. The Netherlands and Deumeland v. the Federal Republic of Germany, 1986.

Specialized literature

15. Ingrid Leijten, Social Security As A Human Rights Issue In Europe – Ramaer and Van Wiligen and the Development of Property Protection and Non-Discrimination Under the ECHR, Zaoerv Journal, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2013.
16. Sen Amartya, Development as freedom, Oxford University Press, Oxford, 1999.
17. Sepúlveda Carmona, Magdalena, Note of the UN Independent Expert on the question of human rights and extreme poverty, Geneva, Commission on Social Development, 49th Session, 11 February 2011.
18. Shivani Verma, Justiciability of Economic, Social and Cultural Rights. Relevant Case Law, 2005, International Council on Human Rights Policy.
19. Wouter van Ginneken, A rights-based approach to poverty eradication in Europe, Paper presented to the 8th ESPAnet Conference, Budapest, 2-4 September 2010.