Introduction to social security law

Basic concepts and principles for the different branches
The notion of social security (1)

Definition of social security:

“body of arrangements shaping the solidarity with people facing (the threat of) a lack of earnings (i.e. income from paid labour) or particular costs”

The notion of social security (2)

- **Social insurance**
  - Publicly regulated
  - Publicly financed (contributions and or taxes)
  - Solidarity elements
    - Mandatory affiliation, income solidarity, intergenerational solidarity

- **Social assistance**
  - Financed from taxes
  - Granted to those in need
  - Subject to means test
  - Sometimes discretionary
The notion of social security (3)

- **Benefits in kind / cash benefits:**
  - A cash benefit is a benefit that is paid in cash and does not require evidence of actual expenditure by the recipients.
  - Benefits in kind are benefits granted in the form of goods and services. They may be provided in the form of reimbursement or directly
    - Reimbursements are payments that refund the recipients in whole or in part for certified expenditure on specified goods and services.
    - Directly provided benefits are goods and services granted without any pre-financing by the beneficiary.

- **Income replacement benefits / cost covering benefits**
  - Income replacement benefits: e.g. long-term allowances (pensions), unemployment benefit, sickness cash benefit
  - Cost covering benefits: e.g. sickness benefits in kind, family benefits

- **Links with other parts of law** (labour, tax law)
Classification of welfare states (1)

- **Bismarck vs. Beveridge**
  - **Bismarck**
    - Social insurance, financed by employers’ and employees’ contributions
    - Covers working population (employees, via derived rights, family members)
    - Earnings-related contributions/benefits (income maintenance)
  - **Beveridge**
    - Tax-financed
    - Universal coverage: whole population (in need)
    - Flat-rate benefits (poverty prevention)
Esping-Andersen’s typology according to the degree of decommodification (= the degree to which individuals or families can uphold a socially acceptable standard of living independently of market participation)

- **the liberal welfare state**: low degree of decommodification, the state playing a subsidiary role and with emphasis on means-tested social assistance and low levels of benefits

- **the conservative welfare state**: medium degree of decommodation, social rights being tied to class and status and with a tendency towards social segmentation

- **the social-democratic welfare state**: high degree of decommodification, universality and generous benefits going hand in hand
Classification of welfare states (3)

- Each system is unique; no system completely fits theoretical classification
- Degree of convergence
- Nevertheless, tendencies and clusters notable

"Expenditure on social protection as % of GDP in EU in 2005 (source: Eurostat)"
### Social protection receipts by type (as % of total receipts)

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(1) Employees, self-employed, pensioners and other persons.
: Data not available.
* Data for Portugal refers to 2004

Source: Eurostat-ESSPROS
Figure 4: Social protection benefits in cash and in kind, 2005

* Data for Portugal refers to 2004

(1) Disability pension, early retirement benefit due to reduced capacity to work, old-age pension, anticipated old-age pension, partial pension, survivors' pension and early retirement benefit for labour market reasons.
(2) For example: paid sick leave, death grant, family or child allowance, unemployment benefit, income support, etc.
(3) Direct provision and reimbursement of in-patient and out-patient health care (including pharmaceutical products).
(4) Social services with accommodation, assistance with carrying out daily tasks, rehabilitation, child day care, vocational training, placement services and job-search assistance, etc.

Source: Eurostat-ESSPROS

Figure 5: Means tested social benefits, 2005 (as % of all social benefits)

* Data for Portugal refers to 2004

Source: Eurostat-ESSPROS
Financing of social security

- Contributions
  - by employees and/or employers (*by self-employed*)
  - percentage of wage (*professional real, anticipated, declared income*)
    - thresholds possible
  - set per branch or for the whole system
  - contributions from social security benefits

- General taxation

- Other sources
  - e.g. earmarked taxes, user charges
Scope ratione personae

- **Universal insurance**
  - All residents
  - Actual residence or past periods of residence

- **Professional insurance**
  - Whole working population, or
  - Different schemes for employees, self-employed and civil servants or for sub-groups of these (e.g. self-employed farmers, persons engaged in crafts and commerce, liberal professions)
  - Specific regimes for specific professions/branches (e.g. miners, mariners, artists…)
  - Distinction between own and derived rights (i.e. rights derived through direct social insurance of another person, upon whom one is dependent)

- **Social assistance**: all residents or all those staying in the territory
Social security risks

- 9 traditional risks of ILO Convention N° 102: medical care, sickness, unemployment, old-age, accident at work, family burden, maternity, invalidity, survival

- Impact of societal evolutions
  - Survival
  - Dependency
  - Pre-retirement
Cash benefits

■ Fixed amount (flat-rate)
  □ Mainly in universal schemes
  □ Reference to national minimum or average wage or minimum subsistence level

■ Percentage of earnings
  □ Last earnings or average earnings during a certain reference period
  □ Only earnings up to a certain maximum (ceiling)
  □ Minimum benefits
Cash benefits (cont.)

- Protection against depreciation (adjustment)
  - Indexation / growth adaptation
- Impact of family composition: single person vs. household (with dependants)
- Means-testing
  - Grant of benefits conditional on the beneficiary's income and/or wealth falling below a specified level
  - Common in social assistance, sometimes also in social insurance
  - Resources taken into account vary from professional income over all income to assets
  - Exemption of some resources
  - Domestic unit for the calculation of resources
Accumulation of benefits
- Different risks occur simultaneously, or insurance under different schemes for the same risk
- Anti-cumulation rules (choice, only the highest, accumulation up to a certain limit)

Duration of benefits
- For limited or unlimited period of time (e.g. unemployment or old-age respectively)
- Any benefit ceases when risks ends or conditions are no longer fulfilled
- Limited-period benefits expire
The different branches: health care (1)

- **Own classification of health care systems**
  - National health services
  - Social insurance systems
    - Benefits in kind systems
    - Reimbursement systems

- **Broad personal scope**

- **Public provision or provision (tariffs, quality standards etc.)** regulated by law/through collective agreements

- **Circle of providers**
  - Only public / contracted or also private, as long as licensed/approved
  - Choice of doctor / hospital
The different branches: health care (2)

- Third-party-payment or reimbursement
- Different types of user charges
- Types of care covered
  - general practitioner care
  - specialist care (often after referral of GP/gatekeeper)
  - hospital care
  - dental care
  - pharmaceuticals and medical devices
- Benefits package
  - explicit (positive or negative lists) or implicit (doctor)
The different branches: incapacity for work (1)

- Income replacement in case of loss of income due to sickness or accident
- Risk covers:
  - sickness benefits
  - invalidity benefits (= long-term sickness benefits)
  - benefits for accidents at work and occupational diseases, and maternity benefits
- Not mere health damage; loss of earnings capacity compared to that of a reference person
- Determination of degree of incapacity
The different branches: incapacity for work (2)

- Determination of degree of incapacity/invalidity
- Sickness cash benefit
  - In case of incapacity for less than a certain time and/or when it is expected that capacity for work will be regained
    - Limited duration
  - Waiting period / continuation of payment by employer
  - Amount linked to last wage
- Invalidity benefit
  - After an initial period of incapacity of work or when incapacity is expected to be permanent
  - Amount linked to degree of incapacity; previous earnings; length of insurance period
The different branches: incapacity for work (3)

- Accumulation with earnings from work
- Review of degree of incapacity/invalidity
- Activating measures
- Specific (more favourable) schemes according to origin of incapacity
  - accidents at work
    - definition (travel between home and work)
  - occupational diseases
    - open definition / list / mixed
  - maternity
The “risk” of old age

Income replacement, not cost covering

Met through social insurance and social assistance

Pillar system
- 1st pillar: mandatory public insurance
- 2nd pillar: mandatory or voluntary insurance set up by collective agreement
- 3rd pillar: individual and private insurance

Flat-rate pension or pension linked to previous earnings

Financing: pay-as-you-go or funded
The different branches: old-age (2)

- **Pensionable age**
  - Generally between 58 and 67
  - Difference men and women
  - Possibility of early and deferred pension

- **Duration of affiliation (residence, insurance, work)**
  - Determines entitlement to benefits (qualifying period) and amount of benefits
  - Non-contributory or fictitious periods taken into account (e.g. military service, child-raising)
  - Full pension if entire career (30-45 years); if less, proportionally reduced
  - Special arrangements for specific categories of persons
The different branches: old-age (3)

- Impact of family composition
- Accumulation with earnings from work and partial retirement
- Determination of pension amount
  - Fixed: reference to minimum wage, to average wage, cost-of-living
  - Linked to previous earnings
    - Last wage; average wage during a reference period; or during the whole career
  - Minimum and maximum pension
The different branches: unemployment (1)

- Insurance and assistance
- Mostly only employees
- Involuntary/non-self-imposed unemployment
- Availability to work
  - registry with the employment services
  - active search for work
  - accept “suitable” job
  - participate in active employment measures
- Partial unemployment
- Ability to work
- Qualifying period / waiting period
The different branches: unemployment (2)

- **Duration of benefit**
  - Limited, linked to insurance record

- **Amount of benefit**
  - Flat-rate or linked to earnings
  - Decreases as unemployment lasts longer

- **Pre-retirement / “bridging” pensions**
The different branches: family burden (1)

- The “risk” of family burden
  - Cost covering (but often without reference to real cost)
- Own right of child or right of person maintaining the child
  - entitling person (child), entitled person (working parent), beneficiary (parent staying at home)
- Often universal insurance
Types of family benefits

- One-off benefits: birth and adoption grants
- Child benefit
  - amount typically depends on age, number, ranking of the children
  - granted until a certain age (18, longer in case of study/disability)
  - supplements in case of disabled children, children of pensioners/incapacitated/unemployed persons
- Child-raising allowance (parental benefits)
- Childcare allowances
- Other
The different branches: social assistance

- Need as a social risk
- Types of social assistance
  - General minimum subsistence benefit
  - Specific minima (old-age, disability, unemployment)
- Beneficiary in situation of need
  - Means test
  - Exhaustion of other claims
  - Available for work
- Benefits
  - Issue of “non-take up”
  - In kind or in cash, periodic or occasional
  - Recovery