

INTRODUCTION TO THE SOCIAL SECURITY SYSTEM IN BOSNIA AND HERZEGOVINA

Concept and sources of the social security law – judicial protection

In accordance with the Dayton Peace Agreement (Annex 4 - Constitution) Bosnia and Herzegovina (BiH) is composed of two entities, the Federation of BiH and the Republic of Srpska; apart from these two entities there is as well the Brcko District of BiH as an independent administrative unit within Bosnia and Herzegovina. The Federation of BiH is composed of ten cantons, each of them with own administration. As result of such complexity, the BiH public administration is established at different governmental levels i.e. canton, entities and state level.

According to the Constitution rights and freedoms defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols will be direct applicable and have priority over all other laws.

Social security systems in Bosnia and Herzegovina include: social insurance, social assistance, family and children protection, and war veteran's protection. Within the social insurance scheme there are: pension and disability insurance, health insurance and health protection, and unemployment insurance.

Social security systems in Bosnia and Herzegovina are fragmented and decentralized due to the specific constitutional framework of the country. State level competencies in the field of social policy and social protection are rather limited (coordination role and international cooperation) in comparison with the Entities. In the Republic of Srpska (RS), the main competency in the field of social policy is at the level of the entity, while in the Federation of Bosnia and Herzegovina (FBiH), the situation is more complex due to the shared competency for social policy between the Federation of BiH and the cantons.

The social security system in Bosnia and Herzegovina is financed from contributions, budget and other sources. Social insurance is covered from the contributions, while social assistance is covered from the budget. The Law on Distribution of Public Revenues and Financing of the Federation of BiH defines the distribution of public revenues between the Federation of BiH and the cantons. A significant part of the revenues is ceded to the cantons which determine the type and the level of revenues they give to municipalities. Social protection is financed in the same way.

The compulsory social insurance system is primordially financed through the contributions of employers and employees and ensures income replacement benefits which are related to the fulfilled insurance period. Pension and disability insurance funds are covered by insured people, employers and the budget of Republic of Srpska and cantonal budgets in Federation of BiH. The contributions are paid in the same percent regardless of the amount of the incomes. In the Brcko District of BiH both Entity laws apply depending on the location of the contribution payment. Although professional in nature, the health care insurance covers the entire population residing in the country and guarantees equal access to health care regardless of employment and legal status of the citizens.

Social protection schemes are defined and focused on the prevention and coverage of the basic social needs. These schemes are universal in the sense that they cover all citizens and persons residing in the country.

The family benefit (child protection) schemes are separately organised. They provide families with cash benefits and services. Although universal in their scope, they mainly target working families with a low income (below minimum subsistence) and families whose members are unemployed and have no income. Means testing is used for that purpose. Special benefits are provided for children with special needs.

Bosnia and Herzegovina, according to the Constitution, does not have explicit competency for social policy, rather such competency was given to the Entities. The right on social protection as a basic human right is guaranteed by the Constitution of the Federation of BiH. According to the Federation of BiH Constitution (III, Article 2) both the Federation Government and the cantons are responsible for the implementation of social policy and provision of social protection services (III Article 4 (j)). In accordance with the Constitution of the Republic of Srpska (Article 61.), the Republic guarantees the minimum social security of citizens and ensures the functioning of public services, in accordance with the law. Funding of public services is done through funds and budgets, in accordance with the law.

The Ministry of Civil Affairs of Bosnia and Herzegovina at the state level was established in 2003. It has a competence for carrying out tasks and discharging duties which are within the competence of BiH and relate to defining basic principles of coordination of activity plans of the Entity authorities and defining a strategy at the international level, among other things, in the field of labour, employment, health, social protection and pensions.

At the state level BiH Agency for Labour and Employment is responsible to carry out the international representation and cooperation with international organizations and to execute the international obligations in the field of labour and employment. It coordinates its activities with the Entity authorities and the Entity employment institutes in relation to employment for projects which are of particular interest for Bosnia and Herzegovina and oversees the employment of Bosnian citizens abroad.

Relevant institutions in the field of social security in the Federation of BiH are the Ministry of Labour and Social Policy, the Ministry of Displaced Persons and Refugees, the Ministry for Issues of the Veterans and Disabled Veterans of the Defensive - Liberation War and the Ministry of Health. Cantonal ministries, i.e. administrations, adopt regulations on additional rights, and in the second instance, decide upon individual appeals filed against the first instance decisions.

In the Republic of Srpska, there are three Ministries responsible for social security issues – the Ministry of Health and Social Welfare, the *Ministry of Labour* and Veteran Protection, the Ministry of Refugees and Displaced Persons and the Public Fund for Child Protection.

The Department of Health and Other Services in the Government of Brcko District was established by the Health Insurance Fund of Brcko District.

In accordance with the Constitution of BiH, the field of employment is at the Entity level, while the Ministry of Civil Affairs of BiH has a coordinating role in the mentioned fields. Furthermore, employment institutes have been established in the Federation of BiH and in the Republic of Srpska, as well as in the Brcko District of BiH.

Individual access to social rights is guaranteed by a three instance process. The third instance is restricted to the legality of the individual acts of state administration. Exercising the rights to the benefits and services within the field of social security are regulated through an administrative procedure in two instances. Against the final decision rendered in this administrative procedure, a judicial review is available through the initiation of an administrative dispute before the competent cantonal court in the Federation of BiH and district court in the Republic of Srpska. An appeal may be filed with the Constitutional Court

of BiH against the decision in this judicial procedure, if such decision violates any of the rights stipulated in the BiH Constitution.

The rights related to the pension and disability insurance are different because they are acquired depending on the period and the amount of investment in the funds for pension and disability insurance. The procedures to exercise the rights and obligations related to pension and disability insurance are laid down in the laws on pension and disability insurance and the Law on Administrative Procedure. The procedure to exercise the rights is implemented through the Pension and Disability Insurance Funds, both in the Federation of BiH and in the Republic of Srpska. It is provided that the procedure of exercising the right to pension and disability insurance funds is carried out in two instances. In a further process against the second instance decision, an individual may launch an administrative dispute before the competent cantonal court within 30 days from the date of the decision (FBiH) or district court (RS), according to the seat of authority which made the first-instance decision.

The procedures to exercise the rights and obligations related to health insurance are laid down in the Health Insurance Law and Law on Administrative Procedure. The procedure is launched upon request of the insured person or a member of his family. An appeal may be filed before the competent court against the decision of responsible authority in compulsory health insurance.

Regarding unemployment benefits, for which decisions are made by the Employment Institute, a person can file an appeal after the first instance decision to the competent institution for work and employment (to the cantonal institute for labour and employment in the Federation of BiH). After that the appeal may be filed before the competent court.

In the Federation of BiH, the right to compensation in case of unemployment is exercised in the cantonal employment services in accordance with the residence of the unemployed person, and in case of an appeal, the decision is taken by the Employment Institute as a second instance authority. An administrative dispute may be filed against the decision of the Institute.

