

INTRODUCTION TO THE SOCIAL SECURITY SYSTEM OF MONTENEGRO

The Montenegrin Constitution proclaims Montenegro as a state of social justice (Article 1) and promotes, among all human rights, the right to social insurance (Article 67), regardless of any particularity or personal feature. The Constitution recognizes for everyone the right to work, to free choice of occupation and employment, to fair and human working conditions and to protection during unemployment (Article 62). The Constitution also stipulates the obligation of the state to provide material security to the person that is unable to work and has no funds to support him/herself (Article 67). Persons with disabilities are guaranteed special protection under the Constitution (Article 68).

The Constitution guarantees everyone the right to health care, but it leaves closer regulation of its enforcement to the law. For certain categories of persons the Constitution stipulates the right to health protection financed by the public revenues, unless they are entitled to that right on other grounds. These are in particular children, pregnant women, elderly persons and persons with disabilities (Article 69). The Constitution includes the guarantee of special protection of mother and child (Article 73) and stipulates that the child enjoys the rights and freedoms in relation to his/her age and maturity. The child is guaranteed as well special protection from mental, physical, economic and from any other exploitation or abuse (Article 74).

The system of social security in Montenegro is mostly insurance based, with the exception of social protection (assistance) and child welfare schemes which are assistance based and means tested.

There are three main schemes based on insurance:

Pension insurance covers the risks of old age, invalidity and death, including employment injury and occupational disease (long-term invalidity and survivors' benefits). This scheme covers functioning of the first pillar or PAYG system (the system of intergenerational solidarity) and the third pillar or voluntary pension insurance based on individual capitalized savings. Pension benefits from the first pillar are financed by general contributions of employees, self-employed persons and farmers (exception: additional employer's contribution for employees working on arduous and unhealthy jobs i.e. jobs where after reaching certain age they cannot perform their professional activity successfully).

Health insurance covers the risk of temporary incapacity for work due to sickness or maternity and health care (it covers also short-term benefits for employment injury and occupational disease). The scheme comprises basic health insurance, which is financed by the general contributions of employers and self-employed persons and voluntary health insurance.

Unemployment insurance represents a provision of funds for exercising the rights arising from unemployment. There is a special contribution that the employer pays in to the unemployment insurance scheme for professional rehabilitation and employment of persons with disabilities.

The three mentioned schemes are governed by the following principles: they are general, public and compulsory schemes with coverage based upon the insurance principle. They are

based upon solidarity of members (except for the third pillar pension funded insurance). There are no special mandatory occupational schemes but some special categories of persons are covered by the general scheme under more favorable conditions and with higher benefits (e.g., mine workers in the pension insurance scheme).

Finally it should be mentioned that Montenegro does not have a special employment injury and occupational disease scheme in place. However special entitlements are regulated under the general programs for pension and disability insurance and under the general health insurance and medical care scheme. The main characteristics of employment injury benefits (short-term from health insurance and long-term from pension insurance) are that they are granted under more favorable conditions and in higher amounts than the rest of benefits. There is no special contribution which is set aside for financing of this scheme.

Apart from social insurances, there are two further schemes which can be identified in the field of social protection:

Basic rights provided under social assistance protection comprising family allowance, personal disability allowance, care and assistance of another person, placement in an institution, placement in another family, assistance for personal development and education of children and youth with special needs, health care, funeral costs and lump-sum cash allowance. Activities are carried out by public institutions: Centers for social work and Institutions for social and child welfare. Public institutions and allowances provided under the Law on Social and Child Welfare of Montenegro are financed from the state budget.

Basic rights under child welfare comprising accessories for the newborn, child birth allowance, wage compensation for part-time work, rest and recreation of children. Rights arising from child welfare are provided to children who are citizens of Montenegro and who have residence in Montenegro. The rights are financed from the state budget.

As to the administrative organization, it can be mentioned that the overall social security system is institutionally organized and implemented at the national level by competent authorities and institutions. In accordance with each of the separate laws, the representatives of workers and employers are actively included in the work of Management Boards of particular institutions, such as the Pension and Disability Insurance Fund, the Health Insurance Fund and the Employment Office.

Regarding judicial protection, the first instance decision of the Pension and Disability Insurance is subject to review conducted by the public administration authority competent for pension and disability insurance matters (the Ministry of Labour and Social Welfare). An appeal may be filed against the first instance decision, also, to the public administration authority competent for pension and disability insurance matters. Administrative disputes may be instituted with the competent court against the decision taken upon complaint, or in conducting review on the rights arising from pension and disability insurance.

A similar situation is found in the rules governing judicial review of the decisions of the Employment Office of Montenegro. Organizational units of the Employment Office are first instance authorities, and the central unit is the second instance authority (second instance proceedings). The Court protection against second instance decision of the Employment Office is based on the possibility of filing an appeal with the Administrative Court of Montenegro, i.e. instituting an administrative dispute.

Decisions upon complaints to the decisions of the Health Insurance Fund and decisions issued by the Ministry of Health in the first instance may be disputed by filing a complaint with the Administrative Court of Montenegro. This guarantees the lawfulness of the work of the first and second instance authority.

