



University
of Basel

Faculty of Law



International Society for Labour and Social Security Law

Prof. Masahiko Iwamura, University of Tokyo
Prof. Dr. Kurt Pärli, University of Basel

Final Report

Research Group: «New Challenges of Social Security»

Prof. Dr. iur. Kurt Paerli, Faculty of Law, University of Basel, Switzerland (Chair)

Prof. em. Masahiko Iwamura, University of Tokyo, Japan (Chair)

Thanks to the Members of the Research Group:

Sara Bagari, MLaw, University of Ljubljana, Slovenia
Prof. Lucas Bento De Carvalho, University of Montpellier, France
Dr. Audrius Bitinas, University of Vilnius, Lithuania
Dr. Quentin Detienne, University of Liège, Belgium
Dr. José Luis Dodera Cabrera, Universidad del Trabajo del Uruguay &
Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Prof. Yves Jorens, University of Ghent, Belgium
Prof. Bok-gi Kim, Law School of Seoul National University, South Korea
Dr. Viviana López Dourado, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Dr. Adriana López López, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Prof. Elena Machulskaya, Moscow State Lomonosov University, Russia
Ass. Prof. Luka Mišič, PhD, University of Ljubljana, Slovenia
Prof. Dr. rer. publ. Lorena Ossio, Universidad Católica Boliviana - MPISOC
Max Planck Institute for Social Law and Social Policy, Muenchen, Germany
Ass. Prof. Vida Petrylaitė, University of Vilnius, Lithuania
Dr. Fabián Pita, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Ass. Prof. Álvaro Rodríguez Azcúe, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Dr. Jorge Rosenbaum Rimolo, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Dr. Gabriel Salsamendi, Facultad de Derecho de la Universidad de la República, Montevideo, Uruguay
Dr. Sophie Selusi, University of Montpellier, France
Prof. Dr. Grega Strban, University of Ljubljana, Slovenia
Prof. Marcelo Leonardo Tavares, State University of Rio de Janeiro, Brasil

In collaboration with:

Bettina Fischer, MLaw, Faculty of Law, University of Basel
Lale Andreani, stud. iur., Faculty of Law, University of Basel

I) Introduction

Social security today faces economic and social difficulties such as aging of the population, decline in fertility, increase in medical costs resulting from the sale of expensive medications, increase in dependent elderly people, social exclusion and poverty

These questions are of course really important, yet today, we are in a very difficult economic and social situation due to epidemic of COVID-19, and we know very well that social security and labour law has to react to this situation in order to revive the economy and support people and workers in difficulty

Policies and measures against epidemic of COVID-19 recommended and adopted by the competent authorities arise not only questions on social security law, but also those on labour law, and often a question involves a sub-question on the first and another on the second

We will examine social security law issues including ones involving labour law issues in **II**), and labour law issues, namely telework in **III**)

Agenda.

I Introduction

II Social Security Law

III Labour Law

IV Conclusion

II) Social Security Law

Material for the report:

- Informations from the members of the working groupe
- Additional research (different journals)
- Documents from international Organisation

II) Social Security Law

Policies from international organizations as responses to Covid-19

- ILO
- EU
- UN

Covid-19 revealed gaps in existing social security systems

Financing of the costs of tests and vaccinations

Tests

- in general not paid by the individual (at least when medically indicated)
- covered by
 - the government (e.g. Slovenia, Korea), or
 - the health insurance (e.g. Belgium)

Vaccinations

- in general not carried by the patient
- covered by
 - social security (e.g. Korea), or
 - the government (e.g. Lithuania, Slovenia, Japan, France, Uruguay)

Financing of the loss of earnings due to quarantine

Benefit for loss of income during quarantine or childcare due to Covid-19

- daily allowance
- paid leave
- unemployment benefit
- sickness benefit

Self-employed persons

- regulations often extended to self-employed persons
- but not everywhere (e.g. Japan or Uruguay)
- conditions and provisions often differ from those applicable to employees

Short-time work and unemployment benefits

Employee

- advantage of short-time work
 - employees keep their job, less unemployment
 - employers keep their employees
 - less expensive than unemployment benefits for the state
- short-time work is primarily known in Europe and the USA
 - known before Covid-19 (e.g. Germany, Austria, Switzerland)
 - new benefits created (e.g. Estonia, UK, Denmark)
- Financial assistance packages for employees (e.g. Canada, different regions in Asia and South America)

Short-time work and unemployment benefits

Self-employed persons

- level of protection varies from country to country
- new measures enacted
 - extending regulation for employees
 - new programs for self-employed (e.g. Belgium)
 - cash funds
- purpose of the payments
 - earning replacement (e.g. Denmark or Netherland)
 - covering business costs (e.g. Czech Republic, Portugal or Spain)

Conclusion

Conclusion

- Vaccinations and tests mostly not covered by the individual
- Government or health insurance take over
- Loss of income due to quarantine is often compensated
- Some benefits are extended to the self-employed persons

- Short-time work or financial packages for employees
- Sometimes extended to self-employed persons

Reflection

Shows importance of social security in combating epidemics

Social risks (health, age, death) must be covered

- Tightening requirements of social insurance benefits will increase poverty

Self-employed persons less adequately insured under social security

- In case of an accident/illness/unemployment threatened to slip into social welfare
- Leads to poverty
- Observed during Covid-19 pandemic

Agenda.

I Introduction

II Social Security Law

III Labour Law

IV Conclusion

III) Labour Law

One of main Labour Law concerns* under world wide pandemic of COVID-19 is Health and Safety at Work

Causes of interhuman transmission of COVID-19 was quickly identified, they are:

- Respiratory droplets;
- Physical contact by hand or on surface

Purposes of preventive measures are to prevent respiratory droplets from reaching mucosal surfaces and to avoid physical contact

* Most of these concerns were examined by Co-reporter Prof. Dr. Krut Pärli in his previous presentation

Preventive measures concerning work recommended by WHO

WHO plays an very important role in developing public health policy in order to respond to Pandemic of COVID-19, however WHO also deals with health and safety at work

Preventive measures in the workplace (for undertakings and business facilities remaining open) recommended by WHO are;

- Hand hygiene (washing hands with soap etc.);
- Respiratory hygiene (develop a mask wearing policy etc.);
- Physical distance (social distancing, reduce density of employees, reduce number of in-person meeting, telework);
- Reduction of work-related travel;
- Regular cleaning and disinfection of workplace etc.

Preventive measures concerning work recommended by WHO (continuation)

WHO advises also to set up appropriate measures according to job of target employees, their vulnerability, level of risk etc.

In addition, WHO emphasizes importance of dialogue between social partners to consider, decide and implement appropriate preventive measures against COVID-19 in the workplace

ILO appeals to national and local governments as well as related organizations necessity of development of economic, social and health policy

ILO indicates 4 issues to be examined by competent authorities and stakeholders

- Economic and employment policy in order to stimulate business
- Support for business, measures for preserving jobs and income support
- Strengthening health and safety measures at work and promoting public health measures in the workplace
- Social dialogue between governments and related organizations in order to find solutions to questions rising from 4 issues mentioned above

ILO naturally pays strong attention to health and safety at work put at risk by epidemic of COVID-19

By referring to WHO's recommendations on public health measures against COVID-19, in particular on health and safety at work, and by stressing importance of international standards issued by itself, ILO indicates 3 policies aiming at reducing transmission of COVID-19 at the workplace;

- Telework (remote work, work from home)
- Reducing human density, social distancing and wearing masks in the workplace:
- Make managers to consider elements and steps for reopening of workplace

ILO emphasizes also ventilation, physical separation, hand hygiene, disinfection of surfaces etc. in the workplace

According to ILO, a cooperation between employers and employees is key point for implementing and enforcing these measures

One of measures against COVID-19 strongly recommended and adopted is telework (remote work, work from home)

Telework is not a new mode of work, this mode of working was widespread to a greater or lesser extent by county, by sector, by occupation before pandemic of COVID-19

Legal questions arising from this mode of working has been already discussed by labour law scholars

There are countries that introduced regulations concerning telework before pandemic of COVID-19 (ex. France)

In European Union, a framework agreement on telework was concluded by European social partners in 2002

Telework is considered as an effective preventive measure against pandemic of COVID-19

WHO and ILO strongly recommend shift to telework as one of effective measures for fighting against COVID-19 because this mode of work significantly reduces physical contacts in the workplace and on the way to work

Telework is also a measure for supporting social security because by this way of working, business continues to operate even if partially and employer pays telework employees wage necessary to support their lives, and to this extent, employer and their employees pay a social contribution and taxes indispensable to finance of social security scheme

Telework is considered as an effective preventive measure against pandemic of COVID-19 (continuation)

A lot of countries adopted shift to telework as such a measure

Undertakings introducing telework increased due to such governmental policy and in order to keep their business open, and so number of teleworkers also increased

According to a survey, workers working from home is estimated 17.4% of the world's employment during the second quarter of 2020, however the rate is much higher in high-income countries (ex. USA; 35.4%)¹

¹ Sergei Soares, Florence Bonnet, Janine Berg, Working from home during the COVID-19 pandemic: Updating global estimates using household survey data, April 2021, <https://voxeu.org/article/working-home-during-covid-19-pandemic-updated-estimates>

Telework is considered as an effective preventive measure against pandemic of COVID-19 (continuation)

In ordinary situation, shift to telework is often considered voluntary, management cannot force an employee to telework without their consent (exception; ex. Japan)

Not a few countries made telework compulsory due to implementation of confinement during pandemic of COVID-19 by enactment of a new law or regulation or by amendment of law or regulation (ex. Paraguay, Belgium, France, Switzerland etc.)

Some countries adopted less restrictive measures such as enactment of a new law aiming at regulating telework, amendment of existing law or regulation, governmental stimulation or recommendation of telework, issue of a new guideline of telework, remind of an existing guideline, encouragement by a subsidy etc. (ex. Uruguay, Chile, Argentina, Republic of Korea, Japan etc.)

Important issues for implementation of telework

ILO pays strong attention to health and safety of employees working from home

According to ILO, several points have to be noted for introducing telework;

- Stimulate employees to take short and regular breaks & to keep a regular rhythm between work and break;
- Introduce measures for avoiding isolation of employees working from home
- Stimulate employees working from home to pay attention to their mental health;

Important issues for implementation of telework

- Method of controlling duration and organization of teleworking;
- Role of supervisory staff about management concerning setting of priorities, workload, tasks to be achieved and deadline of tasks;
- Allow employees to announce the time slot when management can be in touch with them;
- Clarify rights and responsibilities of employees working from home about their health and safety;
- Stimulate teleworkers physical
- Conciliation of work and private of life

Right to disconnect

Widespread of telework under epidemic of COVID-19 strengthens concerns on health and safety of employees working remotely

In taking in consider this problem, European Parliament adopted a resolution on the right to disconnect aiming at recommend to European Commission to examine a possible directive

Several countries introduced this right (ex. Chile, France), while there are national governments don't pay attention so much to this right (ex. Japan)

Short reflection

Roles assumed by WHO and ILO in the fight against pandemic of COVID-19 are very significant

Their recommendations and advices are very suggestive and useful

Telework is one of main preventive measures against COVID-19, so WHO and ILO strongly recommend shift to telework, and countries adopted policy for stimulating, and in particular situation, enforcing this mode of work

However, not only WHO and ILO, but also countries share the same concern about health and safety of employees working from home

Telework is now widespread, while business, jobs and tasks suitable for telework are limited

Agenda.

I Introduction

II Social Security Law

III Labour Law

IV Conclusion

IV) Conclusion (1)

- The current precarious situation of a certain population will be further aggravated through a crisis like Covid-19
- The worse a underlying system is structured, the more the social security system will have to bear

IV) Conclusion (2)

Link between sound social security provision & effective fight against the spread of Covid-19

- WHO and all states oblige citizens to observe hygiene, distance rules and wear a mask
- quarantine in case of infection or contact with persons tested positive
- importance of compliance to interrupt chains of infection

IV) Conclusion (3)

The causal relationship between level of social protection and compliance:

- No fear of disadvantage → more likely to stick to the measures
- Risk of no income or losing the job → weigh up whether they can afford the economic consequences
- Impact of test readiness has a direct impact on the spread of Covid-19
- “Compliance thanks to social protection” also based on experiences with HIV/AIDS epidemic:
 - Conflict(s) between goals of public and individual human rights
 - Social integration & human rights support the fight against the epidemic



University
of Basel

Faculty of Law



Thank you
for your attention.