IASP-AIPS

Discussion Paper 02 (2024)

Regional standards for social protection coordination

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1. The trend towards the formation of large regional coordination groups in insurance matters

1.1. Causes and difficulties.

The exponential increase in the movement of people, whether for work or necessity, goes hand in hand with the internationalisation of the economy, leading to a conceptual shift from what was initially seen as coordination to facilitate the exercise of migrants' rights to what has now become a mechanism of economic and social significance for the proper functioning of countries. Border control is no longer conceived merely as a protectionist shield for the national economy, as it has finally been understood that exchange is a two-way street and that the entry of goods and people is also beneficial, which is why the decision has been made to make such limits functional to their precise objectives. This is where agreements between countries on trade and the movement of people come in, and the need for good rules to coordinate national social protection systems becomes evident, leading first to the proliferation of bilateral agreements between countries to regulate labour transit with another country; and subsequently, the gradual emergence of regional standards that simplify purely bilateral regulatory activity thanks to framework rules that, in the end, also have the beneficial effect of bringing the national legislations concerned closer together.

At present, it is not easy to establish such regional rules. Despite the proclamation of social security and social protection as fundamental human rights[2], and the widespread expansion of national social protection systems, each system is still very different from the others, and their peculiarities set them apart from one another. This is despite the fact that a series of international declarations, beginning with the creation of

the International Labour Organisation (ILO) after the First World War, have outlined the range of contingencies or situations of need covered by the concept, to which was added Beveridge's conceptualisation of social assistance after the Second World War. The International Social Security Association (ISSA), created in 1927 under the auspices of the ILO, brings together 320 public institutions and managing bodies from more than 160 countries, practically all the countries in the world. Many of these countries prefer to continue with the traditional method of signing bilateral social security agreements, as do the United States, Australia and others. But also, and perhaps in most of these 'bilateral' countries, the reason they do not embark on a more sophisticated path is that they only offer nominal social protection that does not even cover their own nationals. Hence, for example, some international standards allow countries to sign up to these systems on condition that they improve their fortunes[3].

Behind such a massive deviation is surely a major emerging feature in national systems: by 2023, the percentage of workers employed in the informal or undeclared economy reached 60 per cent of the total, mostly in developing or emerging countries, as indicated in a recent OECD report on the issue, with the expressive title 'Breaking the cycles of informal employment and low-paid work'[4]. However, employers and workers in the informal economy, where they are not registered as such, can hardly sustain their public social security contributions. And while it is true that most of this economy is spread across developing countries, it is also expanding in developed countries, where the informal economy takes on other forms, invading sectors and activities with high digital exposure. In the midst of this situation, states do not have the financial capacity for general and sufficient welfare provision, nor do the interested parties themselves have the resources to provide general protection. Consequently, mixed public-private formulas are imposed, still with large areas of *ad libitum* protection in social welfare.

1.2. Identification of regional groups

In any case, we can mention five of these regional standards, which are very different in nature, although they all play a role in coordinating national systems. Specifically, these are the following, listed in order of age:

a) ILO Convention 102 of 1952, minimum standard of social security, ratified by 65 member countries. This organisation has other conventions extending protection in specific contingencies, which we will not discuss here[5]. We will discuss the problem of their regional limitation below, as in principle they are instruments of universal application.

b) The European Union's Social Security Coordination Regulations, 883/2004 and 987/2009, which follow on from a robust series initiated during the pre-European Community era, that of the ECSC, EURATOM and EEC, with two regulations numbered 3 and 4 of 1959[6]. These Regulations are effective in all member countries of the European Union, currently 27.

c) The 1964 European Social Security Code of the Council of Europe, revised in 1990, ratified by 34 countries of the organisation. It closely follows ILO Convention 102 Minimum Standard, with the difference that it requires ratification by a greater number of parties than the latter.

d) The Ibero-American Multilateral Social Security Agreement, signed in 2007 and ratified by 12 countries in South America and the Iberian Peninsula[7].

e) The Declaration on Strengthening Social Protection, signed in 2013 by the ten member countries of the Association of Southeast Asian Nations (ASEAN)[8].

We will not discuss other regional standards that may have served as precedents for the five mentioned above, especially in Ibero-America, where the early presence of an Ibero-American Social Security Organisation has encouraged various attempts that have ultimately led to the Multilateral Agreement[9]. Occasional reference will be made to other Council of Europe standards, in addition to the European Code, because they also deal with social protection – albeit in less detail – and because of their close, though not always peaceful, relationship with each other and with the Code: specifically, the European Social Charter (1961, revised in 1996) and the European Convention on Human Rights and Fundamental Freedoms (1950). Nor will we devote special attention to the important Charter of Fundamental Rights of the European Union (CFREU), as the wording of Article IV.34 on Social Security and Social Assistance is too generic: The Union recognises, it states, 'protection in cases such as maternity, illness, industrial accidents, dependency or old age (...), and respects the right to social assistance and housing assistance'.

At first glance, regional coordination has taken root on three continents, especially in Europe (with several standards) and Latin America (with one), and, surprisingly, in Southeast Asia, ASEAN, with another, leaving out North America, the Near, Middle and Far East, as well as Africa and Oceania as a whole. Undoubtedly, most countries have some form of social risk insurance organisation, and here we are only assessing their ability to look around and try to coordinate with their neighbours, with whom they are supposed to have greater similarities.

The list of five regional standards outlined above requires some additional comment. Specifically, it should be noted that two other blocks can also be distinguished: interregional standards (covering more than one region but less than the whole world) and subregional standards (covering less than a region but more than a country), although it sometimes requires some effort to distinguish them from the previous ones.

a) The difficulty in detecting them is evident in the interregional group with respect to some of the regional standards just mentioned, if we recall how the ILO Minimum Standard applies not only in one region, but in several regions of the world[10]. Repeatedly, the subject of social security is only signed, in the conventions referring to it, by the States of Europe, Latin America and Africa, while those of Asia, North America and Oceania refrain from adopting them. We see this in the sixty-five ratifications of Convention 102 Minimum Standard, but also in the seventeen ratifications of Convention 128 on invalidity, old age and death pensions; or in the twenty-four ratifications of Convention 121 on occupational hazards, where we note the signature of Japan; or, finally, in the sixteen ratifications of Convention 130 on medical assistance. These are meagre numbers of ratifications, which are also concentrated in the three continents mentioned above. In this way, we can distinguish between the universal nature of the ILO from a formal perspective and its regional nature - at least for social security conventions - from an application point of view.

b) With regard to the group of subregional standards, we could include the Ibero-American Multilateral Convention, since its name covers two regions, South America and Europe, although the European region only includes the Iberian Peninsula, as has been the case throughout its history. However, other very significant examples should be mentioned in this subregional group, specifically the social security agreement for Rhine boatmen, signed in its current version on 30 November 1979 by the six riparian countries: Germany, Belgium, France, Luxembourg, the Netherlands and Switzerland. Seafarers working on this great river benefit from comprehensive insurance coverage under an international administration regulated by a 1987 administrative agreement and its own managing body, the Central Commission for Navigation on the Rhine (CCNR). The insurance content is referred to European Regulation 883/2004, and dispute resolution is entrusted to the Social Security Administrative Centre for Rhine Boatmen, which has a tripartite composition similar to that of the ILO. Historically, the Central Commission dates back to 1804 and is responsible for enforcing free and unimpeded navigation on the great river, whose national tolls were simplified into a central toll, intended to administer international management, especially in terms of navigability. Only after the Second World War did it also take on the unified management of social security for its seafarers, and it gradually became linked to other navigable European rivers, especially the Danube, with the presence of numerous ‘observer states’[11]. In the same group of sub-regional rules, it is also worth mentioning historical examples related to maritime customs in the Mediterranean and the North Sea, with regard to practices rooted in seafarers' contracts and agreements, and applied by the maritime consulates of their port cities, on coverage for accidents at work and care for widows[12].

Here we will only look at the main block of regional rules, for greater clarity on the subject.

1.3. Cultural background

Such a map of regional coordination takes us back to the origins of social security in European countries, and more specifically to Germany, where Chancellor Bismarck nationalised and regulated the guild systems for the protection of workers, a complex unifying undertaking that not only guaranteed the regularity of their pensions, but also allowed the state to raise huge funds for its policies of all kinds. Even before the trade union organisations, there were similar institutions in Europe: Roman rules on the master's responsibility for the misfortunes of his servant, maritime customs regarding accidents and illnesses of sailors in the Mediterranean and North Atlantic, and those of some merchant guilds such as the Hanseatic League, etc. Even when social security is broadened to a wider concept with the work of Beveridge and his adoption of the Anglo-Danish custom of communal assistance to the local needy, the result in Europe is a combination of both types of coverage, insurance and assistance, under the primary ownership of the State. The European influence in Latin America is clear, but it is also evident in the Association of Southeast Asian Nations, which was born under the direct influence of the European model of coordination[13].

Does religion have any influence on assistance to the needy due to social risk? It is worth asking, and if so, we should also bear in mind that the Christian religion places love for one's neighbour ‘as thyself’ at the heart of its ethics. However, it would be strange to find a strong regional connection in Southeast Asia, where, despite the

Philippines, the Muslim religion predominates, whose beliefs preach almsgiving as one of the basic duties of a good Muslim. This is not the case in Buddhism, where a positive view of one's neighbour is blurred by compassion.

However, the argument that religion does or does not drive the formation of regional social protection organisations is invalid due to the existence of other factors that can disrupt the momentum, such as different languages or traditions, and even the mere presence of large nation states that are difficult for a regional entity to assimilate. And if we look at the 'isolation' in this sense of large 'Western' countries such as the United States or Australia, we will also find it in Asia with countries such as China, India or Japan, which have social security systems but are reluctant to join any of these regional organisations. In these countries, the problem of internal migration sometimes arises due to changes in legislation and rights that migrants experience when crossing internal borders in countries where the federal system is common[14]. Despite this, India and Japan have other types of agreements with ASEAN, namely free trade agreements or FTAs, which instead involve economic coordination. Ultimately, this is a difficult issue to resolve if we consider that there are also nation states of some importance within ASEAN[15].

We have seen some historical impulses for the formation of coordinated macro-groups, but they do not seem to have been decisive in their creation, as we have also seen. The increase in trade and the movement of people, modern phenomena facilitated by new technologies, have decisively driven the need for regional social protection standards.

2. Contents

If we have called the supranational constructions in this area of social protection "regional standards", this is because they lack uniformity in terms of their nature and content, and therefore a generic name is appropriate for the whole. Clearly, the noun is appropriate to their nature, although some are standards in the strict sense and others are declarations of principles, international agreements or supranational codes. The diversity of formulations does not seem to be significant, beyond the varying degrees of application and enforceability of each, which we will see later: the main feature of such rules lies in their mere existence, in the effort and willingness to harmonise such a complex matter among several countries, which sometimes belong to two continents, as in the case of the Ibero-American Multilateral Convention, and in others are scattered across thousands of islands, languages and even creeds, as in the case of ASEAN. More important than the name is the functional and material content of the five groups, as it varies substantially from one to another.

2.1. Harmonisation, distribution and common principles rules. Functionally, the regional standards under consideration are of three types:

a) *Harmonisation* mechanisms seek to bring national legislation up to minimum standards in terms of risk coverage, while allowing for the improvement of these standards through national regulations. At first glance, these constitute the most ambitious objective and consist of a long series of articles in which we see the effort to specify this standard. In their clearest aspect, that of the financial amounts of benefits, they end up in complicated percentages with multiple variables that make them difficult to apply. Thus, for example, those in Article 72 of the European Social Security Code

(Council of Europe), which specifies a common amount, consisting of a percentage of the legal minimum wage or the wage of an ordinary worker[16].

From there, Article 73 sets out a scale of minimum percentages, which are usually set for workers without dependents at 50 per cent of the reference concept - the legal minimum wage or the wage of an ordinary worker.

In addition to the European Code of the Council of Europe, ILO Convention 102 (1952) on minimum standards of social security also pursues the same objective and provides for similar percentages, although the former, with regard to the parts (contingencies) eligible for protection by each State, is more demanding in that it requires the ratification of a greater number of parts by the signatory States. The similarities are due to the clear inspiration of the European Code in the ILO Convention on minimum standards, which is also evident in the control procedure, thanks to four-yearly reports in the case of the European Code, addressed to the Secretary-General through a 'committee of European experts' who evaluate them in terms of compliance with their commitments[17].

The harmonisation sought by the ILO Convention and the European Code represents the greatest effort at coordination of the three methods we are analysing, both in terms of objectives and the procedure chosen, which involves two committees and the Secretary General of the Council of Europe. Unfortunately, it rests on fragile ground that is difficult to establish in order to achieve success. Firstly, because of the long reporting cycle, every four years, which calls into question the effectiveness of the international body's response: it lacks the power to react, as Martínez Martínez[18] forcefully points out. Secondly, from an intrinsic point of view, the calculation of percentages based on the minimum wage or the wage of an ordinary worker is subject to very fragile benchmarks, as many countries do not establish an interprofessional minimum wage, and, for its part, the wage of an ordinary worker refers to the largest category of workers in the metalworking sector or the industrial sector with the largest number of workers, and, within it, the professional category with the largest number of them[19]: an almost dead-end maze. Thirdly, fragility is also detected due to the flaws in each country's reporting system, as they will often be driven by the desire to meet targets at the expense of doctoring statistics, if they have reliable ones at all[20]. Finally, mention should be made of the case law of the European Committee of Social Rights regarding the right to social security also enshrined in the European Social Charter, for which the Committee considers that a percentage such as that usually used to establish the minimum benefit may not be sufficient to guarantee subsistence, so that insufficiency in just one of the headings is sufficient to declare the country's non-compliance with the minimum requirement (the Committee's conclusions on Bulgaria and Georgia)[21].

The European Social Charter, a text that is considerably shorter than the European Code of Social Security[22] and deals with labour rights as a whole, including social security rights, has just been mentioned. Although we do not focus on it, as the aforementioned Code is more detailed, it has taken a step forward in the justiciability of such rights thanks to a Protocol on Collective Complaints (1995), which we will see below in section 3.2 on litigation.

b) The two regional regulations dedicated to the distribution of obligations among the national systems it covers are less complex in their objectives, although not in their

regulation. Without seeking to influence the configuration of these national systems, the two aforementioned European Union Social Security Coordination Regulations and the Ibero-American Multilateral Social Security Agreement and its implementing protocol establish the obligations of the States involved in granting insurance rights to migrants and displaced persons, for which they also define the contingencies covered and the responsible authorities. In essence, this coordination establishes a framework of 'competences' between the countries involved in the recognition of rights for migrants, displaced persons and cross-border workers, which can sometimes be highly complex, as in the case of cross-border accidents at work.

One advance achieved by this group is the joint calculation of contributions from two or more countries in which the person has worked, the totalisation of periods, perhaps the star mechanism of international social security rules, as it allows, thanks to such aggregation, the possibility of obtaining benefits with long periods of accreditation, such as retirement benefits, which in many cases would not reach the necessary accreditation if the calculations were kept separate[23]. The summation of periods is also permitted in the Ibero-American Convention for the coordination between contributions to the public insurance system of one country and contributions to a private system in another, when they are insufficient on their own to give rise to pensions (Art. 16).

There is another type of concurrence of rules which, unlike the previous one, could be described as conflicting. We are now talking about an alternative solution, or in other words, which of these concurrent instruments should prevail, an issue neglected in the previous group of rules on minimums, which focused more on the details of the percentages. The issue is clearly raised in the case of the Ibero-American Multilateral Convention, which advocates the application of the principle of the most favourable rule for the 'beneficiary' in the event of concurrence with other bilateral or multilateral social security agreements (Art. 8), which number eight bilateral agreements with countries in the same region in the case of Spain, for example. These are international agreements, with no reference in this Ibero-American agreement, or in any other, to possible conflicts with internal rules, whether legal or collective, in this regard. There are also references in European regulations to the issue of concurrence, again with the bilateral international agreements signed on the subject by each Member State, which are also resolved by the principle of the most favourable rule[24].

c) Common principle standards. A third group of countries is represented only by the ASEAN Declaration on Strengthening Social Protection, signed by the ten countries of Southeast Asia in 2013. A Southeast Asian association created on three regulatory pillars, one of which is sociocultural, and which, following the 2009 Cha-am Hua Hin Declaration, recognised the role of social protection in enhancing the well-being of its member peoples. The Declaration on Strengthening Social Protection is divided into two sections, one on Principles and the other on Strategies and Mechanisms.

One might wonder why a declaration of principles and policies is needed in a field as well-established as social security. In fact, other texts that have just been analysed also have a section on principles, which are then articulated in specific rights in a later section. Here we find, despite everything, a second reason: if we look closely, the concept chosen is that of Social Protection, a broader view of the subject, which leads us to link it to an increasingly clear idea in the phenomenon of globalisation: Social

Security, the set of contributory benefits or compulsory insurance implemented by Birmark, no longer seems to be the primary objective of social policies, its spearhead, but at most a part of them, as non-contributory and welfare benefits, what we call Social Assistance, are gaining momentum due to phenomena such as the increase in self-employment, informal work, the financial weakness of many countries to provide general coverage, and the abandonment by a multitude of those obliged to pay contributions.

Thus, the ILO's information on the Philippines is compelling: social insurance covers only 34% of the population, with very limited access for workers in the informal economy and indigenous peoples. Many eligible people do not contribute to the SSS or GSIS and will not receive pensions when they retire. Despite high population growth and high unemployment, there is no unemployment insurance. The PhilHealth health benefits package excludes preventive care (outpatient benefits and physical check-ups), resulting in significant out-of-pocket health expenses. The social protection system is affected by high fragmentation, lack of coordination between agencies and inefficient targeting mechanisms. Monitoring and evaluation systems need to be unified to achieve economies of scale[25].

Let us return to the ASEAN Declaration. This appears to be the weakest of the documents analysed, as it does not set out rules, but rather *principles and policies for action* promoted by the ASEAN Council of Ministers of Social Welfare and Development, 'recognising the diverse national coordination mechanisms of member countries' (point 20). The measures envisaged are wide-ranging, covering social security, social assistance and social services, with a view to progressive implementation and adaptation to economic and social changes (point 10), including the extension of social insurance to the informal sector (point 12) and accelerated progress towards universal health coverage (point 17). Social protection is referred to throughout as a broad concept that encompasses a variety of social protection formulas.

One point worth highlighting is the concern for the informal sector, something that is also evident in Latin America and, probably, in Africa. For example, the official magazine *The ASEAN – Social Protection for All* analyses the issue on several occasions, studying the measures taken to extend protection to this social group, which accounts for 80 per cent of the region's workforce, totalling 244 million people[26]. Perhaps the informal sector is the region's Achilles heel, as all member states have social security laws, but coverage of the population seems uneven. Thus, the Covid pandemic has brought to light the large number of people without health coverage in some member countries, as indicated by a study by the Indonesian Ministry of Health on the coverage percentages of each state[27].

It should be noted that none of the ASEAN member countries have ratified the ILO minimum standard convention, so they are not subject to the typology or systematic structure of the contingencies commonly known. Hence, a certain deviation from the conceptual standards used is to be expected, and their social protection institutions differ in more than one respect from the status quaestionis.

2.2. Material classification.

From a material point of view, in terms of the coverage provided, a first perspective differentiates from highest to lowest scope between (1) coordination rules covering social protection - including public social security and public welfare - (2) those covering public social security, and (3) those covering only some of the contingencies of public social security.

This overview does not include a reference to the subjective scope, or personal coverage, of national systems, which is a very significant variable for understanding the depth of protection, but difficult to compare, if we consider, for example, the versatility of social protection, which in some countries extends to housing and home measures, but in exchange for omitting some insurance coverage.

Within the material scope, therefore, we find that the groups dedicated to minimums and coordination are limited to public insurance and the institutionalised contingencies protected by it, which in some cases are gradually increasing, for example in the European Union Regulations on early retirement benefits. However, we have seen how the Ibero-American Multilateral Agreement leaves out two important blocks of contingencies, health and temporary contingencies - including unemployment, temporary disability and family - and it is very specific in stating that it shall not apply to non-contributory schemes, social assistance, or benefit schemes for victims of war or its consequences (Art. 3.4). For its part, the flexible and pragmatic view of the third group conceives of social protection that covers all contingencies due to social risks and is combated with measures of any kind (ASEAN Declaration, point 12).

There are various formulas in the Standards to alleviate the cost of insurance coverage for States. The first of these is the possibility of not ratifying the relevant Standard for their region, when such incorporation is not mandatory. Typically, on the voluntary side are the ILO Minimum Standard Convention, the European Social Security Code (Council of Europe), and the Ibero-American Multilateral Convention, while on the binding side are the two European Union Regulations on social security coordination and the ASEAN Declaration on Social Protection. For example, the European Code has been ratified by 34 member countries of the Council of Europe, while 19 others have not. On the other hand, the formula of directly excluding certain branches of coverage, as we have seen in the Ibero-American Convention, has another equivalent formulation in those other standards that allow only some branches to be ratified, but not all, as we see in the ILO Minimum Standard Convention or the European Social Security Code.

In view of the three groups of regional rules and their differences, we might ask ourselves whether some types could be combined with others. Nothing prevents such a combination, although it seems difficult to mix coordination rules with minimum mechanisms. On the other hand, it would be conceivable to introduce principles or bases into these two groups, or content from them into the third. And of course there is a whole arsenal of neutral content, the ‘common provisions’, such as those relating to administration and management or judicial or extrajudicial control of disputes, which can be introduced indiscriminately. Nevertheless, each regional standard deploys different management and control systems, as we shall see shortly. This latter issue seems resistant to the introduction of private dispute resolution systems, as only in the case of the Multilateral Agreement do we find its unambiguous admission, although very specifically referring to the arbitration of disputes between the States Parties (Art. 28).

3. Administration and contentious application of the coordination rules.

3.1. Administration.

There are no major references to an important issue within the chapter on the management of insurance systems, namely the distinction or complementarity between public and private systems (voluntary capitalisation systems), nor are the various levels of public administration often mentioned, even though some social protection and social security benefits, such as family, unemployment and health benefits, require basic management at the local level, while others require more centralised management at the state or, at most, autonomous community level, such as pensions[28]. This is an issue that causes considerable tension between some autonomous communities and the Spanish state, for example, and which allows for a variety of solutions. The fact that the rights claimed arise at an international level may be an argument in favour of centralising the management response, but it is not a general justification for these cases, if we take into account the content of some of them and the social status of the beneficiaries. Ultimately, decentralisation will allow for greater proximity in management, even if this is resolved by the competent national or international body.

Apart from these omissions, the administration or management of insurance rights is carried out in different ways in each regional group.

The ILO has a Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is competent for disputes relating to all Conventions except those on freedom of association. Its members are independent and usually act slowly, seeking peaceful settlement rather than declaratory sanctions for non-compliance. Its operation is based on the submission of annual reports by the States obliged to apply the respective standards.

The members of this ILO Committee of Experts enjoyed an additional function for some time, as they were also called upon by the Council of Europe to supervise similar reports on the European Code of Social Security[29]. However, the revision of this Code in 1990 established a European Committee of Independent Experts for this task, giving it a more European flavour[30]. It should be remembered that we are talking about the monitoring of periodic reports sent by the States concerned. It will be the Committee of Ministers of the Council of Europe, by a two-thirds majority, which will decide, in the light of the report submitted to it by the Committee, whether the State in question is in breach of its commitments, and may invite it to take the measures it deems necessary, which is ‘very gentle’ but effective, in Otting's opinion[31].

Also within the Council of Europe, two other supervisory bodies, the European Committee of Social Rights and the Committee of Independent Experts for non-ratified parties, are responsible for ensuring the implementation of the European Social Charter and its articles relating to social security, although their supervisory role is carried out through the scrutiny of the four-yearly reports of the ratifying States, with minimal results[32]. In other words, States submit an annual report on only one of the groups of rights in the Charter, with the subject matter at hand corresponding to ‘Health, social security and social protection’. The implementation of the collective complaints procedure by accredited collective entities may influence a change in trend, if ratified by a significant number of countries[33].

There are also several unifying connections between the various regional standards, as follows:

Firstly, the connection between the European Social Security Code (Council of Europe) and ILO Convention 102 Minimum Standard continues the trend already seen in the amounts (percentages) of these,

now with regard to the administration of benefits, although the ILO refers the management of Convention 102 to its Governing Body, while the Council of Europe proposes the presence of a *governmental committee* for the European Social Charter. This Governmental Committee has a tripartite structure[34] and analyses the compliance or non-compliance of Member States with the rights of the Code, particularly in relation to social security, and may propose to the Committee of Ministers of the Council of Europe that a recommendation be addressed to the non-compliant country. The following approach results from *soft* or non-decisional management in both cases.

This Governmental Committee of the European Code is also similar to the Social Security *Administrative Commission*, set up in the European Union for the two Regulations on the subject, with functions that are not strictly managerial, but rather involve providing information on and interpreting European insurance rules from a national perspective[35].

The Ibero-American Multilateral Agreement, for its part, has a *Technical Administrative Committee* for administrative and interpretation issues, made up of one representative from each State party, and seeks above all to establish the uniform application of the Agreement (Art. 24).

3.2. Litigation.

With regard to disputes between parties over breaches of regional rules, there is an initial reluctance to avoid such disputes, which is understandable given that these regional rules are ratified by States, but gradually some scope is opening up for the administration of justice to those directly harmed by non-compliance.

For individual complaints, there is a European Court of *Social* Rights linked to the European Social Charter[36]. Article 12 of the Charter, which proclaims social security as a right, refers to a minimum content calculated in accordance with the European Code[37], thus in some way defending the objective set out in the latter, namely the harmonisation of content.

There has not been complete convergence between European instruments of one origin or another. There have been inevitable tensions, particularly between the decisions of the European Court of Justice (EU) and the European Court of Human Rights (CoE), due to the different orientations of their parent institutions, given that the EU has a ‘split soul’ between the commercial and (now) the social, which the Council of Europe does not have, and even less so with regard to its Convention on Human Rights. So far, we have had to accept the divergent tendencies that had been detected in both European institutions, and which their respective courts had made quite clear, as K. Ewing and J. Hendy so masterfully pointed out in their study on the ‘history of the two cities’,

referring to Luxembourg and Strasbourg, where both judicial bodies are based[38]. The centripetal trend seems to have diminished, although not disappeared, following the European Union's request to accede to the Social Charter, which has been received with some uncertainty as it is a union of states and not a state[39].

With regard to the two European Union Regulations on social security coordination, the competence to resolve conflicts normally lies with the national courts of the country, which may refer their doubts about deviations from national laws with respect to the Regulations to the Court of Justice (CJEU) for a preliminary ruling, whereby this European body hears numerous conflicts and has created an exceptionally dense and qualified body of case law [40].

Of lesser quantitative importance in the field of social protection is the European Committee of Human Rights, which focuses particularly on the civil and political rights recognised by the European Convention on Human Rights, although it also indirectly affects social rights, and hence settles some cases in this area. In Gómez Heredero's opinion, there is a certain tendency to extend the protection of this right, despite the wide scope granted to the signatory states. Contributory benefits or compulsory insurance were recognised first, and then other concepts have been added[41].

The Ibero-American Multilateral Convention is clearer, referring to national courts and containing in Article 9 a rule on the legislation applicable to each case, which shall be that of the State party in whose territory they carry out an activity, whether dependent or not, that gives rise to their inclusion in the scope of application of that legislation, although special rules are indicated in Article 10. Furthermore, the States parties to a dispute are urged to resolve disputes through negotiation, as mentioned above, and in the event of failed negotiations, one of the States involved is entitled to request arbitration, which is ultimately designated by the Ibero-American General Secretariat (Article 28).

Finally, the ASEAN Declaration on Strengthening Social Protection relies on the management of the competent administrative bodies of each member state, as its implementation is the primary responsibility of the member states (Principle 5), although it requires cross-cutting coordination between governments, the private sector, development partners, civil society, service providers, and others (Principle 6), as well as families and communities. Regional coordination is entrusted to the ASEAN Ministerial Committee on Social Welfare and Development (AMMSWD), with the support of the Senior Officials' Meeting on Social Welfare and Development (SOMSWD). The ILO does not have a judicial body for the enforcement of its Conventions, nor does the ASEAN Declaration: it will be the national courts of each signatory country, which are usually very reluctant to assume international jurisdiction, that will hear cases based on these instruments.

3.3. Interregional conflicts of jurisdiction.

Although it may seem strange at first glance that such rare regulatory instruments could clash today, the fact that they are concentrated for the most part in two regions of the world makes such a scenario quite plausible. We have just seen an example of this above with regard to the somewhat stormy relations between the two EU Regulations, the Social Charter and the Social Security Convention of the Council of Europe, and

ILO Convention 102. But we can also mention something similar between all these instruments and the Latin American Multilateral Convention, ratified by two European countries. A multitude of workers will encounter complex conflicts of jurisdiction and applicable law.

As is well known, there are two sides to this issue, as there can be both positive and negative conflicts of jurisdiction, mainly between national courts that are called upon to intervene or, conversely, to refrain from intervening in a case. Behind them are the "internal" conflicts between competent administrations and their ad hoc councils and committees, which are resolved in a more informal manner, as seen above. The European judge or judges will have to rule on their jurisdiction to decide in accordance with European rules, in which case they have the option of referring the matter to the European Court of Justice to see whether or not the regulations in this area apply.

And if the worker has completed qualifying periods or insurance periods in America, in a country linked to the Ibero-American Convention, the competent judges will determine whether or not the periods are added together and whether they will apply the rule most favourable to the petitioner in that section, combined with the rules on jurisdiction.

IASP-AIPS

Discussion paper 2 (2024)

Regional Social Protection Coordination Standards

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Summary

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1. The trend towards the formation of large regional coordination groups in insurance matters

1.1. Causes and difficulties.

The exponential increase in the movement of people, whether for reasons of work or necessity, accompanies the internationalisation of the economy in an equal manner, in such a way that it has caused a conceptual leap between what was initially seen as a coordination to facilitate the exercise of migrants' rights, and what has now become a mechanism of economic and social importance for the proper functioning of countries. Border control is no longer conceived merely as a protectionist shielding of the national economy, as it has finally been understood that exchange is two-way and that the entry of goods and people is also beneficial, which is why it has been decided to functionalise

such limits to their precise objectives. This is where agreements between countries on trade and people traffic appear, and the need for good coordinating rules for national social protection systems becomes evident, which leads, first, to the proliferation of bilateral agreements between countries to regulate labour transit with another country; and subsequently, the progressive appearance of regional rules that simplify with their presence the purely bilateral regulatory activity thanks to framework rules that, in the end, also produce a beneficial result of approximation between the national legislations concerned.

At the present time, it is not easy to arrive at the formation of such regional standards. Despite the proclamation of social security and social protection as fundamental human rights[43] and the widespread expansion of national social protection systems, each system is still very different from the others, and their peculiarities are abysmally different from one another. This is despite the fact that a series of international declarations dating back to the first post-war period with the creation of the International Labour Organisation (ILO) have been outlining the set of contingencies or situations of need covered by the concept, which were joined by Beveridge's conceptualisation of social assistance in the second post-war period. And that the International Social Security Association (ISSA), created in 1927 under the auspices of the ILO, brings together 320 public institutions and managing bodies from more than 160 countries, practically all the countries in the world. Many of these countries prefer to continue the traditional method of signing bilateral social security agreements, as do the United States, Australia and others. But also, and perhaps in most of these ‘bilateral’ countries, the reason they do not go down a more sophisticated path is that they have only nominal social protection that does not even cover their own nationals. Hence, for example, some international standards allow countries to sign up to such schemes conditional on their better fortune[44].

Behind such a massive deviation is surely a major emerging feature of national systems: by the year 2023, the percentage of workers working in the informal or undeclared economy reached 60 per cent of the total, mostly in developing or emerging countries, as indicated in a recent OECD report on the issue, with the expressive title ‘Breaking the Cycles of Informal Employment and Low-Paid Work’[45]. Well, employers and workers in the informal economy, where they are not recorded as such, can hardly be supported by their public social security contributions. And while it is true that most of this economy is widespread in developing countries, it is also expanding in developed countries, where the informal economy is taking on other forms as it invades sectors and activities with high digital exposure. In the midst of this situation, States do not have the financial capacity to provide sufficient general assistance, nor do the stakeholders themselves have the resources to provide general protection. As a result, mixed public-private formulas are proposed as a solution, with large areas of ad libitum protection in the vague field of social welfare.

1.2. Groups identification

In any case, we can mention five of these regional standards, of very different status, although with a coordinating role for national systems. Specifically, they are the following, ordered according to the criterion of seniority:

a) ILO Convention 102 of 1952, the minimum standard of Social Security, ratified by 65 member countries. This Organisation has other Conventions extending protection in specific contingencies, which we will not go into here[46] . We will discuss below the problem of its regional limitation, since in principle it is an instrument of universal application.

b) The European Union's Social Security Coordination Regulations 883/2004 and 987/2009, which succeed a robust series initiated during the pre-ECSC, EURATOM and EEC era, with two regulations numbered 3 and 4 of 1959[47]. These regulations are effective for all EU member states, currently 27.

c) The 1964 European Code of Social Security of the Council of Europe, revised in 1990, ratified by 34 Council of Europe countries. It closely follows ILO Convention 102 Minimum Standards, except that it requires ratification by a larger number of parties than the latter.

d) The Ibero-American Multilateral Social Security Agreement, signed in 2007 and ratified by 12 countries in South America and the Iberian Peninsula[48].

e) The Declaration on Strengthening Social Protection, signed in 2013 by the ten member countries of the Association of Southeast Asian Nations (ASEAN)[49].

We will not deal with other regional norms that may have served as antecedents to the five mentioned above, especially in Ibero-America, where the early presence of an Ibero-American Social Security Organisation has encouraged various attempts that have finally led to the Multilateral Convention. Nor will we look at the important Charter of Fundamental Rights of the European Union (CFREU), as the wording of Article IV.34 on Social Security and Social Assistance is too generic: ‘ensure protection in cases such as maternity, sickness, accidents at work, dependency or old age (...), and respects the right to social and housing assistance’.

At first glance, regional coordination has taken root in three continents, especially in Europe (with at least two standards) and Latin America (with one), and with the surprise of Southeast Asia, ASEAN, with another, leaving out the Near, Middle and Far East, as well as Africa and Oceania as a whole. Most countries undoubtedly have some kind of insurance organisation for social risks, and here we are only assessing their capacity to look around and try to coordinate with their neighbours, with whom they are supposed to find greater similarities.

The list of five regional standards mentioned above requires some additional comments. Specifically, that two other blocks can also be distinguished, that of inter-regional standards (with a scope greater than a region but less than global) and that of infra-regional standards (with a scope less than regional, but greater than national), although it sometimes requires some effort to distinguish them from the former.

a) The difficulty in detecting them becomes visible in the inter-regional group with regard to some of the regional standards we have just seen, if we recall how the ILO Minimum Standard is applied not only in one region, but in several regions of the world[51]. Again and again, only the European, Latin American and African countries have subscribed to the conventions on social security, while those of Asia, North

America and Oceania have refrained from adopting them. This can be seen in the sixty-five ratifications of Convention 102 on minimum standards, but also in the seventeen ratifications of Convention 128 on invalidity, old age and death pensions; or in the twenty-four ratifications of Convention 121 on occupational hazards, where we note the signature of Japan; or, finally, in the sixteen ratifications of Convention 130 on medical care. These are small numbers of ratifications, which, moreover, are concentrated in the three continents mentioned above. We can thus distinguish between the ILO's universal character from the formal point of view, and its regional character - at least for social security conventions - from the point of view of application.

b) With regard to the group of sub-regional rules, we could include the Ibero-American Multilateral Convention, since by its name it includes two regions, South America and Europe, although the European region only in its Iberian fraction, as was already the case in its historical antecedents. But within this sub-regional group there are other very significant examples, in particular the social security scheme for Rhine boatmen, signed in its current version on 30 November 1979 by the six countries bordering the Rhine: Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland. Seamen working on this great river benefit from full insurance cover under an international administration governed by an administrative agreement of 1987 and its own managing body, the Central Commission for Navigation on the Rhine (CCNR). The insurance content is governed by European Regulation 883/2004, and the settlement of disputes is entrusted to the Administrative Centre for Social Security for Rhine Boatmen, which has a tripartite composition similar to that of the ILO. Historically, the existence of the Central Commission dates back to 1804 and is responsible for enforcing free and smooth navigation on the great river, whose national tolls were simplified into a central one, designed to administer international management, especially in terms of navigability. Only after the Second World War did it also take over the unified management of the social security of its seafarers, and it gradually became linked to other European navigable rivers, especially the Danube, with the presence of numerous ‘observer states’[52]. In the same group of infra-regional rules, reference could also be made to historical examples related to the maritime customs of the Mediterranean and the North Sea, with regard to practices rooted in seafarers' contracts and conventions, and applied by the maritime consulates of their port cities, on coverage for accidents at work and care for widows[53].

Here we will only look at the main block of regional rules, for the sake of clarity.

1.3. Cultural background

Such a map of regional coordination takes us back to the origins of social security in European countries, and more specifically to Germany, where Chancellor Bismark nationalised and regulated the guild systems for the protection of workers, a complex unifying enterprise which not only guaranteed the regularity of their pensions, but also enabled the State to raise immense funds for its policies of all kinds. And even before the guilds, we can speak of institutions of the same type in Europe: the Roman rules of the master's responsibility for the misfortunes of the servant, the customs of the sea with regard to the accidents and illnesses of seamen in the Mediterranean and the North Atlantic, and those of certain mercantile corporations such as those of the Hansa, and so on. Even when social security opens up to a broader concept with the work of Beveridge and his reception of the Anglo-Danish custom of communal assistance to the

local needy, the result in Europe is a composite of both types of coverage, insurance and assistance, under the primary ownership of the state. The European influence on Latin America is clear, but it is also clear in the Southeast Asian Association, which was born with a direct influence of the European model of coordination[54].

Does religion have any influence on assistance to the needy due to social risk, one might ask, and if so we should also bear in mind that the Christian religion places at the core of its ethic the love of neighbour 'as yourself'. But the presence of a thriving regional connection in Southeast Asia, where, despite the Philippines, the Muslim religion is predominant, whose belief preaches almsgiving as one of the basic duties of the good Muslim, would seem strange. Buddhism, on the other hand, is not, where the positive outlook towards others is blurred by compassion.

However, the argument that religion does or does not drive the formation of regional social protection organisations is not valid because of the existence of other factors that can disintegrate the impulses, such as different languages or traditions, or even the mere presence of large nation-states that are difficult for a regional entity to assimilate. And if it is enough to look at the 'isolation' in this sense of large 'Western' countries such as the United States or Australia, we can also find it in Asia with countries such as China, India or Japan, which have social security systems but are reluctant to join one of these regional organisations. In these countries, the problem of internal state migration is sometimes present, due to the changes in legislation and rights that migrants suffer when crossing internal borders in these countries where the federal system is frequent[55]. However, India and Japan have another type of agreement with ASEAN, the free trade agreements or FTAs, which involve economic coordination. This is, after all, a difficult question to resolve if we bear in mind that within ASEAN there are also nation-states of some importance.

We have seen some historical impulses for the formation of coordinated macro-groups, but they do not seem to be of decisive importance in their emergence, as we have also seen. The increase in trade and movement of people, modern phenomena facilitated by new technologies, have provided a decisive impetus for the need for regional standards of social protection.

2. The contents

If we have called the supranational constructions in this field of social protection regional 'rules', this is because they are not uniform in nature and content, so that a generic name is appropriate for the whole. Clearly, the noun is appropriate to their nature, although some are rules in the strict sense and others are declarations of principles, international conventions or supranational codes. The diversity of formulations does not seem to be important, beyond the varying degree of application and enforceability of each, which we will see later: the main feature of these rules lies in their mere existence, in the effort and will to harmonise such a complex matter between several countries, which sometimes belong to two continents, as in the case of the Ibero-American Multilateral Convention, and in others are scattered over thousands of islands, languages and even creeds, as in the case of ASEAN. More important than the name is the functional and material content of the five groups, which varies substantially from one to another.

2.1. Rules on harmonisation, sharing and common principles.

Functionally, the regional rules under consideration are of three types:

a) The *harmonisation* mechanisms seek to push national legislation towards minimum standards in terms of risk coverage, while at the same time allowing national rules to improve these standards. At first glance, they are the most ambitious objective, and consist of a lengthy set of articles in which we see the effort to achieve this standard. In their clearest aspect, that of the economic amounts of the benefits, they end up in complicated percentages with multiple variants that make their application difficult. For example, Article 72 of the European Code of Social Security (Council of Europe) specifies a common amount, consisting of a percentage of the legal minimum wage or the wage of an ordinary worker[57]. From there, Article 73 sets out a scale of minimum percentages, which are usually set for the worker without dependants at 50 per cent of the reference amount - the statutory minimum wage or the wage of an ordinary worker.

In addition to the European Code of the Council of Europe, ILO Convention 102 (1952) on minimum social security standards also pursues the same objective and has similar percentages, although the former, with regard to the parts (contingencies) eligible for protection by each State, is more demanding in requiring ratification of a higher number of parts by the signatory States. The similarities are due to a clear inspiration of the European Code in the ILO Minimum Standards Convention, which is also visible in the monitoring procedure, thanks to quadrennial reports in the case of the European Code, addressed to the Secretary General through a 'commission of European experts' who evaluate them in terms of their compliance with their commitments[58].

The harmonisation sought by the ILO Convention and the European Code represents the greatest effort at coordination of the three methods we are analysing, both in terms of objectives and the procedure chosen, which involves two committees and the Secretary General of the Council of Europe. Unfortunately, it rests on fragile ground that is difficult to establish in order to achieve success. Firstly, the long periodicity of the reporting obligation, every four years, casts doubt on the effectiveness of the international body's reaction: it lacks the power to react, as Martínez Martínez forcefully points out. Secondly, from an intrinsic point of view, the calculation of the percentages on the basis of the minimum wage or the wage of an ordinary worker is subject to very fragile references, as there are many countries that do not establish a minimum interprofessional wage, and, for its part, the wage of an ordinary worker refers to the most numerous category of workers in the metal-mechanical sector or the industrial sector with the greatest number of workers, and, within it, the professional category with the largest number of workers[60]: a labyrinth with almost no way out. Thirdly, fragility is also detected due to the weaknesses of the reporting system in each country, as they will often be driven by the interest in meeting targets at the cost of making up statistics, if they have reliable ones at their disposal[61]. Finally, mention should be made of the jurisprudence of the European Committee of Social Rights with regard to the right to social security also provided for in the European Social Charter, for which Committee a percentage such as the usual one for establishing the minimum benefit may not be sufficient to guarantee subsistence, so that insufficiency under only one of the headings is sufficient to declare the country's non-compliance with the minimum requirement (conclusions of the Committee on Bulgaria and Georgia)[62].

Mention has just been made of the European Social Charter, a much smaller text than the European Code of Social Security[63] and aimed at all labour rights, including social security rights. Although we do not devote central attention to it, the Code has taken a step forward in the justiciability of such rights thanks to a Protocol on Collective Complaints (1995), which we will see below in section 3.2, on litigiousness.

b) Less complex in their objectives, but not in their regulation, are the two regional rules devoted to the *distribution of* obligations between the national systems covered by them. Without seeking to influence the configuration of these national systems, the two EU Social Security Coordination Regulations mentioned above, and the Ibero-American Multilateral Convention on Social Security and its implementing protocol, set out the obligations of the States involved in granting insurance rights to migrants and displaced persons, defining the contingencies covered and the authorities responsible. In essence, this coordination establishes a framework of 'competences' between the countries involved in the recognition of rights for migrants, displaced persons and cross-border workers, sometimes of great complexity, as in the case of cross-border occupational accidents.

An advance enshrined in this group consists of the joint computation of contributions from two or more countries in which one has worked, the aggregation of periods, perhaps the star mechanism of the international Social Security rules, as it allows, thanks to this aggregation, the possibility of achieving benefits with long periods of accreditation, such as retirement benefits, which in many cases would not reach the necessary accreditation if the computations were kept separate. The aggregation of periods is also permitted in the Ibero-American Convention for the coordination of contributions to the public insurance scheme in one country and contributions to a private scheme in another, when they are insufficient in themselves to provide pensions (Art. 16).

There is another type of concurrence of rules which, unlike the previous one, we could call conflicting. We are now talking about an alternative solution, or in other words, about which of these concurrent instruments should prevail, an issue neglected in the previous group of rules on minimums, more focused on the details of the percentages. The issue is clearly raised in the case of the Ibero-American Multilateral Convention, which pronounces itself in favour of the application of the principle of the most favourable rule for the 'beneficiary' in the case of concurrence with other bilateral or multilateral social security agreements (Art. 8), which reach, for example, the number of eight bilateral agreements with countries of the same region in the case of Spain. These are international agreements, and there are no references in this Ibero-American agreement, or in any other, to possible conflicts with internal regulations, whether legal or collective, in this respect. There are also references in the European Regulations to the issue of concurrence, again with the international bilateral conventions signed on the matter by each Member State, which are also resolved by the principle of the most favourable rule[65].

c) Common standards of principle. A third group of countries is represented only by the *Declaration on Strengthening Social Protection* of ASEAN, the ten Southeast Asian countries, in 2013. A Southeast Asian Association built on three normative pillars, one of which is socio-cultural, and which, following the Cha-am Hua Hin Declaration of 2009, recognised the role of social protection in enhancing the well-being of its

constituent peoples. The Declaration on Strengthening Social Protection is made up of two blocks, one of Principles and the other of Strategies and Mechanisms.

One wonders why a declaration of principles and policies in a subject as beaten up as social security is necessary. In fact, other texts just analysed also have a section on principles, which are then articulated into concrete rights in a later part. Here, however, there is a second reason: if we look at the concept of social protection, we find a broader vision of the subject, which leads us to link up with an increasingly clear idea in the phenomenon of globalisation: Social Security, the set of contributory benefits or compulsory insurance put in place by Birmark, no longer seems to be the primary objective of social policies, its spearhead, but at most a part of them, while non-contributory and welfare benefits, what we call Social Assistance, are gaining momentum, due to phenomena such as the increase in self-employment, informal work, the financial weakness of many countries to cope with general coverage, and the abandonment by a multitude of obliged parties of their contribution duties.

Thus, ILO data on the Philippines is compelling: social insurance covers about 34% of the population, with very limited access for informal economy workers and indigenous peoples. Many eligible persons do not contribute to the SSS and GSIS and will not receive pensions upon retirement. Despite high population growth and high unemployment, there is no unemployment insurance. The PhilHealth health benefits package excludes preventive care (outpatient benefits and physical check-ups), resulting in significant out-of-pocket health costs. The social protection system suffers from high fragmentation, lack of coordination between agencies and inefficient targeting mechanisms. Monitoring and evaluation systems require unification to achieve economies of scale[66].

Let us return to the ASEAN Declaration. This appears to be the weakest of the documents analysed, as it does not set out norms, but principles and policies for action promoted by the ASEAN Council of Ministers of Welfare and Social Development, ‘recognising the various national coordination mechanisms of member countries’ (point 20). The measures envisaged are wide-ranging, covering social security as well as social assistance and services, with a horizon of progressive realisation and adaptation to economic and social changes (point 10), including the extension of social insurance to the informal sector (point 12), and accelerated progress towards universal health coverage (point 17). Social protection is referred to throughout as a broad concept which includes a wide range of social protection formulas.

One point to note is the concern for the informal sector, something that is also seen in Latin America and probably in Africa. For example, the official magazine The ASEAN - Social Protection for All discusses the issue on several occasions, examining the measures taken against this social group to extend protection to them, given that they account for 80 per cent of the region's workforce, a total of 244 million people. The informal sector is perhaps the Achilles heel of the region, as all member states have social security laws, but the coverage of the population seems to be uneven. The Covid pandemic has brought to light the large number of people without health coverage in some of the member states, as indicated by a study by the Indonesian Ministry of Health on the coverage rates of each state.

Note that none of the ASEAN member countries have ratified the ILO Convention as a minimum standard, so they are not subject to the commonly known typology or systematic structure of contingencies. Hence, a certain deviation from the conceptual standards is to be expected, and their social protection institutions differ on more than one point from the status quaestionis.

2.2. Material classification.

From a material point of view, in terms of the coverage provided, a first perspective differentiates between the rules that cover social protection, those that cover social security, and those that only cover some of the contingencies. This is a very significant variant for understanding the depth of protection, but it is difficult to compare if we consider, for example, the versatility of social protection, which in some countries goes as far as housing and household measures, but in exchange for omitting some insurance contingencies.

Under the material horizon, then, we find that the groups dedicated to minimums and coordination are limited to public insurance and the institutionalised contingencies protected by it, which in some cases are gradually increasing, for example in the European Union Regulations with respect to pre-retirement benefits. However, we have seen how the Ibero-American Multilateral Convention leaves out two important blocks of contingencies, health and temporary contingencies - including unemployment, temporary disability and family - and is very precise in stating that it will not apply either to non-contributory schemes, or to social assistance, or to benefit schemes for victims of war or its consequences (art. 3.4). On the other hand, the third group's elastic and possibilist vision envisages a social protection that covers any contingency due to social risks, and which is combated with measures of any kind (ASEAN Declaration, point 12).

There are various formulas in the Norms to alleviate the cost of States' insurance coverage. The first of these consists in the possibility of not ratifying the relevant Standard in their region, where such incorporation is not mandatory. Typically on the voluntary side are the ILO Minimum Standards Convention, the European Social Security Code (Council of Europe), and the Ibero-American Multilateral Convention, while on the cogent side are the two European Union Regulations on Social Security Coordination, and also the ASEAN Declaration on Social Protection. Thus, for example, the European Code has been ratified by 34 member countries of the Council of Europe, while 19 others have not. On the other hand, the formula of directly excluding some branches of coverage, as we have seen in the Ibero-American Convention, has another equivalent formulation in those other Standards that allow the ratification of only some branches, but not all, as we see in the ILO Minimum Standards Convention or in the European Code of Social Security.

In view of the three groups of regional rules and their differences, it is questionable whether one type could be combined with the other. There is nothing to prevent such a combination, although it seems difficult to mix coordination rules with minimum mechanisms. On the other hand, the introduction of principles or bases in these two groups, or their contents in the third, would be conceivable. And of course there is a whole arsenal of neutral contents, the ‘common provisions’, such as those of administration and management or those of judicial or extrajudicial control of conflicts,

which can be introduced indistinctly. However, each regional standard deploys different management and control systems, as we shall see below. The latter seems resistant to the introduction of private dispute settlement systems, since only in the case of the Multilateral Convention do we find their unambiguous admission, albeit very specifically referring to the arbitration of disputes between the States parties (Art. 28).

3. Administration and contentious application of the Coordination Rules.

3.1. Administration.

There are no major references to an important issue in the chapter on the management of insurance systems, that of the distinction or complementarity between public and private - voluntary capitalisation systems - nor is there any mention of the different levels of public administration, given that some social protection and social security benefits, such as family, unemployment and health benefits, require grassroots management at local level, while others require more centralised, state or, at most, autonomous community management, such as pensions [69]. This is an issue that produces strong tension between some Autonomous Communities and the Spanish State, for example, and which admits a diversity of solutions. The fact that the rights claimed arise at an international level may be an argument in favour of centralising the management response, but not the general justification for these cases, if we take into account the content of some of them and the social condition of the holders. After all, decentralisation will allow for greater proximity in management, even if this is resolved by the competent national or international body.

These omissions aside, the administration or management of insurance rights is carried out in different ways in each regional group, although there are several somewhat unifying connections between them, as follows:

Firstly, the connection between the Council of Europe's European Social Security Code and ILO Convention 102 Minimum Standards continues the similarity already seen in the amounts (percentages) of the latter, now with regard to the administration of benefits, although the ILO refers the management of Convention 102 to its Governing Body, while the Council of Europe proposes the presence of a *governmental Committee* for the European Social Charter. This governmental Committee has a tripartite configuration[70] and analyses the compliance or otherwise of the Member States with the rights of the Code, and in particular with social security, and may propose to the Committee of Ministers of the Council of Europe that it address a recommendation to the non-compliant country. Follow-up results from *soft* or non-decisional management in both cases.

This governmental Committee of the European Code is also similar to the *Administrative Commission* on Social Security, set up in the European Union for the two Regulations on the subject, with functions that are not management functions as such, but rather functions of information on and interpretation of the European insurance rules, as seen from the national positions[71].

The Ibero-American Multilateral Convention, for its part, has an Administrative Technical Committee for administrative and interpretation matters, made up of one

representative from each State Party, and seeks above all to establish the uniform application of the Convention (Art. 24).

With regard to disputes between parties on specific issues, the ILO has a Committee of Experts on the Application of Conventions and Recommendations (CEACR), competent for disputes relating to all Conventions except those on freedom of association, with independent members who are usually slow to act, where peaceful settlement is sought rather than a declaratory sanction for non-observance. The functioning is based on the submission of annual reports by the States bound to apply the respective standards.

The members of that ILO Committee of Experts enjoyed for some time an additional role, as they were also called upon by the Council of Europe to supervise similar reports on the European Code of Social Security[72]. The revision of this Code in 1990 has, however, established a European Commission of independent experts for such work, thus moving away from its ILO precedent and imbuing it with more European flair[73]. It should be remembered that we are talking about the monitoring of the periodic reports sent by the obliged states. It will be the Committee of Ministers of the Council of Europe, acting by a two-thirds majority, which will decide on the basis of the report whether the country in question is failing to fulfil its commitments, and may invite it to take the measures it deems necessary, something ‘very gentle’ but effective, in Otting's opinion.

This is not the end of the original aspects of the Council of Europe's European Code. For individual complaints outside the reports of the obliged states – and now especially for collective complaints by accredited subjects of this nature – there is a European Court of Human Rights that rules on infringements of the right to social security, albeit under the prism of another Council of Europe instrument, the European Convention on Human Rights and Fundamental Freedoms, which focuses on the proclamation of civil and political rights that may also affect social rights in certain cases. However, Article 12, where it is proclaimed as a right, refers to a minimum content in accordance with the European Code[75] , and therefore in a way defends the objective set by the latter, the harmonisation of minimum content. So far, we have to accept the divergent tendencies that had been detected in both European regional rules, and whose respective courts had made explicit with certain clarity, as Ewing and Hendy had so masterfully pointed out in his study on the ‘history of the two cities’, in reference to Luxembourg and Strasbourg, where both judicial bodies are based. The centripetal tendency seems to have diminished, but not abated, following the application for accession to the Social Charter by the European Union, whose application has been received with some uncertainty as it is a union of states, not a state.

Finally, the ASEAN Declaration on Strengthening Social Protection rests on the management of the competent administrative agencies of each member state, as its implementation is the primary responsibility of member states (Principle 5), but requires cross-cutting coordination of governments, the private sector, development partners, civil society, service providers, and others (Principle 6), as well as families and communities. Regional coordination is entrusted to the Committee of Ministers of Social Welfare and Development (AMMSWD), supported by the Senior Officials' Commission on Social Welfare and Development (SOMSWD).

3.2. Litigiousness.

With regard to contentious application, the ILO does not have a judicial body for the application of its Conventions, nor does the ASEAN Declaration: it is the national courts of each signatory country, usually very reluctant to assume international jurisdiction, that will admit claims based on these instruments.

With regard to the two European Union Regulations on the coordination of social security, the competence to resolve conflicts corresponds to the national courts of the country competent in the matter, courts that can raise before the Court of Justice (CJEU) their doubts about deviations of national laws from the Regulations, by means of the so-called preliminary ruling question, whereby this European body hears numerous conflicts and has created an exceptionally dense and qualified jurisprudence. Always at the request of a national judicial body, as indicated above[77].

Of less importance in the area of social protection are the two Council of Europe bodies with competence in social security, on the one hand the European Committee of Social Rights, which focuses especially on the civil and political rights recognised by the European Convention on Human Rights, but also, indirectly, on social rights, which is why it settles some cases in this area. In Gómez Heredero's opinion, there is a certain tendency to extend the protection of this right, despite the broad scope recognised by the signatory States, and in the first place, contributory benefits or compulsory insurance have been recognised, and later on, other concepts have been included. Also in the Council of Europe, two other bodies, the European Committee of Social Rights and the Committee of Independent Experts for the non-ratified parties, are responsible for monitoring the application of the European Social Charter and its articles on social security, although the supervisory function is carried out by scrutinising the four-yearly reports of the ratifying countries, with minimal results. The implementation of the collective complaints procedure of accredited collective subjects may influence a change of trend, if it is ratified by a significant number of countries.

The Ibero-American Multilateral Convention is clearer, referring to national courts and containing in Article 9 a rule on the law applicable to each case, which will be that of the State Party in whose territory they carry out an activity, whether dependent or not, that gives rise to their inclusion in the scope of application of that law, although special rules are indicated in Article 10. On the other hand, the States parties to a conflict are urged to resolve disputes through negotiation, as mentioned above, and in the event of unsuccessful negotiation, the claim by one of the States involved to request arbitration, which is ultimately designated by the Ibero-American General Secretariat (Art. 28).

3.3. Inter-regional conflicts of competence.

Although it seems strange at first sight that such rare normative instruments could collide today, the fact that they are mostly concentrated in two regions of the world makes such a prediction quite plausible. An example of this is the somewhat stormy relationship between the two EU regulations, the Social Charter and the Council of Europe's Social Security Convention, and ILO Convention 102. But there is also something similar between all these instruments and also the Latin American Multilateral Convention, ratified by two European countries. A multitude of workers will be confronted with complex conflicts of jurisdiction and applicable law.

As is well known, the issue has two opposing sides, since both positive and negative conflicts of jurisdiction can be found, mainly between national courts that are called upon to intervene or, conversely, to acquiesce in a case. Then there are the 'internal' conflicts between competent administrations and their councils and ad hoc committees, which are resolved more informally, in the manner described above. The European judge(s) will have to decide on their competence to decide in accordance with European rules, in which case they have the power to go to the European Court of Justice to see whether or not to apply the regulations in that area. And if the worker has completed qualifying or insurance periods in America, in a country linked to the Ibero-American Convention, the competent judges will decide whether or not the periods are added together and whether they will apply the rule of what is most favourable to the petitioner in that stretch, combined with the rules of judicial competence.

FOOTNOTES

[1] Professor of Labour Law (retired) at the University of Seville, Spain. President of IASP-AIPS. Former member of the Committee for the non-ratified parts of the European Code of Social Security, Council of Europe.

[2] Cf. supra Discussion paper 1/2003 by Prof. Roberta Soares Silva.

[3] Thus, the ILO Minimum Standards of Social Security Convention 1952 (102), Art. 3, paragraph 1, establishes that any Member whose economy and medical resources are insufficiently developed may, by means of a declaration annexed to its ratification - if the competent authorities so desire, and for as long as they deem necessary, to the temporary exceptions set out in the following articles: 9(d); 12(d); 15(d); 18(d); 21(c); 27(d); 33(b); 34(3); 41(d); 48(c); 55(d) and 61(d). For example, Bolivia ratified the Convention concerning Minimum Standards of Social Security in 1977, which is currently in force with the following indication: "It has accepted Parts II, III and V to X. Pursuant to Article 3, paragraph 1, of the Convention, the Government avails itself of the temporary exceptions contained in Articles 9(d); 12(2); 15(d); 18(2); 27(d); 33(b); 34(3); 41(d); 48(c); 55(d) and 61(d). Part VI is no longer applicable by virtue of the ratification of Convention No. 121. By virtue of the ratification of Convention No. 128 and in accordance with its Article 45, certain parts of this Convention cease to apply. Part III is no longer applicable by virtue of the ratification of Convention No. 121. No. 130.

[4] OECD, *Breaking the cycles of informal employment and low-paid work,* 16 January 2024. This international institution has been addressing the issue for some time through national reports such as the one on Mexico (OECD [2012], *Getting It Right. A strategic agenda for reforms in Mexico*, OECD Publishing), from which we can highlight Chapter 5, by Huerta, María del Carmen, and Pascal, Marianna, entitled 'Improving access to formal employment', pp. 109 ff.

[5] There are thirty specific conventions, some sectoral and others early ones that have since been superseded, so we will highlight seven: that of 1959 (No. **130**) on medical assistance; 1962 (No. **118)** on equality; 1964 (**121**) on occupational hazards; 1967 (**128**) on disability, old age and death; 1983 (No. 167) on the preservation of acquired rights;

1988 (No. 162) on unemployment; and 2000 (No. 191) on maternity. The 1944 Recommendation on the security of means of livelihood (No. 67) and the Recommendation on Medical Assistance, 1944 (No. 69), which envisage comprehensive social security systems and the extension of coverage to all, and lay the foundations for Convention No. 102 (1952). See López Morales Germán (1996), 'Aspectos teóricos del Convenio 102 y su aplicación en Iberoamérica' (Theoretical aspects of Convention 102 and its application in Ibero-America), in Inter-American Conference on Social Security, *Seminar on International Social Security Regulations*, Mexico City, p. 48.

[6] These were followed by Regulations 1408/71 and 574/72.

[7] Argentina, Bolivia, Brazil, Chile, El Salvador, Ecuador, Spain, Paraguay, Peru, Portugal, the Dominican Republic and Uruguay. Mexico, Costa Rica and Venezuela are missing.

[8] Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

[9] Riaño Barón, Gina M., and Alonso Ligero, María S. (2014) , 'Introduction' to *Social Security Studies. 60 years of the Ibero-American Social Security Organisation. 1954-2014,* Madrid: OISS, p. 19: "The Second Congress... took place in Quito in 1958 and laid the foundations for a Multilateral Agreement, which would later give rise to the Ibero-American Social Security Agreement of Quito (1978), which is the framework under which 12 bilateral social security agreements are currently in force. In 2004, Decision 583 of the CAN, the Andean Social Security Instrument, was approved, and the OISS is currently advising on its regulation (…) The MERCOSUR Multilateral Social Security Agreement has been in force since 2005, with the OISS also providing advice and participating in its management through the process of electronic data transmission between countries. As a culmination of all this, in 2007, in Chile, the Ibero-American Multilateral Social Security Agreement was adopted by the XVII Ibero-American Summit of Heads of State and Government. It has currently been signed by 15 countries and is in full force in 9. The OISS acts as the Secretariat of its Technical Administrative Committee.

[10] Of the 65 ratifications of Convention 102 on Minimum Standards, 80 per cent belong to European and Ibero-American countries, and only 20 per cent to countries in the rest of the world, mainly in Africa: Cape Verde, Chad, Iraq (in 2024), Israel, Japan, Libya, Morocco, Mauritania, Niger, Congo, Senegal, Sierra Leone and Togo: ILO, *Normlex,* 'Ratifications by country'. If we add the African ratifying countries to the European and Latin American group, the ratifications of this group would reach 95 per cent.

[11] Cf. Woehrling, Jean M. (2008), "*La Commission centrale pour la navigation du Rhin : 200 ans d'histoire,* online*;* Woehrling, Jean-Marie), Schirmann, Sylvain, and Libera, Martial, eds. (2015), *Commission centrale pour la navigation du Rhin, 200 ans d'histoire (1815-2015)*, Strasbourg: CCNR, passim.

[12] On this subject, see my study on "Contractual provisions in labour relations prior to the employment contract", in Rojas Rivero Gloria, ed. (2013), *Origins of the*

employment contract and the birth of the Social Security System, Editorial Bomarzo, chapter VII.

[13] The Charter that gave rise to ASEAN in 2008 sought to create 'a European Union-style community' (Agence France Presse, 'Momentous day for ASEAN as charter goes into force', 15 December 2008). As is well known, the countries that make up ASEAN have had centuries of intense contact, both commercial and military, with various European countries.

[14] This is the case, for example, in India's 2020 Social Security Code. For a sociological analysis, see Kumar, Neeraj, *Inter-State Migration in India*, IES (OT) IEG, with data from 2011, focusing on the search for possible factors influencing it. Das, K. C., and Saha S. (2013), 'Inter-state migration and regional disparities in India', Conference Proceeding, Population Association of America Annual Meeting, iussp.org.; Malhotra Neena and Devi Pushpa (2016), 'Analysis of Factors Affecting Internal Migration in India', Amity Journal of Economics 1(2), pp. 34–51. This also occurs in Brazil, as studied by Marco Pinto José and Baeninger Rosana (2006), 'Internal migration in contemporary Brazil', *Population Notes* 82, pp. 1 ff.

[15] Indonesia has a population of 276 million.

[16] Defined as the member of the largest category of persons protected in the relevant contingency (Art. 72.6).

[17] Art. 79 of the European Code (Council of Europe), revised in 1990. Initially, the period envisaged was two years. The European Social Charter, for its part, has two committees, the second of which is tasked with reviewing, with regard to the parts of the Code that have not been accepted, the level of approximation to the required standards (Part IV of the European Social Charter, incorporated by the 1991 Turin Protocol), as we shall see below. On the vicissitudes of the Charter's approval, Rodríguez-Piñero Bravo-Ferrer Miguel (1978), 'La Carta Social Europea y su puesta en práctica' (The European Social Charter and its implementation), Revista de Instituciones Europeas 5 (1), pp. 54 ff.

[18] Martínez Martínez, Verónica (2019), 'The right to social security before the European Committee of Social Rights', *Estudios de Deusto* 67/1, p. 268.

[19] Article 72, nos. 5 and 6, of the European Code of Social Security.

[20] In this regard, Ojeda Avilés Antonio (2009), 'European convergence in social security: the problems of an international code of minimum benefits', Journal of the Ministry of Labour and Emigration, 84, pp. 15 ff.; Jimena Quesada, Luis (2012), 'Chronicle of the case law of the European Committee of Social Rights 2012', *European Journal of Fundamental Rights* 20/2, p. 364; Martínez Martinez, Verónica (2019), 'The right to social security', cit., p. 268.

[21] Martínez Martínez, Verónica, 'The right to social security', cit., p. 270.

[22] Four Parts, with a Second Part of rights recognised by 31 articles, several of which refer to Social Security, Social Services and Social Assistance.

[23] Arts. 5 and 13, Ibero-American Multilateral Agreement.

[24] Articles 8 and 9 of Regulation 883/2004. The issue of competence with regard to the applicable legislation and jurisdiction in matters of employment contracts, which are dealt with in detail in the Rome I and Brussels I Regulations, is a separate matter.

[25] ILO, Social Protection in Asia: Philippines Social Security System, 2015, p. 1. See also González E.T. and Mansan R.G. (2002), Social Protection in the Philippines, Friedrich Ebert Stiftung, pp. 171 ff.; Orbeta A.C. (2011), 'Social Protection in the Philippines: Current State and Challenges', Philippines Institute for Development Studies, Discussion Paper Series 2011-02.

[26] Agbisit Joanne B. (2020), "A Look at Long-term Solutions Studies on Informal Employment Reveal Progress, Gaps, and Future Directions", *The Asean* (Jakarta) 3, p. 35.

[27] Primadi, Oscar, Secretary General of the Ministry of Health (2020), 'Universal Health Care in ASEAN', *The Asean* magazine, no. 3, p. 12: Insurance coverage in Brunei in 2019, 100%; in Cambodia, 24%; in Indonesia, 84%; in Laos, 94%; in Malaysia, 100%; in Myanmar, 2%; in the Philippines, 78%; in Singapore, 93%; in Thailand, 100%; in Vietnam, 89%. If we compare the coverage in the Philippines with the 34% figure given above from the ILO report on this country, the discrepancy could be due to the formula of relying on reports from the respective countries, possibly adopted by ASEAN, where a very optimistic view of the situation is common.

[28] Although it is not part of any regional group, the Indian Code of Social Security 36/2020 proclaims the central government as the 'appropriate government' for the so-called Central PSUs to the central government of the country, as well as for specific sectors of railways, mines, telecoms and banking, and 'controlled industries' (Art. 1.2.3)

[29] 'This rare example of partnership between international organisations saves economic resources and expert time, given the similarity between the 1964 Code and ILO Convention 102': Otting, Albrecht. 'History, development and importance of the European Social Security Code', in ILO-OISS, *Seminar on international social security standards*, cit., p.101.

[30] Otting, op. cit., p.

[31] Otting Albrecht, op. cit., p. 102.

[32] As far as the Committee of Independent Experts is concerned, it has a somewhat peculiar function for the non-ratified parts of the Code:

detecting whether the legislative status of a country allows it to ratify more parts of those already signed. In this regard, Otting, *op. cit.,* p. 101: 'This is done to prevent countries, either through inertia or inadvertence, from failing to report when the evolution of their systems already allows them to make greater commitments.' [32].

[33] See Salcedo Beltrán C., 'The European Social Charter and the Protocol on Collective Complaints: social rights in terms of effectiveness', *NET21* 15, pp. 1 ff. ; the

same, “The collective complaints procedure: paradigm of constitutionalism and social justice (*nullum ius sine actione*), *Revista General de Derecho del Trabajo y Seguridad Social* 57, pp. 195-278. The collective complaints in the Charter were introduced by an ad hoc Protocol in Treaty 158 (1995) and came into force in 1998 with five ratifications. Spain ratified it in 2022 (Official State Gazette of 22 November), which indicates the difficulties and possible fear of opening up the litigation arena to trade unions, employers' organisations and NGOs, even though only registered organisations are admitted. Collective complaints are lodged by these organisations with the European Committee of Social Rights against ratifying States that may have failed to fulfil their commitments.

[34] Five members, with the addition of representatives from the European Trade Union Confederation (ETUC), Business Europe (formerly UNICE) and the International Organisation of Employers (IOE).

[35] There is also the Steering Committee of the Regional Social Security Programme for South-Eastern Europe (IPA Joint Programme), jointly run by the Council of Europe and the European Union, and made up of representatives of the ‘beneficiary states’: Albania, Bosnia and Herzegovina, Croatia, Kosovo under UN Resolution 1244, Montenegro, Serbia, Macedonia, and Turkey.

[36] Not to be confused with the European Court of *Human* Rights of the European Convention on Human Rights

[37] Art. 12, European Social Charter: "In order to ensure the effective exercise of the right to social security, the Parties undertake: 1. to establish or maintain a social security system; 2. to maintain the social security system at a satisfactory level, at least equivalent to that required for ratification of the European Code of Social Security (...)".

[38] Ewing, K. D. & Hendy John, Q. C. (2010), ‘The dramatic implications of Demir and Baykara’, *Industrial Law Journal* 39, 1, pp. 2-51. According to Carril Vázquez, Xosé J. (2023), ‘The European Union's low blows to the European Social Charter’, *Lex Social* 13/2, p. 1, the European Union behaved unfairly in its dispute with the Council of Europe.

[39] On the technical difficulties referred to in the text, see De Schutter, Olivier, The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights, report to the European Parliament, undated, pp. 46 ff. In a long appendix, the normative aspects in contrast between the European Social Charter and EU legislation.

[40] There are, of course, three other types of appeal, as well as the General Court, known until 2009 as the Court of First Instance, which deals mainly with appeals relating to economic disputes. Of the other appeals to the Court of Justice of the EU itself, the most notable are infringement proceedings, which may be brought by the European Commission or another Member State against the allegedly infringing State. Actions for annulment, against acts of the EU itself. And actions for failure to act by an EU body, brought against the EU by a Member State or other bodies.

[41] Gómez Heredero Ana (2007), Social security as a human right. The protection offered by the European Convention on Human Rights, Strasbourg: Council of Europe, p. 65. The book cites violations of several articles of the ECHR: cases of violation of the right to a fair trial (pp. 9 ff.), the obligation of States to comply with the judgments of the ECtHR (pp. 50 ff.), etc.

[42] Professor of Labour Law and Social Security (r) at the University of Seville, Spain. Honorary President of the Spanish Association of Health and Social Security. Former Member of the Committee for the non-ratified parts of the European Code of Social Security, Council of Europe.

[43] Cf. supra Discussion paper 1/2003 by Prof. Roberta Soares Silva.

[44] Thus, the ILO Convention Minimum Standards of Social Security 1952 (102), Art. 3, paragraph 1, states that any Member whose economy and medical resources are insufficiently developed may, by a declaration annexed to its ratification - if the competent authorities so desire, and for as long as they consider it necessary - avail itself of the temporary derogations contained in the following articles: 9(d); 12(d); 15(d); 18(d); 21(c); 27(d); 33(b); 34.3; 41 (d); 48(c); 55(d) and 61(d). For example, Bolivia ratified the above-mentioned Convention on Minimum Standards of Social Security in 1977 and it is currently in force with the following indication: "Has accepted Parts II, III and V to X. By virtue of Article 3, paragraph 1, of the Convention, the Government avails itself of the temporary derogations contained in Articles 9(d), 12(2), 15(d), 18(2) , 27(d), 33(b), 34(3), 41(d), 48(c), 55(d) and 61(d). Part VI is no longer applicable by virtue of the ratification of Convention No. 121. By virtue of the ratification of Convention No. 128 and in accordance with Article 45 thereof, certain parts of this Convention cease to apply. Part III is no longer applicable by virtue of the ratification of Convention No. 130."

[45] OECD, *Breaking the Cycles of Informal Employment and Low-Paid Work*, 16 January 2024. This international institution has been working on the issue for some time through national reports such as the one on Mexico (OECD [2012], *Getting It Right. A strategic agenda for reforms in Mexico*, OECD Publishing), of which chapter 5, by Huerta, María del Carmen, and Pascal, Marianna, entitled 'Improving access to formal employment', pp. 109 ff, is noteworthy.

[46] There are thirty specific Conventions, some sectoral and some early ones that have since been superseded, so we will highlight seven: 1959 (No. **130**), on medical care; 1962 (No. **118),** on equality; 1964 (**121**), occupational hazards; 1967 (**128**), disability, old age and death; 1983 (**167),** preservation of acquired rights; 1988 (**162**), unemployment; and 2000 (**191),** maternity. The Livelihood Security Recommendation, 1944 (No. 67) and the Medical Care Recommendation, 1944 (No. 69), which envisage comprehensive social security systems and the extension of coverage to all, and lay the basis for Convention No. 102 (1952), should also be cited as antecedents to the Framework Convention. See López Morales Germán (1996), 'Aspectos teóricos del Convenio 102 y su aplicación en Iberoamérica' [Theoretical aspects of Convention 102 and its application in Ibero-America], in Inter-American Conference on Social Security, *Seminar on International Social Security Standards*, Mexico City, p. 48.

[47] These were followed by Regulations 1408/71 and 574/72.

[48] Argentina, Bolivia, Brazil, Chile, El Salvador, Ecuador, Spain, Paraguay, Peru, Portugal, Dominican Republic and Uruguay. Missing are Mexico, Costa Rica, Venezuela.

[49] Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

[50] Riaño Barón, Gina M., and Alonso Ligero, María S. (2014), 'Introduction' to Social Security Studies. 60 years of the Ibero-American Social Security Organisation. *1954-2014,* Madrid: OISS, p. 19: "The Second Congress...took shape in 1958 in Quito with the foundations for a Multilateral Convention, which would later give rise to the Ibero-American Convention on Social Security of Quito (1978) which is the framework under which 12 bilateral Social Security Conventions are in force. In 2004, CAN Decision 583, the Andean Social Security Instrument, was approved, and the ISSO is currently advising on its regulation (...) Since 2005, the MERCOSUR Multilateral Social Security Agreement has been in force, on which the ISSO has also provided advice and in whose management it intervenes through the process of electronic data transmission between countries. As a culmination of all this, in 2007, in Chile, the Ibero-American Multilateral Agreement on Social Security, adopted by the XVII Ibero-American Summit of Heads of State and Government, was materialised and has now been signed by 15 countries and is in full force in 9.

[51] Of the 65 ratifications of Minimum Standard Convention 102, 80 per cent are from European and Latin American countries, and only 20 per cent from the rest of the world, mainly from Africa: Cape Verde, Chad, Iraq (in 2024), Israel, Japan, Libya, Mauritania, Morocco, Niger, Congo, Senegal, Sierra Leone and Togo: ILO, *Normlex,* 'Ratifications by country'. If we add the ratifying African countries to the European and Ibero-American group, the ratifications of this group would reach 95 per cent.

[52] Cf. Woehrling, Jean M. (2008), "*La Commission centrale pour la navigation du Rhin : 200 ans d'histoire,* on internet*;* Woehrling, Jean-Marie), Schirmann, Sylvain, and Libera, Martial, eds. (2015), *Commission centrale pour la navigation du Rhin, 200 ans d'histoire (1815-2015)*, Strasbourg: CCNR, passim.

[53] On the subject, see my study on 'Contractual provisions in labour relations prior to the employment contract', in Rojas Rivero Gloria, ed. (2013), *Origins of the employment contract and birth of the Social Security System*, Editorial Bomarzo, chapter VII.

[54] The charter that gave birth to ASEAN in 2008 sought to create 'an EU-style community' (Agence France Presse, '"Momentous" day for ASEAN as charter goes into force', 15 December 2008). As is well known, ASEAN member countries have had centuries of intense commercial and military contact with various European countries.

[55] This is the case, for example, in the Indian Social Security Code 2020. Cf. for a sociological analysis Kumar, Neeraj, *Inter-State Migration in India*, IES (OT) IEG, with 2011 data, focusing on the search for possible factors influencing it. Das, K. C., and Saha S. (2012), 'Inter-state migration and regional disparities in India' . Neena Malhotra and Pushpa Devi, 'Analysis of Factors Affecting Internal Migration in India*',* *Amity Journal of Economics* 1(2), pp. 34-51.

[56] Indonesia has a population of 276 million.

[57] Defined as the member of the largest category of persons protected in the relevant contingency (Art. 72.6).

[58] Art. 79 of the European Code (Council of Europe), revised in 1990. Initially the period of time foreseen was two years. The European Social Charter, for its part, has two committees, the second of which has the task of reviewing, with regard to the non-accepted parts of the Code, the level of approximation to the required standards (Part IV of the European Social Charter, incorporated by the Turin Protocol of 1991), as we shall see below. On the vicissitudes in the approval of the Charter, Rodríguez-Piñero Bravo-Ferrer Miguel (1978), 'La Carta Social Euoepea y su puesta en práctica', *Revista de Instituciones Europeas* 5 (1), pp. 54 ff.

[59] Martínez Martínez, Verónica (2019), 'El derecho a la Seguridad Social ante el Comité Europeo de Derechos Sociales' (The right to social security before the European Committee of Social Rights), *Deusto Studies* 67/1, p. 268.

[60] Article 72(5) and (6) of the European Code of Social Security.

[61] In this regard, Ojeda Avilés Antonio (2009), 'European convergence in Social Security: the problems of an international code of minimum benefits', Revista del Miniserio de Trabajo y Migraciones (España), 84, pp. 15 ff; Jimena Quesada, Luis (2012), 'Chronicle of the case law of the European Committee of Social Rights 2012', *European Journal of Fundamental Rights* 20/2, p. 364; Martínez Martinez, Verónica (2019), 'The right to social security', cit.

[62] Martínez Martínez, Verónica, 'The right to social security', op. cit.

[63] Four Parts, with a Second part of rights recognised by 31 articles and where several of them refer to Social Security, Social Services and Social Assistance.

[64] Arts. 5 and 13, Ibero-American Multilateral Convention.

[65] Articles 8 and 9 of Regulation 883/2004. The issue of jurisdiction is different with regard to the competent law and jurisdiction for employment contracts, which is dealt with in detail in the Rome I and Brussels I Regulations.

[66] ILO, *Social Protection in Asia: Philippines Social Security System*, 2015, p. 1. Also, González E.T. and Mansan R.G. (2002), Social Protection in the Philippines, Friedrich Ebert Stiftung, pp. 171 ff.; Orbeta A.C. (2011), 'Social Protection in the Philippines: Current State and Challenges', Philippines Institute for Development Studies, Discussion Paper Series 2011-02.

[67] Agbisit Joanne B. (2020), 'A Look at Long-term Solutions Studies on Informal Employment Reveal Progress, Gaps, and Future Directions', *The Asean* (Jakarta) 3, p. 35.

[68] Primadi, Oscar, Secretary General, Ministry of Health (2020), 'Universal Health Care in ASEAN', *The Asean* magazine, n. 3, p. 12: Insurance coverage in Brunei in

2019, 100%; in Cambodia, 24%; in Indonesia, 84%; in Laos, 94%; in Malaysia, 100%; in Myanmar, 2%; in the Philippines, 78%; in Singapore, 93%; in Thailand, 100%; in Vietnam, 89%. If we compare the coverage of the Philippines with the 34% coverage given above in the ILO report on the Philippines, the discrepancy may derive from the formula of resting on country reports possibly adopted by ASEAN, where a very optimistic view of one's 's own situation is common.

[69] Although it is not part of any regional grouping, the Indian Code of Social Security 36/2020 proclaims the central government as 'appropriate government' for the so-called Central PSUs to the central government of the country, as well as for specific sectors of railways, mines, telecom and banking, and the 'controlled industries' (art. 1.2.3).

[70] Five-member, with representatives of the European Trade Union Confederation (ETUC), Business Europe (formerly UNICE), and the International Organisation of Employers (IOE).

[71] There is also the Steering Committee of the Regional Social Security Programme for South East Europe (IPA Joint Programme), jointly run by the Council of Europe and the European Union, and made up of representatives of the 'beneficiary states': Albania, Bosnia and Herzegovina, Croatia, Kosovo under UN Resolution 1244, Montenegro, Serbia, Macedonia, and Turkey.

[72] 'This rare example of partnership between international bodies saves economic resources and experts' time, given the similarity between the 1964 Code and ILO Convention 102': Otting, Albrecht. 'History, development and importance of the European Code of Social Security', in ILO-IOSH, *Seminar on International Social Security Standards*, cit. p.101.

[73] Otting, *op. cit.*

[74] Otting Albrecht, *op. cit.,* p. 102.

[75] Art. 12, European Social Charter: 'In order to guarantee the effective exercise of the right to social security, the Parties undertake: 1. to establish or maintain a social security system; 2. to maintain the social security system at a satisfactory level, at least equivalent to that required for ratification of the European Code of Social Security (...)'.

[76] Ewing, K. D. & Hendy John, Q. C. (2010), 'The dramatic implications of Demir and Baykara', Industrial Law Journal 39, 1, pp. 2-51. For Carril Vázquez, Xosé J. (2023), 'Los golpes bajos de la Unión Europea a la Carta Social Europea' (The European Union's low blows to the European Social Charter), *Lex Social* 13/2, p. 1, the European Union would even have behaved disloyally in its struggle with the Council of Europe.

[77] There are three other types of appeal, of course, as well as the General Court, until 2009 known as the Court of First Instance, which is mainly dedicated to appeals on economic disputes. Of the other appeals of the EU Court of Justice proper, the most important is the action for failure to fulfil an obligation, which can be brought by the European Commission or another Member State against the State alleged to have failed to fulfil its obligations. Actions for annulment, against acts of the EU itself. And actions

for failure to act by an EU body, brought against the EU by a Member State or other bodies.

[78] Gómez Heredero Ana (2007), *Social security as a human right. The protection offered by the European Convention on Human Rights,* Strasbourg: Council of Europe, p. 65. The book cites violations of several articles of the ECHR: thus, cases of infringement of the right to a fair trial (pp. 9 ff.), the obligation of states to comply with ECtHR judgments (pp. 50 ff.), etc.

[79] The Committee of Independent Experts for unratified parts of the Code has a somewhat peculiar function: to detect whether the legislative status of a country allows it to ratify more parts than those already signed. In this sense Otting, *op. cit.,* p. 101: 'This is done to prevent countries, either through inertia or inadvertence, from failing to report when the evolution of their systems already allows them to make further commitments'.