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SOCIAL GUARANTEES FOR ARTISTS IN LITHUANIA AND THE EUROPEAN UNION

Juozas Tartilas

Mykolas Romeris University, Faculty of Law,
Department of Labor Law and Social Security
Ateities 20, 2057 Vilnius, Lithuania
Telephone (+370 5) 2714 600
E-mail dsk@mruni.eu

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Annotation. *All citizens of the Republic of Lithuania over 16 years of age have the right to insure with voluntary social insurance. There are two types of insurance – voluntary pension insurance and voluntary social insurance for sickness and motherhood allowances. In the case of pension insurance, contributions are paid quarterly, and those contributions are 50 percent of the basic pension, while sickness and maternity contributions are paid at least once per quarter and the sum of the contribution can vary from 10 to 200 Litas per month.*

Social guarantees for artists constitute a specific sphere of regulation. The main problem is that artists in accordance with their work specifics do not have a stable income, and their nature of work is not defined as regards work time, work place, work tools, and an employment contract itself. For instance, a sculptor can work at home (workshop) at the time suitable for his creative inspiration (day or night), using his own work instruments, and the work may take a few years. Payment for a concluded work can be done in advance (provided that there is a contract-giver) and after the conclusion of works. This and other reasons complicate the relations of artists and Sodra, the State Social Insurance Fund Board of the Republic of Lithuania (e. g., issues on how many months per year an artist is working, what is his length of service, income, the problem of contribution periodicity, etc.). Therefore, it is hard to solve the administrative difficulties that are connected with applying Sodra's tax to artists.

Even if these problems are solved, there still arises a problem of great importance taking into account the future problems of Sodra, i. e. the problem of the reality of earned pensions to all insurants, especially to the artists, whose legal status in case of pension receiving is not strictly defined.

The article analyzes the experience of other European Union member states in the field of artists' social guarantees.

Keywords: *Social security, social care, artist, social welfare, length of service.*

1. Social Conditions of Artists in the EU Member States

There is no single, common and unilaterally recognized definition of “artists” or their status in legal literature of Lithuania and the European Union (the EU) member states. The European Parliament suggested¹ considering an artist as a person who is active in the field of his profession, defined and treated as such under taxation and labor law, and social security legal system.

Problems of artists' labor market are complicated. “Art is not a mystical self-conveying activity.”² This activity aims at pecuniary or non-pecuniary reward. Non-pecuniary reward is understood as recognition, dignity status of an artist and etc. In most of the EU countries, the average of artists' income is comparatively smaller than the average of income of persons of other professions, but despite this, there is a clear surplus of artists in the labor market. Various subsidies for artists decrease their specific income, as the sponsorship system facilitates the flow of new artists to the market.

It is sometimes suggested to divide artists into categories in order to manage relative social questions more effectively. Social security specialists suggest establishing a clear line between amateur artists and professional artists, providing different social guarantees to these categories. Some suggestions of social security specialists could be shocking to the society; for instance, the suggestion for the youth to choose an artist's profession more cautiously, despite temporary glints in public, the suggestion to stress the necessity to get to know the real world of art, and the urge to dethrone the mythology of art or even decrease the support for artists.

Deficiencies of conventional social security models on working artists came to light more clearly in the EU member states lately. These problems are related with the lack of benefits in case of accidents or professional diseases, failure to ensure minimal social guarantees in the process of searching for a new job (e. g., in Denmark). It often happens that a part of an artist's income is not included in calculations of his/her pension's size (it is common for the Northern countries of the EU). A low level of income is common

1 Legislative Dossier on Adoption of Resolution on Social Security Status of Artists. No. 2006-2249 (INI). [interactive]. European Parliament, the Legislative Observatory [accessed 2009-09-03]. <<http://www.europarl.europa.eu/oeil/file.jsp?id=5398742>>.

2 *Ibid.*

for the profession of an artist; this level is much smaller than the minimal level of income, which is necessary for calculation of pension (Germany, Belgium, Spain, Italy, and etc.).³

Artists working under employment contracts, or contracts comparable to employment contracts, or undertaking an individual activity, have the right to participate in the social insurance system on equal grounds with other workers or businessmen of analogous status. In this regard the practice in the EU member states is very diverse. For instance, various pension funds exist in Denmark, and unemployment insurance applies, while in Austria artists are oriented towards professional pension funds, in the Netherlands most attention is paid to ensuring the artists' income level, and in Italy employment contracts must be concluded with artists, and etc. This diversity clearly shows that there is no unilateral view on art and artists' social guarantees in the EU. Art could be considered both as a work and a profession. In some states professional artists of certain sectors (e. g., circus artists) do not have any legal status because flexibility and mobility of work is the characteristic feature of their work specifics.

Most countries agree that at the time of their professional activity, artists are not protected from financial difficulties (e. g., it takes a couple of years to make a sculpture, and an artist receives his/her pay only after this work is done). Moreover, some professions might involve a risk to health or even life (ballet artists, circus artists, and etc). Therefore, the states agree that social guarantees should apply to artists, especially in consideration of their creative input in the common cultural heritage.

2. European Parliament on Social Status of Artists

The European Parliament adopted the Resolution on the social status of artists in the European Union on 7 June 2007.⁴ This resolution is aimed at facilitating the social conditions of artists in the European Union. With this resolution, the European Parliament calls on the member states to develop a legal framework, support creative artistic activity through the implementation of coherent and comprehensive measures, to ensure social security, sickness insurance, to improve taxation system and the compliance with the general European rules. The resolution suggests the EU member states to pay attention to the atypical and precarious nature of artists' work.

The resolution also urges to analyze applied measures in order to earmark some of the revenue for the support of artists' creative activities for the improvement of the social and financial protection of artists.

The Resolution underlines that in many member states of the EU, certain arts sector professionals are the only workers who do not have the legal status, thus an artist in Europe finds it almost impossible to plan a professional career. It stresses the necessity to

3 European Commission Directorate General For Economic and Financial Affairs. Special Report No. 1, 2006.

4 Resolution on the Social Status of Artists in the European Union. Adopted by the European Parliament on 7 June 2007, No. A6-0199/2007.

promote retraining opportunities for artists, should that be necessary. As a negative fact, the resolution mentions that artists from third countries can have only a limited stay in art events, and this limitation is connected with great difficulties in acquiring long-term visas. Most difficulties that artists face are not related with culture, but with flexibility, policy on visas, social security, and unemployment; these are the problems of paramount importance, in accordance with the European Parliament.

2.1. Social Guarantees for Artists Suggested by the European Parliament

From the perspective of labor law, artists could be divided into two groups:

- Artists working under employment contracts;
- Artists working under copyright agreements.

Regardless whether the artist belongs to one or the other category, some specific peculiarities of creative work are not avoidable, i. e.:

- The work place and work time are often not defined;
- The nature of investigation of accidents and professional diseases is complicated and confusing, and often does not correspond with the usual investigation procedure;
- The final work product may be finished in few years, and it is often not considered that during that period, it is difficult for an artist to meet everyday material needs.

An artist who is working under an employment contract is provided with all social guarantees, which apply for persons paying social contributions, i. e. sickness benefits, childcare leave, pension care, and etc.

Meanwhile, an artist working under copyright agreements is not provided with any social guarantees that apply to a socially insured person. Such an artist can use only the advantages that the state provides to socially disadvantaged persons (e. g., benefits). Nevertheless, such artists retain the right to use the ineffective guarantee of voluntary insurance.

While analyzing possible social insurance systems of artists, it is necessary to keep in mind that social security consists of five main parts:

- Old age and disability allowances;
- Sickness and maternity allowances;
- Work safety allowances and allowances related to risk at work;
- Unemployment protection;
- Family support.

From the point of law, different approaches are possible, i. e. treating social contributions as taxes or not, making them compulsive or adjustable. It is thought that if an interested person has a choice whether to pay contributions, it surely cannot be considered a tax. A mixed system of contributions applies in some EU members states, i. e. some contributions are compulsory and some – voluntary. It depends on constitutions and legislation of the states.

Sometimes a question is raised whether art can be treated as work. After all, art can be described as everything that gives people aesthetic satisfaction. The rhetoric question

arises: can an aesthetic emotion (i. e. art) be equated with work and consider as work? In the European Parliament's proposal on the social status of artists (23 May 2006) it was claimed that art can be considered as "work"; thus it has a connection between work and income, and at the same time, a creator of art must have specific social guarantees. What social guarantees apply at the moment in the EU member states?

In Denmark most artists work under employment contracts; it means that the usual social insurance system applies.⁵ Obviously, there are artists who undertake individual activity, but there are not many in Denmark. Short-term employment contracts are very common in this country. Every artist has a right to apply for an additional pension. A system of unemployment insurance is in place.

The issue of social guarantees of artists is not fully solved in Italy either, although it has been attempted to solve this problem since 1930. The situation is special because in Italy artists cannot be employed without informing special artists' insurance institutions, which helps to guarantee that their works are recorded and social guarantees are applied timely. These institutions record working days for which contributions are being paid. There is a minimum period of days of contributions applicable.

In Austria, a fund of artists' social insurance was established in 2001, and its provisions apply only to freelance artists, i. e. artists who work independently or undertake independent economic activity (provide professional services). In accordance with these provisions, the rules on compulsory insurance are applicable. A special commission establishes whether a person is an artist. If a person has a university degree in arts, he is immediately granted the status of an artist.

In the Netherlands, a working artist has a right to receive benefits under the law on artists' pay and income, provided that his income is smaller than the social support level and he has a professional artistic education or is a recognized artist. Artists apply for allowances to municipalities that are in charge of these finances.

In Poland, the law on state social security and support regulates the social problems of artists.⁶ The social insurance pension is composed of the main and additional parts. The main part is determined by the paid social insurance period, and the additional part depends on the intensity of the artistic activity.

In Finland, private pension funds exist next to the national social system. Moreover, state pensions are applicable. The concept of an artist is widely interpreted in Finland. From 1 January 2007 a new law is applicable in Finland, according to which depending on the success of the year, it is possible to pay smaller or bigger contributions.

Artists undertaking an individual activity do not have any social guarantees in case of unemployment.

Thus, we have reviewed the social guarantees of artists in some typical states. Next, we get to know what are the suggested guarantees for persons of this category under the European Parliament's resolution on artists social status in the European Union.

5 *Compendium of Cultural Policies and Trends in Europe*, 9th edition. Council of Europe/ERICarts. 2008.

6 Ustawa z dnia 17 grudnia 1998 o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych.

The resolution provides measures to improve the conditions of artists. Member states are encouraged to develop legal framework by supporting artistic creation. Comprehensive measures have been suggested, such as employment contracts, and social security, as well as insurance, and direct and indirect taxation. The resolution encourages concluding artists' professional education and qualification-raising contracts in the fields of artistic activity. Consultations with representatives of arts sector lead to a decision to establish European professional register for the European type of artists, which would include data on the status of artists, the nature and duration of their contracts. The European Commission is suggested drafting a unilateral and thorough practical handbook for the European artists and relevant institutions together with the aforementioned sector; such manual would establish all existing provisions of the EU and member states on sickness insurance, unemployment insurance and pensions. The resolution calls the Commission to launch a pilot project introducing, on an experimental basis, a European electronic social security card specifically intended for European artists. Such a card would help to distinguish between mobility specifically relating to artists and that relating to workers in general in the EU and would help to gather all relevant information concerning the artist. The resolution encourages the member states to create specialized training structures for specialists working in the cultural sector with a view to developing a genuine employment policy in this area. The resolution declares that the most important objective of the European cultural policy is to create a dynamic, creative, and innovative environment in all field of art, which would be impossible if next to the necessary creative freedom, artists are not provided with social guarantees that are given to all other workers.

2.1. Social Guarantees of Artists in Lithuania

A clear definition of an “artistic creator” applies in Lithuania. This definition is provided in Article 2(1) of the Law on artistic creators and their organizations. It is provided that an artistic creator means a natural person, granted the status of artistic creator, who creates artistic works, as well as performs, interprets them artistically and thus adds a new artistic value to them.⁷ However, sole definition of an artistic creator does not solve the problem of social guarantees of artists.

By its decision No 2112 adopted on 19 March 2008 the Seimas Board formed a working group for drafting a law on social guaranties of workers in this category. The peculiarity of these laws is that while drafting them, the experience of other states with longer experience and traditions in the area cannot be used mechanically. This is entrenched in the very foundations of social security⁸ because every state has a different demographic situation, political system, economic conditions, and etc.

7 Law on artistic creators and their organizations. *Official Gazette*. 2004, No 153–5573.

8 Pieters, D. *Įvadas į pagrindinius socialinės apsaugos principus*. [Pieters, D. Social Security: An Introduction to the Basic Principles]. Vilnius: Eugrimas, 1998.

While solving social questions, the demographic situation in the state is especially important.

Lithuania, as many other European countries, has an aging population, because in developing and improving medical care people are living longer. Unfortunately, the aging population is also associated with another demographic problem – decreasing rates of birth. Already since 1992, Lithuania features sharp decline in population. It is essential to plan demographic processes in order to predict the future ratio of retired persons and working residents that will support those pensioners. The European Commission and United Nations experts have expressed their opinion on Lithuania's demographic problems.

The European Commission forecast of 2005 states that Lithuania will have a population of 2, 9 million in 2050. Two persons of working age will then correspond to one pensioner (over 65 years of age) per capita. The Department of Statistics of Lithuania provides a similar prognosis, according to which around 3 million persons will live in Lithuania in 2050. This means that the problem of supporting the future retired persons would be twice as difficult to solve.⁹

The United Nations prognosis of 2004 provides that there will be only 1, 5 working age person in Lithuania in 2050.¹⁰ A similar number is provided by the Lithuanian ministry of social security and labor.¹¹

This means that the perspectives of retirement age persons, including pensions of artistic creators, are dark and uncertain. Therefore, the question of solving the problems of social guarantees of artists in Lithuania must be viewed with caution. As Italy, which does not have such an experience of political turmoil as Lithuania, cannot solve this problem since 1930, in Lithuania these decisions must be taken with particular care.

Artistic creators in Lithuania are provided with the possibility to acquire a voluntary social pensions' insurance by paying contributions of pension social insurance to the budget of the state social insurance fund. This insurance in practice does not differ from the compulsory pension social insurance and ensures the right to the same national social insurance pensions. For now, only a limited number of artists take use of this opportunity. It should not be forgotten that many artistic creators work under employment contracts as pedagogues, consultants, creative managers and etc, thus this problem becomes less relevant because the question of their social guarantees are solved on common grounds.

9 European Commission Directorate, Special Report, 2006.

10 United Nations Population Division. *World Population Prospects*. 2004

11 *Pension Reform in the Baltic States*. Fultz, E. (ed.). Budapest: International Labor Office, 2006.

Conclusions

1. There is no systematic approach to arts as profession and social guarantees of artists in the EU member states.
2. Member states with older traditions of solving the problem of artists' social guarantees, have not solved them to this date (for instance, Italy is trying to solve this problem since 1930), thus it is hardly surprising that Lithuania is still putting efforts to solve this problem.
3. Experience of other countries cannot be applied mechanically in the social security field, thus independent decisions must be responsible and thoughtful.
4. System of voluntary insurance or compulsory social insurance scheme in Lithuania basically solves the issue of social guarantees of artists.¹²

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12 *Darbo ir socialinės apsaugos teisė XXI a.: iššūkiai ir perspektyvos*. Teisinės informacijos centras, 2007.

MENININKŲ SOCIALINĖS GARANTIJOS LIETUVOJE IR EUROPOS SĄJUNGOS VALSTYBĖSE

Juozas Tartilas

Mykolo Romerio universitetas, Lietuva

Santrauka. *Visi, vyresni nei 16 m., Lietuvos Respublikos piliečiai turi teisę draustis savanoriškuoju socialiniu draudimu. Yra dvi draudimo rūšys – savanoriškasis pensijų draudimas ir savanoriškasis socialinis draudimas ligos ir motinystės pašalpomis. Pensijų draudimo įmokos mokamos kas ketvirtį, o tų įmokų dydis yra 50 procentų bazinės pensijos; ligos ir motinystės įmokos mokamos ne rečiau kaip kartą per ketvirtį, o įmokų dydis svyruoja nuo 10 iki 200 litų per mėnesį.*

Problemiškos yra menininkų socialinės garantijos. Esmė yra tai, kad menininkų darbas gana specifiškas, jie negauna nuolatinių pajamų, labai neapibrėžtas jų darbo pobūdis darbo laiko, darbo vietos, darbo įrankių, galop ir pačios darbo sutarties požiūriu. Pvz., skulptorius gali dirbti savo namuose (dirbtuvėse) jam parankiu kūrybinio pakilimo metu (dieną arba naktį), naudodamasis savo įrankiais, o tas darbas gali trukti keletą metų. Atsiskaitoma už atliktą darbą gali būti tiek avansavimo būdu (jei yra užsakovas), tiek užbaigus darbą. Dėl šių ir daugelio kitų priežasčių menininko santykiai su „Sodros“ institucija gana keblūs (pvz., kiek mėnesių per metus jis dirba, koks darbo stažas, pajamos, įmokų periodiškumas ir t. t.). Taigi sunku spręsti menininkų apmokestinimo „Sodros“ mokesčiais administracines problemas. Net ir jas išsprendus, „Sodros“ ateities problemos lieka aktualios ir jų padariniai sunkiai prognozuojami – iškyla rimta užtarnautų pensijų visiems apdraustiesiems, o ypač menininkams, kurių teisinis statusas nėra griežtai apibrėžtas, realumo problema.

Straipsnyje nagrinėjama kitų Europos Sąjungos valstybių patirtis sprendžiant menininkų socialinių garantijų klausimus.

Reikšminiai žodžiai: *socialinė sauga, socialinis aprūpinimas, menininkas, darbo stažas.*

Juozas Tartilas, Mykolo Romerio universiteto Teisės fakulteto Darbo teisės ir socialinės saugos katedros profesorius. Mokslinių tyrimų kryptys: socialinė sauga, socialinės garantijos.

Juozas Tartilas, Mykolas Romeris University, Faculty of Law, Department of Labor Law and Social Security, professor. Research interests: social security, social guarantees.