

“Enhancing Social Cohesion in South East Europe by promoting the co-ordination of national social security schemes”

(Abstract from the report on assessment of the needs for coordination of national social security schemes in SEE, courtesy of the Council of Europe)

Introduction

With the project “Enhancing Social Cohesion in South East Europe by promoting the co-ordination of national social security schemes” the Council of Europe in joined collaboration with the EU, is focusing upon an enhanced co-operation between the South East European countries (i.e. in Albania, Bosnia-Herzegovina (BiH), Bulgaria, Croatia, the Former Yugoslavian Republic of Macedonia (FYROM), Moldova, Serbia-Montenegro and Romania). At the same time it aims at a growing cohesion in this Southern region of Eastern Europe. By co-ordinating the different national social security systems, specific problems experienced by migrants and foreign populations with regard to their access to social protection could be resolved.

This report is the result of the first stage in the “Social Cohesion” project. It will be used as a basis for further activities, including among others trans-national and national training initiatives, and a follow-up research project, which will monitor the development of national action plans on the implementation of required co-ordination treaties and which will measure the impact of such implementation. Hence, the objective of this report is limited. In the first place it will map the foreign and migrating populations in the region and indicate the composition of these groups. From the outset it should be underlined that the main purpose of this report is not to provide the latest and most exact figures on the foreign populations in the region. For this project and the further development of successive initiatives it is more important to come up with an indication of what the relative share and composition of foreign populations are in the various South East European countries (migrant workers, political refugees, stateless people, economic refugees, illegal migrant persons etc) and to what extent the respective groups of foreigners have problems with accessing the social protection systems. The latter should facilitate us to indicate the needs for an enhanced and adapted regional strategy of social security co-ordination.

Suggestions for co-ordination should as much as possible be tailored to the needs of the foreign and migrating populations who are now present in the countries of the South East European region. Furthermore the mapping of the ongoing fluxes (movement from and to) will be important to come to the formulation of conclusions for a proper co-ordination strategy in the region.

The scope of this report is in principle restricted to the social security position of foreigners who stay legally in one of the Stability Pact countries. As such we do not touch upon the issue of the social protection position of the illegal migrants/workers. The social security position of illegal immigrants and illegal migrant workers is already subject of other initiatives, which recently have been undertaken in the framework of the Council of Europe¹. To a large extent we can refer to the conclusions of these studies undertaken in parallel. However, as will become clear during the study, the legal position of irregular migrants in the South East European countries, will be touched upon regularly. This has various reasons. First of all some categories of migrant persons are legally speaking in a grey zone. They do not hold a legal permit to stay in the country, but are neither completely illegal as they are tolerated – e.g. for humanitarian reasons – in the country. Looking at the recent regional wars and the process of disintegration which some of the countries in the region face(d), many of the migrants live in this grey zone. Some of them never migrated or moved but became foreigner as they could not obtain citizenship of the new emerging states in the region. Next to this it appears that the number of the migrants across the South East European region who are in an illegal or semi-legal position seems to be rather high (although often no exact figures could be given due to the position they live in). As a consequence of the conflicts in the region a massive movement of war refugees and displaced persons have been recorded; some of them regaining their home country, which in some cases ceased to exist and turned into a new state with new procedures regarding citizenship and residence. Similarly, displaced persons very often witnessed a status change from an “internal” to an “external” refugee. Due to newly established and internally varying conditions and

¹ In the framework of the CS-CO a study on the access to social protection for migrant persons who work illegally is being commissioned; besides this, the section on Migration in the Council of Europe installed a working group on irregular migrants, which ambition it is to come to a coherent approach towards the guarantee of some basis rights for illegal migrants. Social protection, and more precisely the access to social security, social assistance and social services will be covered by this working group as well.

procedures on citizenship, many a refugee ended with no citizenship at all or simply kept the former citizenship of a state not existing anymore (e.g. the Yugoslavian Federation). Not touching at all upon the issue of illegal or semi-legal migrants would leave aside a reality, which is partly at the core of the instable situation in the South East European region. For this reasons the authors decided to take into account the presence and the position of illegal persons in the various countries of the South East European region, wherever it was possible. Taking into account illegal migrants did not lead to an extensive and coherent study of all kinds of illegal migration and the various approaches on the access of illegal migrants to social protection. For the purpose of this project we only touched upon the illegal migrants taking into account the reality and the specific needs of the region.

More strict has been an approach of the legal position of minorities in a country. The report focuses upon the position of migrating people with regard to social protection and thus does not deal with the problematic issue of access to social rights for minorities in the South East European countries. This topic might be important, it would take us far beyond the original objectives of this project: mapping the migrating and foreign groups in the region and analysing the problems when they demand for social protection benefits. Only when the “minority” is not domestic (e.g. with a foreign citizenship) attention will be paid to them.

Furthermore we focused ourselves primordially upon the region and the movement of persons within the region of South East Europe. The problems, which possibly emerge from a movement to/from the countries of the European Union will not be analysed in detail. For some South East European countries (e.g. Romania and Bulgaria) this kind of exercise has already been dealt with (e.g. in the framework of Phare and/or the twinning projects on the co-ordination of social security). The project aims in the first place at stabilisation and cohesion in the region. Fluxes of people to the EU are therefore not of first interest here. However, some countries reported a massive (sometimes hidden) migration and/or movement towards the countries of the European Union. Where information has been made available, this will be reported in this paper. Moreover, this information supported some of the concluding remarks in this report. We should not loose out of sight that the EU-countries are also members of the Council of Europe, and hence share European

guarantees in the field of social security with the countries of the South East European region. Moreover some of the countries of the South East European region might become EU-member in a not too far future. Hence some remarks on the relation between South East Europe and the EU are legitimised.

This report will not touch upon the problems of co-ordination within a state (“internal co-ordination”). Many of the states present in the research are of a federal nature (some even of a con-federal structure). Especially when the composing regional entities hold competencies in the sphere of social protection, problems of internal co-ordination may show up. With this report we did not have the ambition to map all kinds of possible problems of social security co-ordination within a given country (across the regions). It deals about the co-ordination between states in the South East European region. Only when the lack of internal co-ordination affects the international co-ordination principles, some remarks have been developed. Furthermore, we should not loose out of sight that many of the regional entities became independent states the last decade. It is not sure whether this process came to a stand still (see e.g. the unclear situation with regard to Kosovo). Especially when the competencies are not clearly distributed across federal state and regional entities problems start to emerge which very often also have an effect upon the international co-ordination (between states). An internal co-ordination, which is not smoothly operating will inevitably affect migrants coming from other countries. Although it was not at the core of this project, the problems of international co-ordination between regional social security systems have been dealt with as well in this report.

For the writing of this report, the authors mainly used materials, which were put at their disposition by the national administrations. As not much is being published on the issue of co-ordination of the South East European social security systems, leave aside on the exact migration flows in the region, it was decided to work primordially with the national administrations; they were the main source of information for the development of this report. The gathering of information was done in a structured way, on the basis of a questionnaire made for this purpose by the authors. The questionnaire² has been presented at the occasion of a meeting³ of the network of

² See the annex to this report for an example of this questionnaire.

national co-ordinators. On this meeting the questionnaire, the range of required information and the method for the further development of this project have been discussed among the participants (representatives of the administrations, experts, representatives of Council of Europe, European Union and International Labour Organisation). Although a final agreement by all participants could be found on the set-up of the questionnaire, it seemed still rather difficult to receive the necessary information⁴. Mainly the fact that the region knows many newly established states, some of them in an intermediate position of further splitting into national subcomponents, others with still changing territorial borders, made it difficult to deliver in time the required responses. Moreover, many states are of a federal nature (some even of a co-federal nature), of which the regional entities are (partially) competent in the field of social protection. In some cases this hampered a smooth and efficient provision of information. The authors were fully aware of this situation and took themselves the initiative to gather information on the social security position of migrant populations in the region, which has been made public by some international organisations. Most of the documents, which are made publicly available, target however mainly war refugees and displaced persons. Information on traditional migrants (e.g. frontier workers in the border regions, seasonal workers, posted workers, etc) was much more difficult to obtain or was even simply not existing. Hence, the replies on the questionnaire together with the information of the international organisations gave only a first indication of the composition of foreign populations in the region. They are not of a nature to give us the latest exact data on the migration flows. Nor are they of that kind to provide us with all detailed information on the social security position of all migrant populations in the various countries of the South East European region.

Concretely, the report has been developed in the following manner. In a first chapter an overview is given of the composition of the foreign populations in the region. This is done in a first stage for each country; as a closing section a general overview of

³ This meeting took place in Strasbourg on September 15-16. All national delegations were present at this meeting, including a delegation of the intermediary administration for Kosovo (UNMIK; United Nations Interim Administration Mission in Kosovo). The national contact points (“co-ordinators”) are in principle civil servants who function in the ambit of the social protection administration.

⁴ Serbia and Montenegro e.g. showed not be in the possibility to reply fully on the questionnaire as one constituent part of the country, i.e. Montenegro, refrained from providing any information whatsoever. The figures which have been provided only relate to the Republic of Serbia.

what kind of migrating people are to be found in the South East European Region, is provided. In a second chapter the core co-ordination principles are being highlighted. From the outset, it should be mentioned that we did not restrict ourselves to the traditional co-ordination principles, but we took also into account the provisions, which are to be found in the harmonisation conventions (both instruments of principle and conventions of substance) and deal with the legal position of foreign and/or migrant persons in the field of social protection. In a third chapter an overview is given of the problematic areas in the field of social protection for foreign populations. This is done in a country-by-country approach (indicating the problematic areas in the national legislation, as well as in concluded bilateral treaties). In the final chapter we come to some suggestions as to what action could be undertaken by the countries and/or (parts of) the regions to overcome the listed problematic areas. This will be carried out taking into account as much as possible the *acquis* in social security co-ordination at the European level (especially the Council of Europe) as well as the specific situation the countries of the South East European region are currently facing.

Finally it should be stressed that this report has the nature of being a provisional document which should trigger discussion on the second meeting of national experts and administrators of the South East European region, to be held in Strasbourg in January 2004. The document will be adapted and updated taking into account the discussions held during this meeting, and the comments and additional information provided by the various participants. Furthermore the document has the sole ambition to serve as basic document for the further development of possible programmes and projects strengthening the social cohesion in the region and across the states of South East Europe.