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Work Accidents, Occupational Diseases and Social Security Mechanisms in Private Companies in Lubumbashi (D.R. Congo): Situation and Perspective

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Abstract: ***Through this study, the authors present a questioning of the professional trajectory of workers in the Democratic Republic of Congo, particularly those working in the private sector in Lubumbashi. Although the National Social Security Fund exists, its effectiveness has yet to be demonstrated. This study explores organizational factors and legal mechanisms that explain the precariousness that characterizes the social protection system in the Democratic Republic of Congo. The results of the research question the effectiveness of the legislator's action as well as the passivity of public policies implemented in the D.R. Congo. To remedy this state of affairs, we suggest a pluralist and realistic approach based on the re-visitation of the legal framework and the liberalization of the social security sector. This strategy should facilitate each Congolese to recover his or her rights to social protection.***

Keywords: Social protection, social responsibility, insurance, security, public policy

1. Introduction

Social security was one of the consequences of the industrial revolution, with all the social and human issues that it raised for both workers and employers. To this day, social security is considered to be one of the best ways of guaranteeing protectionist coverage for all workers, starting with their contributions, in the event of occupational illness, accidents at work, retirement, etc. Today, this mechanism seems to be the main form of protection against social risks for workers. Kalombo Bongala [1] believes that without an efficient organization from the financial point of view, social security would not be able to pay the various benefits due to its members. Thus, the aim of any social security system is to provide compensation to people who are victims of social risks and those who are covered by the collective system.

Our observation is based on the phenomenon according to which the employees of private companies in the D.R. Congo and more particularly in the city of Lubumbashi do not benefit from a social security. This is due, on the one hand, to the inability of the latter to claim their rights, but also and above all to the fact that the said companies are characterized by irregularity and refusal to submit to the rigor of the law in this matter, on the other hand.

Faced with this situation, our research question consists of knowing what factors justify the inability of private companies in the Democratic Republic of Congo to put in place effective social security mechanisms?

To this end, we assume that the mechanisms accompanying the legal texts would be an effective means of accessing adequate social security.

We set ourselves the objective of identifying the factors at the root of the fragility linked to social security in private companies in the Democratic Republic of Congo, and then to determine the consequences from a legal and societal point of view.

To achieve these objectives, we will use a descriptive approach. The surveys will be carried out by means of directional interviews.

Spatially, this study will be conducted in the Democratic Republic of Congo, specifically in the city of Lubumbashi. As far as the time frame is concerned, we will base ourselves on the historical evolution of social security in DR Congo.

This work will include three essential parts: the first will deal with the management mechanisms of social security in the D.R. Congo, the second will be devoted to the collection of contributions in Congolese social security law and the third will focus on occupational risks and legal provisions.

2. Social Security Management Mechanisms in the D.R. Congo

2.1 The Historical Context:

a) The colonial period

It does not seem useful to refer to the pre-colonial period, because here society did not know wage labor and was dominated by family solidarity as a technique of social guarantee. The beginning of colonization coincides with the birth of social insurance in Germany under Chancellor Bismarck.

However, it should be taken into account that a real social security system was only born in 1945 and gradually extended to non-natives. At the same time, it is obvious to distinguish between social security for employees and for workers.

According to Mukadi Bonyi [6], the social security of employees includes the following insurances: old age and premature death, work accidents and occupational diseases, illness and disability, family responsibilities and unemployment.

Of all these insurances, one will draw our attention, namely the social insurance of old age and premature death.

This insurance was implemented or instituted by the decree of 10-10-1945, later supplemented by the regent decree of 23 April 1948 and the royal decree of 25-01-1952. The insured persons were persons bound by an employment contract. They were entitled to a pension:

- Male insured with 20 years of contributions and who have reached the age of 50;
- Male insured with 10 years of service who has reached the age of 60;
- Female insureds who have reached the age of 50, regardless of the length of their service.

a) Legal regime of capitalization

In the funded system, employees save to finance their own retirement. In fact, employees save according to their income. Therefore, the rate is calculated as a percentage. The savings are deducted at the end of each month or each month on the basis of the payment dates of the employees or the insured. Once retired, the employee gets an annuity of what he saved during his working life. Furthermore, in France, every citizen is free to open a retirement savings account or any other financial investment such as life insurance. The purpose of this is to guarantee an income at retirement comparable to his or her standard of living (to the standard of living of a working person or employee). Currently, 12.5 million people hold a financial product that can be seen as a way to capitalize for retirement.

However, in the Democratic Republic of Congo, there is no problem of choice of employees or working people; because a public institution is implemented or in place for the collection of contributions from working people, and this, according to the rate determined by the texts of the Republic. This is why, according to Jean-Pierre Chauchard, capitalization is the accumulation of contributions to the personal account of the insured. In short, he says, capitalization sometimes reflects the desire to apply the laws of the market economy to various public services such as education, justice and social security [2]. For Francis Netter, the funded pension system consists of the allocation of contributions paid in respect of a given period to cover the commitments that arose during that same period [3].

b) The post-colonial period

The post-colonial period was marked by the promulgation of the decree-law of 19 June 1961. This text presents three main innovations compared to the previous texts:

- The elimination of all forms of discrimination;
- Taking into account the stability of the plan;
- Simplification of administration;

However, the first social insurances set up in the 1930s were based on a compulsory French pension system as we know it today, created in 1945. What does this mean in concrete terms? Each year, the total amount of contributions paid to the pension funds is used to pay the compulsory retirement pensions of the retirees of that same year. This applies to the basic pension and to the supplementary pension.

In view of the above, and in the search for the period of implementation of one of the social security management techniques, it is obvious for us to affirm that, from colonization until today, social security in DR CONGO is managed under the capitalization technique. On the other hand, in French law, it is managed by the technique of distribution by virtue of the principle of family solidarity of the members of a society.

3. Collection of Social Security Contributions under Congolese Law

The Caisse Nationale de la Sécurité Sociale (CNSS) is the institution in charge of organizing social security in the Democratic Republic of Congo. It is difficult to talk about the National Social Security Fund without referring to its historical context.

Indeed, this institution was created on June 29, 1961 in Kinshasa under the name "National Institute of Social Security". This was marked by the promulgation of the decree-law of 29 June 1961 on the organization of social security [4].

However, this law participated in the creation of the National Institute of Social Security through the merger of three funds, namely:

- The workers' pension fund;
- The central compensation fund for family allowances;
- The workers' disability fund.

This institute was created to manage the social security system. The institute is a public establishment with civil status and financial autonomy. It is placed under the guarantee of the State. It is also guaranteed by the provinces for the compensation of family allowances [4].

The National Institute of Social Security currently manages three of the nine contingency branches provided for in Convention 102 of the International Labor Organization. We can mention:

- Pension branch (disability, retirement and survivor);
- Occupational risks branch (work accidents and occupational diseases)
- Family allowance branch (family expenses).

Indeed, by Decree No. 18/027 of July 14, 2018, it is created an institution that comes to replace the National Institute of Social Security named National Fund of Social Security [5].

3.1 Organization and Function of the National Social Security Fund

The organic structure of the National Social Security Fund is determined by this law (Decree No. 18/027 of July 14, 2018) in its Article 9 and following. This structure is presented as follows:

a) The Board of Directors

The Board of Directors is responsible for the design, orientation, control and decision of the fund. It defines the policy of the fund, determines the program, decides on the budget and approves the financial statements for the end of the year.

It sets the framework and status of the fund's staff by decision, on the proposal of the Director General, and submits it for approval to the minister responsible for social security. This body includes the social partners, i.e. the State, the employers and the workers. These are:

1) Two representatives of the State, one of whom will be chosen as Director General by consensus of the social partners and appointed by order of the President of the Republic;
2) A representative of the employers' professional organizations;
3) A representative of the workers' professional organizations.

The term of office of the members of the Board of Directors is three years, renewable once. It can end by voluntary resignation or by death or when the member loses the capacity which motivated his nomination. In this case, the member is replaced. The board of directors is headed by a president elected by his peers for a period of one year. He is drawn from the members other than the General Manager. The members of the Board of Directors receive, at the expense of the Fund, an attendance fee, the amount of which is determined by a decree of the Prime Minister deliberated in the Council of Ministers, on the proposal of the Minister responsible for social security.

b) The General Management

The General Management is the caisse's management body. As such, it implements the decisions of the Board of Directors and ensures the day-to-day management of the fund. It executes the budget, prepares the financial statements and directs all the services.

The General Management represents the fund with respect to third parties. To this end, it has all the powers necessary to ensure the smooth running of the fund and to act in all circumstances on its behalf. The latter is chosen from among the two representatives of the State, by consensus of the social partners represented on the Board of Directors, as evidenced by the minutes.

The General Manager is assisted by a Deputy General Manager, appointed by order of the President of the Republic.

Legal actions, both as plaintiff and defendant, are brought and/or defended on behalf of the fund by the General Manager or, in his absence or inability to act, by the Deputy General Manager or by any other person duly authorized for this purpose by him [5].

c) The College of Statutory Auditors

The college of auditors ensures the control of the financial operations of the fund. It is composed of two persons coming from different professional structures and having proven technical and professional knowledge in the field of social security.

The auditors receive a fixed allowance for the cash account, the amount of which is determined by the Prime Minister's decree deliberated in the Council of Ministers.

3.2. Resources of the fund

The decree-law of 1961 established the National Social Security Institute as a resource:

- Receive advances and subsidies from the state and local authorities;
- To receive donations and legacies;
- Acquire for valuable consideration or dispose of any movable property, and subject to the joint authorization of the Minister of Labor and the Minister of Finance, any real property;
- Enter into leases of real property for the purpose of its services [5].
- On the other hand, for the 2018 decree, the resources of the national social security fund are made up of:
- The initial allocation as defined in Article 3 of this decree;
- The contributions required to finance the various branches of the general social security system;
- Increases incurred due to late payment of contributions and interest on arrears;
- State subsidies;
- BORROWING;
- Proceeds from the investment of funds;
- Donations and legacies;
- Any other sources to be assigned to the fund by law or regulation [5].

4. Occupational Risks and Legal Provisions

In D.R. Congo, the following risks or branches of occupational risks are retained in social security law Work accidents; Professional illness.

4.1 Work-Related Accidents

Article 58 of the law of 2016 the work accident is whatever the cause, the accident occurred to a worker by the fact or on the occasion of work whether or not he has the fault of his part [2]. Workers' compensation insurance is the most widespread type of coverage, often coming into play first when a social security system is set up.

Are considered in Congolese law as an accident at work:

- An accident to an employee while traveling to and from his or her residence or the place where he or she ordinarily eats.

The compensation of the commuting accident is an extension of the protection granted by the law to the victims of an accident at work. This solution is explained by the fact that the journey made may be directly related to the work. However, this relationship may disappear if the journey is interrupted or diverted for a reason unrelated to the job or dictated by personal interest. In this case, the legal protection is no longer applicable.

In France, the victim's possible need to choose the route is not enough to change the accident, which remains a commuting accident.

- Accident during the trip for which the expenses are borne by the employer [2].

In the United Kingdom, the employee who has suffered an accident is entitled to a disability benefit. Disability benefit is payable to an employee who is disabled as a result of an accident at work or when he/she has contracted a disease recognized as an occupational disease. Entitlement to these benefits does not depend on the amount of contributions paid to the national insurance. Self-employed persons are not entitled to these benefits.

4.2 Occupational Diseases

An occupational disease is any disease designated in the table of occupational diseases and characterized by the conditions mentioned there. While waiting for the decree of the Prime Minister which must intervene in this field.

Article 60 al. 1. of the aforementioned law states that "is presumed to be of occupational origin, any characterized disease not designated in the table of occupational diseases, when it is established that it is essentially and directly caused by the usual work of the victim and that it leads to his permanent incapacity or his death" [8].

For Paul Dumand, once it has occurred, an occupational accident poses problems of the same nature as an occupational disease [7].

This insurance is generalized to the whole population in European countries and socialist nations; it is most often limited to wage earners and even only to a part of them in the rest of the world, including the United States [2].

In the United Kingdom, we talk about the sickness benefit from where:

- Employer-paid sickness benefit: here the individual may be entitled to employer-paid sickness benefit if he or she has been working under an employment contract and is sick for at least four days in a row and has an average weekly earnings at least equal to the lower wage limit.
- Work and support allowance: this allowance was introduced in October 2008 to replace the incapacity allowance. This allowance is claimed by the worker if he is unable to work due to illness or disability, and if the duration of this illness is at least four days; and if he is not entitled, during this period, to daily sickness benefit paid by the employer. No indemnity is due for the first three days of incapacity to work.

4.3. Social Security

Article 7.26 of Law 16/009 defines social security as the protection that society grants its members, through a series of public measures, against economic and social deprivation or could plunge them due to the disappearance or significant reduction of earnings, illness, maternity, industrial accidents and occupational diseases, unemployment, disability, old age, death, in addition to the provision of medical care and granting of benefits to families and with children [8].

a) At the conceptual level

Social security is based on the idea of a collective guarantee of individuals belonging to a socio-professional group, to the same class or national community, against social risks.

b) At the institutional level

The character of an autonomous or state system of guarantee based on solidarity, organized by individuals belonging to a specific human community.

c) At the functional level

It highlights a set of official measures coordinated in substance:

- Guaranteed medical care
- Guarantee the granting of a social compensation income.

All in all, he says, we can limit ourselves to considering social security as a system of social insurance organized by the State in order to guarantee social protection to all [6].

4.4. Social security and other scientific disciplines

This paragraph allows us to examine the relationship between social security and other scientific disciplines. In this case: labor law, insurance law, civil law, criminal law, public finance, administrative law.

1) Labor law

It is indisputable that social security law has developed around labor law.

Today, although social security law seems to have acquired its autonomy, close links remain between the two disciplines.

We can mention some concepts of the labor law that are decisive in the social security law: subordination, salary, remuneration, contract, etc.

2) Insurance law

Like the insurer, the social insurer uses the concept of risk. Like the insurer, he uses statistics and probabilities, which means that they use the same techniques: capitalization and distribution.

3) Administrative law

The concept of social security implies the intervention or involvement of the state in the organization of insurance. Therefore, the bodies in charge of managing the social security system have a public status. It follows that the legal relations existing between them are subject to public law and consequently to administrative law.

4) Civil law

The space of private life is the first place of protection for individuals. The theory of liability comes into play when it comes to the possibility of full compensation for damages caused by an accident at work.

5) Criminal law

Criminal sanctions are provided for in the framework of social security legislation and regulations in order to make them effective. In particular, it is a matter of dissuading fraud and practices that may hinder the proper functioning of social institutions.

6) Public finances

When we move away from the socio-professional approach to the universal vision, taxes inevitably become a source of public finance for social security [1].

In view of this and in the light of this work, it is obvious to affirm that technical management is a solution. The problem arises in the choice of techniques, which are: capitalization and distribution.

However, only one (capitalization), because of its character which implies the accumulation of contributions by the employee or active in his own account, would be a favorite plan facilitating this management.

In fact, this system allows each active member to receive an annuity in proportion to the payments made by him/her; beyond that, this system allows the growth of the national economy. The operation of the system is based on the existence of reserves at least equal to the commitments of the system. The reserves must be sufficiently large to cover the eventuality that the scheme will no longer receive contributions. Member contributions are invested in the financial markets. The benefits paid out are therefore highly dependent on the returns on the invested assets and the performance of the adapted management. The objective of the funded pension plan managers is therefore to optimize the use of the markets to ensure that the funds entrusted to them benefit from all opportunities compatible with security.

A pension plan's liability can be thought of as the discounted sum of probable future benefits corresponding to the rights already acquired by members and owed to them by the plan. A funded pension plan operates regardless of the population covered. It creates material, direct, vested rights, but their adequacy is dependent on financial returns and the length of time members will be retired. The performance of funded schemes is obviously very much linked to the financial market, which itself reflects the health of the economy. They also depend on the demographic evolution of the members, for the group plan essentially, and on the evolution of mortality: the considerable increase in life expectancy after retirement increases the duration of benefit payments. Life expectancy at retirement increased by almost a quarter between the 30 glorious years and 2005: one out of two women aged 60 in 2007 will live to 92, according to the TGF 05 mortality table. The funded pension, based on savings, does not allow for the immediate redistribution of resources and therefore of purchasing power between generations. It is even sometimes thought that it reflects the inequalities of income during working life. This last idea is less and less true, however, because the vast majority of company group plans are compulsory and cover all employees, regardless of their professional income. Moreover, the savings effort made allows investments and job creation from which the working population benefits. If the money invested is in funds related to French companies.

Nevertheless, the consequences related to the system or retirement by distribution are:

- The consequences related to the monetary devaluation: here it is noted that an employee who has paid his contributions at the higher rate, his time to enjoy his right, that there is a decrease in rate, this decrease caused by the loss of value of the local currency that is the basis in the contribution;
- The consequences related to the number of active and inactive people: it is necessary to affirm that one does not invest to live the failure. In this system, the decrease in the number of active people, in other words, if the number of inactive people is greater than the number of active people, this has a negative impact on the distribution of benefits or rights that each employee or active person who has contributed has.

A pay-as-you-go plan, on the other hand, is a plan that does not depend on the strict rule imposed on funding: the liabilities can be greater than the allocated financial assets.

It should be noted that a pure pay-as-you-go scheme, in which all contributions are immediately redistributed to the pensioners, is a completely theoretical concept. Such a plan does not exist in reality. All pay-as-you-go plans have at least one working capital fund to ensure the payment of benefits in the event of a delay in the payment of contributions, or in the event of a time lag between the collection of contributions and the disbursement of benefits. Some plans have reserves, known as provisioned distribution: in this case, these reserves and their financial income will be used to pay part of the future benefits.

The pay-as-you-go scheme can be considered in a defined benefit context, as can the funded scheme. In the first case, the allowance to which the future retiree will be entitled is expressed explicitly.

The choice of a pay-as-you-go pension system in France is a logical one given the context of the country's reconstruction.

The demographic ageing resulting from the non-renewal of generations and the increase in life expectancy is destabilizing the financial equilibrium of pension schemes for economies that have opted for intergenerational solidarity. Possible reforms concern the amount of contributions or benefits, the retirement age or the development of funded pension schemes. This work evaluates, with the help of dynamic simulations in a general equilibrium framework, the consequences of these reforms in an economy where different categories of workers coexist. We show that a mixed reform combining the development of a funded system and a small decrease in the benefits of the pay-as-you-go system is pareto-improving in the long run, but at the cost of a growing gap in the distribution of neutral goods between agents. With regard to the reforms modifying the lengthening of the contribution period, the equal retirement age must be uniformly delayed by seven years, which means an increase in the working life of almost 20%.

Example: Mr. Serge KASONGO and his companions, found employment at TFM in 1994 at the age of 30, in 2024, they reached the age of 60 years, therefore he asked for his retirement. From 1994 to 2023, the company has 5000 active employees with a registration number from the National Social Security Fund (CNSS). In view of some economic difficulties, the company sends 3500 active employees on technical leave.

Consequently, being in a retirement system by distribution, as a main effect, the retiree (Mr. Serge KASONGO) will not have to receive the totality of his pension like the other employees or inactive people for whom, he had contributed.

This explains the inefficiency of the distribution pension, therefore, to avoid these hazards, we propose to all the States of the world to opt for the system or pension by capitalization. Because it is a system that leads to the development of a people.

For the other branches (benefits to families and occupational hazards), must be taxable to the employer being the one who hires the employees or workers.

5. Conclusion

This study focused on work accidents and occupational diseases in the face of social security mechanisms in private companies in Lubumbashi: state of play and perspectives. We started from the observation that the employees of private companies in the DRC and more particularly in the city of Lubumbashi do not benefit from a social security system, due to their inability to claim their rights. Our initial concern was to know what are the factors that justify the inability of companies to put in place effective social security mechanisms. As a hypothesis, we considered that the mechanisms accompanying the legal texts would be an effective way to access adequate social security. The objective of this research was to identify the factors at the root of the fragility linked to social security and to determine the consequences that follow from a legal and societal point of view. We used a descriptive approach. The surveys were carried out by means of directive interviews. The results illustrate several modalities to which multiple legal provisions and mechanisms implemented by the companies in the area apply. However, in these companies a precarious social security is lived, characterized by solidarity and resilient practices. In this perspective, it is not accompanied by any legal provision. Therefore, more than one employee goes through his whole professional career unable to claim his rights against the employer. To remedy this state of affairs, we suggest that the Congolese legislator adopt and promote the liberalization of the professional insurance sector in order to facilitate each worker to benefit from a total security during and after his or her professional career. In conclusion, we wish that other researchers from here as well as from elsewhere could consider similar studies in order to deepen this question which affects hundreds of thousands of workers in the Democratic Republic of Congo.

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