

Tankut Centel

Turkish Social Law

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Preface

The present study is supported by the themes I have been dealing with in my undergraduate lectures at Koç University Law School (Istanbul, Turkey) since 2008.

The idea of writing this book came to me at the beginning of the reform movement of Turkey in the field of social security since 2006. Law No. 5510, enacted in 2006, has managed to gather all social security institutions and employees under a single law. As such, the general health insurance, which was also discussed for years, began to apply by this law in Turkey for the first time.

The Turkish social security system has embarked on a quest for an important reform since 2006. Thus, as of that date, the action has been undertaken to ensure the union of norms and standards in Turkey. Up until then, the social security of employers, self-employed, and public officers was provided by different institutions and different laws, which were subordinate to separate ministries. The reform studies have initially united these institutions under a single roof. Accordingly, regardless of whether the insured is a worker, self-employed, or public officer, their social security services are only carried out by the Social Security Institution under the organization of the Ministry of Family, Labour and Social Services. Thus, previously dispersed social security institutions were gathered under a single ministry and a single roof.

Besides, workers and self-employed and public officers were subject to a large number of social security laws determined by their status. This situation led to dispersed social security legislation and resulted in employees having different standards. All these numerous private laws have been combined in a single text with the Social Insurance and General Health Insurance Act. Thus, it has been ensured that all employees are subject to the same standard norm, as long as their situation does not require them to act differently.

These changes led to the deformation of the reform movement and resulted in a social legislation consisting of a large number of laws.

Furthermore, it is observed that social security institutions have started to lose their autonomous structures in the Turkish social security system. First of all, the

general assemblies of social security institutions have been converted to advisory bodies. Then, social party representatives have been made ineffective in taking decisions on the boards of directors of social security institutions. Likewise, the fact that the representatives of the public sector who will serve on the boards of directors are not sought to have a certain experience in the field of social security and that their appointment is held open to political preferences also causes negativity.

Besides, Turkey approved the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) in 1971 and started to apply in 1974. However, due to the lack of a separate special law for family benefits and in the face of the unemployment insurance was not accepted yet at that time in Turkey, Turkey could not have confirmed Convention No. 102 with all of its provisions.

Since 1999, with the adoption of unemployment insurance, Turkey came to a position to confirm the provisions of Convention No. 102 concerning the unemployment benefits. However, there has not been much progress in the legal area of family benefits. The payment of family benefits is left to be included either in collective labor agreements or in statutory provisions that do not contain significant amounts.

The aim of this book is to provide a comprehensive overview of the social law system of Turkey. It mainly consists of nine parts: an introduction, organization of social insurance, concept of social insurance, social insurance liabilities, social insurance branches, general health insurance, complementary social security institutions, noncontributory regime, and concluding remarks.

Thus, the first part is about the general information on the concept of social law, historical development, and legal sources.

The next five parts focus on the concept and organization of social insurance with social insurance liabilities and social insurance branches including general health insurance.

The seventh part provides information on complementary social security institutions. It consists of charity funds and the private pension system.

The last two parts of the book focus on the noncontributory regime and concluding remarks. The social assistance and social services are inherent in the noncontributory regime.

In the last part, you will find a general evaluation of the Turkish social law system. There you can see an assessment of the whole national social security system.

During the recent COVID-19 pandemic, the need for a strong social security system has once again manifested itself. The accumulated cash in the unemployment insurance fund has made a great contribution to overcome the economic difficulties which have arisen when the pandemic occurred. Thus, those included in the noncontributory system have started to get benefit from the contributory system. It appears to change the understanding up to now that only those who have paid premiums can get benefit from the premium regime.

Besides, special thanks are owed to Springer and especially to *Dr.iur. Brigitte Reschke* for the editorial procedure of the publication.

Finally, I would like to invite the readers—faculty, students, practitioners, and others—to send suggestions and comments as well as any corrections. I will be reached by e-mail at *tcentel@ku.edu.tr*.

I hope that it can contribute to a better understanding of the essentials of the social law system in Turkey.

Istanbul, Turkey
September, 2020

Tankut Centel

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List of Abbreviations

AD	Act on the Disabled
add.	Additional
art.	Article
C	International Labour Convention (ILO-Convention)
CC	Court of Cassation
Civ. Div.	Civil Division
Const.	Constitution of Turkey (Turkish Republic)
et al.	And others
fn.	Footnote
GDP	Gross domestic product
ILO	International Labour Organization
LA	Labour Act
LCA	Labour Courts Act
OG	Official Gazette
OHSA	Occupational Health and Safety Act
p.	Page
PD	Presidential Decree (governmental decision signed by the President of Turkey)
PPA	Private Pension Savings and Investment System Act
prov.	Provisional
para.	Paragraph
rep.	Repeating
SD	Statutory Decree
SIGHIA	Social Insurances and General Health Insurance Act
SSA	Social Services Act
SSI	Social Security Institution (governmental carrier of social insurances)
TCC	Turkish Code of Commerce
TCO	Turkish Code of Obligations
TLI	Turkish Labour Institution (Turkish Employment Agency)

TPC	Turkish Penal Code
UIA	Unemployment Insurance Act
UIF	Unemployment Insurance Fund

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Part I
Introduction

Chapter 1

Concept of Social Law



1.1 Scope of Social Law

The scope and content of social law are closely related with the emergence and development of social security concept. Accordingly, the concept of social security developing in the course of time fundamentally lays the foundation of content to be referred to the term “*social law*”.

As a concept, the social law is defined as the whole of legal regulations regarding the social security that is the whole of institutions given the task of providing the individuals with economic security against certain social risks of life, regardless of their income levels.¹ For this reason, it is important to examine the reasons for the emergence of social policies and social security system constituting the concept of social security, as well as the advancements in these elements.

1.1.1 Emergence of Social Security Concept

The social security concept can be considered as the outcome of modern societies. In fact, the term “*social security*” has been used for the first time in 1935 in *American Social Security Act*.

This concept, which has spread throughout the world, has transformed into a universal principle and become the symbol of today’s modern civilization. Accordingly, the social security or social protection having a wider meaning is basically the result of searches for a security solution for the circumstances that would pose a risk for the lives of individuals from economical or physiological aspects.

From this aspect, the reason for social security concept is to provide the individuals, who face with risk, with a minimum security and to ensure the social protection

¹See: Tunçomağ (1990), p. 5.

in this manner. The importance of social security concept gradually increases as a result of the negative effects of economic crises, technological advances, and the transformation in production on the individuals.

The term “*social security*” is mainly considered from the aspect of social policies and social security systems. Among these, the social policies determine the objectives and purposes of social protection, whereas the social security systems cover the legal methods established in order to achieve these objectives. From this aspect, the social law is the whole of legal measures taken against the poverty and deprivation of a country’s society.²

On the other hand, the social policies that the social security incorporates are considered as the “*narrow-sense social security*”. Besides that, the term “*broad-sense social security*” is used for the combination of social policies and social security systems.³ From this aspect, the social law has a context that both represents the social policies and incorporates the social security systems. Accordingly, the social law consists of the institutions that are involved in broad-sense social security.

1.1.2 Objectives of Social Security

The “*social security*” term incorporates providing the individuals, who lost their capacity of earning their lives in the profession or became dependent due to any reason, with the income that is sufficient for achieving a decent life standard, which fits to the human dignity.

Another field of social security is to offer the medical care and rehabilitation services for healing the individuals, who became disabled due to any disease or disability.

The employees face with the risk of losing their health and even lives during their working life. Ensuring the assurance against the losses that might occur because of occupational diseases and occupational accidents that emerges when the healthy and secure working environment is not provided is one of the objectives of social security.

On the other hand, the individuals might lose his/her job because of the economic problems of the company or country. In this case, compensating the income losses of individuals, who became unemployed, and providing them with new job opportunities are also among the objectives of social security system.

Besides these, the social security has also the objectives such as supporting the families in cases of events putting them into difficult conditions, as well as meeting the housing needs of low-income families. The main objective here is to protect the individuals, who do not have the sufficient income level, from social aspect, as well as eliminating the poverty and deprivation. Thus, the economic inequalities of

²Sözer (2019), pp. 1–2.

³See: Güzel et al. (2020), pp. 5–9.