

## THE EQUALITY PRINCIPLE IN LABOUR AND SOCIAL SECURITY LAW TRADITIONS AND MODERNITY

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### Abstract

*The paper examines the equality principle as a general principle of Bulgarian labour and social security law. The focus of the research is on the existing legal frameworks related to its contemporary normative manifestation.*

*In conclusion the authors outline tendencies in the evolution of the equality principle in terms of national regulation and synchronization with international norms.*

**Keywords:** *principles of labour law, principles of social security law, equality principle, Conventions of the ILO*

**JEL Codes:** *K31, K32*

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### Introduction

The regulation of societal relations within the field of labour and social security law is based on legal principles. In modern legal systems the number of these principles is growing and this is relevant to all legal branches, which requires, apart from good knowledge at the legal branch level, the study of their correlation and priority application in specific cases.

The principles of law are social categories perceived primarily from a doctrinal perspective. Accordingly, they seem not to be prioritised in the everyday practice of applying the norms of the relevant legal branch. The courts increasingly refer to a legal principle underlying their judgements. In other words, tradition in law is sustainable and connected with the undying interest in the nature and application of legal principles in terms of their social, legal and moral significance, but it is also evolving. Legal principles follow and reflect the dynamism and spirit of a particular time and thus of the societal relations governed by them. This is true both for legal principles in general and for the principles of labour law, which today are subject to processes that were unknown at the time of their enshrinement in international and domestic legal sources. Legal principles are normally associated with values and most of them have to do with morality. In Bulgarian labour law these principles are associated with moral aspects and ethnopsychology. The work-related values of Bulgarians are an impetus for the realization of the legal principle enshrined in the legal norm. This was the case in the time before the fourth industrial revolution. The current stage of social development is directly influenced by digitization and globalization processes and this affects peoples' values. In this respect the legal principles are also undergoing their evolution and need the protection of the State in order to subsist.

The topicality of the selected subject is determined by several reasons. On the one hand, legal principles are a central category in law and their study and the insight into their nature in terms of the relevant type of societal relations are permanently topical. Secondly, the impact of digitization and globalization changed the dynamics of the development of social processes, which is relevant also to the transformation of legal principles. From a doctrinal perspective it is precisely legal principles that guide us from the genesis of knowledge to modernity.

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At the end of the previous and the beginning of this century the legal theory started to pay more attention to this subject and, not coincidentally, it is considered one of the most discussed topics in legal literature (Maltsev, 2007, p. 661). The study of legal principles within the different legal branches is particularly important in view of the specifics of their manifestation and their practical application.

**The subject of this study** is the principle of equality in the current national legislation, in terms of the nature and specifics of its manifestation in labour and social security law.

**The aim of this paper** is to analyse the principle of equality and its significance for Bulgarian labour and social security law. On the basis of an analysis of the legislation the authors examine the role of this principle in the sources of the above-mentioned legal branches. The emphasis of the research is put on an analysis of current legal frameworks and the related trends in regulation and development in doctrinal and practical aspect.

For this purpose the authors have taken up several **research tasks** determining the structure of this paper, in particular: 1. Explore and analyse the principle of equality in Bulgarian labour law, focusing on current functions and manifestations; 2. Explore and analyse the principle of equality in Bulgarian social security law; 3. Draw conclusions and identify trends in the evolution of the principle in the aspect of its national framework and its synchronization with international and European principles.

To achieve the objectives and complete the research tasks the authors have primarily used the following methods: analysis of legislation, comparative legal research, historical approach and others.

The analysis was performed with priority on the plane of existing Bulgarian legislation and is concentrated around two axes, namely the manifestation of the legal principle in the two above-mentioned legal branches. This determines the structure and arrangement of the study, but in spite of this internal differentiation, both parts of the study are intended to function as a whole, where the first part, namely the analysis of the equality principle in labour law, serves as introduction, given its historical precedence and in view of the derivative nature of social security in relation to labour.

For the purpose of proper understanding of the analysis of the legislation, the authors have made some non-exhaustive clarifications and general notes on terminology.

The research is in line with labour and social security legislation existing as at 15 June 2019.

### **1. The principle of equality in Bulgarian labour law**

In order to determine the nature of the fundamental principles of Bulgarian labour law, doctrinal studies have been conducted since the inception of the legal branch, each study having contributed to the clarification of the general concept and the specifics in the manifestation of the relevant principle. In the context of achieving the aim set in this study we will start by clarifying the terminology, based on a definition given by the eminent Bulgarian scholar prof. L. Radoilski: “These are fundamental solutions acknowledged by the legislation, which pervade, are contained in and stem from the legal framework of labour relations” (Radoilski, 1957, p. 67-69). They embody universal human values that have passed the test of time and undergone their evolution along with the development of law. The principles of Bulgarian labour law are related to the achievements of the international community, from the period of creation of the legal branch through the stages of its development in line with the economic and political conditions in the country. At present this translates into alignment with the labour law of the European Union and its Member States (Mrachkov, 2018).

**The principle of equality** refers to the basic principles of labour law and in this regard it is important for labour law doctrine and practice. This study places the principle

predominantly at the level of scholarly research and is aimed at analysis and understanding of its manifestations in specific provisions of the legislation. In this sense, the principle has undergone its development in the law and its genesis has helped improve the labour law jurisprudence.

Equality of rights within labour law is based on the general principle of equality and builds on its values. The modern development of both principles is related to the desire to create a welfare state (Drumeva, 2013, p. 135-138), (Tanchev, 2007, p. 325-343) whose policy enshrines the exercise of basic social rights. In this context, the welfare state is seen as a model of governance that reflects the new understanding of the responsibility of the government for the welfare of the population (Blagoycheva, 2016, p. 23).

Equality in law is the basis to build on and its transformation leads to its cloning into a variety of legal forms relevant to the various societal relations. In this regard, we join the opinion of Yanaki Stoilov, who defines equality as a measure (Stoilov, 2018, p. 261). Such measuring is typical for labour law relations and the reciprocity of what is given and received within the legal relationship between employee and employer, as contemplated in the provisions of this field of law.

As already mentioned, equality is the basis on which equal standing in the employment relationship builds. The principle of equality is extensively regulated in legal sources, starting from international instruments: Article 2, Para. 2 ICESCR, ILO Conventions - 111 since 1958 concerning discrimination in employment and positions, and 100 conventions on equal pay since 1951.

Article 6, Para. 2 of the Bulgarian Constitution proclaims the equality of citizens before the law and non-discrimination based on criteria exhaustively listed in the provision. In the field of labour law, these criteria are elaborated through regulation at the statutory level: Labour Code (Article 8, Para. 3), the Protection against Discrimination Act (Articles 12 to 28).

The principle of equal standing is an emanation of the legal equality on the plane of labour relations. Its main manifestations are on several levels that build on the idea and develop it throughout the stages of interaction between the parties.

First comes the equal treatment of parties that can enter into an employment relationship, i.e. equal ability of all individuals to participate as employees. This corresponds to the equal standing of the other party, i.e. the employers' ability to hire "another's workforce".

The second step in the development of the principle of equality in labour law is in the phase of an existing legal relation. At this stage, the essence of the principle consists in granting equal rights to and imposing equal obligations on the parties to the legal relation.

The third manifestation of the principle takes place on the plane of its protective function and is expressed in equal protection of infringed rights and interests.

While summarizing these three manifestations of the principle of equality emerging in the course of the employment relationship we should not ignore its importance to the modern democratic society and for the development of labour law going back to the stage of its genesis and the struggle of the weaker party in the legal relation, i.e. the employee, for "equality".

The method of equal standing in labour law refracts through the prism and the specifics of the legal branch. It is this principle that embodies the application of the method in the regulation of relations between parties.

The employer in such capacity is the party responsible for the organization and leadership of the labour process. In this connection, the employee appears to be in a position of subordination in the context of employment. This subordination cannot give rise to restrictions on the scope of the principle of equality at the stage of an existing legal relation, because it is organizational and technical in nature, not a manifestation of authoritative functions conferred by the State.

As regards the weaker party in an employment relationship, the State uses additional legal methods of achieving a balance with the other party. It is precisely for the purpose of such legal “equality” that the legal norms superimpose the principle of protection of labour. This principle guarantees the horizontality of the standing of employers and employees.

## **2. The principle of equality in Bulgarian social security law**

While the principle of equality in labour law is manifested on the plane of the legal relations between the parties to an employment relationship, i.e. employee and employer, and concerns equal rights and obligations, in social security law this principle has different manifestations, mainly related to the specificities and role of the social security system. As an enduring legislative scheme guaranteeing and protecting basic human needs and focusing on the subsistence of the individual, the social security system is based on the principles of solidarity and equal treatment of insured persons, social dialogue in the governance of the social security system and organization of social security funds. It was introduced and sustainably established as a response mechanism in the event or emergence or stabilization of insured risks, and it meets a few basic requirements while observing the principle of equality of the persons insured. In the broadest sense, these boil down to the following: comprehensive and adequate protection of the person insured, corresponding to their social security contributions; long-term maintenance of persons in the event of persisting disability, as well as adequate medical assistance and prophylactic and ancillary benefits within health insurance.

In evolutionary aspect, based on the two models - of Bismarck and Beveridge, the social security system developed in two main directions: a social contract between generations and social groups, based on solidarity, reciprocity, interdependence and equality in the use of the social security service, as contemplated in the Bismarck model, and, on the other hand, universality and comprehensiveness with maximum scope of State involvement in the Beveridge model (Yolova, 2016).

As a direct emanation of the constitutional principle of equality, the principle of equal treatment is enshrined in social security laws, in particular Article 3, Item 3 of the Social Security Code (SSC), Article 5, Item 5 of the Health Insurance Act, and Article 283 SSC. Its development in philosophical and social terms and through the prism of the general concept of equality before the law reveals certain specifics of its understanding and implementation. Insofar as the basis for its development and durable enshrinement concerns closely the principle of legal equality as a projection of equality before the law (Mikhailova, p. 71), the principle of equal standing should be regarded as equal treatment of insured persons in their utilization of social security and health insurance benefits. The latter predetermines its examination in terms of **non-discriminatory application of norms, but one that is closely tied to the social security and health insurance status of the individual, i.e. whether they have performed their obligation to pay the respective contribution as grounds for the exercise of a specific individual right.**

Thus, in particular, and insofar as the status of being insured is a direct prerequisite for enjoying social security and health benefits under equal conditions, the principle of equal treatment manifests itself **in several fundamental aspects, namely:**

- ✓ Equal conditions for providing and receiving insurance benefits, subject to the eligibility of the relevant person as prescribed by the specific statutory provision
- ✓ Variations in the nature, scope and size of social security benefits based solely on the criteria social security earnings and entitling length of service (Sredkova, 2012, p. 119)
- ✓ Non-discriminatory systematics and unity in the procedures for exercising social security rights

- ✓ Determining the amount of short-term benefits based only on the nature of the social security event and the relevant degree of eligibility
- ✓ Non-discriminatory (except for the special characteristics age and gender) conditions for entitlement to and provision and utilization of long-term social security benefits.
- ✓ Priority of equal treatment in the use of medical care, in particular packages of health services guaranteed by the budget of the National Health Insurance Fund (NHIF), available to all insured persons within the scope and under the terms and conditions set out in the National Framework Agreement, in view of the authoritative interpretation laid down in Decision No. 32 of 26 November 1998 of the Constitutional Court in Constitutional Case No. 29 of 1998, which introduced as a general principle “the entitlement to medical treatment of all citizens in the event of sickness and equal conditions and equal opportunities for use of the treatment”.

However, the principle of equal treatment should not distance itself from the general philosophy and understanding of the social role of the social security system in the aspect of its correlation to **mechanisms of social protection**. It should not be overlooked that such social security system, based on the concept of social justice and social solidarity, aims at providing benefits also to non-contributing individuals as a result of the responsiveness and solidarity of the system towards needy uninsured, and in light of the understanding of civil inclusion and shared public risk (Yolova, 2016, p. 183).

The current trend is for equality and equal treatment to be examined through the prism of social equality philosophies, given that the social security system should to a large extent function also as a social protection system. In that sense, there is a tendency for the **principle of equal treatment to shift from equality of conditions** (Stoilov, 2018, p. 287) **to fair social environment**. Such social function is especially visible in the implementation of the principle of equality at the level **of the European Communities policies**, where the philosophy in understanding the values of the new social order is enshrined in the **European pillar of social rights**, created on the basis of the Interinstitutional Proclamation by the European Parliament, the Council and the Commission at the Social Summit in Gothenburg on 17 November 2017. The Proclamation states that “the aim of the European Pillar of Social Rights is to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges which are directly aimed at fulfilling people’s essential needs” (Opinion of the Economic and Social Council on the European pillar of social rights and the role of organized civil society, 12 March 2018). The European pillar of social rights contains twenty principle rights, which are divided into three large groups, where the **Social protection and inclusion** group includes Childcare and support to children, social protection, unemployment benefits, minimum income, old age income and pensions, healthcare, inclusion of people with disabilities, long-term care, housing and assistance for the homeless, access to essential services. In this context and in view of the **aspects of application of the principle of equality at the level of social protection, the following key points have been established:**

**Equality under comparable conditions** - it is proclaimed that “Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection.”

**Minimum eligibility requirements** - in particular it is determined that “Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services.”

**Long-term entitlement - in view of the principle** “Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights”,

but at the same time “**Everyone in old age has the right to resources that ensure living in dignity**”.

**Affordable health care - in view of the proclamation that** “Everyone has the right to timely access to affordable, preventive and curative health care of good quality.” Similar points are expressed in the Opinion of the European Economic and Social Committee called “Impact of the digital healthcare revolution on health insurance” of 20 September 2017, which emphasises the need to maintain and ensure, respectively preserve and promote solidarity-based, inclusive and non-discriminatory health insurance systems in coordination with and in implementation of the principles of equal access, high quality of healthcare, universality and solidarity as a condition for universal health insurance.

There is a clear trend in that the consistent application of the principle of equal treatment under equal conditions for entitlement does not exclude social protection in the aspect of justice and social solidarity. There is a steady shift in the principle – from equality in entitlement to equality in terms of social justice. This is also the essence of the social protection strategies developed by the World Bank (2001), which give priority to mechanisms aimed at “providing better protection for vulnerable social groups in order to enhance justice (justice-based system of legal principles) and at reduction of extreme poverty” (Andreeva, A., Yolova, G., 2018, pp. 293-307). Thus, given the new understanding of the balance of social justice, the principle of equality subject to entitlement should not be considered unchangeable; it should be understood as extended scope of social protection in the light of social solidarity.

### **Conclusion**

The study conducted on the principle of equality in the two legal branches - labour law and social security law, allows us to draw certain conclusions and identify trends in their development.

It is undisputed that the establishment, development and permanent enshrinement of the principles in legal norms and practice follow a tendency of consistency and equal guarantees mechanisms. Although the principle varies in its nature given the essence and manner of establishment in the two legal branches, we should not overlook the fact that the current development of labour and social security legal relations is itself facing the challenge of displacement of the main characteristics and the transformation the principles in the light of new social realities. **In this respect we can outline several main conclusions:**

1. The principle of equal standing in the field of labour law evolves while preserving the tradition of continuity and upgrade. Building on the basic principle of equality, it develops and specifies the employment relationship.

2. In the modern period of social development labour law evolves in a direction following the pace of the fourth industrial revolution. In this respect, at the national level we see adjustments to specific labour law constructs and enhanced impact of legal principles. This applies to the full extent also to the principle of equal standing.

The State, acting through its government bodies, is the normative regulator of societal relations in the sphere of labour. At the same time the State can be viewed as an employer of the highest order. This is not directly reflected in the principle of equal standing, but is indirectly imposed by way of all the guarantees for creating an environment of parity of the parties to an employment relationship.

3. There is a permanent transition of the understanding of fair contribution in the utilization of social security benefits to equality in the aspect of social justice. The latter is especially typical in formulating the principles of social protection at the Community level, where the emphasis, in view of the principles of minimum entitlement and affordable health care, is on “everybody”, and not only on the persons insured.

4. The tendency of applying principles of equality in social security law is ever more often linked to the response mechanism of the welfare state at the level of highlighting the role of social security, given its protective social role.

While the principle of equality has a different nature and manifestations in labour law and social security law, respectively, new social realities create and promote a new specific category of social rights, where the principles of the two legal branches meet. It is in this sense that the principle of equal standing in labour law and social security law is most clearly identified, in terms of the recognition of the so-called third generation social rights (Stoilov, 2018, p. 151), and in particular given the right to social security and minimum income, common for both legal branches. In this regard the focus is rightly placed on the issue of minimum basic income as part of a minimum level of social security of individuals, and in particular on the role of the State as employer of last resort where jobseekers cannot find any work (Stoilov, 2018, pp. 151-152). Internationally, at the present time this is only possible in developed countries, which have both the economic ability and social policies in place. Currently, in Bulgarian labour and social security law this issue is dealt with only on the field of legal doctrine, as the country has not yet reached a level of development allowing implementation in practice.

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