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The fundamental human right to social security in the Portuguese Constitution and how needs of funding are pursued

Podstawowe prawo człowieka do zabezpieczenia społecznego w Konstytucji Portugalii i sposób, w jaki realizowane są potrzeby finansowania

Abstract. The right to social security has been a theme of attention and debate, not only regarding its nature, but also how it is to be accomplished and ensured. This article intends to contribute to this discussion by stating, in the Author's opinion, what is the nature of the right to social security and how the Portuguese State has created its system to accomplish the duty that is set upon on it. This system is thrice divided and subsequently composed of subsystems and different regimes. Furthermore, the Author also analyses the established forms and sources of financing needs of social security, and verifies how these are allocated to the different systems, without disregarding the needs that they could have in acquiring a balance between them. Lastly, it is discussed how the public capitalization system with Social Security Financial Stabilization Fund was created to act as

a reserve fund and as a safety net of the contributory system of the social security system.

Keywords: social security; fundamental rights; human rights; systems of social security; capitalization system; Social Security Financial Stabilization Fund; social security finances; public finances.

Streszczenie. Prawo do zabezpieczenia społecznego było tematem uwagi i debaty nie tylko w odniesieniu do jego natury, ale także sposobu jego realizacji i zapewnienia. Niniejszy artykuł ma na celu przyczynienie się do tej dyskusji poprzez stwierdzenie, zdaniem autora, jaka jest natura prawa do zabezpieczenia społecznego i w jaki sposób państwo portugalskie stworzyło swój system, aby wypełnić nałożony na nie obowiązek. System ten jest trzykrotnie podzielony i następnie składa się z podsystemów i różnych reżimów. Ponadto autor przeanalizuje również formy i źródła potrzeb finansowych zabezpieczenia społecznego, które zostały ustanowione, oraz to, w jaki sposób są one przydzielane do różnych systemów, nie pomijając potrzeb, jakie mogłyby mieć w celu uzyskania równowagi między nimi. Na koniec, w jaki sposób publiczny system kapitalizacji z Funduszem Stabilizacji Finansowej Zabezpieczenia Społecznego został stworzony, aby działać jako fundusz rezerwowy, jako sieć bezpieczeństwa systemu składkowego systemu zabezpieczenia społecznego.

Słowa kluczowe: zabezpieczenie społeczne; prawa podstawowe; prawa człowieka; systemy zabezpieczenia społecznego; system kapitalizacji; Fundusz Stabilizacji Finansowej Zabezpieczenia Społecznego; finanse zabezpieczenia społecznego; finanse publiczne.

1. Introduction

The Portuguese Constitution was created and approved on 10 April of 1976, after a long period of a fascist dictatorship that has been overthrown by the armed forces movement in what is referred to as the Carnation Revolution of 24 April of 1974.

The initial redacting of this fundamental law reflects the social climate that was rife in that era, to restore the democratic rule of law to the opposing and preceding political persecution, oppression, arbitrary judi-

cial decisions and special closed tribunals to instil fear as means of enforcing social control.

One of its primary goals was to reinstate the fundamental rights and freedoms that were denied to the Portuguese people for almost half a century and facilitate a “socialist society, in the respect of the Portuguese people, aiming to construct a freer country, more just and more fraternal”¹.

2. Social Security and Solidarity

The Portuguese Constitution presents as a main structure, fundamental principles and from this point, it is divided in Titles and Chapters. One of these Titles is Title III, that is devoted to economic, social and cultural rights and duties, for which its Chapter III, Social Rights and Duties, includes Article 63 that inscribes “Social Security”² in its original title. That part of law has been subject to three modifications, with the last one made in 1997 when “and Solidarity”³ was added to the Title III.

The way in which this norm has been phrased, considering only the text that is in force, has stressed that the text has been divided, to firstly, establish a right and, secondly, to impose on the State a duty to provide that right. Therefore, Article 63(1) foresees the right of all citizens to be entitled to social security. The opposition to the above-mentioned estab-

¹ As described in the original text, see Decree of Approval of the Constitution of the Portuguese Republic of 10 April 1976, DR [Diário da República – Portugal Official Gazette] of 1976 No 86, Série [Series] I of 1976-04-10, pp. 738–775 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://files.diariodarepublica.pt/1s/1976/04/08600/07380775.pdf> [access on-line: 26.08.2024].

² Constitution of the Portuguese Republic of 10 April 1976, DR of 1976 No 86, Série I of 1976-04-10, pp. 738–775.

³ Amended by Constitutional Law of 30 September 1982 No 1 of 30 September, DR of 1982 No 227, Série I de 1982-09-30, pp. 3135–3206 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://files.diariodarepublica.pt/1s/1982/09/22700/31353206.pdf> [access on-line: 26.08.2024]; Constitutional Law of 8 July 1989 No 1, DR of 1989 No 155, 1st Suplemento, Série I de 1989-07-08, pp. 2–69 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://files.diariodarepublica.pt/1s/1989/07/15501/00020069.pdf> [access on-line: 26.08.2024]; Constitutional Law of 20 September 1997 No 1, DR of 1997 No 218, Série I-A de 1997-09-20, pp. 5130–5196 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://files.diariodarepublica.pt/1s/1997/09/218a00/51305196.pdf> [access on-line: 26.08.2024].

lished right, is provisioned in Article 63(2), which stipulates a duty imposed on the State to organize, coordinate, and subsidize a unified and decentralized social security system, Unions and other representative organizations of workers, as well as representative associations of other beneficiaries would participate in it.

Notwithstanding this, the fundamental legislator (a qualified majority in a parliament to amend the Constitution) has established the principles⁴ that would support the social security to be created by the State. Thus, the system that needed to be created had to comply with protecting citizens in situations of unemployment, old age, disability, widowhood, orphanhood, and in all other situations of a lack of or a diminishing means of subsistence or a capability to work (Article 63(3)).

Similarly, the fundamental legislator univocally pursued, regarding the contributory or also known as the pay-as-you-go system, that all workers would equally contribute regardless of the nature or a type of work or a sector of an activity in which that work is executed. Therefore, the total duration of time in which work has been performed should be acknowledged or included in the calculations of the pensions of old age or disability according to the law that will be created by the ordinary legislator (Article 63(4)).

Furthermore, in Article 63(5), another duty for the State is established, that also will need an intervention from the ordinary legislator to create the needed adequate legal framework. The secondary law must support and oversee the activity and functioning of private charity institutions and other types of associations of recognized public interest who operate without a profit and which pursue goals of social solidarity established, specifically⁵:

⁴ The principles are comprehended within the text of Article 63, but also from Article 5 to 22 in General Basis of the Social Security System (GBSSS), that must be apprehended by the interpreter. GBSSS Law of 16 January 2007 No 4, Consolidated and Updated Version, DR of 2007 No 11, Série I de 2007-01-16, pp. 345–356 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/lei/4/2007/p/cons/20131230/pt/html>, [access on-line: 29.08.2024].

⁵ What is pursued by legal collective persons is established in their social object. In the creation of an association, or cooperative, all of them are non-profit, but it does not

- those foreseen in the present legal norm (Article 63),
- to promote creating and guaranteeing access to a national network of day care centres and other social facilities for family support, as well as a policy on the elderly (Article 67(2)(b)),
- to pursue the protection of childhood, especially against all forms of neglect, discrimination and oppression, as well as against the abusive exercise of authority in family and other institutions (Article 69(1)), and ensure special protection in cases of orphan hood, abandonment, or any other situation in which children are deprived of a normal family environment (Article 69(2)), and to forbid all types of work for underage children still/going to in school (Article 69(3)),
- to especially protect youth when executing economic, social and cultural rights, in particular, enjoying free time (Article 70(1)(e)),
- to ensure that all citizens with disabilities have the full capability to be entitled to the rights and duties that are established in the Constitution, apart from those when their disability exempts them from complying with those rights and duties (Article 71(1)), to commit to execute or to be part of a national policy that is to be executed by the State for the prevention and treatment, rehabilitation and integration of citizens with disabilities and support for their families, to develop a pedagogy that sensitizes society about the duties of respect and solidarity towards them, and to assume the responsibility of the effective realization of their rights, without prejudice to the rights and duties of parents or guardians (Article 71(2)), and that the State shall support all of the organizations or associations of citizens with disabilities (Article 71(3)),
- to ensure that all of the elderly are entitled to economic security, housing conditions, and family and community living that respect their personal autonomy, and avoid and overcome isolation or social marginalization (Article 72(1)), as well, an old age policy must also include measures of an economic, social and cultural nature with the

mean that will be a charity or an organization with the unique purpose of fighting poverty or providing social assistance. So, specifically, concerns only to associations and other organizations described by the legislator.

tendency to provide to the elderly opportunities for personal fulfilment through active participation in the community (Article 72(2)).

Therefore, simply stated, the fundamental legislator regarding social security ensured that all citizens are entitled to the right to social security. This duty and fundamental task (Article 9 of the Portuguese Constitution)⁶ that was set upon the State must be fulfilled without forsaking the important and vital role that private charity institutions have in society, specifically when helping to secure the much-needed emergency social assistance that citizens crave in a broader and sometimes – in comparison with the State – in a more immediate manner.

3. Social Security as a fundamental human right: a mild (but necessary) provocation

The focus of the present article is not to develop or address the doctrinal debate of whether social security is or is not a fundamental right, but rather to assess how the needs of funding are to be accomplished and fulfilled by the legal mandate that is imposed by the fundamental legislator to the ordinary legislator. Nevertheless, the opportunity has arose for the Author to posit on this matter in a very succinct and brief, but, hopefully, in a manner convincing to the Reader.

As stated above, the Constitution stipulates the principles and, from that point on, is sectioned into Titles and Chapters.

The present debate in Portugal revolves around this theme with 3 different positions, firstly, on whether economic, social and cultural rights (ESCR) are also part of fundamental rights (FR), secondly, whether the fundamental legislator decided to separate ESCR and FR it is to treat them accordingly to their different legal frameworks pursue, and thirdly whether,

⁶ J. Casalta Nabais, M. Lavouras, *O financiamento da Segurança Social* [in:] J. Campino, N. Monteiro Amaro, S. Fernandes da Costa (Eds), *Segurança social: sistema, proteção, solidariedade e sustentabilidade*, Lisboa 2020, pp. 172, 179–181.

if there is a complementary nature of the ESCR towards FR, i.e., ESCR and FR are not divided but they complement each other⁷.

In this regard, according to the Author, that there is a simpler, but sometimes neglected way to effectively handle with this issue. The interpreter must approach the problem that is presented concerning the mechanisms that are available in the legal text, and not regard the legal framework as different areas that divide the legal subjects.

Overall, fundamental legal texts have mechanisms to accept, in the internal legal order, international legal instruments to which the State has adhered. In the Portuguese Constitution such a mechanism is found in Article 8, in which the legal norms and principles of international law, general or common, are part of Portuguese law (Article 8(1)). Additionally, the legal norms established for international conventions that were regularly ratified or approved will enter into force in the internal legal order after their official publication and while still internationally binding the Portuguese State (Article 8 (2)).

To reinforce this mechanism, the fundamental legislator has established another norm, Article 16, that all fundamental rights enshrined in the Constitution do not exclude any other set of applicable laws and rules of international law (Article 16 (1)).

Moreover, the constitutional and legal precepts concerning fundamental rights must be interpreted and integrated in harmony with the Universal Declaration of Human Right (UDHR), proclaimed by the United Nations General Assembly in Paris on 10 December 1948⁸ (Article 16(2)).

So, with the joint application of Articles 8 and 16 of the Portuguese Constitution the Author can present a solution to this debate.

Bearing this in mind and without further ado or necessity of presenting an extended array of legal instruments or arguments, the UDHR will be

⁷ Cf. J.C. Vieira de Andrade, *Os Direitos Fundamentais na Constituição portuguesa de 1976*, Coimbra 2021, pp. 167–187; J. Miranda, R. Medeiros, *Constituição Portuguesa Anotada*, Vol. I, Coimbra 2005, p. 634; J.J. Gomes Canotilho, *Direito Constitucional*, 6th edition revista, Coimbra 1993, pp. 527, 553–555.

⁸ Universal Declaration of Human Rights [online]. New York, United States of America: United Nations, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> [access on-line: 27.08.2024].

specifically examined. The UDHR sets out the fundamental human rights to be universally protected and the Portuguese Constitution must comply with these rights and protect them. Therefore, it is established in the UDHR that everyone, as a member of society has the right to social security and is entitled to realization through national efforts and international co-operation. This is in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for dignity, and the free development of personality (Article 22). Considering that the UDHR was ratified and officially published and entered into force in 1978⁹, it is an opinion presented in the doctrine¹⁰ that this is a fundamental human right (and not a mere social right).

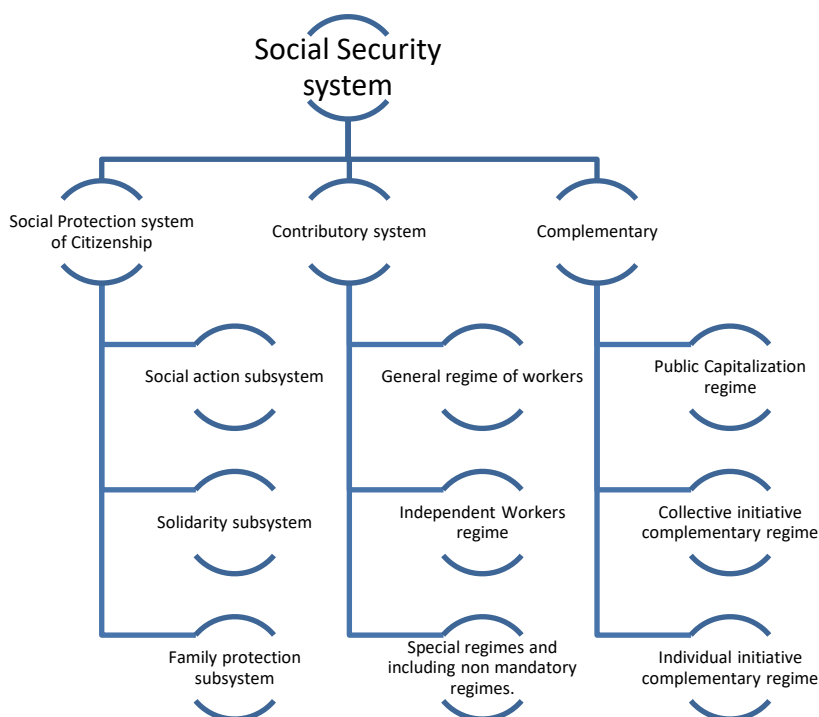
4. Social security system and the financial forms and sources of its funding

Regarding the financing of social security, the common legislator approved the General Basis of the Social Security System (GBSSS) with Law No 4/2007 of 16 January¹¹ which is structured in the following manner:

⁹ Notice of 9 March, DR of 1978 No 57, Série I de 1978-03-09, pp. 488–493 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://diariodarepublica.pt/dr/detalhe/aviso/57-1978-446107>, [access on-line: 27.08.2024].

¹⁰ See A. Gonçalves Pereira, F. Quadros, *Manual de Direito Internacional Público*, 3rd edition, Coimbra 1997, pp. 117–118.

¹¹ Law of 16 January 2007 No 4, Consolidated and Updated Version, DR of 2007 No 11, Série I de 2007-01-16, pp. 345–356]. [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/lei/4/2007/p/cons/20131230/pt/html>, [access on-line: 29.08.2024].



From the analysis of the social security system, it can be seen that the system is divided into three main systems, i.e., the social protection system of citizenship, contributory system and complementary system (Article 23 of the GBSSS).

The social protection system of citizenship includes the social action subsystem, the solidarity subsystem, and the family protection subsystem (Article 28 of the GBSSS). According to Article 53 of the GBSSS the contributory system is composed of general social security applicable to all workers' schemes, independent workers or self-employed schemes, and by special schemes and/or voluntary registration schemes as foreseen by Article 51(2) of the GBSSS. The complementary system includes a public capitalization scheme and complementary schemes for collective initiatives and individual initiatives (Article 81 of the GBSSS).

Each part of these systems has dedicated forms of funding. The social protection system of citizenship is financed by direct transfers from the state budget and through consignment of tax revenues, such as social value added tax (VAT)¹² (Article 90(1) of the GBSSS), as well as from social games revenues (Article 90(5) of the GBSSS). The contributory system is funded by the workers' and employers' contributions.

The capitalization regime which is composed of the Social Security Financial Stabilization Fund¹³ will be funded by a ratio parcel between 2–4% concerning workers' contributions until this fund can secure the predictable coverage with pensions for a minimum period of two years (Article 91(1) of the GBSSS) with the exception of years in which economic difficulties occur that do not allow complying with this financial requirement (Article 91(3) of the GBSSS). Additionally, the Fund is also funded by the annual balances of the social security system, and the income resulting from the sale of assets and the gains obtained from financial investments being managed under a capitalisation regime (Article 91(2) of the GBSSS).

¹² For the way that social VAT is used to finance the social protection system of citizenship, especially, the subsystems of solidarity and family protection see J.B. Conceição Apelles, *Segurança social: manual prático*, 11th edition, Coimbra 2019, p. 663; with a distinct opinion that considers that social VAT is used to finance the contributory regime see, J. Casalta Nabais, M. Lavouras, *O financiamento da Segurança Social...*, p. 199. The Author concurs with the opinion of J.B. Conceição Apelles as it is provisioned by the legislator that social VAT is destined to be used to finance the social protection system of citizenship, as established by Article 7 of the legal framework for financing the social security system. However, this does not mean that a second opinion is not valid because the contributory system can be funded by transfers with an origin of the social protection system of citizenship. In this manner, the social VAT can be indirectly transferred as prescribed by Article 14(1)(e) of the legal framework for financing the social security system published by the Decree Law of 2 November 2007 No 367, Consolidated and Updated Version, DR of 2007 No 211, Série I de 2007-11-02, pp. 7987–7991 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/dec-lei/367/2007/p/cons/20101231/pt/html>, [access on-line: 28.08.2024].

¹³ For a further analysis and development please see N. da Costa Cabral, N. Goulart, *O Fundo de Estabilização Financeira da Segurança Social*, Lisboa, Portugal: Conselho da Finanças Públicas, Março de 2024. Publicação Ocasional 2024, No 2, https://www.cfp.pt/uploads/publicacoes_ficheiros/po-02-2024.pdf [access on-line: 15.04.2024].

The capitalization regime is also composed of the collective initiative complementary regime that aims to be a complementary and voluntary regime in favour of a predetermined group of people. These are funded, without prejudice to the contributory system, by workers, independent workers, and employers (Article 83 of the GBSSS). The individual initiatives regime that are also non-mandatory include retirement savings plans, life insurance, capitalization insurance, and mutualist modalities (Article 84 of the GBSSS).

In this regard, it is the Author's understanding, that the primary sources¹⁴ of funding¹⁵ (Article 92 of the GBSSS) of the social security budget that is a part of the state budget¹⁶ include:

1. Direct transfers of the state – include indirect taxes and legally prescribed tax revenues, specifically social VAT (Article 9, paragraphs c), d), f), g) and j) of the GBSSS).
2. The contributory scheme (or pay-as-you-go) – is regulated by the code of contributory systems of the social security system¹⁷. These

¹⁴ The common legislator has established two main principles regarding the sources of funding. One is the principle of diversification of sources of financing that implies broadening the bases for obtaining financial resources, with a view to reduce non-wage labour costs as foreseen by Article 88 of the GBSSS. Other important principle is a selective adequacy. That consists of determining the sources of financing and allocating financial resources according to the nature and objectives of the social protection arrangements defined in the law, and with special situations and measures. These are particularly those related to active employment and vocational training policies, as described in the text of Article 89 of the GBSSS.

¹⁵ The Author of this article has a simpler and clearer division aggregating the sources of funding of social security into four main categories. However, other authors present this in a different manner and structure. Cf. A. Brandão de Pinho, *Em torno da sustentabilidade da Segurança Social e da ainda sustentável procrastinação da sua sustentabilidade*, pp. 139–169 [in:] J. Campino, N. Monteiro Amaro, S. Fernandes da Costa (Eds) – *Segurança social: sistema, proteção...*, p. 141; J. Casalta Nabais, M. Lavouras, *O financiamento da Segurança Social...*, pp. 193–197. For a more comprehensive analysis that includes revenues and expenses, see J.B. Conceição Apelles, *Segurança social...*, pp. 659–670.

¹⁶ The State Budget must comply with Fiscal Framework Law approved by Law of 11 September 2015 No 151, consolidated and updated version, DR of 2015 No 178, Série I de 2015-09-11, pp. 7566–7584 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/lei/151/2015/p/cons/20200818/pt/html>, [access on-line: 29.08.2024].

are contributions made by workers and employers (Article 92, paragraphs a), b), c), f), g) and j) of the GBSSS).

3. Capitalization regimes – are those for which the Social Security Financial Stabilization Fund receives an income from own property and the income from state assets that are allocated to in in order to strengthen it. It also receives legally prescribed tax revenues, specifically, additional to the municipal property tax, additional to the contribution of the banking sector, consigned corporate income tax, capital gains from real estate sales levied on personal income tax¹⁸ (Article 92, paragraphs d), e), f), i), and j) of the GBSSS). Additionally, the collective and individual initiative capitalization receive voluntary funds from their beneficiaries.
4. Transfers from the European Union and from other organisms (Article 92, paragraphs c) and h) of the GBSSS).

The GBSSS is further developed in the Legal Framework for Financing the Social Security System (LFFSSS) approved by Decree Law No 367/2007 of 2 November¹⁹. The LFFSSS also establishes three main forms of financing, specifically, a) composed of contributions of workers and independent workers, employers, and voluntary regimes; b) transfers from the state budget, as well as c) through consignment of revenues as described in Article 3.

The revenues that are destined to the finance social protection system of citizenship are provisioned in Article 7 and include: a) transfers from the state; b) VAT revenue allocated to the social security system; c) other legally assigned tax revenues; d) transfers from other entities or public or

¹⁷ Code of Contributory Systems of the Social Security System (Código dos Regimes Contributivos do Sistema Previdencial de Segurança Social) approved by Law of 16 September 2009 No 110, consolidated and updated version, DR of 2009 No 180, Série I de 2009-09-16, pp. 6490–6528 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/lei/110/2009/p/cons/20230403/pt/html>, [access on-line: 28.08.2024].

¹⁸ N. da Costa Cabral, N. Goulart, *O Fundo de Estabilização...*, pp. 28–30.

¹⁹ Consolidated and Updated Version, DR of 2007 No 211, Série I de 2007-11-02, pp. 7987–7991 [online]. Lisboa, Portugal: Imprensa Nacional da Casa da Moeda, <https://data.dre.pt/eli/dec-lei/367/2007/p/cons/20101231/pt/html> [access on-line: 28.08.2024].

private funds; e) transfers under community funds and programmes of the European Union, even if with a national counterpart, without prejudice to Article 14(1)(c); f) the revenue from social games allocated to expenditures in the area of social action under applicable legislation; g) the proceeds of contributions provided for by law or regulation, in particular in connection with the implementation of social development programmes; h) transfers of foreign agencies; i) the proceeds of pecuniary penalties applicable within the system; and, finally, j) other legally required revenues.

The revenues of the contributory system as foreseen in Article 14, are found in the following paragraphs: a) income from contributions by employees, contributions by self-employed workers, employers' contributions due under general social security schemes and other contributions, due under other social security schemes, even if these contributions are voluntary; b) revenues from public entities or funds associated with active employment and vocational training policies; c) revenue from the European Social Fund and its national counterpart from the state budget; d) income from the return on surplus cash; e) transfers from the social protection system of citizenship; f) the proceeds of pecuniary penalties applicable within the system; g) proceeds from borrowing authorized by law; h) the revenue referred to in paragraphs 3 and 4 of Article 11, that can include transfers from the state; and i) other legally required revenues.

Paragraph 2 of the same legal norm provides that the revenues referred to in point a) of the preceding number correspond to the product of the global contribution rate or applicable, by the tax base intended to compensate for the occurrence of contingencies integrated into the social security system and expenditures for active employment and vocational training policies.

Concerning what is provided by Article 14, respectively in paragraphs 3 and 4, the first are transfers from the state budget, and the second, are transfers from the Social Security Financial Stabilization Fund, if the financial situation of the contributory system requires or justifies its use.

Another aspect that it is important to refer to is that the public capitalization system and particularly the Social Security Financial Stabilization Fund in the LFFSSS (as a development of the GBSSS) identifies the

nature of this fund as a reserve fund of the contributory system²⁰. This is outlined by the legislator by stating that the “in the terms of Article 91 of the GBBS constitute revenues of the contributory capitalization system, integrating the Social Security Financial Stabilization Fund (...)” as described in Article 17(1).

Therefore, the common legislator assumes a cross reference of two systems, i.e., the contributory and capitalization regimes, and, regarding revenues of the contributory capitalization system the following paragraphs are found: a) an amount between 2 and 4 of the 11 percentage points corresponding employees’ contributions; b) alienation of the assets of the social security system; c) income from own and state assets allocated to reinforcing capital reserves; d) gains obtained from financial investments managed under a capitalization regime; e) annual surpluses of the social security system, except those resulting from programmes financed by community transfers; f) the product of any surplus in the execution of the state budget for each year; and g) other sources provided for by law.

Article 17(2) establishes a mandatory transfer of the amount between 2 and 4 of the 11 percentage points corresponding to the contributions of employees. However, a safeguard is instituted that exempts from compliance, if the state of the economy climate does not justifiably allow it.

In the social protection system of citizenship and contributory system, sources of funding include: transfers from the state (Article 7(1)(a) and 14(3)). On the contributory system we encounter transfers from the social protection system of citizenship (Article 14(1)(e)) and transfers from the Social Security Financial Stabilization Fund, if the financial situation of the contributory system requires or justifies its use (Article 14(4)).

Regarding the contributory capitalization (as described in Article 17(1)) has a source of funding that corresponds to an amount between 2 and 4 of the 11 percentage points corresponding to the contributions of employees, therefore, originating in the contributory system that is channelled into the capitalization system.

²⁰ N. da Costa Cabral, N. Goulart, *O Fundo de Estabilização...*, pp. 15–18.

As described in the above, there are crossed sources of financing needs between the systems, that act as measures and counter measures, in almost a very similar way as checks and balances to ensure equilibrium between them.

Therefore, the common legislator created inner mechanisms of achieving funding in order to sustain each one of the systems that he created if a need to support it arises.

5. Conclusion

The fundamental human right to social security is a fundamental duty and task of the State that is imposed on all signatory states of the UDHR not only by international law, but also as foreseen in the Portuguese fundamental law, i.e., the Portuguese Constitution.

The legislative instruments or legislative acts produced by the common legislator aim to provide social security to all citizens, by creating a network of systems to assure that all predictable situations of economic frailty and/or need are protected under this legal framework. The forms and sources of financing are accomplished and developed through two different laws i.e., the GBBS and the LFFSSS provide to (the direct and indirect administration of) the State, instruments that can be used to establish, not only sources of revenue for foreseeable expenses, but also a far more necessary equilibrium between systems, with a safety net that is provided by the Social Security Financial Stabilization Fund.

Bibliography:

- Andrade J.C. Vieira de, *Os Direitos Fundamentais na Constituição portuguesa de 1976*, 6th edition, reprint, Almedina, Coimbra 2021.
- Apelles J.B. Conceição, *Segurança social: manual prático*, 11th edition, Almedina, Coimbra 2019.
- Cabral N. da Costa, Goulart N., *O Fundo de Estabilização Financeira da Segurança Social*, Lisboa, Portugal: Conselho da Finanças Públicas, Março

- de 2024. Publicação Ocasional 2024, No 2, https://www.cfp.pt/uploads/publicacoes_ficheiros/po-02-2024.pdf (access on-line: 15 April 2024).
- Canotilho J.J. Gomes, *Direito Constitucional*, 6th edition revista, Almedina, Coimbra 1993.
- Miranda J., Medeiros, R., *Constituição Portuguesa Anotada*, Vol. I, Coimbra Editora, Coimbra 2005.
- Nabais J. Casalta, Lavouras M., *O financiamento da Segurança Social* [in:] Campino J., Amaro N. Monteiro, Costa S. Fernandes da (Eds), *Segurança social: sistema, proteção, solidariedade e sustentabilidade*, AAFDL, Lisboa 2020.
- Pereira A. Gonçalves, Quadros F., *Manual de Direito Internacional Público*, 3rd edition, Coimbra 1997.
- Pinho A. Brandão de, *Em torno da sustentabilidade da Segurança Social e da ainda sustentável procrastinação da sua sustentabilidade* [in:] Campino J., Amaro N. Monteiro, Costa S. Fernandes da (Eds), *Segurança social: sistema, proteção, solidariedade e sustentabilidade*, AAFDL, Lisboa 2020.