



Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social

XXIII Congreso Mundial

7 - 10 de Septiembre de 2021 - Lima, Perú

RETOS DE LOS SISTEMAS DE LEGISLACIÓN LABORAL Y SEGURIDAD SOCIAL

- Transformación del trabajo: desafíos para el Derecho del Trabajo
- Comercio internacional y trabajo
- Nuevos retos de la Seguridad Social
- Trabajadores migrantes
- Trabajadores atípicos e informales
- Igualdad en el trabajo
- El Estado y las nuevas formas de voz colectiva



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**NUEVOS RETOS DE LA
SEGURIDAD SOCIAL**

**NEW CHALLENGES OF
SOCIAL SECURITY**

SUPPLEMENTARY SOCIAL SECURITY MECHANISM IN TURKEY: PRIVATE PENSION SAVINGS SYSTEM

GAYE BURCU YILDIZ

I was graduated from Ankara University Faculty of Law in 2000. I have been working at Ankara University, Faculty of Political Sciences, Department of Labour Economics and Labour Relations since 2002. I gained LLM (2003) and PhD (2008) at Labour and Social Security Law. My research areas are anti- discrimination at work, fundamental rights at work, employment relationship, collective rights, social dialogue and social security law. My current position at the Faculty of Political Sciences is Associate Professor.

ABSTRACT: Demographical changes as well as changing nature of work evokes certain social security concerns. Ageing constitutes a major issue because increasing share of older people in the society in comparison with working age population will endanger the financial sustainability of social security systems. In addition to these, eliminating poverty has been put as primary goal in United Nation's 2030 Agenda for Sustainable Development. Old age poverty has and will be a major problem for societies in this context. In order to tackle with this problem by providing a supplementary income for older people, supplementary social security mechanisms have been considered as a remedy. Besides this concerns, supplementary social security mechanisms scope remains limited and falls far from providing adequate protection because of the systems are depending on individual's financial power mainly.

KEYWORDS: Private pension savings, automatic enrolment system, social security.

I. GENERAL OVERVIEW

One of the main concerns of European Social Pillar of Social Rights regarding pensions, is the right to resources that ensure living in dignity in old age. Also, it is stressed that pensions are a priority area in the European Semester economic coordination cycle.¹

Supplementary social security mechanisms are evaluated as a key factor in order to tackling the problem of old age poverty. Due to the low coverage of supplementary pension system in EU, a “High-Level Group of Experts On Pensions” have been set in order to provide policy advice to the Commission including supplementary pensions.²

Old age poverty and providing a sustainable social security system can be listed within the major problems of social security mechanism in Turkey, as well as many other countries including EU.

Social security as a fundamental right, has been recognised by the Constitution of Turkish Republic, designed as a duty for the State and consequently organised by State in Turkey. Compulsory social security scheme is organised

1 <https://ec.europa.eu/social/main.jsp?catId=752> (Access date: 16.03.2021)

2 <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&doid=38547> (Access date: 16.03.2021)

by a public body, named Institute of Social Security, which is affiliated to the Ministry of Labour and Social Security.

In this paper, a general scope of the system, actual status about participation rates and attitude towards the system, pros and cons will be examined in the light of social security right through legal perspective and related international instruments such as ILO Conventions, European Social Charter and European Pillar of Social Rights.

II. LEGAL FRAMEWORK OF PRIVATE PENSION SAVINGS AS SUPPLEMENTARY SOCIAL SECURITY MECHANISM

In 2001, law numbered 4632 on “Private Pension Savings and Investment System Law” has been enacted. The purpose is to provide a supplementary social security scheme for citizens of Turkey, meanwhile creating funds for investment by using the savings of the people for retirement. The system is based on voluntary participation. Law numbered 4632, provides tax refunds to the participants for the contributions they made. Nevertheless, the participation rate to that supplementary system was beyond the expectations.

Savings within the System are invested in pension mutual funds established by pension companies, in compliance with relevant Capital Markets Board regulations by which they are governed, commensurate with each individual’s risk-return profile. Private Pension Mutual Funds are authorised to invest in cash and time deposits, borrowing instruments including reverse repo, stocks, assets based on precious metals and real estate, futures and options, stock exchange money market transactions, mutual funds and other financial instruments deemed appropriate by the Capital Markets Board. This system is governed and directed by private insurance technics but State has a monitoring and surveillance role on the system.

There are two types of participation. First one is voluntarily and individual participation, the other is automatic enrolment of employees.

Voluntarily participation to the system is based on a “pension contract” which stipulates the procedures and principles about the individual pension account, the relationship between the participant and the private pension company as well as contribution payments, investments of paid contribution to preferred funds and payments to be made to the beneficiaries. Coverage

within compulsory social security system is not a pre-requisite in order to be a participant to the private (voluntary) pension saving system. Also, there is not a restriction concerning minimum age to participate in the system. An amendment made in 2021 and it abolished the requirement about having capacity to act. So, parents can pay the contribution for their children and make them a participant to the system.

In 2016, an amendment took place and participation for employees (workers and public servants) to Private Pension System (PPS) became mandatory from the date 1.1.2017. As a brief explanation for “automatic enrolment”, the employers have to sign a contract with a private pension saving company. After signing that contract, all of the employees of that firm/person or public authority, will become participants to the system by automatic enrolment. As a result, the employers (whether public or private) have to pay contributions for their employees. Although participation to the system for workers and public servants is “automatic”, they have the right to get out of the system if they want to do so. In order to make that supplementary system preferable, State is providing a special contribution on behalf of the participant, which is equal to %25 of his/her monthly contribution amount.

Automatic enrolment of employees also depends on a contractual relationship. The difference between the two participation methods is the contractual parties. In the second method, parties of the contract are private pension company and the employer, the participant is the employee. Automatic enrolment to a pension plan can be valid only for the employees who are under the age of 45. The contribution for an automatic enrolment pension plan is the 3% of the employee’s monthly earnings which are considered also for the determination of the social security contributions. The employee may withdraw (opt-out) from the contract within two months after being notified of entrance in the plan. In that case, paid contributions, if any, along with investment earnings in the account, shall be reimbursed to the employee within 10 working days.

An important point to be addressed is foreign employees are left outside of the scope of automatic enrolment system.

State is also paying contributions for both types of participation. The amount is the 25% of the contributions made for the participant, whether by the participant or by his/her employer. There is a limitation for State contribution for every participant, which is equal to the 25% of total annual minimum wage.

TABLE 1: COMPARISON OF VOLUNTARY PENSION SYSTEM AND AUTOMATIC ENROLMENT SYSTEM BASED ON ESSENTIAL FACTS³

	VOLUNTARY SYSTEM	AUTOMATIC ENROLMENT SYSTEM
Participation	Voluntary	Automatic/Mandatory
Retirement requirements	10 years of participation and achieving age of 56	10 years of participation and achieving age of 56
Scope/Target group	Everyone	Employees below 45 age
Foreigners	Can join	Cannot join
Authority of choosing pension company	* Participant * On the condition of existence of a group retirement plan at the workplace, based on voluntary system, employer	Employer
Withdraw (opt-out) right	Can be used within 2 months of signing or approval of the contract	Can be used within 2 months of announcement of participation to an automatic enrolment plan to the employee
Right to exit from system	Can be used at any time	Can be used at any time
State contribution	%25 of the paid contributions	%25 of the paid contributions
Entitlement to state contributions	<ul style="list-style-type: none"> • 15% for a presence of at least 3 years in the system; • 35% for at least 6 years; • 60% for at least 10 years; • 100% for retirement, decease and disability 	<ul style="list-style-type: none"> • 15% for a presence of at least 3 years in the system; • 35% for at least 6 years; • 60% for at least 10 years; • 100% for retirement, decease and disability
Retirement options	<ul style="list-style-type: none"> • Lump sum payment • Reimbursement within a timeline (payment of total or partial amount of savings within a timeline) • Annual income insurance (payment of total or partial amount of savings as pension on annual base) 	<ul style="list-style-type: none"> • Lump sum payment • Reimbursement within a timeline (payment of total or partial amount of savings within a timeline) • Annual income insurance (payment of total or partial amount of savings as pension on annual base)

III. ACTUAL STATUS OF PRIVATE PENSION SCHEMES IN TURKEY

According to the data of Pension Monitoring Centre⁴, which is established for ensuring the safe and effective operation of the individual pension system as well as building a monitoring and supervision system by the Law numbered 4632, the actual number of participants in the individual pension system is

3 <https://www.egm.org.tr/otomatik-katilim/oks--bes-karsilastirmasi/>

4 <https://www.egm.org.tr/corporate/establishment-and-purpose/> (Access date 13.07.2021)

6.911.647 and the participants in the automatic enrolment system is 5.770.576, by the date 02.07.2021.⁵

In order to provide a better understanding about the actual status of private pension schemes and participants, population data will be needed. The latest official statistics reveals out Turkey's population is over 83 million for 2020, 16 million of the population is above the age of 55. This age group can be excluded from the possible participant group because of already been achieved to retirement age of individual pension system which is 56, although there is not any legal restriction towards them in order to be a participant of voluntary system.⁶ So, around 67 millions of Turkish citizens have the right and possibility to be a participant of individual (voluntary) pension system. As it is mentioned above the total number of participants to the system is 6.911.647.

For making an assessment about automatic enrolment system the total number of employees has to be known. Employee term refers to workers and public servants which are also constituting the scope of the automatic enrolment system. Total number of employees (workers and public servants) are 15.794.188 workers; 3.148.326 public servants for April 2021, according to the official statistics of the Social Security Institution.⁷ Over 18.942.514 employees, there are only 5.770.576 participants in the automatic enrolment system.

These numbers can be interpreted as participation to private pension schemes is remaining symbolic in Turkey.

Another important data, which might give an opinion about public concerns towards supplementary pension schemes might be the ratio and reasons for termination of participant status.

5 Total fund sizes are 171,5 billion TRY for individual (voluntary) system and 13,6 billion TRY for automatic enrolment system, <https://www.egm.org.tr/homepage>(Access date 11.07.2021)

6 <https://data.tuik.gov.tr/Bulten/Index?p=Adrese-Dayali-Nufus-Kayit-Sistemi-Sonuclari-2020-37210> (Access date 13.07.2021)

7 http://www.sgk.gov.tr/wps/portal/sgk/tr/kurumsal/istatistik/aylik_istatistik_bilgileri

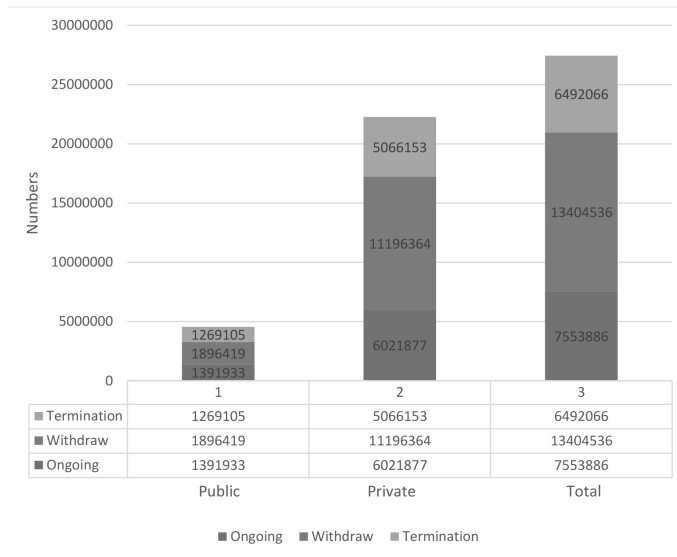
TABLE 2: REASONS FOR TERMINATION OF PRIVATE PENSION RELATIONSHIP⁸

	VOLUNTARY PENSION CONTRACT SYSTEM	AUTOMATIC ENROLMENT SYSTEM
Withdraw (opt-out)	88,48%	48,83%
Transfer to another company	5,91%	4,16%
Account unification	2,34%	1,35%
Termination of the participant status (exit from system)	1,37%	15,25%
Retirement	1,41%	-
Decease/Disability	0,49%	0,15
Termination due to loss of employment status	-	2,74%

As it can be seen from the Table 2, withdraw (opt-out) is the dominant reason about termination of private pension relationships. The ratio is much higher in voluntary pension contract system in comparison with automatic enrolment system.

On the other hand, an evaluation within the automatic enrolment system, 48,83% of the participants in total withdraw from the system. The ratio of public sector employees' withdraw is higher than the private sector employees' withdraw ratio.

8 <https://www.egm.org.tr/bilgi-merkezi/istatistikler/> (Access date: 11.07.2021) Data belongs to 30.06.2021.

FIGURE 1: ONGOING AND TERMINATED RELATIONS WITHIN AUTOMATIC ENROLMENT SYSTEM⁹

These figures can be interpreted in many ways. As an example, economic problems may cause some of the employees withdraw from the system as well as lack of trust concerning private pension idea creates the sole reason for others.

TABLE 3: REASONS FOR WITHDRAW (OPT-OUT FROM SYSTEM)¹⁰

High level of expenses or debt	71%
Lack of affordability	56%
Concerns related to the long-term investment	35%
Investments in other savings vehicles	30%
Concerns about the investment performance of pension funds	19%
High level of charges	16%
Lack of confidence about the automatic enrolment system	10%
Lack of faith-consistent investing alternatives (including interest-free funds)	2%

9 <https://www.egm.org.tr/bilgi-merkezi/istatistikler/> (Access date: 11.07.2021) Data belongs to 30.06.2021. The difference between total numbers and private-public sector numbers are deriving from pension companies lack of data relating the sectoral information of some automatic enrolment participants. These are 140.076 ongoing (%23,01); 311.753 (%51,22) withdraws and 158.808 terminated cases which are not specified by the companies whether they are public or private sector.

10 Peksevim, S. and Akgiray, V., Reforming the Pension System in Turkey; Comparison of Mandatory and Auto-Enrolment Pension Systems in Selected OECD Countries, 2019, 38.

Considering the facts and figures, it seems unrealistic for these mechanisms to provide a supplementary pension system for the majority of the society. As a result, private pension scheme whether voluntary participation or automatic enrolment, creates a supplementary investment method for those who can afford and continue to be a participant.

IV. SUPPLEMENTARY SOCIAL SECURITY MECHANISMS IN THE LIGHT OF SOCIAL SECURITY RIGHT

Social security right has been defined as a human right in International Declaration on Human Rights. ILO's Social Security (Minimum Standards) Convention (No.102) constitutes a basic level for social security by covering nine principal branches as follows; medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. European Social Charter (1961) and the Revised European Social Charter, declare social security as a right for all workers and their dependants. These international instruments are core materials for social security as a fundamental right.

Demographical changes as well as changing nature of work evokes certain social security concerns. Ageing constitutes a major issue because increasing share of older people in the society in comparison with working age population will endanger the financial sustainability of social security systems. Another problem deriving from ageing population is the increase of the risk of poverty for elder people. These risks are fortified by the changing nature of work like increase in self-employment and non-standard work contracts.¹¹ According to UN, in 2050 the number of persons aged 60 or over will reach to 2,1 billion worldwide. the share of the older population will increase more rapidly in the future in developing than in developed regions. By 2050, older persons, age 60 and over, are expected to account for 35 per cent of the population in Europe, 28 per cent in northern America, 25 per cent in Latin America and the Caribbean, 24 per cent in Asia, 23 per cent in Oceania and 9 per cent in Africa.¹²

11 https://ec.europa.eu/info/sites/default/files/pensions_en.pdf; Final Report of the High-Level Group of Experts on Pensions, 2019, 13, 25, <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=38547>

12 United Nations: World Population Prospects: The 2017 revision: Key findings and advance tables New York, 2017, para. 10 & p.1; https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---rel-conf/documents/meetingdocument/wcms_673680.pdf, 190.

In 2011, International Labour Conference (100th session) adopted a strategy on the extension of social protection. This strategy has two dimensions, one is the horizontal dimension which aims at the rapid implementation of national social protection floors containing basic social security guarantees that ensure universal access to essential health care and income security at least at a nationally defined minimum level, the other is the vertical dimension which aims the progressive achievement of higher levels of protection within social security systems. The two main ILO source with these strategies are Social Protection Floors Recommendation (No. 202, 2012) (horizontal dimension) and Social Security (Minimum Standards) Convention (No.102) (vertical dimension).¹³

One of the important principles has been regulated in paragraph 3 of the Recommendation as “the overall and primary responsibility of the State” about providing adequate and sustainable social protection floors.

According to the Social Protection Floors Recommendation (art.5), national social protection floors should comprise at least the following basic social security guarantees;

1. access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality;
2. basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services;
3. basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and
4. basic income security, at least at a nationally defined minimum level, for older persons.

In 2019, Committee of Experts on the Applications of Conventions and Recommendations published its General Survey on the implementation of the Social Protection Floors Recommendation. In concluding remarks, the Committee points out the fact that “However, challenges remain, particularly since

13 <https://www.ilo.org/secsoc/areas-of-work/policy-development-and-applied-research/social-protection-floor/lang--en/index.htm>

only 29 per cent of the world population enjoys access to comprehensive social security coverage. The gaps and obstacles to the achievement of universal social protection observed in the present General Survey show the clear and pressing need for many countries to strengthen social protection policy and law and their effective implementation. To this effect, the Committee calls upon all member States to take up and carry forward the Recommendation by ensuring that its objectives and principles are given effect and that the right to social security becomes a reality for everyone, in particular in the context of the numerous challenges resulting from changes in the world of work. For the future, this is the high road to sustainable and cohesive societies and the realization of human rights.”¹⁴

The main concern about supplementary social security mechanisms is their direct relation with individual’s economic power. According to the OECD, the coverage increases in direct relation with income.¹⁵ While international documents and organizations are putting effort on recognizing social security as a human right and trying to provide this for every human being, supplementary social security mechanisms fall beyond that idea. In another way, supplementary social security mechanisms put the individual’s risk and responsibility at first. This can be seen in many ways as their direct relation with individual’s economic capability, financial literacy and trust to funds in which the savings are invested. These are all on individual’s shoulders in supplementary social mechanism especially in private pension systems. This structure pushes the liability and responsibility of the State back. If anyone is only capable of directing some amount of his/her earnings to funds and taking the risk of this investment, this can be called only as an investment method, not in the scope of social security right.

14 ILO, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development*, 2019, 300.

15 *Final Report of the High-Level Group of Experts on Pensions*, 2019, 16.