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Internship report and research project

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Part I: Internship report

1. Introduction

This first part of this paper is dedicated to the description and evaluation of the three-months long, full-time internship that I performed in Brussels, at the research unit of the European Trade Union Institute (ETUI), the research arm of the European Trade Union confederation (ETUC). My internship was part of the Master of European Social Security, that I have attended at the KU Leuven during the academic year 2017/2018.

During this internship I have been supervised by two researchers at the center: Dr. Zane Rasnača and Dr. Stefan Clauwaert. With the first I took care of legal issues concerning the European Union labour and social law, while with the second I mainly dealt with the implementation of the ESC and on the last conclusion written by the European committee of social rights¹.

2. Presentation of the Host institution

As mentioned before, the ETUI is the research arm of the ETUC, that is the umbrella organization of the European trade union². It also includes affiliates from Non-EU member states like: the EFTA countries, Turkey, and Serbia. The ETUI has a recognized institutional role in the EU social dialogue³ and in the CoE.

¹ European Committee of Social Rights . (2017). *Conclusion 2017*. Strasbourg : Council of Europe. <https://rm.coe.int/compilation-of-conclusions-2017-by-country/1680786061>
European Committee of Social Rights. (2017). *Conclusions XXI-2 (2017)*. Strasbourg: Council of Europe. <https://rm.coe.int/compilation-of-conclusions-xxi-2-2017-by-country/1680786063>
European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Greece*. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_GRC_ENG&filename=CR_XXI-2_GRC_ENG.pdf
European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Iceland*. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_ISL_ENG&filename=CR_XXI-2_ISL_ENG.pdf
European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Luxembourg*. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_LUX_ENG&filename=CR_XXI-2_LUX_ENG.pdf

² Ciampani, A., & Tilly, P. (2017). *National trade unions and the ETUC: a history of unity and diversity*. Brussels: European Trade Union Institute.

³ Lapeyre, J. (2017). *Le dialogue Social Europeen: Histoire d'une innovation sociale (1985-2003)*. Brussels: ETUI.

The institute was founded in 1978⁴ as an independent institute of research with the mission to promote Trade Unionism and the cooperation between its partner⁵. At the beginning, its domain of activity was⁶: Performing research; Providing Information/Documentation; Supporting the activity of training of the trade unionist.

In 2005 the ETUI incorporated other two institutes linked to the ETUC, and absorbed their competences: the European Trade Union academy (in charge of training the members of the national trade union) and the Trade Union technical office (competent about health and safety, and working condition affair)⁷. Its current structure is divided in two branches⁸:

- the educational department, in charge of the training and education of the ETUC affiliates;
- the research department, in charge of carrying out research on socio-economic topics and industrial relations, and of monitoring the European policy developments of strategic importance for the world of labour⁹. This department is further divided in three units:
 - Europeanisation of industrial relations;
 - Economic, employment and social policies;
 - Working conditions, health and safety.

3. Governance of the institute¹⁰

The ETUI is an international non-profit association constituted under the Belgian law, and its activities are financed by the European commission. It works in strict collaboration with the ETUC, whose members have a prominent role in the bodies in charge of the governance of the institute. In fact, the general aims of the institute are pursued by the general assembly, composed by all the members of the ETUC, and the residual administrative functions are managed by the management committee composed by 28 members of the ETUC. The priorities

⁴ ETUI. (1978). *Rapport d'activites de l'institut syndacal Europeen 1978*. Bruxelles: European Trade Union Institute.

⁵ Statuts de l'ISE art. 3

⁶ ETUI. (1978). *Rapport d'activites de l'institut syndacal Europeen 1978*. Bruxelles: European Trade Union Institute.

⁷ Degryse, C., & Tilly, P. (2017). In *1973-2013 40 anni di storia della confederazione European dei sindacati* (p. 244). Bruxelles: European Trade union institute.

⁸ <https://www.etui.org/About-Etui>

⁹ <https://www.etui.org/About-Etui>

¹⁰ <https://www.etui.org/About-Etui/Governance>

of the institute are incorporated in the bi-annual working program, that is written after a long consultation with the ETUC, and that has to be approved by the directors committee where near to the general director of the ETUI. The directors of the two branches, the general secretary of the ETUC, and deputy secretary in charge of the relationship with the ETUI have a seat.

However, since the institute aims at being a bridge between the world of the trade unions and the world of research¹¹, the task to develop a multi-annual medium-term strategy is assigned to an advisory group composed by twenty-five members of the academic world¹². In the designation of the strategy of the ETUI an important role is also played by the foresight unit, composed by three members, in charge of following the evolution of the issues concerning labour and trade unionism in the in order develop a vision on the future challenges¹³.

4. Activity of the intership

a. Tasks Performed

As it was explained in the introduction, my internship was divided in two parts, under the supervision of different mentors. During the first part of the internship I have been supervised by the dr. Zane Rasnača under the unit in charge of research on the Europeanisation of the industrial relationship. My task was to assist her work of research by writing reports on the recent initiatives of the commission, and on the ECJ case law.

The first report I wrote was about the initiatives taken by the commission about the institution of a European social security number¹⁴, whose consultation had started a month before the beginning of my internship¹⁵. The report analyzed the three possible scenarios individuated by the commission: introduction of the

¹¹ <https://www.etui.org/About-Etui>

¹² <https://www.etui.org/About-Etui>

¹³ <https://www.etui.org/About-Etui/Foresight-unit/Presentation>

¹⁴ European Commission. (2017). *Inception assessment European social security number*. Brussels: European commission. http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5862503_en

¹⁵ European Commission. (2017). *Public consultation on a European Labour Authority and a European Social Security Number*. . Brussels: European Commission.

European Commission. (2017). *Public consultation on a European Labour Authority and a European Social Security Number*. Brussels: European Commission. <http://ec.europa.eu/social/BlobServlet?docId=18685&langId=en>

social security number through soft law, introduction of a European format for social security number through hard law, and introduction of a single European social security number through hard law.

The second report I had to write was on the private pension scheme in the EU legislation, focusing mainly on the personal scope, and, in particular, on the self-employed persons, from the first directives concerning the second pillar pensions¹⁶ till the recent draft regulation on a Pan European Pension Plan (PEPP), that is a third pillar pension¹⁷.

The third task was a reflection on the personal scope of the EU social security and social protection law. The starting point was the document of the second phase of consultation under the art. 154 TFEU launched by the EU commission on the social protection of the atypical workers in the frame of the European pillar of social rights¹⁸, about that I had to write a report, and the status of the atypical workers, in particular self-employed, in the EU social security legislation.

The following step of this reflection was finding the relevant case law concerning the definition of worker for the purpose of the EU law. To do so, I started with the Lawrie-Blum judgement¹⁹, where the meaning of the word worker for the purpose of the freedom of circulation of persons was defined, and I searched the cases that progressively extended that definition to most of the EU labour and social law legislation. To do that, I took an article concerning this topic as a starting base²⁰, and I searched and read the cases quoted there, and, since each judgement of the ECJ usually makes reference to others, I was able to develop a clear picture of the situation. Finally, I used the searching engine of the website Curia.eu to find the most recent evolution of the case law, and I found two other relevant cases²¹.

The last task was to find and summarize the relevant case law of the ECJ concerning the personal scope of the EU social security law. In order to complete

¹⁶ Directive 98/49/Directive 2003/41; Directive 2004/113; Directive 2016/2341.

¹⁷ Proposal for a regulation of the European Parliament and the Council on a pan-European Personal Pension Product (PEPP); Brussels, 29.6.2017; COM(2017) 343 final

¹⁸ European commission. (2017). *Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights C(2017) 6121 f.* Brussels: European commission.<http://ec.europa.eu/social/BlobServlet?docId=18309&langId=en>

¹⁹ ECJ judgement C-66/85 - Lawrie-Blum v Land Baden-Württemberg

²⁰ Van Pejipe, T. (2012). EU Limits for the Personal Scope of Employment Law. *European Labour Law Journal*, 35-53.

²¹ ECJ 393/10 Dermod Patrick O'Brien v Ministry of Justice, formerly Department for Constitutional Affairs

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this task, I focused my attention on five situations where the application of the EU law may have raised some problem in the interpretation, and I searched for the relevant case law through the searching engine of the website curia.eu; those five elements were:

- The extension of the scope of the EU social security law to the third country national;
- The limit to the concession of the cross-border benefit to poor people;
- The extension of the benefit to the family members of a worker;
- The rights of the self-employed;
- The necessity of the cross-border element.

While I was performing this task, I made use of the notions learnt during the lessons at the MESS, especially the lesson of professor Cornellissen; a key role had been played also by the reading material of the course of European social security law, especially the one about the third country national²², and the one about the free movement for the poor²³.

Unfortunately, I could not report the end of this part of the internship to my supervisor because she had to take leave due to health reason two weeks before the day I should have made the final report, as a consequence the work done in the first part of the internship has not been finally assessed, and it remained as a draft.

During the second part of the internship, I have been supervised by Dr. Stefan Clauwaert, who represents the ETUC in the framework of the Council of Europe Social Charter activities. In this part of the internship, I worked with the conclusion of the committee of social rights on the state of implementation of the ESC in the contracting parties²⁴.

²²Cornellissen, R. (2012). How difficult is to change EU social security coordination legislation? *pravnik* 67, 57-78.

²³ Verschueren, H. (2015). Free movement of EU citizens including the poor. *Maastricht journal of European and comparative law*, 10-34.

²⁴ European Committee of Social Rights. (2017). *Conclusion 2017*. Strasbourg : Council of Europe. <https://rm.coe.int/compilation-of-conclusions-2017-by-country/1680786061>
European Committee of Social Rights. (2017). *Conclusions XXI-2 (2017)*. Strasbourg: Council of Europe. <https://rm.coe.int/compilation-of-conclusions-xxi-2-2017-by-country/1680786063>
European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Greece*. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_GRC_ENG&filename=CR_XXI-2_GRC_ENG.pdf
European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Iceland*. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_ISL_ENG&filename=CR_XXI-2_ISL_ENG.pdf

My task was to read the conclusion of the committee, listed by countries, and to make a report that summarized when each country was found not in conformity, or when more information was required. In this report, the situations of not conformity were listed by article violated instead of by country.

This report will be used by the ETUC in the framework of discussions on the above-mentioned Conclusions within the so-called Council of Europe Governmental Committee of the European Social Charter and the European Code of Social Security (GC). Therefore, the report will be sent to the ETUC affiliates, and in particular the ETUC Fundamental Rights and Litigation Advisory Group, with a request for their input on in particular the cases of non-conformity against their country.

The Affiliates will, at that point, be asked to provide updated information on the state of play of those non-conformity conclusions; and any feedback received from the affiliates will then be submitted to both the European Court of Social Rights and the Governmental Committee. Furthermore, the information provided will also be used during the 137th and 138th meetings of the Governmental Committee held in April and September 2018. During those meetings, the cases of non-conformity will be orally discussed and, depending on the outcome of these discussions, the Governmental Committee may decide to take further action in the form of addressing a warning or recommendation towards the country in case that any new positive developments have not been taken.

b. Conferences and workshops attended

During the period of my internship at the ETUI I had had the opportunity to attend three conferences and workshops organized by the institute on legal, economic and social issues.

The first event was a workshop held the 11th of January 2018, a few days after the beginning of my internship, in Brussels, at the ITUH building, and organized by one of my supervisors, the Dr. Zane Rasnača. The topic of this workshop was the strategic litigations for trade unions and workers. The strategic litigation is a way for collective organizations to use the judgements brought in the courts to promote different legal interpretations and policies in favour of a determined category. During the workshop several speakers exposed their research or their

European Committee of Social Rights. (2018). *Conclusions XXI-2 (2017) Luxembourg*. Strasbourg: Council of Europe.
http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_LUX_ENG&filename=CR_XXI-2_LUX_ENG.pdf

experience as trade union lawyers. In particular I was impressed the presentation by Dr. Paul Palsterman, a Belgian lawyer, about a case he took care of concerning the competent member state for collecting the social security contributions of the Ryanair flying personal, since it involved issues that have been taught during the classes in Leuven.

Later, That month I attended the conference “Narrowing the gaps: 30 years after the transition started and 14 years after enlargement – where are we on convergence?”²⁵ held in the conference room of the economic and social committee on the 25th January 2018 and organized by Martin Myant, a senior researcher of the institute, as the last one before his retirement. The topic of the conference was the economic gap between western Europe and the ensemble of central and eastern Europe, after almost thirty years from the fall of the Berlin walls and 15 after the first accession of part of those states in the EU. Since the conference was more focused on economic issues, which I am less familiar about, I found it a good opportunity to broaden my knowledge on the problem of the social dumping in the EU from a different perspective than the legal one.

The last conference I attended was “polderen of folderen”, the presentation of the research made by Marianne Schapmann, the head of the health and safety, and working conditions unit of the research department, on the Polder model, the traditional model of the Dutch industrial relationship based on cooperation, and how it has been changing in the recent period, the presentation was held in a room of the ITUH building the 16th of February 2018. I was particularly interested in this presentation because I had the opportunity to know a model of industrial relationship different from the one of my country (industrial relationships in Italy have been based more on conflict than on cooperation²⁶). Furthermore, the last part of this presentation was about the effects of the flexibilization of work on the Dutch industrial relationships; I was particularly interested in this topic because flexibilization of work have been also object of the classes of global social law held in Leuven in the frame of the MESS. Attending to this presentation made me also reflect on the flexicurity model that I have always judged as a good compromise between the necessity of flexibility of the employer and the need of protection of the workers, but, as it was shown in the presentation, its application in the Netherland shows controversial evidences.

²⁵ <https://www.etui.org/Events/Narrowing-the-gaps-30-years-after-the-transition-started-and-14-years-after-enlargement-where-are-we-on-convergence>

²⁶ Treu, T. (2000). Il conflitto e le regole. *Giornale di diritto del lavoro e di relazioni industriali*, 283-328.

7. Personal experience and achievement

During this internship, I also had the big opportunity to broaden my knowledge, and to develop a more practically oriented point of view. In fact, as explained above, during my internship I had to apply the notion acquired in the classes of European social security about the EU competence, the third country nationals, the rules for the social security coordination for poor people, the role of the ESC for the harmonization of the social security on the European continent, and its process of implementation.

Furthermore, seeing the action from the backstage and doing my part in processes and mechanisms that I have studied during all my academic career in Italy and in Belgium - such as the consultation of the EU commission with the social partner; the iter of an EU legislative proposal, the monitoring in the frame of the implementation of an international convention - made me develop a better and deeper understanding of them.

Another important achievement of this internship is that I have acquired a deeper knowledge of the trade union world. Talking with my colleagues about their experience in their countries; being able to read the publications of the institute, and attending to the conferences and workshops about that subject allowed me to know how the collective organization works in the other countries, and at the EU level.

A third outcome is the fact that I have improved my research skills: I learnt how to find the relevant case law through the searching engine of the ECJ (curia.EU), and through the one of the CoE (HUDOC); I learnt how to search documents and studies of the commission; and how to follow a legislative initiative of the commission in all its step, and how to write a clear and synthetical report.

8. Strength and weakness of the organization

A point of strength of the ETUI is the important role it plays in the framework of the European trade unionism. In facts it set its priorities in strict collaboration with the ETUC, as explained above; and, from its side, the ETUC uses the research conducted by the ETUI to shape its political position.

Furthermore, the institute acts like a bridge that connects the world of trade unions and the world of university and research²⁷. In fact, the ETUI organizes workshops, seminars, and conferences on the current labour and social issues attended by scholars from all over the continent. It also contributes to the scientific debate through the review it edits: “*Transfer*, the European Review of Labour and Research” published by sage publications; and “SEER, the Journal for Labour and Social Affairs in Eastern Europe” published by Nomos; furthermore, the institute publishes: books, working papers, reports and policy briefs written by the researchers of the institute.

A third important function of the ETUI is to take care of the education of the members of the national trade union through the organization of courses on the thematic accorded in the working program, the organization of training courses at the European level is for sure a further element of strength of the organization.

As far as weaknesses are concerned, if this above-mentioned prominent role can be considered an element of strength for the reason listed above, on the other side it may be seen as a point of weakness, because the research of the ETUI can in a sort of way be biased by such a strong contact with only one part of the industrial relations. This is not necessarily a bad point, especially if we consider the particularity of the subject considered and of the study on them, but it is something that one should always keep in mind when approaching the works and study published by the ETUI.

9. Conclusion

To conclude this internship report. I can affirm that this internship has greatly contributed to my professional growth and it gave me useful instruments to attend the second part of the MESS. All the conferences and workshop attended, the task performed, and the possibility to talk with my colleagues have been a big opportunity to deepen my knowledge during the whole duration of the internship.

Furthermore, I found interesting being involved in the world of industrial relationship, and I consider it a possibility for my future professional career: on the trade union side, or on the employer’s one. And I think that this period of internship will increase my possibility to be in the future involved in such affairs.

²⁷ <https://www.etui.org/About-Etui>

Part II: Research Project

“what rights should be granted to a citizen of a contracting parties of one of the Convention of the CoE concerning social security that moves to aEU member state? Are these rights effectively implemented?”

1. Introduction

Mobility of persons is a core element of modern society, but if on one side the states consider it a resource to gain competence and manpower lacking in the country, on the other it is considered a potential threat for its impact on the public order and on the labour market. This double side of the phenomenon of immigration is reflected also in the debate about the cross-border social security and social protection where, on one hand, there is the necessity to recognize the rights of the legal migrants, and, on the other, the fear that they would represent an unreasonable burden on the budget of the host state receiving much more than what they give. Different states provide different balances between the two above-mentioned issues, and the international and regional organization such as; the ILO, the CoE, the EU, have tried to set a minimum set of core rights for the migrant and cross-border workers²⁸.

Furthermore, even when the rights are recognized in international instruments there is the need to develop specific norms for the coordination of social security, that goes from the right to export benefit abroad to the right to conserve the rights in phase of acquisition while moving, and aggregate contributory periods paid in different member states. Some instruments of international law, like the EU regulation 883/2004 and 987/2009 law, provide the rule for the coordination between the different national legal systems²⁹, while others, like the European Social Charter, only provides the obligation of the member state to find a way to regulate the cross-border welfare, through bilateral agreements or unilateral provisions³⁰.

²⁸ Schoukens, P., & Pieters, D. (2015). Social security law instruments of the next generation: European social security law as a source of inspiration? In D. Pieters, F. Pennis, P. Schoukens, & G. Vonk, *Research Handbook on European Social Security Law* (p. 534-557). Cheltham: Edward Elgar Publishing LTD.

²⁹ Schoukens, P. (2016). *Introduction to social security co-ordination in the EU*. Leuven: European Institute of Social Security.

³⁰ Heredero, A. G. (2009). *International standard-setting instruments on social security and monitoring arrangements in Social security. Protection at the international level and developments in Europe*. Strasbourg: Council of Europe Publishing.

In Europe the question of cross border social security is faced by the two main regional organizations of the continent, the EU and the CoE. In the big majority of the European states the issue concerning the social security and social protection of migrant persons is covered by the EU law, that is applicable not only to the twenty-eight member states, but also to the EFTA countries³¹. The status of the people coming from the other European countries is much more complex, their situation can be regulated by the national legislation and bilateral agreements subscribed by his home and host state; however, the situation of such a person may also fall in the scope of one of the convention written in the frame of the CoE, if such a convention has been signed by all the states involved. The CoE is the other important European regional organization that includes all the state of the continent, with the exception of Belarus and the Holy See, and three states geographically located in Asia (Azerbaijan, Armenia and Georgia). Between these conventions particular importance for the vastness of the material scope, for the number of states parties and for the system of implementation put in place, is given to the European Social Charter and to the European Convention of Human Rights.

2. Material scope, research question and objectives

The research I intend to shape in these pages involves the two European regional organization: the EU and the CoE. The object of the research will be the rights of the citizen of those states, parties of a CoE convention concerning social security and social protection rights, who move to a EU member state. Such a situation covers a lot of people in the EU since, for example: Turkish are the first foreigner community in Germany, Albanian are the second in Italy, and in a lot of eastern European countries there is a strong presence of Russians and Ukrainians³².

In order to undertake this research, I will take in consideration: from one side the rights of the convention written in the frame of the CoE dealing with the cross-border social security and social protection issues; and from the other the EU law on third country nationals, that is the reference legislation as far as equal treatment with the host country national is concerned, and the national legislation of the member states and the bilateral agreements signed by them, that are the

³¹ Tobler, C. (2016). One of Many Challenges after 'Brexit': The Institutional Framework of an Alternative Agreement — Lessons from Switzerland and Elsewhere? *Maastricht Journal of European and comparative law*, 575-594.

³² Source: eurostat, online data code migr_pop1ctz
http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_pop1ctz&lang=en

reference law as far as coordination and exportability of the benefits are concerned.

The question around which the research will take form is formulated as follow: “what rights should be granted to a citizen of a contracting parties of one of the Convention of the CoE concerning social security that moves to a EU member state? Are these rights effectively implemented?”

The final goal of the research will be to draw a picture of the obligation posed on the contracting parties by the conventions written in the frame of the CoE, and on the current state of the implementation of the above-mentioned rights in the EU member states.

3. Legal framework

This research moves in a vast legal framework that includes:

- The convention written in the frame of the CoE that concerns the rights of the migrant from a state parties:
 - The European convention on human rights (ETS NO. 005): even if the main focus of this treaty is the protection of the Human Rights, the ECHR is also an important element for the interpretation of the rights enshrined in the ESC³³, and the case law of the European Court of Human Rights covers also social security affairs³⁴
 - The European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors (ETS NO. 012) that grants equal treatment with the national of the host state for the benefit related to old age, invalidity and survivorship; and the extension, to the citizen of the other parties, of the current and future multilateral agreement concerning the contributory schemes between one or more contracting parties with regard to:
 - The determines the competent legislation in the cross-border situation;
 - The maintenance the acquired rights and rights in course of acquisition;

³³ Mikkola, M. (2008). Social rights of migrants under the European social charter. *European Journal of Social Security*, 25-59.

³⁴ Mikkola, M. (2008). Social rights of migrants under the European social charter. *European Journal of Social Security*, 25-59.

Tsetoura, A. (2013). Property protection as a limit to deteriorating property protection. *European Journal of social security*, 55-78.

- The possibility to export the benefit in another contracting party;
- The European Interim Agreement on Social Security other than Schemes relating to Old Age, Invalidity and Survivors (ETS NO. 013), that extended what was already provided in the ETS No. 012 for the risks of: sickness, maternity, death (death grants), employment injury; unemployment, family allowances.
- The convention on social and medical assistance (ETS No. 014): under which a state took the commitment to grant to the citizen of the other contracting parties legally residing in its territory social and medical assistance at the same level granted to its own citizen.
- The European social Charter (ETS no. 035); this treaty is the most important elaboration of the CoE in terms of social rights harmonization. Under this convention the legal migrants from the other contracting parties have the right to:
 - Equal treatment with the national of the host state (art. 12 par. 4);
 - The cumulation of the period of insurance and employment accrued in another contracting parties (art. 12 par. 4)
 - Benefit, in case of need of social and medical assistance without losing any political or social rights, on the same level of the national of the host state (art. 13 par. 4);
 - Benefit from the housing policies on the same level of the citizen of the host state (art. 19 par.4).
- The European Convention on Social Security (ETS: NO. 078); this convention aims to ensure the application between the contracting parties of the four basic principles of international social security law:
 - The principle of not discrimination;
 - The determination of the applicable legislation;
 - The maintenance of the rights in course of acquisition;
 - The exportability of the benefit.
- The EU law concerning third country national that includes:
 - The different level of integration in terms of social security coordination with the non-EU member states of the continent:
 - The EEA states that are bound by the EU legislation concerning social security, freedom of movement of workers, and freedom movement of service provider; but not

- by any competence concerning the legally residing third country national³⁵.
- Switzerland that has some agreement with the EU on the implementation of the single market, but, contrary to the EEA state it is a static agreement (representative of both the EU and Switzerland meets regularly and decide whether the new legislation should be applied or not)³⁶
 - Turkey: with that the EU has a partnership agreement that grant to the citizen of both the contracting parties equal treatment on the ground of social security and the maintenance of the accrued rights.
 - Other countries with that the EU has no agreement at all and whose nationals have only the rights accorded by the EU legislation on third country national
- The evolution of the EU competences concerning the third country national migrants since the Amsterdam treaty and its territorial scope³⁷;
 - The EU regulation 1231/2010 that extend the EU regulation 883/2004 and 987/2009 on social security coordination to the third country national; and its territorial scope (this regulation doesn't apply to Denmark that has no obligation as far as third country national are concerned, while in the UK it is still applied the old social security regulation as far as third country national are concerning)³⁸;
 - The EU legislation on legally residing third country national (the directive 2003/109 on the status of third-country nationals who are long-term residents, and the directive 2011/95 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ; and its territorial scope (Denmark, Uk and Ireland are excuded from the application of these directives).
- The national legislation of the member states concerning:

³⁵ Tobler, C. (2016). One of Many Challenges after 'Brexit': The Institutional Framework of an Alternative Agreement — Lessons from Switzerland and Elsewhere? *Maastricht Journal of European and comparative law*, 575-594.

³⁶ Tobler, C. (2016). One of Many Challenges after 'Brexit': The Institutional Framework of an Alternative Agreement — Lessons from Switzerland and Elsewhere? *Maastricht Journal of European and comparative law*, 575-594.

³⁷ Cornellissen, R. (2012). How difficult is to change EU social security coordination legislation? *pravnik* 67, 57-78.

³⁸ Cornellissen, R. (2012). How difficult is to change EU social security coordination legislation? *pravnik* 67, 57-78.

- The constitutional rights granted to migrants as persons (for example the right to receive adequate emergency health care and basic social assistance);
- The constitutional procedures for the ratification and implementation of the international conventional law in the national legal system, and its eventual direct applicability;
- The law regulating the access of legal migrants to social security and social protection;
- The eventual presence of bilateral and multilateral agreements that ensure a system of social security coordination between two or more states.

4. Methodology

a. Small research questions

In order to carry out the research it is necessary to focus on some specific issues related to the main research question shaped above. Each one of these issues can then be translated into small research questions. The small research questions have the important function to individuate the main issues that the research will take care of, and, therefore, to delimitate the scope. In this sense they assume the role of the skeleton of the whole research

For this research four small research question have been individuated:

- How does the ratification and implementation of a convention written in the frame of the CoE works in the EU countries?

Differently from the EU law the legislation of the conventions written in the frame of the CoE are not self-executive, and are considered normal treaties of international law³⁹. As such their implementation is dealt differently in different states according to their legislation on the ratification and implementation of the national treaties.

Usually the first step after signing an international convention is the ratification through an *ad hoc* law called ratification law, that, according to

³⁹ Heredero, A. G. (2009). *International standard-setting instruments on social security and monitoring arrangements in Social security. Protection at the international level and developments in Europe*. Strasbourg: Council of Europe Publishing.

the different constitutions, may require a vote: only in the low chamber (for example Belgium and Slovenia); in both the low and the high chamber (for example Italy and France); and sometimes it may also require the approval in the regional parliament (Belgium)⁴⁰.

After the ratification, an international treaty imposes obligations only towards the other contracting parties, and in some states a person can't directly claim for a right enshrined in an international convention if the mentioned right have not been correctly transposed in the national legal system through the ratification law, or if such a right have not been correctly implemented, this is called dualist system⁴¹.

However, some countries have adopted a monist legal system that, through the constitutional mechanism of the interposed norm to overcome this lack⁴². Under this mechanism a constitutional norm grants the conformity of the national legislation to the international conventions signed and ratified by the country; and, in case of violation, the norm in contrast with the international convention can be considered unconstitutional, an example of such a mechanism is the art. 117 of the Italian constitution⁴³.

Also, when the national constitution provides an interposition norm, a further passage may be needed to fully implement the international treaty, it depends on whether the right in question has or not a self-executive nature. The self-executive rights are those that don't need any further legislation to be implemented, but only the disapplication of the national legislation in contrast with the disposition of the international convention (for example the right to access to social protection on an equal footing than the national of the host state); while, on the contrary, the non-self-executive can't be directly applied without a provision that implements them (for example the right to the accumulation of the insurance period paid in different countries).

Having clear in mind how this mechanism works in the state involved is fundamental to carry on a research on the current state of implementation of the conventions written in the frame of the CoE in the EU member states.

- Is the application of the EU law concerning third country national enough to be in conformity with the provision of the convention of the CoE

⁴⁰ Grosek, C., & Sabbati, G. (2016). *Ratification of international*. Bruxelles: EPRS | European Parliamentary Research Service.
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593513/EPRS_BRI\(2016\)593513_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593513/EPRS_BRI(2016)593513_EN.pdf)

⁴¹ Heringa, A. W. (2016). *constitution compared*. Cambridge: Intersentia.

⁴² Heringa, A. W. (2016). *constitution compared*. Cambridge: Intersentia.

⁴³ Gennusa, M., & Ninatti, S. (2011). Italy and the ECHR. *Ius Publicum*, 1-12.

concerning equal treatment between the national of the contracting parties? And what does the country excluded from the application of such a legislation do to be in conformity with the convention of the CoE signed by them under this point of view?

As explained above the EU has developed a legislation concerning third country national that involves also their access to social security and social protection, with some exception, on an equal footing than the citizen of the host state. This question deal with whether the simple respect of these EU directive can be enough for being in conformity with the standard of the conventions written in the frame of the CoE. If the reply to this question will be affirmative, the research in this regard should be focused only on the three countries where the EU legislation on third country national don't apply: Denmark, Ireland and UK; while, if it would be negative, a further research should be carried out in order to discover how the member state complete the Eu legislation to be in line with the conventions of the CoE.

- Are there other bilateral or multilateral convention that should be kept in consideration in this research?

It is possible that two or more countries have signed an agreement between them concerning the social security benefits. Agreements concerning social security are the main way to implement the international obligation concerning the aggregation of the insured period required in the art. 12 par. 4 ESC and in the two European interim agreement on social security. Therefore, the investigation about the existence of such conventions is important to know whether such provisions are implemented or not

- When there is no agreement concerning social security between an EU member state and a contracting party of the ESC, how are the obligations concerning the coordination of two different social security system laid down in the art. 12 par. 4 of the ESC dealt with?

When there is no agreement between two contracting parties of the ESC the provision of the art. 12 par. 4 concerning the cumulation of the period of insurance and employment accrued in another contracting parties should be granted in a unilateral way. This question aims to investigate whether and to which extent this happens in case of lack of agreement, and, if that is enough to be in conformity with the ESC.

- Are there some disposition whose implementation in the EU member states finds more resistance than the others? If yes why?

This small question deal with the fact that there may be some disposition that is violated more than the others, if the author should also try to find out Whether this happens and why.

b. Sources

The main sources used to carry on the research will be the legal sources: The text of the above-mentioned legislation and treaties; The relevant case law at the CoE, EU and national level; the Official documents and studies of the administrative and advisory bodies of the concerned institutions.

Since analysing the legal system of the 28 EU member state and make a deep research on them would be almost impossible, it will be, therefore, necessary to restrict the number of sources that we need to look at, in order to do that it may be useful to draw some to reduce the material that will be analyzed to search for the relevant sources, these criteria intend to be only a guide and if a document, case or legislation interesting to analyse will be found outside these criteria it will still be taken in consideration:

- A first criterion, is to reduce the number of judgement by focusing the research mainly on the state where there is a stronger presence of citizenship of a state member of the CoE, but not of the EU, and therefore bigger probability to find cases involving them. To do that the starting point will be the date of Eurostat on the number of migrants in the different EU member state divided by citizenship of provenience⁴⁴. This date includes only absolute numbers, and therefore a work to relate these data to the total amount of population must also be done.
- A second method to reduce the material to analyse is searching the relevant decision of the committee of social rights concerning the art. 12 par.4 and art. 13 par. 4 of the ESC on the HUDOC database, so that to see if such an issue has been raised also in front of the national court, and if the national government have provided to bring that situation into conformity; and, if yes, how.
- A third way is to read the last conclusion on the implementation of the European social charter written by the committee of social rights⁴⁵; from

⁴⁴ Source: eurostat: code migr_pop1ctz

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_pop1ctz&lang=en

⁴⁵ European Committee of Social Rights . (2017). Conclusion 2017. Strasburg: Council of Europe. <https://rm.coe.int/compilation-of-conclusions-2017-by-country/1680786061>

what the committee wrote on the implementation of the art. 12 par. 4 and art. 13 par. 4 it would be possible to see whether the country have established bilateral agreement with the other contracting parties, whether there are negotiations ongoing; and where the country concerned have been found not in conformity with the ESC.

- Another good method to find where to look for relevant material is reading the manuals, and the scientific literature. This method can be useful in two ways; in fact from one side while reading the scientific literature it is possible to find legislation case law and official document quoted, all sources that can be useful for the present work; on the other case reading a manual can help the author to develop an idea on the legislation adopted in different countries on a determined issues; for example a good manual of compared constitutional law could be a good starting point to analyse the self-executiveness of the international conventional law in the national legal system.
- In the end another good method to find the legislation and the case law to focus on is from the interviews of the person involved in the social security administration.

c. Process of elaboration

After the individuation of the relevant material the next step will be reading it to find the major situation of clash between the EU or the national legislation from one side; and the convention written of the CoE from the other, clash that can have been brought in front of a court or in front of the committee of social rights of the CoE; or that can be only potential, and in this case the author of the research will proceed also to affirm his opinion on such a situation basing on the previous case laws and decisions.

In this phase, language can constitute a barrier in this phase: since the author can understand what is written in Italian, French English and Spanish, he can

European Committee of Social Rights. (2017). Conclusions XXI-2 (2017). Strasbourg: Council of Europe. <https://rm.coe.int/compilation-of-conclusions-xxi-2-2017-by-country/1680786063>

European Committee of Social Rights. (2018). Conclusions XXI-2 (2017) Greece. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_GRC_ENG&filename=CR_XXI-2_GRC_ENG.pdf

European Committee of Social Rights. (2018). Conclusions XXI-2 (2017) Iceland. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_ISL_ENG&filename=CR_XXI-2_ISL_ENG.pdf

European Committee of Social Rights. (2018). Conclusions XXI-2 (2017) Luxembourg. Strasbourg: Council of Europe. http://hudoc.esc.coe.int/app/conversion/pdf?library=ESC&id=CR_XXI-2_LUX_ENG&filename=CR_XXI-2_LUX_ENG.pdf

carry out the research about the countries that speak those languages, however there is the risk that such an approach may be reductive. A good way to overcome this problem is that he should be assisted by person able to speak other languages to find the relevant material, and that he could eventually pay for a translation if needed.

Once the situations of clash have been individuated it will be highly probable that there will be a considerable number of them in that case a precedence will be given to those situations that happen in a more than one state respect to those that are linked to the particular situation of a state or of a region; unless the case in question have been challenged in front of a court that pronounced a principle of general scope, like in the ECJ judgement *Kamberaj*⁴⁶.

The next step to write the research will be dividing the situation of clash found between the one found in conformity and the one found not in conformity. For the latter the author will operate an aggregation of the similar cases under the principle violated (for example not discrimination, cumulation of periods, exportability of the benefit, determination of the competent state), and under the type of violation (for example not cumulating the period of unemployment insurance paid in different countries; not granting equal treatment with the national of the host country after a reasonable amount of time). After this work of classification, the following step will be the analysis of the material to try to give an answer the small research question outlined above.

In the End, to explain the reason of the non-implementation, that involves less objective elements and where a strong role is played by the personal evaluation on the facts, it may be useful to draw a set of question, based on the results of the previous step of the research, that will be sent to the administrative and political personal of each of the 28 member states involved in the administration of social security at the national level.

The final outcome of this research should be a clear picture of the obligation concerning the cross-border social security enshrined in the convention of the CoE, and of their current state of implementation implementation in the EU member states. At the end of the research the author should also have been able to find which are the disposition whose implementation found the most resistance, and the reason of that.

⁴⁶ C-571/10 *Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*

6. Final structure

As final act of this research project it is now possible to delineate the summary of the research, that will be structured in 5 chapters plus an introduction and a conclusion, one for the explanation of the legal framework, and one for each of the main issues of the cross-border social security; the final structure of the research will therefore be:

- Introduction: where the topic, and the aim of the research will be explained; and some basis for the legal;
- Chapter I Legal framework: where the main aspects of the legal system concerned will be explained.
- Chapter II: equality of treatment; where the issues concerning the equality of treatment between legal migrants citizen of one of the CoE countries and the citizen of the host EU member state will be analyzed.
- Chapter III: Cumulation of period; in this chapter it will be analyzed how it is managed the cross border social security between a EU member state, and a state member of the CoE but not of the EU, an important part of this chapter will be the investigation about the presence of bilateral agreements.
- Chapter IV: exportability of the benefit; the focus of this chapter will be on the possibility to bring the benefit acquired in one of the state member of the CoE to another one.
- Chapter V: applicable legislation; this chapter will deal with the applicable legislation in case of cross border social security between a EU member state and a member state of the CoE, but not of the EU.
- Conclusion: in the final conclusion the research will try to reach an outcome of the situation analyzed in the five previous chapters.

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