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The Right of Social Aid and Social Service of Foreigners in Turkey

Cemil Güner

University of Selçuk, Faculty of Law, Turkey

Abstract

There is no difference on the right of social aid and social service between citizens and foreigners in Turkey. The valid rule is territorial principle in Turkish law currently. According to the principle, as a rule, both citizens and foreigners get benefit equally from the right of social aid and social service. But some regulations on the right of social aid and social service in Turkish law are contrary to the purpose of equality principle. For this reason, these regulations have to be changed by the legislator.

Keywords: right of social aid, right of social service, foreigner, equality principle

1. Introduction

Social security is a indispensable requirement for people. In this concept, protection of people against to social risks is a important responsibility of states. In other words, states grant the right of social security to people in the form of social state's reflection (Kocaoğlu, 1997, p. 86).

Requirement of social security has arised in every stage of history. But states had granted the right of social security in the near future (Sadroleşrafi, 1999-2000, p. 864). Although a state grants the right of social security to its citizens before for else, in modern time, the idea that foreigners must have this right like citizens too is accepted by states (Şanlı, 1981, p. 25). At the present day, as a rule, the right of social security is granted to both citizens and foreigners and is protected globally.

Turkish state grants the right of social security like other social states. The right of social security is accepted in article 60 of Turkish Constitution. Besides international conventions on social security that Turkish state became party them and codes and the other regulations have some rules about the right of social security (Çelikel & Öztekin Gelgel, 2011, p. 211).

Many foreigners reside in Turkey excluding Turkish citizens. In recent years, foreigners who reside in Turkey have increased. Because clauses of the right of real estate acquisition of foreigners were enabled. And, geographical position of Turkey causes refuge and emigration streams in Turkey actively.

According to this, the extent of the right of social aid and social service of asylum seekers, refugees and other needy foreigners who reside in Turkey must be determined. In this context,

our presentation's main topic is the right of social aid and social service of foreigners as part of the right of social security.

2. In General

Social aids and social services are three main bases of social security with social insurances (Akad, 1992, p. 12; Tunçomağ, 1987, p. 7). So firstly, the notion of social security should be explained. Social security takes measures for all the workers against social risks like old age, unemployment, disability, illness. And it aims to ensure economic security of people. Besides, if all the conditions are okay, the institutions concerned social security cure rightful person in medical establishment, put them on pension and take other measures on social security (Güzel & Okur & Caniklioğlu, 2010, p. 1; Tunçomağ, 1987, p. 5).

Social insurances have the most extensive legal effect at social security certainly. But social aids and social services have important role like social insurances too.

2.1. Notion of Social Aid

Social aid is a type of aid in kind and in money to all poor and needy people who are with modest regular income reluctantly from the state budget without remuneration so as to ensure a minimum standart of living that is human honourly (Dilik, 1980, p. 73; Akad, 1992, p. 12).

Social aids are financed by taxes but not by premium on the contrary to social insurances. The rightful persons don't pay into them. For this reason all comers who are poor and needy without remuneration benefit from social aids. Besides, these aids are unilaterally extended by the state (Tuncay, 1994, p. 16).

2.2. Notion of Social Service

Social service is a type of service by the state and the other private institution to all poor, needy, physically and mentally handicapped people so as to ensure a minimum standart of living that is human honourly and appropriate to environment (Uşan, 2009, p. 70). For instance child care, protection of needy children, care and protection of needy old, disabled and ill persons are kind of social service.

Social services are financed by taxes like social aids. Expenses of these services are covered by the state budget directly or by the public fund or by the private institution fund. Similarly, all comers who are poor and needy without remuneration benefit from social services like social aids. Besides, these services are unilaterally extended by the state (Uşan, 2009, p. 70).

3. The Right of Social Aid and Social Service of Foreigners

3.1. In General

According to article 2 of Turkish Constitution, social state is a character of Republic of Turkey. The mission of Turkish state is to ensure a minimum standart of living that is human honourly to people so as to social state.

According to article 60 of Turkish Constitution everybody has the right of social security and the state takes measures for it and makes organization on social security. Besides, according to article 61 of Turkish Constitution the state protects handicapped persons, takes measures for they participate to social life, protects and helps old persons, protects needy children.

Turkey has become party some bilateral and multilateral international convention on social security. In these convention as a rule, citizens and foreigners are accepted equal status on the right of social security (Çelikel & Öztekin Gelgel, 2011, p. 212). For example, Turkey became party the Convention Concerning Equality of Treatment of Nationals and Non-Nationals in Social Security. Similarly, the European Social Charter and the Revised European Social Charter, the International Convention on Economic, Social and Cultural Rights and the Convention Relating to the Status of Refugees were ratified by Turkey too.

In Turkish law, there is no a code on social aids and social services exclusively contrary to social insurance. These rights are regulated by several code and other regulations. For this reason firstly regulations that include the right of social aids and social services have to be unified by the legislator like social insurance code (Dursun, 2009, p. 205).

Although the equality principle is accepted by the some Turkish domestic regulations too, the other some regulations include contrary provisions against to this principle. The relevant provisions will be analysed hereafter.

3.2. Provisions on Social Aids

3.2.1. The Foundations Regulation

The Foundations Regulation includes provisions on social aids like utilization from communal kitchens, needy salary, education aid, free cure service and etc. According to article 67 of the Regulation, people who has no the right of social security and whose income doesn't exceed net minimum wage may utilize from communal kitchens. Similarly, the Foundations Regulation regulates needy salary that is put needy handicapped persons and orphans. According to article 73 of the Regulation, the state puts needy salary to the needy orphan children and minimum 40 per cent needy handicapped persons provided that they have no social security, salary, income, movable good and real property that is income yielding. Besides, according to article 82 of the Regulation, the state helps to needy and poor students who are at primary or high school for their education. Moreover, according to article 89 and 94 of the Regulation, the state helps to poor and needy ill who have no health insurance for free cure and if it is urgent, may cover travel expenses, funeral expenses and the other expenses. And, according to article 95 of the Regulation, the state grants the right of examination and cure to poor foreigners who reside in Turkey.

3.2.2. The Encouragement of Social Assistance and Solidarity Code (Law No. 3294)

The aim of the Encouragement of Social Assistance and Solidarity Code is to help to poor and needy citizens and other persons who came or are allowed to Turkey, to take measures for stabilization social justice, to make for fair income distribution and to encourage social assistance and solidarity.

But the Encouragement of Social Assistance and Solidarity Code has some contrary provisions to the international convention on social aids. Because the Code grants these rights to Turkish citizens merely. According to this, the Code covers poor and needy citizens who don't get salary and income from the social security institutions and the other citizens who will be helpful to society if the state helps minimally temporarily or grant education facility them (Güzel & Okur & Caniklioğlu, 2010, p. 817; Tuncay, 1994, p. 75).

The Encouragement of Social Assistance and Solidarity Code that doesn't cover foreigners is contrary to both article 60 of Turkish Constitution and the international convention on social security that Turkey becomes part because of its content that has no equality between citizens and foreigners. But it must cover foreigners too. Because the Code helps to poor and needy citizens and other persons who came or are allowed to Turkey. In this context other persons who came or are allowed to Turkey may be foreigners, especially refugees, asylum seekers and stateless (Çiçekli, 2013, p. 288).

3.2.3. The Code on Allowance to Needy, Poor and Lonely Turkish Citizens (Law No. 2022)

The aim of the Code on Allowance to Needy, Poor and Lonely Turkish Citizens is to put on salary to Turkish citizens who are age allowance and don't get salary and income from social security institutions and don't work and don't get alimony. Besides, its aim is to put on salary to handicapped Turkish citizens who are 19 years old if all the provisions are okay too. This Code covers Turkish citizens merely. This is contrary to the equality principle.

3.2.4. The Code on Free Resident Student or Beneficiary Student Teaching at University and Social Aids (Law No. 3580)

This Code is a kind of social aid to university students-oriented. The code doesn't set up citizenship condition with respect to rightful university students (Korkusuz & Uğur, 2010, p. 102). Thus both citizens and foreigners can be free resident student or beneficiary student in consideration of their compulsory service on behalf of the Ministry of Education at the college, faculty and institute that educates teacher and educationalist.

Nonetheless the Regulation with respect to the Code Law No. 3580 stipulates being Turkish citizen for such social aids. This provision is contrary to the Code. So this provision of the Regulation must be abrogated (Dursun, 2009, p. 235).

3.2.5. The Code on Free Resident Student or Beneficiary Student Teaching at Primary and High School and Social Aids (Law No. 2684)

This Code is a kind of social aid to successful and poor students who major at primary and high schools of the Ministry of Education. The Code doesn't set up citizenship condition with respect to rightful students. Thus both citizen students and foreigner students can be free resident student or beneficiary student at primary and high schools of the Ministry of Education.

Nonetheless the Regulation with respect to the Code Law No. 2684 stipulates being Turkish citizen or Turkish Republic of Northern Cyprus citizen for such social aids. This provision is contrary to the Code. So this provision of the Regulation must be abrogated too (Dursun, 2009, p. 236).

3.2.6. Turkey Red Crescent Association Statute

Red Crescent Association is a humanitarian aid institute whose aim are to help to needy and unprotected people and to fight against to disaster. In this context, Red Crescent Association extends help social aids for such aims.

According to Red Crescent Association Statute, it doesn't discriminate people by nationality, ethnic group, religious belief, category, political belief and helps all them. As can be seen, Red Crescent Association grants the right of social aid to both citizens and foreigners (Çelikel & Öztekin Gelgel, 2011, p. 216).

3.3. Provisions on Social Services

Procedure and principles of discharging of social services in Turkey are regulated by Social Services and Society for the Protection of Children Code Law No. 2828. According to the Code, Social Services and Society for the Protection of Children serves social services to unprotected and needy family, child, handicapped, old and the other people (Uşan, 2009, p. 71; Tuncay, 1994, p. 78).

In practice, social services are discharged by different legal ways. For example, needy babies and children are cared and growed in the nursery school, parenting homeland, baby nursery and rescue home. Similarly, these needies are taken up a profession. Besides, they are educated. All these examples are a kind of social service (Tuncay, 1994, p. 81; Korkusuz & Uğur, 2010, p. 107). Correspondingly, care of needy handicapped or old people is a social service too. And, the nursing home for protection of needy old people is a kind of social service (Korkusuz & Uğur, 2010, p. 113).

Social Services and Society for the Protection of Children Code has no regulation that discriminates between citizens and foreigners. So citizenship is not a distinctive mark with respect to social services.

4. Conclusion

The valid rule is territorial principle with respect to social aids and social services in private international law currently. According to this, as a rule both citizens and foreigners get benefit equally from the right of social aid and social service.

There is no difference on the right of social aid and social service between Turkish citizens and foreigners in Turkey too. According to article 60 of Turkish Constitution everybody has the right of social security. Similarly some provisions of the codes and regulations accept equality principle too.

In context of social aids, for example the Foundations Regulation accepts equality of citizens and foreigners. Likewise the Code on Free Resident Student or Beneficiary Student Teaching at University and Social Aids accepts the equality of citizens and foreigners too. Nonetheless some regulations on the right of social aid in Turkish law are contrary to purpose of equality principle. For example the Code on Allowance to Needy, Poor and Lonely Turkish Citizens. According to this, the aim of the Code is to put on salary to Turkish citizens who are age allowance and don't

get salary and income from social security institutions and don't work and don't get alimony and to put on salary to handicapped Turkish citizens who are 19 years old. The Code covers Turkish citizens merely. This situation is contrary to equality.

In context of social services, the Social Services and Society for the Protection of Children Code has no regulation that discriminates between citizens and foreigners. According to this, the Code doesn't discriminate people by category, ethnic group, language, religion, religious order, region.

As can be seen, some regulations conform with provisions on social aids to the Turkish Constitution and international conventions that Turkey became party on social security. Because the provisions of these regulations accept the equality principle between citizens and foreigners. Nonetheless there are some regulations that are contrary to the equality principle too. These lawless provisions have to be changed by the legislator.

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