

*Turkish Social Security Reform and Social Justice***Türk Sosyal Güvenlik Reformu ve Sosyal Adalet**

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Çalışma Ekonomisi ve Endüstri İlişkileri Bölümü

Ekim 2016, Cilt 6, Sayı 2, Sayfa 9-27
October 2016, Volume 6, Number 2, Page 9-27

P-ISSN: 2146 - 4839

E-ISSN: 2148-483X

2016/2

www.sgd.sgk.gov.tr
e-posta: sgd@sgk.gov.tr

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Cilt:6 - Sayı: 2 - Yıl: 2016 / Volume: 6 - Number: 2 - Year: 2016

Sahibi / Owner of the Journal

Sosyal Güvenlik Kurumu Adına / On behalf of the Social Security Institution
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Yayın Türü: Uluslararası Süreli Yayın / *Type of Publication: Periodical*

Yayın Aralığı: 6 aylık / *Frequency of Publication: Twice a Year*

Dili: Türkçe ve İngilizce / **Language:** Turkish and English

Basım Tarihi / Press Date: 31.10.2016

Sosyal Güvenlik Dergisi (SGD),

TUBİTAK ULAKBİM - TR

ASOS INDEX - TR

SOBIAD - TR

EBSCO HOST - US

INDEX COPERNICUS INTERNATIONAL - PL tarafından indekslenmektedir.

Journal of Social Security (SGD), has been indexed by

TUBİTAK ULAKBİM - TR

ASOS INDEX - TR

SOBIAD - TR

EBSCO HOST - US

INDEX COPERNICUS INTERNATIONAL - PL

SGD Sosyal Güvenlik Dergisi

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Tasarım / Design: 360 Sosyal Medya Reklam Tic. Ltd. Şti. • www.sosyalmedya360.com

Basım Yeri / Printed by: 7 Punto Tasarım - Matbaacılık Ltd. Şti. • www.yedipunto.com

İletişim Bilgileri / Contact Information

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Tel / Phone: +90 312 207 88 91 - 207 87 70 • Faks / Fax: +90 207 78 19

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Turkish Social Security Reform and Social Justice¹

Türk Sosyal Güvenlik Reformu ve Sosyal Adalet

Yusuf ALPER*

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ABSTRACT

Social justice refers to morally defensible distribution of benefits/rewards in society, evaluated in terms wages/housing/medical care/welfare benefits and so on. Social security as a social policy instrument will also be effective/succeed when its aforementioned aim is achieved. According to the ILO, humanizing globalization can be achieved by social justice. Therefore the ILO has placed to realize social justice into the new social security approach/policies. The purpose of this study is to evaluate to what extent is closer to the social justice ideal of the social security reform in Turkey (2008). It focuses on universal health and old-age insurances branches expressed as the main axis of reform. Universal health insurance reform empowers social justice: to scope of protection the people; to participate the state to funding; to facilitate access to health services etc. Nevertheless difference in service payments are some praxes which shatter social justice. Old-age insurance also blows the cobwebs away which get away from social justice.

Keywords: Justice, social justice, social security reform in Turkey, universal health insurance

ÖZ

Sosyal adalet, başta refah, gelir ve sosyal statü gibi maddi veya sosyal ödüllerin ahlâken haklaştırılabilir bir dağıtımına işaret eder. Bir sosyal politika aracı olarak sosyal güvenlik ise; sosyal politikanın sosyal adaleti gerçekleştirme idealine hizmet ettiği ölçüde başarılıdır ve etkindir. ILO'ya göre küreselleşmenin insanileşmesi kadar meydana getirdiği ekonomik ve sosyal krizlerin aşılması da sosyal adaletle gerçekleşecektir. Bu sebeple ILO yeni sosyal güvenlik anlayışının ve sosyal güvenlik politikalarının merkezine sosyal adaletin gerçekleştirilmesi amacını koymuştur. Bu çalışma, Türkiye'de 2008 yılında gerçekleştirilen sosyal güvenlik reformunun sosyal güvenliğin sosyal adaleti gerçekleştirme idealine ne ölçüde hizmet ettiğinin belirlenmesine yöneliktir. Bu değerlendirme, reformun merkezinde bulunan genel sağlık sigortası ve yaşlılık sigortası ile ilgili olarak yapılacaktır. Türk sosyal güvenlik sistemindeki reformun genel sağlık sigortası ayağı; koruma kapsamına alınan kişiler, devletin finansmana katılması, sağlık hizmetlerine erişimin kolaylaştırılması gibi değişiklikler sosyal adalet ilkesini güçlendirmiştir. Ancak hizmet farkı ödemeleri gibi sosyal adalet ilkesini zedeleyecek uygulamalar da vardır. Yaşlılık sigortası ayağında ise; sosyal güvenliğin sosyal adalet ilkesinden uzaklaşılın yenilikler söz konusu olmuştur.

Anahtar Sözcükler: Adalet, sosyal adalet, Türkiye'de sosyal güvenlik reformu, genel sağlık sigortası

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¹ An earlier version of this paper was presented at the The International Academic Forum (IAFOR) International Conference on Social Sciences, Brighton, UK, July 07-10, 2016. We would like to thank Chan Wai Yin [Hong Kong Baptist University], Harrison Chukwuma Ajebon [University of Calabar], and Larry Mead [University of Derby] for their comments on an earlier draft.

INTRODUCTION

The social insurance pillar of Turkish social security system was restructured from the start with the changes in institutional structure in 2006 and social security legislation in 2008. While an attempt was made to resolve the problems of the previous system with these changes called reform, on the other hand new purposes compatible with the sense of universal social security were added to the system. Thus, “to reduce poverty in the society by creating a social security system which includes the whole population in the scope of protection and to prevent social unrests by preventing the inequalities in the distribution of income” (Prime Ministry, 2005: 39) was regarded among the purposes of reform.

Especially, “A health service with an equal scope and a quality will be provided to all the citizens, and protective health services will be included in the scope” was stated with the general health insurance (Prime Ministry, 2005: 55). The primary aim of the Institution in the Social Security Institution Law which will carry the reform legislation into effect is determined as “to conduct an active, fair, easily accessible, actuarially and financially sustainable social security system based on the principles of social security, within the contemporary standards.” (Social Security Institution Act No. 5502, article 3), and a special emphasis was made to the social justice principle.

This study was prepared for determining to what extent are the new arrangements brought by social security reform compatible with the aim of securing the social justice by the social security. Various provisions of Law no. 5510, especially the compatibility of the arrangements regarding the general health insurance with the social justice principle of the social security, will be emphasized.

I- CONCEPTUAL FRAMEWORK: JUSTICE, SOCIAL JUSTICE AND RELATIONSHIP BETWEEN SOCIAL JUSTICE AND SOCIAL POLICY

Heywood (2012: 163), in his work, defines justice as a mental impression idea regarding the reward and penalty distribution which can be made morally legitimate. In brief, justice is generally related to granting every person the thing believed to be “fair claims”, in other words their own

“right”. Justice, within this context, seems applicable for the distribution of every “benefit” in the society (freedom, rights, power, welfare, leisure time, opportunity etc.). According to Gngr (2000: 105), it is difficult to secure and/or implement the justice. However, he has another definition: An appropriate reaction of every behavior, by the society or the institutions representing the society.

Justice is a concept which surrounds and comprises many virtues. According to Aristotle, the concept of justice is the most completed and perfect virtue which embraces all the other virtues and which arises from the obedience to the laws. Within this sense, he speaks of two kinds of justice: Distributive justice and corrective justice. The criterion for the distributive justice is the distribution of right and honor with a geometrical method according to individual effort. And the corrective justice is materialized with the arithmetical equality method (Topakkaya 2009: 628). een who defines justice as “implementing rights and laws” (een, 1975: 96) and regards justice as “leading principle and primary norm of law” (een, 1975: 29) points out the essential relationship between justice and law.

The two most common usages of the concept of justice are “legal justice” and “social justice”. Legal justice emphasizes that the mistakes in the distribution of penalties and rewards are particularly a consequence of violating the law (Heywood, 2012: 164-165). And the concept of social justice which is located in the center of this study refers to the ideal situation in which all the individuals of a society have equal rights, protection, opportunities, liabilities and social benefits (Zastrow, 2014: 820). Social justice makes a reference to a morally legitimate-able distribution of material or social awards/gains such as income, social status and especially welfare.

The concept of social justice directed its main interest towards the criteria regarding the distribution of income and wealth and its partition. These criteria are composed of merit/desert and need. These are aimed at ensuring the real/material equality. The question of whether these criteria can be determined objectively or not is controversial. However, there is a matter on which social security supporters agree. And this matter is the need of undertaking positive duties by the state in various economic and social issues. With the concept of social justice, the emphasis was laid on the result emerging from implementation of rules. Therefore, the idea

that individuals should have a minimum level of welfare started to appear in the classical justice theory. Thus, a parallelism between the concept of social justice and welfare state is observed. Naturally, this parallelism can be observed between social state and welfare state as well. Rawls discussed strikingly the necessity for a welfare level and the sense of welfare state problematizing in terms of the justice concept in his justice theory which he is trying to develop in a work of his (Sandel, 2013: 181-183; Aktaş, 2001: 193-195).

Social justice can also be considered as a type of justice observed in social services for citizens provided by the state apparatus. According to the classical state concept, administration ensured equality before the law and a regular life among them. Today's sense of modern state undertakes the necessary services for people to live better lives as well as the services in question. In this respect, people search for not only the absolute equality before the law but also the equality in the struggle for life. However, there is a matter which should be underlined. Social justice can be described as "equality of opportunity and facility". And laying an emphasis on this description is needed. Because, society does not equalize the individuals socially; it tries to grant them "equal opportunities". A society in which all the individuals are equal cannot be built. Statuses in a society are distributed according to the "desert" principle so the most qualified/efficient people should have the highest statuses. Therefore, the thing the society does or should do for the social justice should enable people to improve their abilities.

It can be said that social justice, as stated with detail below, is in a close relationship with social policy in general and with social security specifically. As known, social policy in the strict sense emerged as policies aimed at maintaining the economic and social life, the order in short, in order to end the injustice and struggle between endeavor and capital owners in the capitalist order with peaceful means. As for the social policy in general, these policies should be based on a legal foundation such as socio-economic rights for the social policy to gain a function and a quality providing "social justice". Social policy in general includes the problems of classical (narrow-scoped) social policy such as the protection of working class and reducing the contradictions between the working class and employers as well as all the disadvantaged groups. Here, beyond the relationships between workers and employers, it is aimed to regulate the relationships of all the social classes with themselves and state.

These constitute the most significant part of the society policy (such as struggle against poverty, housing, health and education policies; policies minimizing the injustice in the distribution of income and wealth). In brief, the primary aims, listed as firstly social justice and social development, social balance, social integration and social democracy, present the most obvious evidence regarding to what extent this discipline focusing on “human” carries out policies.

A- Social Security and Social Justice

Social security is to rescue people from damages resulting from dangers to which they are exposed involuntarily and to ensure a life standard befitting the human dignity in the society they live in (Alper, 2016: 11). Social security is recognized as one of the primary and irrevocable human rights in the United Nations Universal Declaration of Human Rights, and while stating that “Everyone, as a member of society has the right to social security for their dignity and the free development of their personality...” in the article 22, the limitations of social security and its scope were specified with the statement of “Everyone has the right to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control” in the article 25.

Social security, no matter which description and scope are used, is a system of income transfer aiming to ensure the re-distribution of income in reality. The direction of this transfer is towards to those with high incomes to low incomes or to those in need for social security. Social security with this feature is the most effective and extensive means of the social policy for the re-distribution of income.

Another most frequently used but most controversial concept of the new period is social justice. Social justice means that a specified balance is ensured in terms of income distribution among different social classes, life standard, level of welfare etc. (Seyyar, 2005: 249). Within this sense, social security is a matter of distribution, and it expresses the distribution of added value created by a society, which ensures at least a specific life standard for all the individuals constituting the society (Seyyar, 2005:

250). Everywhere in which the social security term appears, fundamental human rights and equality are also present. Social justice can be described by emphasizing its political and social dimensions as well as its economic dimension. Thus, social justice within this context is to ensure the environment which enables everyone constituting the society to lead their lives with their own facilities in the society by benefiting from political rights, income/welfare distribution and equality of opportunities (www.investopedia.com, 29.06.2016).

B- Relationship between Social Security and Social Justice

Social security and social justice are two terms which enrich and strengthen one another. Each one is the foundation and provider of another. One of the foundations on which the social security systems are based is the sense of equality and social justice which it strengthens. Mutual assistance and solidarity principle composing the social security systems are in existence for realizing the social justice. Ensuring a life standard befitting the human dignity for individuals and their families in the society they live in is possible through a transfer of income towards those who are in need from those who are not, among the individuals in the system. At this point, no correlation between the premium paid and benefit provided has been made, and a life standard befitting the human dignity is ensured for individuals and their families no matter what premium they pay and what costs they bear. The relationship between social security and social justice is clearer in the non-contributory regimes. Individuals are granted a social security through which they can protect their personalities and individualities as a member (human) of the society they live in and rescued from being enslaved of their needs (Yazgan, 1992: 20).

ILO makes a special emphasis on the essential relationship between social security and social justice in their recent reports and agreements. 2014 World Social Protection Report was prepared with a theme of economic improvement, inclusive improvement and building social justice (ILO, 2014: i). The report was prepared with the claim of resolving the inequalities arising from global crises, and with the claim that the key factor of the solution of the deep social crises (also called as social justice crises) which the world faces would be the expansion in the scope of social security systems (ILO, 2014: xxi). In the 6th section of the report, the reason why the scope expansion of social security systems was discussed

as a key factor in economic improvement and in solution of crisis (ILO, 2014: 154). In the same section, it is stated that the new sense of social security whose general principles are formed with “Social Protection Floors Recommendation” No. 2012 adopted in 2012 is the main subject of ILO, setting the agenda in the period after 2015 with the sense of scope which reduces poverty and inequalities, promotes proper work, ensures inclusive growth and finally which does not exclude anyone (ILO, 2014: 154-159).

ILO, in all of its recent studies, laid emphasis on the importance and priority of social security in creating a fairer and more inclusive (social justice) globalization process by solving inequalities and therefore poverty and other social problems (ILO, 2011a: 1-3; ILO, 2011b: 7-8). ILO recommends following a bidirectional strategy with regard to building an inclusive social security system. The first strategy regarding the development of vertical scope of social security is related to the finance, institutional structure and functioning basics of social security systems (ILO, 2012: 3). It suggests a new structuring named as social protection staircase. Accordingly, it contains the first stair at the bottom ensuring health and minimum income assurance and comprising the whole population, the second stair including social insurances named as obligatory regimes with contributions and finally the highest stair involving supplementary social security institutions established with a voluntary basis (Kapar, 2015: 197-198). Vertical scope aims to ensure the highest social security for the social classes whose number is gradually increasing (ILO, 2012: 2). And the horizontal scope is related with social protection floors forming the basis of social security systems, and it fundamentally aims to grant health and income assurance to the whole population (ILO, 2012: 3). In this scope, the basis of social protection floors approach is composed of:

- a)** Providing obligatory fundamental health services to everyone (including motherhood),
- b)** Providing a fundamental income assurance which meets the needs of nutrition, education and care, obligatory goods and services of children,
- c)** Providing a fundamental income assurance which ensures an adequate income in the events of sickness, unemployment, motherhood and disability,
- d)** Providing a fundamental income assurance to the elder who are not in active working age (ILO, 2012: 5).

ILO emphasizes that an inclusive social security system will be formed

with vertical and horizontal scope strategy, and such social security system strengthens the social security's function of securing the social justice.

C- Social Security Regimes and Social Justice

Social security systems' function of securing social justice can be defined more easily in terms of public social security expenses named as non-contributory regimes. In the public relief and services, social security will be financed with taxes for those who cannot meet their own needs due to various reasons, especially the inadequacy of income (poverty). Practices which strengthen social justice in social relief and services are to obtain tax incomes forming the source of income transfer from those who have high incomes and to provide an income transfer with a level and an efficiency which meets these needs through a determination of those who are really in need. Without any discrimination (age, sex, status, race, faith etc), the determination of those in the need will reinforce the social justice at the same amount and level for those with the same needs.

Social justice function of the social insurances named as contributory regimes is more different. There is a principle of "reciprocity" materializing with paying premiums, being different than social relief. However, the people who are in the system by paying premiums can benefit from their social insurance rights. At this point, each social insurance risk should be evaluated separately. In the event that a social risk appears as unpredictable and absolute (inevitable) for everybody, the relationship between premiums which are paid with a social justice approach and rights is built more faintly. Because sickness (health) risk is related with the right to live and is universal/inevitable for everyone, it contains the rights which should be granted equally to everyone regardless of their payments. A similar situation is also valid for unpredictable working accidents, occupational diseases, disabilities encountered during the working age and death risk. Generous rights are granted for these insurance branches with short-term obligations, and there is not a search for a balance between premiums paid and rights granted.

In old-age insurance, unlike other social risks, principle of equality is applied since it is predictable and there is enough time for people to take measures, and a direct relationship between premiums paid and rights granted is built.

An exception to this is the support practice aimed at providing a minimum income assurance which can ensure the income transfer to those with low incomes from those with high incomes. Equality and social justice principles for other risks and insurance branches (unemployment, motherhood, family allowances) can be managed in different ways. In the event that social security is used as a means of population and family policies or struggle for poverty policy, conditions of benefits are determined by highlighting the factor of need with a better justice approach. The preferences on the following matters determine the social security systems' function of securing and strengthening social justice

- a)** No discrimination of sex, age, status, sector, size of workplace and region in terms of including workers to the scope of social insurance,
- b)** Including all of the workers who have the same income/status to the scope at the same time,
- c)** Including people with the same income and status to the scope as entitled to the same liabilities and rights,
- d)** Granting social security rights at the same level and standard to those who pay premiums at the same amount,
- e)** Ensuring that the same services are accessible for the people with the same needs with the same liabilities,
- f)** Considering the factor of need in ensuring social security assurance.

More can be added to the list; however, the foundation of social insurances is aimed at ensuring the balance of felicity/inconvenience and building the relationship between cost and profit. However, searching for this balance at the individual or social levels shows very different results. Its search at the individual level results in an egalitarian approach, and as for its search at the social level, it results in a social justice approach. Social dimension of social insurances expresses re-distribution of an income considering the factor of need, and insurance dimension expresses that benefits obtained from the rights granted with the costs borne for the premium paid are balanced in social terms. Searching for actuarial account balance forming the basis of social insurances on the social ground enables re-distribution of income and reinforces the social justice to the extent in which mutual assistance and solidarity are allowed.

II- THE EFFECT OF REFORM AND SOCIAL JUSTICE ON TURKISH SOCIAL SECURITY SYSTEM

A- The General Framework of the Social Security Reform

Social security reform was planned as a whole structure consisting of 4 pillars from the beginning. These being:

- a) Uniting all workers in one pension system
- b) Creating a general health insurance that covers everyone
- c) Uniting the social aid and the social service
- d) Gathering all the social insurance institutions under a single roof

In the process of legalization of the reform, initially, gathering the organizational structures under a single roof is achieved and the 5502 numbered Social Security Institution Law was entered into force in 20 May 2006, uniting SSK (Social Security Institution), Bağ-Kur (Social Security Organization for Artisans and the Self-employed) and Emekli Sandığı (Government Retirement Fund). Being held separated in the beginning of the reform process, the retirement insurances and the general health insurances have been combined in the process of legalization and entered into force in 1 October 2008 as the 5510 numbered Social Security and General Health Insurance Law after the annulments and adjournments. Being the 3. pillar of the reform, the uniting of social aid and services was achieved only after the foundation of the Ministry of Family and Social Policies in 2011; however, it took place differently in terms of organizational structures as planned in the beginning of the reform process. In this study, the subject of how the changes made in the social insurance branch of the briefly given reform process serve the aim of social security in the way to achieve the social justice will be evaluated.

B- Individual Coverage and Social Justice Policy of Social Insurances

The 5510 numbered Law gathered insurances in different statutes stated separately in 5 different social insurance laws under a single roof. Being important in terms of building the norm and standard unity, this regulation fell short of the expectations. This integration could not go further than unifying only the insured people under the same article

because no insurance tariff could be created covering all the workers no matter what their status are. Hence, in pre-reform term the individuals under the law 506 were considered as 4/1-a, the ones under 1479 were considered as 4/1-b and the ones under 5434 were considered as 4/1-c insured people; and, as they were under different social insurance laws before, their existing status differences continued in the new term, for they were regulated under different paragraphs under the same article.

In time, 5510 numbered Law have gathered various working groups (discontinuous working agricultural laborers, drivers, workers in domestic service, artists, etc.) which are undeclared and are insured by no insurance branch under the scope of social security with additional articles. Also, the coverage of some insured people has been expanded, and social security right has been given to the various groups (interns, trainees, prisoners and detainees, students, etc.) at least for one insurance branch. Expanding the individual coverage of social insurances, these provisions are implementations enforcing the social justice policy of the social insurances.

The most contradictory implementation to the equality and justice in the 5510 numbered Law is the one that including the workers and the self-employed in the coverage of Law immediately, but excluding the public officers (civil servants) who were insured before the effective of the Law; and this law was applied to the insured only after the effective of the 5510 numbered Law . These side effects have created an exception which will continue for 30-40years.

The second important implementation of the 5510 numbered Law that damages the social justice policy about individual coverage was found in the provisions about self-employed (4/1-b). The principle of compulsory insurance was abandoned because of the exemptions introduced out of the low income, and the insured became almost optional. Initially being from the health care services, benefit from the social security rights of the insured was prevented if they have any premium debt. 4/b insurance became an insurance relation to be avoided from. These exceptions arose as a contradictory development against the ILO's general approach which aims to cover everyone with corporate social security system.

C- The Relation between the Provisions on Rights and Obligations of Social Insurance and the Social Justice

Along with many positive provisions strengthening the social justice policy of social insurance in respect to rights and terms of benefiting from social insurance for the insured on different status, 5510 numbered Law also brought some regulations impairing this principle. The implementations strengthening the justice policy of the 5510 numbered Law and improving the vertical extent of the social security are as follows:

- a)** For the first time, the self-employed insured were considered in the coverage of accidents at work and occupational diseases insurances.
- b)** Terms of pension from invalidity insurance was amended with the same provisions for all the insured and the special conditions of 4/c insured was taken into consideration.
- c)** Terms of pension from burial insurance was amended with the same provisions for all the insured and the provisions in favor of 4/a insured was preserved.
- d)** Same terms apply for all insured for the benefit from general health insurance. Individuals who pay premiums every 30 days can benefit from health care services under the coverage of general health insurance.

The provisions of social insurance reform that weakens the social justice policy in terms of rights and liabilities or removes it -especially with the changes made after the abolishment decision of Supreme Court- are as follows:

- a)** 4/b insured cannot get grants from the sickness insurance by paying their premiums. In case of an occupational accident, they get the grant only if they require an inpatient treatment.
- b)** 4/b insured company partners cannot benefit from the maternity insurance grants.
- c)** 4/c insured are excluded from the coverage of short term insurance branch.
- d)** 4/b insured are conditioned with having no premium debt for benefiting from all the rights.
- e)** Quality from e pension via old age insurance is determined as 7200 days for 4/a insured and 9000 days for 4/b and 4/c insured. This difference creates a “forced migration” between insurance statutes.

f) Advantageous groups have been created by expanding the scope of exceptions earlier given only to a limited number of persons (like the retirements of the MPs in Grand National Assembly of Turkey).

g) Actual service pay, which allows the early retirement of some insured groups, has not been updated.

h) After the reform, in order to improve the employment and premium collection, while some of the premium of 4/a insured and employers was paid by the National Treasury with the intention of encouragement and aid, there was no aid towards 4/b, which is considered to be the weakest link in the insured chain.

5510 numbered Law has highlighted equality rather than the social justice with some of its provision. The financial problems and the concern of meeting the actuarial account balance of the insurance companies went through in the pre-reform term have brought along these implementations.

a) Calculating of the pensions from long term insurance branches (except for some groups such as the disabled and miners) have been balanced.

b) By strengthening the cost/profit relation between the premiums paid and the pensions given, the equality principle highlighted in the determination of the parameters which are determinant in the calculation of the pensions.

Income replacement rate was determined as a fixed rate which is same for all the insured.

D- The Relation between the Provisions on the Calculation of Income and Pensions and the Social Justice

One of the regulation fields impairing the social justice policy of the 5510 numbered Law is the provisions on the accounting of income and pension. Aiming to balance the actuarial account because of the deficits of social insurance companies in the pre-reform term, these regulations have weakened the function the social security's achievement towards social justice.

a) Being one of the most important implementations of the social insurances and allowing the redistribution of income, the threshold of the pensions or the minimum wage enforcement was changed. In the long terms insurance branches, the minimum wage (threshold of the pensions)

is determined by each insured considering the premium they paid. The minimum wages had been reduced by half until 2000.

b) In the update index, which is a determinant parameter in the accounting of the incomes and pensions, only a 30% of the annual economic growth is being taken into consideration. This will, in long term, cause to a reduction in the rate of the created added value, thus leading a decline in the pension income.

c) The increase in the income and the pensions have been subject only to the inflation increase, and the prosperity rate increase was excluded. To give an example, the real growth in economy between 2002-2012 was 43%; but this was not reflected on the pensions. In other words, the retired became relatively impoverished.

d) A decrease in the income replacement rate along with the update index will be decreasing the pensions in the medium and long term. In other saying, a social insurance system which creates poverty for those paying low premiums was created (Arabacı & Alper, 2010).

Accounting the minimum wages in the individual basis or changing in the fundamentals of the income and wage accounting will lead the medium and long term social insurance system retirees to face a danger of relative poverty. This will especially affect negatively the 4/b insured who pays their own premium and who pays premiums in the lower limit of the earnings taken as basic 98% to premium, and this will lead them to acquire income or wage equals to the poverty line or below it. Social insurance system will be turning into a social aid system, and a system created against the poverty will create poverty itself.

E- The Relation of General Health Insurance and Social Justice

In the reform that took place in Turkish social security system, general health insurance is the strengthening and reinforcing field to the social justice policy of social insurance. In the pre-reform term, the benefiting conditions and the scope of the service provided for all 3 social insurance owners in the health care services were widely different. The provisions of the general health insurance (entered into force with all its provisions in 2012) which reinforces the social justice are as follows (Alper, 2010):

- a) All the workers and all their dependants are in the coverage without any status differentiation.
- b) All the children not above 18 are in the coverage.
- c) Those who does not work and those with low incomes are in the coverage with low premium payments or none at all.
- d) The terms of benefiting from the general health insurances were provided as 30 days on the first entry, which is relatively short.
- e) Reinforcing the social justice, the preventive health services are in the coverage.
- f) Health services are given to all workers and their families on equal standard and degree.
- g) Except for a limited number of branches like aesthetics operations, the basic health services are in the coverage.
- h) Emergency services are in the coverage without a condition of insurance and free of charge.

Along with the positive evaluations above, there are also some issues that will impair social justice policy in the general health insurance implementation. The contribution imposed to prevent the unnecessary treatment application and drug use, and the extra prices paid upon application to private health institutions might harm the exercise of the right to health. If the insured delays or abandons the health service demand because of the contribution paid at treatment services, this might generate a consequence impairing the right to health, one of the fundamental human rights. The contribution amount which is used to prevent the unnecessary drug use and to discipline the applications to health institutions must be determined in a level that will not prevent the individuals from applying health facilities.

F- The Relation between Premium Exemption, Service Debts and the Social Justice

It is not possible to evaluate the effect of Turkish social insurance system on social justice policy without taking into consideration the exercise of exemption from premium debts. Against the nature of the social insurance system, the exercise of exemption from premium debts of the insured exceeded 30 with the employers (public and private) who fail to meet the liability of paying their premiums in time. An exemption from the premium comes in almost every 2 years and thus resulting a penance

for those who paid their premiums in time (Alper, 2015:49). The service debt exercise which was common before 2008, now continues with foreign service debt. The foreign service debt which was emerged as an obligation in the late 1970s, has transformed the social security right into a “meta” that can be bought with the bank credits. An exercise which was initially brought to prevent victimization, has created an advantageous group today. Both the exemption from premium debts and service borrowing exercises are damaging the “social cooperation and solidarity policy” which underlines the social security. Along with punishing those who fulfill their liabilities in time, these exercises also weaken the social justice achievement function of the system.

CONCLUSION

The reform that took place in the social insurance branch of the Turkish social security system brought the regulations which strengthens and reinforces the social justice policy along with the ones that weakens it. Especially, covering all the workers with social insurance under the same Law, has strengthened the social justice policy. Likewise, with the regulations that can be considered as micro insurance in the following years; casual workers, drivers and domestic workers were also considered in the insurance coverage. Equal opportunity dimension of the social justice was strengthened with these regulations.

Social security reform has weakened the social insurance’s function of redistribution of the income by changing the fundamentals of the income and wage accounting system belonging to the old age insurance and of the monthly increase. The target of ensuring the financial stability of social insurance has surpassed the function of income redistribution. However, the insurance and income redistribution function of the system in the invalidity and burial insurances was strengthened.

The pensions from social insurance system will be lowered in the medium and long term. This decline, especially for the low-income persons, might turn social insurance wages into social aids and this will weaken the system’s function of struggle against poverty. Moreover, with the wages that may go below the poverty line, the system itself will start to create poverty.

General health insurance pillar of the social security reform is the pillar that most successfully realizes and reinforces the social justice policy of the social security. The entire population was taken under the insurance coverage. The solvents pay their premiums; and the insolvents or lackings premiums are paid by the state, by being subjected to the income test. Along with the therapeutic health services, the preventive health services are also offered to everyone in the same standard and quality.

The prevention of 32% undeclared work and getting everyone under coverage, the transforming of the legal coverage into the effective coverage, and the reflecting of enhance in the welfare to wages by making changes in the accounting system of the income and pensions will strengthen the social security systems' function of ensuring social justice.

References

- Aktaş, S. (2001), Hayek'in Hukuk ve Adalet Teorisi [Hayek's Law and Justice Theory], (Ankara: Liberte Yayınları).
- Alper, Y. (2016), Sosyal Güvenlik [Social Security], İstanbul Üniversitesi, Açık ve Uzaktan Eğitim Fakültesi, İstanbul.
- Alper, Y. (2015), Sosyal Sigortalar Hukuku [Social Insurance Law], (Bursa: Dora Yayınevi).
- Alper, Y. (2010), "Genel Sağlık Sigortası ve Primsiz Ödemeler"[General Health Insurance and Premium Payments], 1. Sosyal Güvenlik Reformu Kongresi, Gazi Üniversitesi, 25 May, Ankara.
- Arabacı, R. Y, Y. Alper (2010), "Sosyal Güvenlik Reformunun Yaşlılık Aylıklarına Etkisi: Yoksulluk Yaratan Bir Sosyal Güvenlik Sistemi" [The Impacts of Social Security Reform on Old Age Pensions: A System That Creates Poverty], TODAİE, Amme İdaresi Dergisi, Vol: 43, No: 2, June, pp. 101-117.
- Başbakanlık (2005), Sosyal Güvenlik Reformu: Sorunlar ve Çözüm Önerileri [Social Security Reform: Problems and Proposed Solutions], Kamu Yönetiminde Yeniden Yapılanma: 9. T.C. Başbakanlık, Ankara.
- Çeçen, A. (1975), "Hukuk'ta Norm ve Adâlet [Norm and Justice in Law] *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, Vol. 32, No. 1-4, pp. 71-115.
- Güngör, E. (2000), Ahlâk Psikolojisi ve Sosyal Ahlâk [Moral Psychology and Social Morality], (İstanbul: Ötüken Neşriyat).
- Heywood, A. (2012), Siyasetin Temel Kavramları [Key Concepts in Politics], (Ankara: Adres Yayınları).
- ILO (2011a), Social Protection Floor for A Fair and Inclusive Globalisation (Edt. M. Bachelet), Geneva.
- ILO (2011b), Social Security for Social Justice and Fair Globalisation, Report VI, ILO 100th Session, Geneva.
- ILO (2012), Social Security for All: Building Social Protection Floors and Comprehensive Social Security Systems, Geneva.
- ILO (2014), World Social Protection Report 2014/15: Building Economic Recovery, Inclusive Development and Social Justice, Geneva.
- Kapar, R. (2015), "Uluslararası Çalışma Örgütünün Sosyal Koruma Tabanları Yaklaşımı" [Social Protection Floor Approach of the International Labour Organization], *Karatahta: İş Yazıları Dergisi*, (2).
- Sandel, M. J. (2013), Adalet: Yapılması Gereken Doğru Şey Nedir? [Justice: What's the Right Thing to Do?], (Ankara: BingBang Yayınları).
- Seyyar, A. (2005), Sosyal Güvenlik Terimleri: Ansiklopedik Sözlük [Social Security Terms: Encyclopedic Dictionary], (İstanbul: Papatya Yayıncılık).
- Topakkaya, A. (2009), "Aristoteles'te Adâlet Kavramı" [Der Begriff der Gerechtigkeit bei Aristoteles], *Uluslararası Sosyal Araştırmalar Dergisi*, V. 2/6, Winter, pp. 628-633.

- Yazgan, T. (1992), İktisatçılar İçin Sosyal Güvenlik [Social Security for Economists], (İstanbul: Türk Dünyası Araştırmaları Vakfı) <http://www.investopedia.com/terms/s/social-justice.asp> “Social Justice” (date of access 29.06.2016).
- Zastrow, C. (2014), Sosyal Hizmete Giriş [Introduction to Social Work and Social Welfare], (Ankara: Nika Yayınevi). https://en.wikipedia.org/wiki/Social_justice#Health_care “Social Justice” (date of access 29.06.2016).