

The Right to Social Security: Towards a New Dawn!

THE RIGHT TO SOCIAL SECURITY: TOWARDS A NEW DAWN!

Suzanne Jongste
Saskia Klosse
Saskia Montebovi
Anne Pieter van der Mei and
Gijsbert Vonk (eds.)

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LIST OF ABBREVIATIONS

AMWD	Adequate Minimum Wage Directive
CESCR	Committee on Economic, Social and Cultural Rights
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union (also ECJ)
CoE	Council of Europe
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECJ	European Court of Justice (also CJEU)
ECSR	European Committee of Social Rights
ECSS	European Code of Social Security
EPSR	European pillar of Social Rights
ESC	European Social Charter
ICESCR	International Covenant on Economic, Social and Cultural Rights
SNCB	Special non-contributory benefits
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

PREFACE

This edited volume is an initiative following upon a three-day conference entitled ‘The Right to Social Security: Towards a New Dawn!’, held in Maastricht from 24 to 27 September 2024. The conference was co-hosted by the Department of Public Law of Maastricht University and the Province of Limburg, with the support of Instituut GAK, the European Institute for Social Security (EISS) and the EU MoveS Network for the Freedom of Movement of Workers and the Coordination of Social Security Systems. This volume presents a selection of the presentations and contributions discussed at the conference. Some address specific aspects of the right to social security itself, while others examine the relevance of broader human rights frameworks for the field of social security. Each of the chapters in this volume can be read as a standalone article. They each identify a central theme and research question, which is developed in the main body and revisited in the conclusion. As conveners and editors, we express our gratitude to all those who contributed to the discussions at the conference and/or this volume.

Suzanne Jongste, Saskia Klosse, Saskia Montebovi, Anne Pieter van der Mei and Gijsbert Vonk

THE RIGHT TO SOCIAL SECURITY: TOWARDS A NEW DAWN

A short editorial introduction

Anne Pieter van der Mei and Gijsbert Vonk

1. INTRODUCTION

This edited volume is dedicated to the fundamental right to social security. Long recognised as a cornerstone of the welfare state and an indispensable element of human dignity, this right is enshrined in most national constitutions as well as in international and European human rights instruments. At a time when welfare systems face pressures from demographic change, fiscal constraints, digitalisation, and geopolitical uncertainty, the question of how to secure this right for present and future generations acquires renewed urgency. Yet its meaning, scope, and enforceability remain deeply contested across jurisdictions.

What guarantees does the right to social security actually protect? Can the right to social security be invoked in courts in the same manner as other human rights? How does it interact with other rights applicable to social protection?

This volume brings together twelve contributions that approach the right to social security from diverse perspectives – constitutional, comparative, European, and international. Together, the contributions chart both the normative foundations and the practical challenges of the right, offering fresh insights into its doctrinal development, institutional enforcement, and potential for renewal.

2. STRUCTURE OF THE VOLUME

Some chapters focus directly on the right to social security, while others examine the relevance of broader human rights frameworks to social protection. The contributions are grouped into four thematic sections.

The first three chapters analyse the right at the national level. Mark Steijns (Chapter 2) compares the interpretation of the right in the Netherlands with international standards. Max Gelissen (Chapter 3) contrasts the German Constitutional Court's approach to

the ‘Existenzminimum’ with the UN Committee on Economic, Social and Cultural Rights’ interpretation of the ‘absolute minimum’. Eleni de Becker (Chapter 4) presents a comparative analysis of Belgium, Germany, and the Netherlands.

The next four contributions focus on the European dimension. Grega Strban (Chapter 5) discusses the European Social Charter and the work of the European Committee of Social Rights. Anne Pieter van der Mei (Chapter 6) explores the added value of the EU Charter of Fundamental Rights for the coordination of social benefit systems. Luka Mišić (Chapter 7) critically analyses CJEU case law on mobile EU citizens’ right to social assistance, through the lens of solidarity, chance, and cosmopolitan justice. Rob Cornelissen (Chapter 8) reflects on the functioning of the preliminary ruling procedure in relation to free movement and social security coordination.

Two chapters address specific legal and policy issues. Ane Aranguiz and Sarah Marchal (Chapter 9) explore definitions of the social minimum and their treatment in law and policy. Anne Spijkstra (Chapter 10) examines how predictive algorithms in welfare sanctions affect beneficiaries’ procedural rights, particularly access to information as part of the principle of equality of arms.

The final two chapters provide overarching analyses. Gijsbert Vonk (Chapter 11) argues that the interpretation of the right to social security should emphasise qualitative guarantees that shield individuals from excessive bureaucracy, rather than focusing solely on systems being “available, accessible and adequate.” Danny Pieters (Chapter 12) reflects on the right to social security as a connotational imperative, warning against judicial overreach.

3. SYNOPSIS OF MAIN FINDINGS

A central theme across the volume is the recognition of social security as a fundamental right, while also probing its limits and vulnerabilities.

At the national level, even neighbouring countries display stark contrasts. Belgium and Germany have developed rich constitutional doctrines, whereas in the Netherlands the right remains dormant – what Steijns terms a “state of denial.” The German doctrine centres on the *Existenzminimum* as an individually enforceable right while Belgian courts focus on standstill requirements and procedural guarantees (De Becker). De Becker’s comparative analysis demonstrates that meaningful judicial review is possible without undermining the legislature – a striking contrast to Dutch political discourse, which fears an undue shift of power to the judiciary.

At the supranational level, Strban shows how the European Social Charter and its complaints mechanism offer underused but important avenues for enforcement. Cornelissen highlights the CJEU’s balancing act between market integration and social guarantees. Together, these contributions underscore the importance of multi-level governance in shaping social rights.

Mobility and solidarity feature prominently in van der Mei's and Mišič's chapters. Van der Mei explains how EU coordination rules address cross-border workers, while Mišič interrogates the broader ethical challenges of solidarity in the Union. While both authors highlight the fragility of cross-border protections in times of political strain, but express some doubts as to the added value of the right to social security in this respect. Van der Mei actually doubts whether the EU Charter of Fundamental Rights has to add much to the existing framework of social security coordination beyond the possible affirmation of an absolute minimum standard of social protection to ensure human dignity for cross-border movers.

Aranguiz and Marchal make a strong case for embedding reference budgets and multidimensional poverty indicators into legal frameworks. By operationalising adequacy, such tools enhance both judicial and policy oversight, linking legal theory to empirical poverty research.

Digitalisation emerges as both a challenge and a risk. Spijkstra shows how automated decision-making may perpetuate bias, undermine due process, and erode trust. Vonk extends this to the wider notion of welfare state dystopia, in which digitalisation, repressive administration, and weak legal protection combine to generate large-scale scandals in Europe and beyond. He calls for reinterpreting the right to social security through qualitative guarantees – compensation, elevation, and participation – arguing that the judiciary must safeguard these standards.

Finally, Pieters urges caution. While constitutionalising social rights is valuable, their scope should be defined primarily through democratic processes rather than judicial activism. This tension – between legal enforceability and democratic legitimacy – runs through this entire volume.

4. CHALLENGES AND PERSPECTIVES

Despite these tensions, the subtitle 'Towards a New Dawn' is chosen for a good reason. Several chapters demonstrate how legal imagination can revitalise the right: Germany's subsistence guarantees, Belgium's creative jurisprudence, and the European Social Charter's procedures offer models of innovation. Proposals such as reference budgets, adequacy concepts, and even employee participation mechanisms point to ways of strengthening inclusiveness and legitimacy.

Fiscal pressures, digitalisation, and political fragmentation are real threats, but they also underline the urgency of rethinking social security. Far from being a relic of the twentieth century, the right to social security emerges in this volume as a living framework – adaptable, resilient, and central to human dignity.

If the metaphor of a "new dawn" has weight, it is because this collection shows that through legal innovation, comparative learning, and civic engagement, the right to social security can continue to serve as a cornerstone of solidarity and democracy.

