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CHANGES IN THE SOCIAL PROTECTION OF SURVIVING SPOUSE – A COMPARATIVE LEGAL ANALYSIS**

European countries introduced the concept of social protection of survivors, primarily spouses and children, in their respective legislations back in the 19th century. Since its introduction, the concept has undergone significant changes in the majority of EU Member States. This paper will provide an overview of the concept of social security survivors benefits, with the main focus on the survivors benefits for surviving spouse in the European Union, and in particular on the differences in regulation of this concept in Western European and the Eastern European countries. The author of this paper will endeavour to point out the ways the survivors benefits follow, and to establish whether this form of social security will survive in the future, in spite of the numerous changes Europe witnesses. The paper offers a comparison among three different systems of social protection for surviving spouse in the European Union, as follows: (i) the Scandinavian concept, (ii) the Western European concept and (iii) the Eastern European concept. Finally, on the basis of the characteristics of these three models and a comparative analysis of their effects, this paper will try to propose grounds of new European model for the social protection of surviving spouse.

Key words: *Surviving Spouse. Social Security. Social Benefits. Survivors Pension. European Union.*

1. INTRODUCTION

In the last few decades, many changes have occurred with regard to the social protection of survivors in Europe. The concept of social protec-

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tion for survivors, in the first place for the widows and children of deceased persons, has been present in European society since the end of the 19th century. The concept itself was established through a contribution method, where social security organizations ensured benefits for survivors in the case of the death of the breadwinner of the family, who had been insured through contributions before their death. Pieters claims that “this social risk regards a social risk which occurred as a result of the decease of the breadwinning partner”.¹ According to the same author “the decease of one person will often result in the loss of a source of income for other person; hence the recognition as a social risk of a person’s death or, viewing it from a different angle, of another person’s surviving or being left behind”.² As far as this is concerned, upon the death of the breadwinner, the family would stay without appropriate income and in those cases they would be able to get some kind of benefits. In the majority of cases, the family of the insured person (widow, widower, orphan/semi-orphan and other relatives) are secured through survivors benefits, which are based on the contribution method or in some countries, especially in Great Britain, through death benefits which are predominantly granted based on means testing.

Today, the concept of social protection of survivors has been changed in the majority of European Union countries. Luckhaus claims that with regard to the changes in the protection of survivors, two recent developments have been observed: “the introduction of survivors benefits in both statutory and occupational schemes and the conversion of some statutory schemes from entitlement based only on contributions to entitlement based on means testing or a mix of means testing and contributions”.³ The first attitude with respect to the changes concerns the fact that during the development of survivors benefits, the main sources governing the benefit rights were statutory schemes, i.e. State provisions – law, ordinances, rules and regulations etc. The family of the deceased would be entitled to survivors’ benefits only to the extent that the law governing such rights provided so. Today, the situation has changed and there is a possibility for employees and employers to secure rights to survivors benefits through special occupational schemes, where employees pay in contributions to special private funds and by means of such payments of contributions they secure their families in case of a social risk of death. An occupational pension scheme can be contributory or non-contributory, insured or a self-administered pension scheme, which an employee may be eligible to join by reason of his or her employment in a firm or mem-

¹ D. Pieters, *Social Security: An introduction to the Basic Principles*, Kluwer Law International, The Netherlands 2006, 31.

² *Ibid*, 59.

³ L. Luckhaus, “Equal treatment, social protection and income security for women”, *International Labour Review* 139/2000, No. 2, 158.

bership of a profession or trade, and nowadays in the majority of the European countries (Sweden, the Netherlands), within such firms there is an option of instituting special schemes for survivors benefits.⁴

The second attitude of Luckhaus concerns the conversion of some statutory schemes from entitlement based only on contributions to entitlement based on means testing. Furthermore, when survivors benefits were first instituted, the main idea was to finance these kind of benefits through contributions and only the family of the deceased who paid the contributions was entitled to survivors benefits. Today, in some countries the main idea regarding the protection of survivors is that only those families that do not earn income for decent living are entitled to survivors benefits. Because of this fact, the means testing is conducted and in those situations, survivors benefits have an element of social assistance. Some European states decided to abolish survivors benefits based on the contribution method and to allow only benefits based on the means test method, as a consequence of the prevailing attitude according to which the right to such benefits are to be granted only to the families of the deceased which are in need.

It is of crucial importance to provide a correct theoretical definition of survivors benefits. It is not an easy task to find a clear definition, especially as there is a lack of relevant scientific work with regard to this topic. There are a few different scientific definitions of survivors benefits. Despite the numerous changes, the most widely accepted concept of survivors benefits is that which ensures the benefits for survivors through contribution methods of financing. This concept occurs in those countries that have adopted the Bismarckian method of social security. Pieters explains the goal of the survivors benefits as follows: “at guaranteeing an income replacement for the surviving relatives who depended upon the labour income of the deceased person; this will apply as long as the survivors concerned are expected not to be able to provide for earnings of their own”.⁵ The survivors benefits which are based on the Bismarckian concept in the majority of cases take the form of a long-term periodic allowance – survivors pensions.⁶ Therefore, most scholars define the concept of survivors benefits by employing the definition of survivors pension for such a purpose. The most commonly encountered definitions of

⁴ In spite of the specified very strict conditions for the national survivors benefits, the situation in the Netherlands with regard to protection of the surviving spouse is not so hopeless, because of a well developed second pension pillar. There are more than 800 company pension funds which covered more than 80% of employees in the Netherlands and through them surviving spouses are better secured in the cases of death of one spouse. Occupational pension scheme, Business dictionary, http://www.businessdictionary.com/definition/occupational_pension_scheme.html, last visited 16 June 2014.

⁵ D. Pieters, *Ibid*.

⁶ *Ibid*, 61.

survivors pensions are those contained in various laws providing the scope of application and the requirements of entitlement to the survivors pension for both the widow/widower and the children, which thus makes it fairly difficult to find a precise scientific definition concerning this sphere of social security. Creutz, for example, provides a definition of survivors pensions: “pensions paid to the survivor intended to make good the permanent loss of support suffered by the family through the death of the breadwinner”.⁷ According to the Council of Europe Glossary, survivors pension is “the pension received by the members of the deceased insured person’s nuclear family (husband/wife and children)”.⁸ Baltić and Despotović define the survivors pension as “a right as provided by the law that certain members of the insured person’s family are entitled to on the basis of the pension and invalidity insurance, if the insured persons have satisfied certain requirements of insurance until the day of death: a certain duration of insurance before death of the insured person is required and/or the deceased insured person enjoys certain rights arising from the pension and invalidity insurance”.⁹ This concept of survivor’s pension has been accepted in the majority of the Eastern European countries during the period of communism.

Also, for the development of the concept of survivors benefits around the Europe, a very important fact is the adoption of ILO Convention No. 102 on Minimum Standards of Social Security in 1952 as well as the adoption of the Council of Europe European Code of Social Security in 1964. A concept which has been provided in those documents with regard to the survivor’s benefits and the requirements of entitlement to benefits is the concept which has been adopted by the majority of the European countries in consideration of the protection of survivors. In spite of the numerous changes the world has undergone over the course of the last sixty years, particularly in relation to the concept of family as the beneficiary of support in the case of death of the breadwinner, and with regard to the labour market as well, and especially as far as the position of women in the labour market is concerned, the Convention no. 102 continues to hold an unquestionable influence on the development of social systems in most European countries.¹⁰ On the other side, there are

⁷ H. Creutz, “Introductory report”, *Survivors benefits in a changing world*, Studies and Research No. 31, International Social Security Association Geneva 1992, 2.

⁸ *Glossary of Social Security*, Social Institutions Support Programme, Council of Europe, European Commission, Skopje Council of Europe Regional Office 2006, 73.

⁹ A. Baltić, M. Despotović, *Osnovi Radnog prava Jugoslavije sistem samoupravnih međusobnih radnih odnosa i osnovni problemi sociologije rada*, Savremena administracija, Beograd 1979, 522. See more: B. Lubarda, *Uvod u radno pravo sa elementima socijalnog prava*, Beograd 2013, 517-520; P. Jovanović, *Radno pravo*, Novi Sad 2012, 466-469.

¹⁰ A downside of the Convention and something perceived as a feature of the past times when the Convention was adopted is that the Part X regulates exclusively the rights of widows and children, thus automatically eliminating the possibility that the wife could

also the diverging opinions and appeals for some changes in ILO social security standards and the need for new challenges in this area. Kulke claims that “Social Security Minimum Standards Convention No. 102 which is still considered the flagship of all International Labour Organization social security Conventions, has played a predominant role in defining its parameters” and in this context she has asked the question, “whether it still constitutes the most adequate instrument to guarantee universal coverage worldwide, or if it would need to be complemented by a new instrument more suited to the achievement of new social security objective”.¹¹

The main focus of this paper is to explain the concept of survivors benefits, especially survivors benefits for widows and widowers in the European Union, as well as different concepts of social protection of surviving spouse in different parts of Europe, especially emphasizing the distinctions that exist between Western European and Eastern European countries. The author of this paper shall make an endeavour to point out the ways the survivors benefits follow, and to establish whether this form of social security shall survive into the future in spite of the numerous changes society experiences.

A comparison shall be made among three different systems of the social protection of surviving spouse in the European Union, namely the Scandinavian concept of social protection of survivors, the Western European concept and the Eastern European concept. On the basis of those three different concepts, comparative analysis will attempt to propose an innovative European model for the social protection of surviving spouse in the changing world. The main focus will be to compare differences in the social protection of surviving spouse and the different eligibility conditions in regards to the rights to those benefits. Furthermore, a short analysis will be made about the right to survivors benefits for cohabitants and same sex couples in the analyzed countries, due to the changes in the traditional family concept.

2. THE SCANDINAVIAN CONCEPT OF THE SOCIAL PROTECTION OF SURVIVORS

For the comparison of different concepts of social protection of surviving spouse in Europe, Sweden will serve as an example of the

be a breadwinner and that upon her death the husband as a supported person could be entitled to survivors benefits. See more: Lj. Kovačević, *Normiranje socijalne sigurnosti u međunarodnom pravu*, MPhil thesis, Beograd 2007, 297 299.

¹¹ U. Kulke, “The Present and future role of ILO standards in realizing the right to social security”, *International Social Security Review*, Vol. 60, 2 3/2007, International Social Security Association Geneva 2007, 121.

Scandinavian countries. We shall cite the most significant characteristic features of the system. The Scandinavian countries are characterized by the fact that they organized a separate system for the protection of survivors and have abandoned the traditional concept of social security for survivors based on the contribution method, deciding to abolish widow/widower pensions as early as the 1990s. The characteristics of such a model are reflected in the new benefits for survivors that have been created in the form of an adaptation pension, with the main feature being the limited duration, or even lump sum benefits, provided as support for the new situation which caused the reduction in the family budget. The aim of the survivor's social protection system reform in the Scandinavian countries is contained in the fact that the surviving spouse should be discouraged from relying upon the usual form of unlimited benefits, thus avoiding participation in the labour market, and encouraged to adapt within the shortest possible period of time to the new circumstances. In the first place, it is important to note that Sweden provides national pension based on Beveridge model of social security, which is granted to all citizens at a certain age, and thus there is no need to uphold the traditional widows/widowers concept of protection.

2.1. Social Protection System of Surviving Spouse in Sweden

According to Smedmark "an entitlement to a survivor's pension provided by the national insurance scheme was introduced in Sweden in the mid-40s and in that time the benefits were low, they were income tested and the right was limited to woman between the age of 55 and the general pensionable age as well as to widows and widowers in care of young children".¹² In the 1960s, two new types of benefits were instituted for widows – the basic pension as defined in the 1940s was extended to younger women without children, and the second type was created through the supplementary pension scheme, introducing the benefits for women which were linked to the deceased husband's previous income.¹³ In this period, the survivors pension was granted to women who would usually get married and abandon the labour market in order to dedicate themselves to the household and their family. Men, as in the majority of the European countries at the time, would play the role of the breadwinner, and wives would be pension insured in the case of death of their partners, which was not motivation for them to rejoin the labour market. The situation changed, however, in the last decade of the 20th century. Since the early 1990s, there has been no concept of the widows' pension in the

¹² G. Smedmark, "Survivors pensions in Sweden: A recent adaptation to changed conditions", *Survivors benefits in a changing world, Studies and Research No 31*, International Social Security Association Geneva 1992, 63.

¹³ *Ibid.*

Swedish social insurance system as it was consistent “with the aim of implementing an individual model in Sweden that pursues the goal of economic independency for all adults”.¹⁴ According to Pieters, “the basic idea behind the reform was to remove differences between sexes concerning the right to a survivors pension since the number of woman in active employment increased”.¹⁵

Today, when a person entitled to *folkpension* (flat-rate national basic pension scheme for all persons being 65 or older) or ATP (earning-related national supplementary pension scheme) dies, “the surviving children or spouse can be entitled to survivor’s pension which can be paid as Child Pension, Adjustment Pension and Special Survivors Pension”.¹⁶ Since the 1990s, the original widows’ pension based on the contribution method has been abolished. What is specific for the new Swedish system of protection of survivors is that a surviving spouse has the right to an adjustment pension (*omställningspension*), which is “paid to a surviving spouse under the age 65 for a period of ten months if the surviving spouse lived uninterruptedly with the deceased spouse for a period of at least five years”.¹⁷ Furthermore, “the adjustment pension is maintained for as long as the surviving spouse lives with a dependent child under the age of 12”.¹⁸ The right to this form of benefits is also granted to “a person who lived permanently together with the deceased without being married is regarded as a spouse if they had been married earlier or have had or were expecting a child at the time of death”.¹⁹ Upon the expiration of a twelve-month period, when the surviving spouse is entitled to the adjustment pension and when the beneficiaries adjust to the new circumstances, the spouse shall lose the right to allowance. The legislator probably consid-

¹⁴ J. Selen, A.C. Stahlberg, “Survivors Pension Rights in Occupational and Social Insurance: The Swedish Experience”, *European Journal of Social Security*, 3/2001, 131.

For women born in 1944 or earlier, the option is provided that in the case of death of a husband, a woman shall be granted a right to widow’s pension based on the legislation in force before the reforms, however only on the condition that on December 31, 1989 and at the moment of the husband’s death, they were married. If a woman was born in 1945 or later, she may realize the right to a part of the widow’s pension on condition that on December 31, 1989 and at the moment of the husband’s death the two were married. All those women are not affected by the new rules in regard with the social protection of survivors. www.pensionsmyndigheten.se, last visited 29 May 2014.

¹⁵ D. Pieters, *The Social Security Systems of the Member States of the European Union*, Intersentia, Antwerp Oxford 2002, 321.

¹⁶ *Ibid.*

¹⁷ Social protection Social Inclusion, “Comparative tables on Social Protection Sweden”, European commission MISSOC, http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do;jsessionid=qsyGPVJJs8xcPwKHJRpbJYcs84psFlrdQ9jQqTg5cxLmKnBk1ITx!2015099289, last visited 31 May 2014.

¹⁸ D. Pieters (2002), *Ibid.*

¹⁹ *Ibid.*

ered that the twelve-month period would be enough for the surviving spouse to make a decision as to the manner of providing adequate income for a decent living for himself/herself and his/her family.

The Swedish legislator has also provided for a situation when a surviving spouse is unable to earn an adequate living through work. In those cases, the surviving spouse shall be entitled to a Special Survivors pension when the right to an adjustment pension expires and when the surviving spouse cannot support themselves by working and do not receive a retirement pension.²⁰ Pieters claims that “the Special Survivors Pension can be limited in time and in any case it will be reviewed every three years; it is not means tested because the deciding factor is whether the surviving spouse is able, or should be able to support himself by working”.²¹ According to the Swedish pension legislation, when the surviving spouse turns 65, he/or she will be entitled to the basic guarantee old-age pension, which all citizens of Sweden are entitled to after a minimum of three years of residence. It should be noted that as provided by the Swedish legislation, the concept of spouse comprises registered partners and cohabitants, if the deceased had or expected a child with the spouse, or they lived together in a marriage or registered partnership.²² Consequently to such equalizations, it would make sense that the same rights to survivors benefits were granted to cohabiting and same-sex couples in Sweden.

There is the possibility in Sweden to ensure a classic survivors pension, based on the contribution method, through an occupational insurance scheme. According to Selen and Stahlberg “Sweden has a quasi-mandatory system of employer-provided pensions, where the occupational pension is not a legal requirement imposed by the state, but is the result of a contractual agreement between labour unions and employers that covers most workers”.²³ Furthermore, same authors claim that “the survivors pensions from the occupational schemes in Sweden are paid to widows, widowers and children of private white-collar workers, state employees, and local authority and country council employees if the deceased worked for more than 40 per cent of full time”.²⁴ Such a form of security is widespread in Sweden, particularly as the rate of organizing into trade unions is significantly high, ranging from 80 to 89 per cent, and therefore, a large number of employees provide social protection for their

²⁰ *Ibid.*, 322.

²¹ *Ibid.*

²² International Serbiska, Porodična penzija u slučaju smrti člana porodice, Pensionsmyndigheten, http://www.pensionsmyndigheten.se/EfterlevandepensionOmEnFamiljemedlemAvlidit_sr.html, last visited 29 May 2014.

²³ J. Selen, A.C. Stahlberg, *Ibid.*, 119.

²⁴ *Ibid.*

family members based on the traditional contribution model of survivors protection.

3. THE WESTERN EUROPEAN CONCEPT OF SOCIAL PROTECTION OF SURVIVORS

The traditional concept of the social protection of survivors, based on compulsory social insurance scheme and benefits which depend on the pension of the deceased person, still exists in the majority of the Western European countries. Here we shall make an analysis of the social protection system of surviving spouse in Germany and an overview of the changes that have happened in the Western European system during the last decade, along with the main features of widows and widowers rights on survivor's pension.

3.1. The Social Protection System of Surviving Spouse in Germany

It is a well-known fact that Germany is a country where the Bismarckian concept of social security is established, and where the Law on Mandatory Insurance in Case of Invalidity, Old Age and Death was adopted in 1889, whilst the concept is applied even today in the majority of the EU countries. In Germany today, widow or widower pensions still exist, and are granted on the condition that “the deceased was entitled to a pension or had satisfied, actually or fictitiously, a waiting period of 60 months”.²⁵ Holden and Brand claims that in “Germany statutory old-age pension benefits are strictly earning-related, based on a ratio that measures the person's lifetime earnings relative to those of the average worker, although there are some credits for periods out of the workforce due to unemployment, sickness and raising children”.²⁶ The deceased must have 5 years of contributions paid, although the “qualifying period may be deemed fulfilled when the insured person passed away as a consequence of an employment injury or a short time after education/training”.²⁷ Apart from the traditional compulsory social insurance scheme for survivors, there is also the possibility of voluntary insurance for all persons over the age of 16, who are residents of Germany and for all Germans abroad.

²⁵ D. Pieters (2002) *Ibid*, 125; See more: E. Eichenhofer, *Sozialrecht*, Mohr Siebeck Tübingen 2012, 71–73, 183.

²⁶ K. Holden, J. Brand, “Income Change and Distribution upon Widowhood: Comparison of Britain, the United States and Germany”, *Pensions: Challenges and Reforms*, (eds. E. Overbye, P. A. Kemp), Ashgate, United Kingdom 2004, 213.

²⁷ Social protection Social Inclusion, Comparative tables on Social Protection Germany, European commission MISSOC, http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do?jsessionid=qsyGPVJJs8xcPwKHJRpbJYcs84psFlrdQ9jQqTg5cxLmKnBk1ITx!2015099289, last visited 14 June 2014.

Significant changes in the German system for the social protection of survivors happened with regard to the right to survivors pension for cohabitants and civil union partners. German law provides that, apart from the surviving spouse and orphaned children, cohabitants, divorced spouses and partners of a registered civil union also have the right to survivors pension. Germany has recognized the civil union of same-sex couples and explicitly provides that partners to the union have the same rights as the surviving spouse, on the same condition that marriage/civil union must have lasted for at least one year and in such a manner, the rights to survivor's pension are equalized for both marriage and civil union. The same rule applies for the cohabitants. The right to survivors pension in Germany is granted to "widowed persons aged 45 years or more, persons with reduced capacity to work or for persons caring for a child up to the age of 18 (no limit in the case of disabled children unable to maintain themselves)".²⁸ This points to the fact that the requirements for survivors pension in Germany are set alternatively. Due to demographic changes and a growing ageing population problem in Germany, the Act on the adjustment of the standard retirement age to demographic development and the reinforcement of the principles of statutory pension insurance financing of April 20, 2007, provided for the gradual increase of the retirement age for widows or widowers pension in case of death of the insured person from 45 to 47 years in 2012.²⁹ The same rules apply to surviving spouses, surviving partners and cohabitants.

According to Pieters "the survivor's pension in Germany is derived from the pension rights of the deceased person".³⁰ The German system of social protection of survivors distinguishes two types of survivors pension – the major widows or widower's pension and the minor widows or widower's pension. There is also a form of adaptation survivors benefits, which is reflected in the fact that "the insured person's full pension is paid to the widow or widower for the 3 months following the insured persons death".³¹ It is a relevant fact that, in Germany, the pension is granted to widows and widowers on an equivalent basis, as a result of the 1985 Reform, when the Federal Constitutional Court "had declared the legislation previously in force unconstitutional in that it gave rise to inequality of treatment between widows and widowers".³² With regard to this equality, Germany is one of the countries where during the 1950s and 1960s, there was significant inequality in the labour market and women

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ D. Pieters (2002), *Ibid.*, 125.

³¹ *Ibid.*

³² F. Ruland, "Survivors benefits of the pension scheme in Germany", *Survivors benefits in a changing world*, Studies and Research No 31, International Social Security Association Geneva 1992, 52.

in the majority of cases decided to stay at home to take care of children.³³ Therefore, a traditional contribution method of funding still exists in Germany, and the resulting fact is that the survivors pension still derives from the earnings of the deceased spouse. The need for equality between widows and widowers came to light in the 1980s and 1990s, when the increase in women's participation in the workforce on the labour market was recorded.

Today, the major survivors pension amount is 55 % of the old-age pension for which the deceased spouse would have been eligible, while the minor survivors pension amount is limited in time and it is “payable for a maximum period of 24 months to the amount of 25% of the old-age pension for which the deceased spouse has been eligible”.³⁴ It is important to note, that in regard of the amount of benefits, survivors who have raised children receive a dynamic supplement.³⁵ The said minor survivors pension is paid only in situations when widows/widowers have not met the requirements for the major survivors pension (age/incapability for work/raising children). In a way, the minor survivors pension also has certain features of the adaptation benefits for the new circumstances caused by death of the spouse and changes in household income.

According to the new changes resulting from the 2002 Reform of the German social security system, there is a possibility for the spouses to opt for splitting pension entitlements between spouses instead of providing for dependents in the form of a derived widows or widower's pension.³⁶ This represents to a certain extent an alternative form of survivors pension. The option to split pension entitlements only applies to couples married after December 31, 2001 and those couples “can decide to split their pension entitlements when they both reach retirement age or when one partner dies”.³⁷ This new system in Germany provides for the possibility for the couples to decide what option is better for them – “whether to split pension entitlements or go for a widow(er)s pension, also they will have to consider a number of questions such as which partner is

³³ See more: G. Bonoli, *The origins of Active Social Policy – Labour Market and Childcare Policies in a Comparative Perspective*, Oxford University Press, Oxford 2013, 129–131.

³⁴ For marriage before 1.1.2002 or in situation where at least one spouse born before 2.1.1962 or deceased before 1.1.2002, the major survivors pension amounts to 60% of the pension for which the deceased spouse would have been eligible.

Social protection Social Inclusion, Comparative tables on Social Protection Germany, European commission MISSOC, Ibid.

³⁵ *Ibid.*

³⁶ Germany, Pension insurance, MISSOC; http://ec.europa.eu/employment_social/missoc/2003/022003/de_en.pdf, last visited 26 May 2014.

³⁷ H. Conrad, T. Fukawa, “The 2000/2001 Pension Reform in Germany Implications and Possible Lessons for Japan”, *The Japanese Journal of Social Security Policy*, 2/2003, 76.

likely to live longer, whether there is any additional income of the surviving spouse which might reduce a widow(er)s pension, how high individual pension claims would be in case of splitting and whether the widow(er) is likely to marry again”.³⁸ According to Conrad and Fukawa, “several criteria have to be met before such a pension can take place, the most important being that both partners have reached retirement age and that both have individually accumulated 25 years of qualifying time”.³⁹ Certainly, it is a very interesting new concept in the protection of survivors and it is highly probable that this concept will expand across Europe in the near future and maybe replace survivors benefits, especially as there is an increasing participation of women in the labour market and further as we are closer to realizing the idea of equalization of rights of women and men in the sphere of labour, especially the rights concerning salaries. Based on all these facts, it may be concluded that the splitting of pension rights seems like a very good idea and maybe represents a better option of securing a decent income for the spouses upon death of one spouse.

4. THE EASTERN EUROPEAN CONCEPT OF SOCIAL PROTECTION OF SURVIVORS

The concept of the social protection of survivors in Eastern European countries was well developed in the period of communism. Despite the equality principle of work for men and women in communist societies, there were much fewer women who would stay at home with children than in the Western European countries. Because of a small percentage of widows, who would be the beneficiaries of survivors benefits, the eligibility conditions were not very strict. In those countries, women gained social security on the basis of their own work and payment of contributions for mandatory social insurance and in that period the number of beneficiaries of survivors pensions was rather lower than in Western European countries. However, the reality was completely different. According to Širovatka and Saxonberg, “women continued to have full responsibility for the household chores and child upbringing and in reality women accepted lower positions and lower salaries than men, so in those cases they could balance work and family”.⁴⁰ “The state-socialist system did not see women simply as housewives, but rather as wives-mothers-workers”.⁴¹

³⁸ *Ibid*, 76 77.

³⁹ *Ibid*, 77.

⁴⁰ According to same authors “All women worked, but only men had careers”, S. Saxonberg, T. Širovatka, “Failing family policy in post communist Central Europe”, *Journal of Comparative Policy Analysis* 8(2)/2006, 196.

⁴¹ A. Cerami, *Social Policy in Central and Eastern Europe The Emergency of a New European Welfare Regime*, LIT Verlag, Hamburg, Berlin 2006, 162.

Since the 1990s, the situation on the labour market in Eastern Europe has changed, and a lot of women lost their jobs during the period of transition. In order to alleviate the crisis caused by massive release of employees, in that period an idea was promoted for women to be at home with their children, rather than at work. It is interesting that in four post-communist countries (the Czech Republic, Poland, Slovakia and Hungary) in the 1990s, a general tendency in familist-gendered policies was to encourage women to leave the labour market to raise children.⁴² In a way, there was a shift in employment policies in Eastern and Western European countries. While the concept of equality was advocated in Western European countries where women were encouraged to enter the labour market, leave their households and “ovens“ and stand side by side with their husbands, the Eastern European countries, where women were included in the working process during almost the entire 20th century, left the concept of dual breadwinner and shifted to the concept that prevailed in the West during the fifties of the 20th century. All those facts produce an increased percent of widows, beneficiaries of survivors pensions and therefore, the countries had to change their laws with regard to the conditions for survivors pensions in order to reduce deficits in the social security budget caused by increasing number of beneficiaries of the survivor’s pension. Also, the majority of Eastern European countries have not adopted the concept of certain rights of survivor benefits for cohabitants and same-sex partners, primarily because of the traditional concept of marriage which is still very present in those states. It will take time until the rights to survivors benefits are approved and equalized for the cohabitants and, in particular, for same-sex couples. Through an analysis of the Romanian system of the social protection of survivors, we will review the main features of the Eastern European countries’ concept.

4.1. Social Protection System of Surviving Spouse in Romania

Romania became a member state of the European Union in 2007 and in the process of association it reformed its pension system. The New Romanian Law on Unitary Pension System was adopted in 2010 and the main changes were “the public pension system has been unified into a single Law, the cap of five times the average gross salary for pension contributions has been reintroduced and the standard retirement age has been raised to 63 for women (previously 60)”.⁴³ According to the new law, the rights to survivors benefits are granted to the surviving spouse and children of the deceased who were pensioners or eligible for Invalidity Pension, Old-Age Pension, Old-Age Pension with Reduced Standard

⁴² S. Saxonberg, T. Širovatka, *Ibid.* 189.

⁴³ KPMG Romania, [https://www.kpmg.com/RO/en/IssuesAndInsights/ArticlesPublications/Newsflashes/Tax/Direct Tax Newsflash/Documents/TNF%20231%20EN.pdf](https://www.kpmg.com/RO/en/IssuesAndInsights/ArticlesPublications/Newsflashes/Tax/Direct%20Tax/Newsflash/Documents/TNF%20231%20EN.pdf); last visited 29 May 2014.

Retirement Age, Retirement Pension and Partial Early Retirement Pension (all forms of pension specified are a part of the public system of pensions).⁴⁴ In Romania, there are two different conditions with regard to the surviving spouse – conditions related to age and conditions unrelated to age. Compared to Western European countries, where the condition for the surviving spouse with regard to duration of marriage is approximately one year, the condition related to age for the surviving spouse in Romania is at least 10 years plus the standard retirement age.⁴⁵ If the surviving spouse is affected by category I or II invalidity in accordance to the Romanian standard of invalidity, the condition with regard to marriage will be that marriage has lasted for at least one year.⁴⁶ Also, the surviving spouse will be entitled to survivors benefits if his/her “level of income is lower than 35% of the Average Gross Earnings (in July 2011–167 Euro) and raising a child who is up to 7 years of age”.⁴⁷ According to MISSOC Tables, “The surviving spouse who does not meet the conditions un/related to age, is nevertheless entitled to receive a Survivor Pension for a limited period (6 months following the date of death of the supporting spouse) if during this period the level of income is lower than 35% of the Average Gross Earnings (EUR 167).” The last form of survivor’s benefits possesses some features of adaptation benefits and social assistance and seems to include means-testing. The surviving partner, cohabitant or divorced spouse in Romania is not eligible for survivors benefits. It is an interesting fact that not until 2004 could the widowers in Romania claim the survivors pension and before that, pension used to be payable only to widows.⁴⁸

There are specific rules in Romania which are different from the rules of most Western European countries, and they refer to calculating the amount of pension. The survivor pension amount is calculated and paid monthly as a percentage of the old-age pension or old-age pension with reduced standard retirement age paid or payable to the deceased person.⁴⁹ According to Pieters, “the calculation basis is the deceased’s pension or the one she/he would have received and the level of the survivors

⁴⁴ Social protection Social Inclusion, Comparative tables on Social Protection Romania, European commission MISSOC, http://ec.europa.eu/employment_social/missoc/db/public/compareTables.do?jsessionid=qsyGPVJJs8xcPwKHJRpbJYcs84psFlrdQ9jQqTg5cxLmKnBk1ITx!2015099289, last visited 12 June 2014.

⁴⁵ Before Reforms, condition was minimum 15 year of marriage, *Ibid*.

⁴⁶ *Your Social Security Rights in Romania*, Social Europe, European Commission, European Union 2011, 23.

⁴⁷ Social protection Social Inclusion, Comparative tables on Social Protection Romania, European commission MISSOC, *Ibid*.

⁴⁸ Reforms, “Survivors’ benefits now also payable to widowers”, International Social Security Association, [http://www.issa.int/Observatory/Country Profiles/Regions/Europe/Romania/Reforms2/\(id\)/2439](http://www.issa.int/Observatory/Country%20Profiles/Regions/Europe/Romania/Reforms2/(id)/2439); last visited 30 May 2014.

⁴⁹ *Your Social Security Rights in Romania*, *Ibid*, 24.

pension is established according to the number of the survivors: one survivor – 50%; 2 survivors – 75%, 3 or more survivors – 100%, this being the maximum percentage awarded”.⁵⁰ This form of calculation brings us to the conclusion that the amount of pension for the surviving spouse without children in Romania is 50% of the pension that the deceased would have received and it is probably insufficient for a decent life. This concept of calculation is also adopted in other countries of the Balkans (Bulgaria, Serbia, Slovenia, Croatia, Montenegro), with certain conditions for the calculation of pension being more favourable than in Romania. A concept for calculating the amount of pensions which corresponds to the number of the family members, present in most Eastern European countries, shows that the concept of survivors protection is still the strongest form of social security which relates to the family as an important social category in this part of the world. In the further reform of the pension system in Romania, it will be useful to change the conditions with regard to the calculation and thus provide better security for the surviving spouse.

5. CONCLUSION

The social protection system of surviving spouse in Europe has changed in the last decades, and will continue to change into the future. From the traditional concept, which was based on the contribution method of funding, there has been a shift towards occupational schemes, universal coverage through means testing and helping only those survivors who are in need. It will be quite useful for all member states of the EU to ratify the relative part of the ILO Convention no. 102 as well as the section of the European Code of Social Security with regard to the protection of survivors. Further, it would be beneficial that the ILO adopts new standards which would come sixty years after Convention no. 102, regarding the principles of social security, comprising new trends and changes to that extent. Member states of the EU should coordinate their systems concerning entitlement to survivors’ benefits and the calculation thereof.

The role of women in the labour market has changed in the last decades, and women have the same rights as men. Their emancipation and inclusion in the labour market, particularly in the countries of Western Europe, has resulted in a reduction in the number of beneficiaries of survivors pensions. National legislation of some countries, like Sweden, abolished the right to widow’s pension. It is a large step that all countries recognize the right of widowers to pension, and that their rights are in all

⁵⁰ D. Pieters, *The Social Security Systems of the States Applying for Membership of the European Union*, Intersentia, Antwerp Oxford 2003, 159.

equalized with those of the widows. It is expected that the new forms of social security of survivors shall further develop, and that traditional concepts shall be substituted for the new forms, as is the case in Sweden. There is a distinction among Scandinavian, Western and Eastern concepts, and it could be favourable to overcome the differences in the future, in order to establish an innovative European model for social protection of survivors. In the future perspective, it is expected that we shall have a concept of protection of survivors, especially spouses, for the purpose of offering them the best option for protection in the case of their new circumstances, which would enable them to have decent living standards.