

**SOCIAL SECURITY RIGHTS AND GUARANTEES OF SOUTHERN COMMON
MARKET MIGRANT WORKERS**

***DIREITOS E GARANTIAS PREVIDENCIÁRIAS DO TRABALHADOR MIGRANTE NO
ÂMBITO DO MERCADO COMUM DO SUL***

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ABSTRACT: This article revises literature regarding the portability of resources, which constitute social security savings of the migrant workers who live regular and permanently or temporarily in Southern Common Market region. Based on an intuitive approach, resulting from a reality critical theory, the study starts debating migratory process and human development, which demands mobilizing internal and external savings, in order to finance their insured benefits. For this reason, Social Security International Conventions and Treaties – to be ratified by two or more signatory countries – should to guarantee the portability of social security benefits through simplifying the transference of resources and protecting the rights of MERCOSUR's migrants. Social security is not only important to build a more equal and fair society, but is also a social right protected by public authorities/law that enhance the economic, financial and social development of a country.

KEYWORDS: Migrant worker. Portability of social security savings. Social security. Social security conventions. MERCOSUR.

RESUMO: O presente trabalho revisa a literatura sobre a portabilidade dos recursos que se constituem em poupanças previdenciárias dos trabalhadores migrantes que vivem em situação regular e em caráter permanente ou temporário no âmbito do Mercado Comum do Sul. Utilizando-se de uma abordagem indutiva resultante de uma teoria crítica da realidade, o estudo parte do debate da migração e do desenvolvimento humano que exige a mobilização de poupanças interna e externa para financiar os benefícios de seus segurados. Diante disto, os Acordos ou Tratados Internacionais de Previdência Social – a serem ratificados pelos governos de dois ou mais países signatários – devem assegurar a portabilidade dos benefícios da seguridade social mediante a simplificação da transferência de recursos e a melhor proteção dos direitos do migrante intrarregional mercosulino. Importante para a construção de uma sociedade mais justa e mais igualitária, a previdência é um direito social protegido pelo Poder Público que pode enternecer no desenvolvimento social e econômico-financeiro de um País.

PALAVRAS-CHAVE: Trabalhador migrante. Portabilidade das poupanças previdenciárias. Seguridade social. Acordos previdenciários. Mercosul.

SUMMARY: 1 Introduction. 2 Monetary portability in welfare policies. 3 Transnational social security rights and guarantees. 4 Mercosur social security. Conclusion. Bibliography.

1 INTRODUCTION

The increasing migratory process, observed in the last decades, has called the attention of governments, generally, concerned about its consequences in internal labor market and social security. Considering economics integration rise and the consolidations of economic-political blocks, the movement of workers is expected to gradually increase.

In modern times, migration has become an increasingly relevant issue. The possibility of moving from one geographic region to others depends on the economic conditions in the original and receiving countries, and also on the migrations costs. This process arises when incomes are lower in the original country and higher in the receiving one. It is also observed when the migrations costs are low (BORJAS, 2012, p. 405).

Therefore, emerges the necessity of adjusting social security systems to the current scenario, in order to enable workers to move freely. For this purpose, any kind of prejudice must be set apart (GINNEKEN, 2013, p. 212-213). This increasingly mobility of international workforce comes up with questions regarding migrant workers guardianship.

When discussing social security in the international context, workforce mobility emerges as one of globalization presuppositions, and it requires measures able to protect migrants' social security rights (BRASIL, 2009, p. 50-59). Thus, an articulation of social security systems - that can be shared among the States and socially safeguard migrant workers - is demanded. Besides, such articulation is intended to reduce asymmetries among social security systems, which can represent obstacles to the mentioned mobility (ARAUJO, 2013, p. 55).

This exploratory research aims to investigate the current practices regarding social security rights and guarantees of workers who migrates through MERCOSUR Member States. The methodology presents an evident theoretical characteristic, synoptic/analytical reading and an extensive bibliography regarding Social Security International Law.

Facing the geographic movement rise, which follows globalization, the International Labor Office (ILO), as a National Union (NU) agency, recommends to Member States elaborating social security adjustments, so that workers are social insured (CASTRO, 2014, p. 103). From this contexts, the following question may be asked: which are the social security rights and guarantees of migrant workers established by MERCOSUR countries?

The answers are to be found in the negotiation process present in the Social Security International Conventions and Treaties. They should be definitely comprised as coordinate measures among MERCOSUR countries. The performance of this research is consolidated in the global social protection field. Consequently, it will contribute to implement and consolidate migrant workers social security rights.

2 MONETARY PORTABILITY IN WELFARE POLICIES

Social Security International Conventions permit welfare policies' portability, through savings and transferring monetary amounts among countries (FICK; FLECHAS, 2007, p. 67;

HOLZMANN, 2004, p. 41-44). Internally, Brazilian Government has adopted the orientation of the ILO Convention n° 118 - Equality of Treatment of Nationals and Non-Nationals in Social Security (1962), which comprises the equality of treatment of national and foreigner workers, regarding social security, and the International Covenant on Economic Social, and Cultural Rights – ICESCR, 1966, (BRASIL, 1999; BRASIL, 1992).

ILO Convention n° 118 and ICESCR were elaborated by UN as a milestone of the establishment of a series of rights related to social security (BRASIL, 2013, p. 23). They served to stimulate multi and bilateral conventions, comprising several aspects with minimal impact, under social security as a human right, whose contents regard, mainly, the benefits related to disablement, old-age, accidents and work-related diseases. Regarding social security coverage, it will depends on the convention assigned (CASTRO; LAZZARI, 2016, p. 24; PRESOTTO, 2011, p. 15).

Regarding Latin countries, the portability of social security savings has begun with the Covenant of Social Security, assigned by Chile and Peru in August, 23rd, 2002. The Covenant comprises the transference of funds. Therefore, it is not considered a simple transference of rights (QUINTERIOS, 2006, p. 92).

Currently, Brazil is a Member State of some social security treaties assigned together with Cabo Verde, Chile, Spain, Greece, Italy, Luxemburg, Germany, Canada, France, Belgium, and Portugal. There also other treaties assigned with Austria, United Sates, Switzerland, and South Korea. Meanwhile, there is not a unification or harmonization among national laws of MERCOSUR regarding social security rights (RECHSTEINER, 2016, p. 115).

The cause of such effect is the diversity of management models and social security policies, in which States must include Social Security Conventions comprising norms about “[...] the portability of social security savings, related to countries adopting social security policies, based on individual capitalization, in order to provide a better guardianship to migrant workers (QUINTEROS, 2006, p. 92).

From this perspective, portability is a measure that needs a strong development and presents several questions to be considered, which cannot be solved in combination and require specific agreements among the countries involved or, in some cases, with another country. The cause is mainly related to the fact that there is no harmonization among social

security legislations, which causes different social security policies (ARRIGHI, 2006, p. 165-168).

International social security conventions need to overcome complex problems related to human basic rights (SCHWARZER; PASSOS, 2004, p. 1-5). The effectiveness of social security systems varies around the world. Therefore, harmonizing very different basic norms is essential. Another consideration is that an eventual transference of monetary amount among countries will have to be ruled to different tax laws, different exchange and capital markets' norms, besides their update.

There is a discussion, yet, about the rights provided to migrant workers. This is the case of social security vested rights, even if they have been booked correctly. Usually, social benefits payments present components which are difficult to be established. As a general rule, social security systems, under governments' responsibility, present an infinite characteristic, supposing it will always have a regular and continuous inlet flow. Consequently, their financing methods consider depositing cash in the background – a kind of public income – which consider the original population and the future one as a unique group aimed for this purpose (MARTINS, 2016, p. 139).

Castro (2011, p. 39) aims that contributions already made by migrant workers must be kept in the receiving country until they are granted, preventing any kind of financial loss or prejudice related to nationality. Thus, when insured workers will take their benefits, the country which receives their contributions, even when it is not the place where labor activity is carried out, has to grant and totally transfer these contributions to the new country, permitting this last one to manage and be responsible for the new judicial relation, until the right is fully vested.

The most representative programs are from Argentina (family assistance), Peru (sick pay), Brazil (disablement aid) and Chile (family assistance). These countries present the best social security programs, including world standard aspects (DIXON, 2000, p. 274).

The percentage of people living outside their original country has significantly risen after the decade of 1960, reaching 3.3% of the world population, in 2015, which represents around 244 million people (HOLZMANN, 2016, p. 6). This study focus on estimating conational who resides outside Brazil. In 2015, they were 3.123 million (comprising 193 countries), and, based on the data from the General Office of Welfare of the Brazilian

Ministry of Treasure, about 88.60% were insured by social security conventions (BRASIL, 2015b; BRASIL, 2017).

The world is underestimating the migratory dynamic of workers. Although this dynamic is hard to quantify, due to multiple migrations, frequently, in several countries, migrant workers' average tenure, outside their original country, has increased (HOLZMANN, 2016, p. 55-59). In EU, the number of citizens who will live part of their adult lives outside their original country (as students, trainees, inter, intra-company mobile and migrant workers, and retirees) has increased and, soon, this proportion will be one to five people in the world (EUROSTAT, 2017).

Statistics show that the volume of pension has increased in all European countries from 2004 to 2014. However, pensions paid to migrant workers has increased even more, reaching 11.8% in 2014, in Austria, 6.9%, in 2013, in Germany, and 10.2%, in 2014, in Switzerland (EUROSTAT, 2017). Regarding social security, Creveld (2004, p. 34) states that governments cannot freely decide about foreigners' migration like they used to do before the emergence of Human Rights International Law, since their sovereignties are not the same.

Notwithstanding the fact that legislations of some countries comprise the possibility of some foreign workers may take their social security benefits, even their labor relation with these countries have ended, only 25% of world migrants had concluded the portability of their social security benefits related to their original country (HOLZAMANN; KOETTL, 2014, p. 378-380). The portability of social security rights is necessary in order to respect migrants' human rights (TAHA; ASTRID; MESSKOUB, 2015, p. 102-110).

Under human rights point of view, individuals have the right to social guardianship, but, the key problem is if these human rights are applied to all social rights, that is, since they require financial resources, can social trade-offs emerge among the countries involved? For Holzmann (2016, p. 8), bilateral agreements regarding social security are considered crucial in order to establish portability, but these agreements functionality and efficacy have not been investigated yet. Thus, policy makers from original and receiving countries need orientation.

More important for migrant workers, who move to another country or return to their original ones, is not losing their social security benefits. Then, original and receiving countries might be interested in exporting or importing such benefits, increasing the advantages of internationally moving workforce (TSENG, 2014, p. 29).

Currently, the proposition of the Law of Migrations is being analyzed (Law Project nº 2,516/2015, proposed by the Federal Senator Aloysio Nunes Ferreira PSDB/SP) by the Senate. It has already been approved by the Chamber of Deputies (BRITO, 2016). The argument to its approval is based on human purposes and withdraw the Statute of the Foreigner, known as a punitive and banishing norm (BRASIL, 2015a). Among guarantees and rights to life, equality, freedom, property, security, education, it also provides, innovatively, the right to social security.

3 TRANSNATIONAL SOCIAL SECURITY RIGHTS AND GUARANTEES

ILO and UN, facing the growing geographic workers' mobility – following globalization –, have continuously recommended that countries should adjust their social security legislations in order to provide social guardianship for these workers (UNITED NATIONS, 2016). For example, the International Convention on the Protection of the Rights of all Migrant Workers and Their Families (ORGANIZATION OF AMERICAN STATES, 2016a) and the Convention concerning Discrimination in Respect of Employment and Occupation (111) (ORGANIZATION OF AMERICAN STATES, 2016b).

In 1935, when ILO Convention nº 48 was published, job offer and maintenance of social security rights for migrant workers started to be discussed (SÜSSEKIND, 1998, p. 67). After that, other important ILO conventions also discussed migrant workers subject: Convention nº 118, of 1962 (SÜSSEKIND, 1998, p. 118); Convention nº 143, of 1975; and Convention nº 157, of 1982 (SÜSSEKIND, 1998, p. 301).

Within UN scope, the first concern is related to migrant workers' rights, observed when UN Economic and Social Council approved Resolution nº 1,706, in 1972 (Attachment LIII), which warned about exploitation of forced labor in African countries, similarly to problems as slavery and illegal transportation of workers to Europe (PIOVESAN, 2016, p. 304). ILO Convention nº 97/1949, still not ratified by Brazil, states that legal migrant must not be treated differently from nationals and that they are permitted to access information regarding their judicial situation.

ILO Convention n° 118/1962, already ratified by Brazil, refers to the treatment received by national and non-national workers regarding social security, and establishes that any Member State, which has signed such Convention, will treat foreigners as nationals are treated, observing their legislations. The necessity of respecting ILO Convention n° 118/1962 stimulated Member States to adjust their social security norms. In Brazil, international treaties regarding social security have guaranteed to Brazilian citizens and to other Member States to access social security services and benefits (RECHSTEINER, 2016, p. 115).

ILO Convention n° 143/1975, still not ratified by Brazil, refers to abusive migration conditions and aims to promote equality of treatment and opportunities for migrant workers. ILO Convention n° 157/1982, in its turn, refers to the guardianship of social security human rights, specifically, workers' social security, and is the only convention aimed to strength portability, although it is supported by only three countries: Philippines, Spain and Switzerland (HOLZMANN; LEGROS; DALE, 2016, p. 43-44).

Within international experiences, first efforts aiming to coordinate social security policies through Social Security International Conventions occurred before the Second World War. Nevertheless, mutual agreements, as they are known today, have emerged only after the end of the war (TAHA; ASTRID; MESSKOUB, 2015, p. 44).

In 1919, France and Italy both assigned a social security bilateral agreement, which referred to the loss or installment of social services addressed to migrant workers. Through the next years, other countries followed this example and signed multi and bilateral agreements regarding the same subject (FICK; FLECHAS, 2007, p. 49-51).

Currently, in practice, each country defines its own rules. For example, in the United States, pensions or retirement pensions were originally paid as a disablement or sick pay, provided when workers suffered injuries in the labor place. Later, the country adopted the retirement pension per se (BATEMAN, KINGSTON and PIGGOTT, 2001, p. 100-132).

EU regulations are the best examples related to the portability of social security benefits, at least when they refer to EU citizens rights. The Council CEE Regulation n° 1408, from June, 14th, 1971, is a judicial disposition which extends social security rights to all EU citizens, since they are protected from any social security disadvantage when moving from one Member State to another (SEGURANÇA SOCIAL, 2017).

Currently, EU Member States have the most complete portability system, through which their citizens have total and non-prejudicial portable access to their social benefits (D'ADDIO; CAVALLERI, 2015, p. 350-353). Such fact impacts on a small percentage of citizens from EU, who see the non-portability of social rights as an obstacle to move to another Member State.

In Brazil, the Federal Constitution of 1988, has guaranteed, in its Article 6, the retirement as a right of all rural and urban workers, including domestic workers, since the requirements for this purpose are accomplished (BRASIL, 1988). Thus, Article 201 refers to these requirements, guided by the Brazilian General Social Welfare Policy (*Regime Geral de Previdência Social – RGPS*), without making any difference about the place the insured worker resides - in or outside the national territory (CASTRO, LAZZARI, 2016, p.78).

Regarding non-national workers, Brazilian government searches continuously for establishing Social Security International Conventions, in order to speed the recognition of the rights guaranteed to insured workers by social security policy and standardize such rights (QUINTEROS, 2006, p. 92-96). These agreements does not mean that the countries involved has to change their current social security legislation, since they can adjust them according to their own legislations, respecting each agreement peculiarities (STEINMEYER, 2006, p. 69-72).

Each international social security convention has its specificities regarding payment methods and the benefits considered. For this reason, social security conventions assigned by Brazil and its partners do not indicate different events or create new benefits besides those already established in their respective legislations. Each convention presents defined and precise delimitations regarding the legal spheres it must be applied to (RAULINO, 2000, p. 46).

The main problem regarding pension portability seems to be that, when there is not a multi or bilateral agreement, periods of contributions are not calculated together, which cause huge losses to international migrants. When such situation occurs, migrants may not have their right to pension guaranteed, since they may not accomplish the minimum of years contributing in some or all systems, although they might have worked and contributed more than the necessary time (HOLZMANN; KOETL; CHERNETSKY, 2005, p. 33).

The agreements provides to migrants the following possibilities: (i) accessing medical assistance; (ii) benefiting from the social security of their own original country while working in another Member State temporarily or under another additional special conditions; and (iii) applying benefits guaranteed by the social security policy from the country where the worker has migrated (SCHWARZER, 2009, p. 191-200). In this last case, the time contributed in the original country, and, in some cases, in other countries that, in their turn, have agreements with any Member State, are also calculated.

Analyzing the current different practices, it is observed that different solutions have been implemented in order to solve migrants' social guardianship problems. In Hong Kong, for example, migrant workers can opt for the pension system of the country to where they have migrated or, they can keep contributing in their original country or any other country (HOLZAMNN; LEGROS; DALE, 2016, p. 43-44).

By the other hand, in some countries, as Persian Gulf, pension system is created as a social system to non-migrant workers, and they cannot apply to participate in the pension system of the receiving country, even willfully (GUARDIANCICH; NATALI, 2012, p. 30). Both situations require the migrant worker to keep contributing to a pension system different from the receiving country, or to a private one.

Globalization has stimulated States to consider incorporating Social Security Conventions, as norms related to the portability of social security savings, regarding countries presenting social security policies, based on individual capitalization, in order to authorize an enhanced guardianship to migrant workers (QUINTEROS, 2006, p. 81).

In this document, funds portability refers to the transference of contribution resources from one system to another, and not to the transference of rights (LEITÃO; MEIRINHO, 2016, p. 749). This fact is enough to justify that providing such social security benefits would depend just on the receiving country legislation.

As an example, Chilean legislation can be mentioned: Law nº 18,156, of August, 25th, 1982, which, among other statements, authorizes, according to certain requirements, that funds be returned to the foreigners that had contributed to Pension Funds Companies in such country (QUINTEROS, 2006, p. 32). This is accomplished when funds are returned to workers.

Chilean proposition is incorporating the portability of social security savings to Social Security Conventions among countries which had adopted social security systems, whose insured people deposit their savings in individual accounts (BERTRANOU; SOLORIO; VAN GINNEKEN, 2002, p. 11-20). Thus, those who have moved to another country for work reasons, can transfer their funds to the social security system of their residence country and, then, keep their social security characteristics, avoiding administrative costs in both States.

Even in the situation of the public and private pensions being transferred, an undesirable surprise can emerge after the retirement or the receiving of benefits, since pensions sent from the exterior run the risk of being taxed - or not - or double taxed (in the original and the receiving countries) (HOLZMANN, 2016, p. 45). Second the researcher, this can affect and distort the mobility of workforce and the decision of where residing, creating undesirable tax effects in all countries involved.

Apparently, bilateral agreements are the best solutions to benefits' portability, since they can avoid benefits' losses and establish tax equality for the developing countries (HOLZMANN; PALACIOS; ZVINIENE, 2004, p. 26). In this sense, pension portability seems to be a reasonable profitable procedure, after the agreements establishment, since there are not conclusive studies about the subject.

The most part of the conventions assigned through the world refer to long term benefits, such as old-age and disablement retirements, pensions for death and other incomes (SABATES-WHEELER, p. 2009, p. 19-20). The benefits related to workers' health conditions are presented in small extent and, usually, are not subjected to social security agreements. Besides, benefits as social or maternity assistance, are, usually, explicitly free from portability tax.

In South Asia and Sub-Saharan Africa, the situation is even more critical. Taxes paid by migrants, who have access to benefits provided from portability, ranges from zero to 4%, respectively, denoting how low income countries still need International Social Security Agreements (AVATO, KOETTL; SABATES-WHEELER, 2010, p. 459-463).

Regarding social security portability, Holzmann (2016, p. 78) states that during his permanence outside, international migrants use to access social rights related to benefits they want to export to their families left in their original countries, or to future benefits – mainly old-age pensions and social care – they want to take when they move to another country. This

phenomenon originates the problematic of social benefits portability, that is, the ability of safeguarding, maintaining, and transferring social security rights, regardless nationality or the country of residence.

When social security benefits cannot be transferred, geographic and occupational motion of migrant workers become harder (GUARDIANCICH; NATALI, 2012, p. 46). Then, workers mobility is affected in such situation, since social security portability should be a vested right, basic for global citizens to plan their lives. From human rights point of view, migrants have the right to social guardianship, according to national legislation and international conventions (PIOVESAN, 2016, p. 707).

Facing the growing migration phenomenon and its impact, a kind of “social security unique market” must be created, which can help to safeguard mobile workers rights. Regarding taxation field, migrants can analyze social security portability and choose the more adequate and advantageous benefit (HOLZMANN, 2016, p. 87).

Although there are few conclusive researches regarding portability – or its absence – and the way it affects migrants’ mobility, the impossibility of transferring vested rights is presumed to influence work market decisions, as well as the ability of individuals and their families of rightly managing social risks or planning their lives. Anyway, political and macroeconomic context influence the possibility of exercising their rights (BONNET, EHMKE, HAGEMEJER, 2010, p. 51-54). The current downturn has stunt to intra-community migrants the effective social security portability. Such structural factors need a more detailed investigation.

Migration age will present solutions that overcome States’ geographic boundaries. Therefore, it is unquestionable the fact that States are increasingly different, regarding culture, religion, and ethnicity, which facilitates the creation of transnational webs, in which States will play a minor role when compared to the one played in the mid of 20s (VEDOVATO, 2013, p. 179).

Since benefits are not portable, individuals may decide to not migrate or to return to their original countries, in order to work informally, affecting general taxes incomes and the economic growth of the original and receiving countries (HOLZMANN; PALACIOS; ZVINIENE, 2004, p. 37-41). Besides, when portability is not enough, vested social

guardianship rights, historically well-established by international agreements, are also affected.

4 MERCOSUR SOCIAL SECURITY

MERCOSUR is a regional integration project created by Treaty of Asunción, in March, 26th, 1991, and is included in a “new regionalism” imposed by globalization. The following countries are MERCOSUR’s effective members (or Member States): Argentina, Brazil, Paraguay, Uruguay (since 1991), and Venezuela (since 2012, and interrupted in December, 1st, 2016). Associate members are: Chile (since 1996), Peru (since 2003), Colombia, Equator (since 2004), Guyana and Surinam (both since 2013), and Bolivia (since December, 7th, 2012, a Protocol of Accession has been assigned). Currently, the only process still outstanding ratification is to be approved in the Paraguayan Congress. However, Paraguay has been formally included in MERCOSUR during the 48^a Summit Meeting of the MERCOSUR Member States, carried out in Brasília, July, 17th, 2015 (BRASIL, 2016).

MERCOSUR comprises “Member States” and “associated states”. The main difference is that the first have a great decision-making power compared to the last ones. The associated, for example, do not have the right to vote to approve the appliance of other Member States to be accepted in the block.

During the 13^a MERCOSUR Council Meeting, carried out in December, 15th, 1997, in Montevideo/Uruguay, Member States assigned the MERCOSUR Social Security Multilateral Convention, adopted in Brazil from the promulgation of the Legislative Decree n° 451/2001, aiming to provide social security equal treatment for its workers, prevailing from June 1st, 2005.¹

Article 1, subparagraph “a”, and Article 19 state such Convention is available to be adhered by other States that might assign Treaty of Asunción, which has created MERCOSUR. Thus, in November of 2006, after has been included in MERCOSUR, Venezuela has assigned the Convention during the Permanent Multilateral Committee, committing itself to adjust its social security legislation to the other Member States (CONSIDERA, 2016, p. 113).

¹ “ARTICLE 2 1. Social security is recognized as a right to workers who have worked in any Member State. Thus, they and their families have the same rights and obligations addressed to nationals of the Member States, related to those specifically mentioned in the present Convention. 2. The Convention will be also applied to any other foreign worker resident in any member state territory, since they have performed any labor activity in the countries specifically mentioned in this Convention” (BRASIL, 2006).

In 1997, the Common Market Group (*Grupo do Mercado Comum – GMC*) has guaranteed social security rights reciprocity among Member States. Facing the impossibility of unifying their national legislations, they have searched or adjust them through international agreements regarding social security and work subjects, aiming to safeguard migrant workers (URIARTE, 2004, p. 8).

Social Security Multilateral Convention assigned by MERCOSUR Member States enables, among other things, social guardianship for those workers who exercise their labor activities under different social security systems inside MERCOSUR (CAVALCANTE; VILLATORE, 2015, p. 98). Then, MERCOSUR Sociolabor Declaration has been assigned with programmatic principles of regional integration, providing to migrant workers rights similar to the nationals' ones, including, thus, social security.²

Such Convention and Declaration, assigned due to MERCOSUR, have represented an important advance regarding social guardianship to workers, caused by a constant migratory flow of workers through the countries involved, notably, the performance of permanent and temporary work. They recognize and guarantee to migrant workers and their families the same social security rights and obligations of the other Member States' workers (ALVES, 2012, p. 90).

It is important to emphasize that International Social Security Conventions, specifically, provide social security benefits through a process that does not implies any change in the current legislation of the countries. Each State/country is competent to analyze the applications to benefits presented and decide about their provision and its conditions, based on their own legislation (MERCOSUL, 1997). This statement is reproduced in the national and private MERCOSUR model of treating migrants (REDIN; MEZZARROBA, 2012, p. 360-361).

The Convention aims to adjust – and not to unify – social security legislations of the Member States. It is also present in Article 4, which states the migrant workers will be subdued to the member state legislation where they exercise their labor activities (SILVA, 2012, p. 101). The benefits which workers might have access, when moving through different social security systems of the countries included in MERCOSUR, have to be identified, although not all benefits will be covered by the Multilateral Convention.

² “Art. 4. Item I. All migrant workers, regardless their nationality, have the right to help, information, protection and equality of rights and work conditions in the country they are performing their labor activities, according to each country professional legislation” (BRASIL, 2015c).

National legal documents do not prescribe a unification of the social security legislation among MERCOSUR Member states, but a balance among them, which must keep providing social assistance according to their intern legislations (BALERA, 2005, p. 11; 2005, p. 250). Article 7, subparagraph 1 of the Social Security Multilateral Convention states that only the benefits of old-age, disablement or death are to be provided bilaterally (BRASIL, 2006). Therefore, the Convention comprises, inside MERCOSUR, old-age and disablement retirement, sick aid and death pension, which exclude other social security benefits: special retirement, retirement for period of contribution, accident aid, reclusion aid, family salary and maternity salary.

CONCLUSION

This article revised researches about the portability of social security savings of MERCOSUR' migrant workers. Several multi and bilateral agreements or the adhesion to conventions already assigned establish reciprocal rights and obligations through the portability established among regional blocks, in order to approve international conventions that integrates intern judicial ordinances.

Bibliographic revision concludes that migrants have gradually accessed social guardianship and portability, resulting from political will, although they represent a small part of permanent and temporary workers. Challenges must taking into account the perspectives of world mobility and migration, besides the migratory policy development, which considers the society is comprised by workers and "people".

It is necessary to improve the international cooperation regarding migration, through specific policies, in order to manage illegal migration. It is also important to emphasize the ethnical subject, social diversity and social changes, based on the consequences to each State.

The immediate impossibility of observing all the negative and positive consequences cannot be a reason to impede individuals to access their fundamental rights. States tend to protect their total freedom regarding migration regulation. However, global economy, cultural integration and international treaties are undermining States' sovereignty. International

migration age can be characterized by nationalism and state sovereignty downfall, besides the existence of cultural, racial and religion problems to be faced.

Freedom to move must be seen as an option to international migrants, and not a strategy to survive. In this context, authorities from both sides of the migratory flow are the first to be benefited by these agreements. Notwithstanding rich and skilled migrants are welcome, the others does not feel stimulated to stay and, since their temporary labor activities end, they leave the receiving country. Moreover, if this last group violate any rule about visa or work status, they usually face criminal processes.

It is necessary to formalize social security as a fundamental right extended to migrants resident in any Member State of MERCOSUR, since they are subduced to the constitutions of these countries. Based on this fact, social security agreements regarding reciprocity permit providing such benefits to MERCOSUR migrant workers, since they aims to guarantee social guardianship to the whole society, considering people equal, based on law, without any kind of distinction.

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