



Gaabriel Tavits

*Docent of Labour and Social Welfare Law
University of Tartu*

International Standards for Social Security and Their Fulfilment in Estonia:

Changes in Pension and Health Insurance and Their Constitutionality

Two important issues concerning the backing of social security schemes have emerged in Estonia. A recently published study arrived at the conclusion that the Estonian health insurance financing system is not sustainable and proper health care remains unavailable to individuals in the long run.^{*1} Secondly, the parliament of the Republic of Estonia—the Riigikogu—had to decide on raising the retirement age^{*2}; also subject to discussion has been the abolition of special pensions, depriving a certain group of people of their legal right to receive social benefits.^{*3} The future of two important social security schemes has, therefore, been under discussion. Both social security schemes are, among other things, closely related to the economic situation of the country, but also to international requirements by which the Republic of Estonia is bound.

This article analyses the compliance of the amendments made in Estonian health insurance and pension insurance with international requirements and the principles set forth in the Constitution.

1. The right to social security as a fundamental right

The right to social security has been recognised as one of the fundamental rights. In Estonia, the rights related to social security are regulated by §28 of the Constitution.^{*4} Pursuant to subsection 2 of that section, a person has the right to state assistance in the event of old age, incapacity for work, loss of someone on whom he depends, and need. With that provision, the Estonian state has assumed the responsibility to ensure the payment of social benefits necessary for an individual in the above-mentioned circumstances.

¹ See analysis Responding to the challenge of financial sustainability in Estonia's health system. WHO 2010. Available at <http://www.haigekassa.ee/uploads/userfiles/E93542.pdf> (9.10.2011).

² Riikliku pensionikindlustuse seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus (Act Amending the State Pension Insurance Act and Other Related Acts), §7 (1). – RT I 2010, 18, 97 (in Estonian).

³ See, e.g., 'Valitsus püüab eripensione kaotada järk järgult' (Government Tries to Abolish Special Pensions Gradually). – Postimees, 18.5.2010. Available at <http://www.postimees.ee> (in Estonian); 'Valitsus tahab eripensionid kaotada' (Government Set to Abolish Special Pensions). – Postimees.ee, 28.4.2011. Available at www.reporter.ee/2011/04/28 (in Estonian).

⁴ Eesti Vabariigi põhiseadus. – RT 1992, 26, 349; RT I 2007, 33, 210 (in Estonian).

Pursuant to §28 (1) of the Constitution of the Republic of Estonia, everybody is entitled to health protection. This provision has sparked discussions^{*5} of whether the right to health protection would automatically entail the right to health insurance, or if the right provided by the Constitution means only a person's right to receive state-warranted health care in cases of emergency (e.g., accident), while routine treatment is not covered by §28 (1) of the Constitution.^{*6}

The Constitution presumes that the state has to ensure a decent existence for everyone. Social rights, therefore, consist in a person's right to receive benefits from the state. At the same time, the state is obliged to take active steps to ensure these benefits.^{*7} It is important to keep in mind that fundamental social rights (incl. the right to social security) are so-called soft rights, meaning that the state can only provide benefits to the extent for which it has the resources.^{*8} As a result, the standards that states follow may indeed be identical while the actual economic value (purchasing power) of the benefits provided through social security varies greatly by country.

In the past year, several fundamental reforms intended to ensure the sustainability of the national social security system have been carried out in Estonia. Important changes have been made in pension insurance. With regard to this field of insurance, the retirement age was raised and state instalments in the second pension pillar were suspended.^{*9} International opinion on the sustainability of the Estonian health insurance system is negative, since the financing founded on the principle of solidarity used thus far is not sustainable and is hence in need of reform.^{*10}

2. International legal instruments in the field of social security that are binding on Estonia

Various requirements have been set for social security at the international level. The main organisations enforcing these requirements are the International Labour Organization (hereinafter referred to as the ILO) and the Council of Europe.^{*11} Two documents of the Council of Europe in the area of social security—the European Social Charter^{*12} and the European Code of Social Security^{*13}—are binding on Estonia. These two documents jointly prescribe the development and functioning of health insurance and pension insurance systems to Member States.

Estonia has not ratified ILO conventions for regulation of the field of social security. Nor is there currently any need for Estonia to ratify these conventions, because, bound by the documents approved by the Council of Europe, Estonia has met all of the international requirements set for social security systems.

⁵ See M. Malvet, *Õigus sotsiaalkindlustusele kui põhiõigus. Magistritöö (Right to Social Security as a Fundamental Right. Master's Thesis)*. Tartu 2006, pp. 40–41 (in Estonian).

⁶ T. Annus, A. Nõmper, *The Right to Health Protection in the Estonian Constitution*. – *Juridica International* 2002 (VII), pp. 122–35.

⁷ See: *Põhiseadus: kommenteeritud väljaanne (Constitution: Commented Edition)*. 2nd edition. Tallinn 2008, §28 comment 1 (in Estonian). The duties prescribed to the state have been provided by the European Social Charter. Article 12 of the European Social Charter thus provides that member states shall create or maintain a social security system, as well as ensure the conformity of the social security system to the conditions of the European Code of Social Security.

⁸ *Põhiseadus: kommenteeritud väljaanne (Note 7)*, §28 comment 3. See also *The International Covenant on Economic, Social and Cultural Rights*, Article 2. – RT II 1993, 10/11, 13.

⁹ From this year (1.1.2011), pension contributions to the second pillar have partially been restored. Here it is relevant to give a brief description of the Estonian pension system. According to the proposal made by the Estonian pension reform committee, Estonia's pension system comprises so-called three pillars: 1st pillar—state pension system, which is backed by the state. The second pension pillar is the mandatory funded pension. Every person of working age in Estonia is required to subscribe to the second pension pillar. The second pension pillar is administered by various private pension funds. Pension funds are a subset of investment funds. The third pillar of the pension reform is the voluntary funded pension. With this pillar, it is up to the person to decide if he wants to insure himself in this pillar or not. See <http://www.pensionikeskus.ee/?lang=en>.

¹⁰ Responding to the challenge of financial sustainability in Estonia's health system. WHO 2010. Available at <http://www.haigekassa.ee/uploads/userfiles/E93542.pdf> (9.10.2011).

¹¹ F. Pennings, *An overview of interpretation issues of international social security standards*. – F. Pennings, *International Social Security Standards*. Intersentia 2007, pp. 1–30.

¹² *European Social Charter, revised version*. – RT II 2000, 15, 93.

¹³ *European Code of Social Security*. – RT II 2004, 6, 17.

3. Changes in pension insurance

3.1. Raising the retirement age

Various countries have begun to seek options for reforming the social security systems effective in their jurisdiction. A major part of the social security systems to be reformed is pension insurance.^{*14} One of the main reasons for reforming pension insurance is the ageing of the population.

Both the European Code of Social Security and ILO Convention 128 set the age of retirement at 65 but permit raising the retirement age.^{*15} The current age for old-age pension in Estonia is 63, but the Riigikogu recently decided to raise the retirement age to 65.^{*16} Behind this decision is the demographic situation of Estonia, which clearly points to the inevitability of an increased retirement age.^{*17}

The demographic situation leaves the state a choice between, on the one hand, leaving the age limit required for receiving old-age pension at the same level and raising the relevant taxes to the levels needed for financing pension insurance and, on the other hand, raising the retirement age and thereby in the longer term ensuring the functioning of the pension system and a fundamental right—the right to a decent standard of living and state assistance in the event of old age. Although it may seem at first sight that raising or not raising the retirement age is more of a demographic issue, it also has legal consequences. The retirement age is an important condition by which receipt of a pension can be ensured also for future generations. Pursuant to the State Pension Insurance Act^{*18}, the pension is a monthly monetary payment based on the principle of solidarity (§2). According to that principle, the older generation presumes that the younger generations pay for the pensions of the older. Not raising the retirement age creates a situation wherein the younger generations are no longer able to finance pensions and the principle of solidarity provided by the State Pension Insurance Act is violated as well. That, in turn, entails violation of §28 (2) of the Constitution, pursuant to which a person is entitled to state assistance in old age. The non-functioning of the principle of solidarity also follows from the fact that the younger generation supposed to enter the labour market are doing so later and later in life. Today's pensioners typically started their working life at the age of 14–15, while nowadays professional careers begin at 20 at the earliest, and in some cases even later.^{*19} It can therefore be said that professional life has shortened by 10 years when compared to that of today's pensioners. Accordingly, the shorter life span that has emerged as a main argument in current discussions^{*20} is not the only serious argument for not raising the retirement age.

Insofar as international standards retain the option of raising the retirement age, each country is entitled to do so. In fact, it can be argued that not raising the retirement age might entail legal problems in the context of international documents, as well as with respect to the right to assistance in old age prescribed by the Estonian Constitution. It follows from the above that raising the retirement age does not violate international standards or the right to state assistance due to old age prescribed by §28 (2) of the Constitution.

¹⁴ See, e.g. T. Sakellariopoulos, M. Angelaki. *The Politics of Pension Reform in South European Welfare States*. – J. van Langendonck. *The Right to Social Security*. Intersentia 2007, pp. 121–139.

¹⁵ European Code of Social Security, Article 26; ILO Convention 128, Article 15.

¹⁶ The retirement age of 65 years will enter into force on 1.1.2017.

¹⁷ In political discussions, the demographic (rhetorical) objection that if the retirement age is to be raised, the life-span of persons must be increased as well, has been raised at once (See M. Lauristin. *Esmalt tuleb tõsta inimeste eluiga* (At First, People's Life-span Must be Increased). – *Postimees*, 23.3.2010. Available at <http://www.postimees.ee> (in Estonian). At the same time, it must be kept in mind that when the part of population of working age decreases, the revenue base of the state is inevitably diminished. As a result, the system of social benefits is also no longer sustainable.

¹⁸ Riikliku pensionikindlustuse seadus. – RT I 2001, 100, 648; RT I 2010, 41, 240 (in Estonian).

¹⁹ B. Contini. *Youth Employment in Europe: Institutions and Social Capital Explain. Better than Mainstream Economics 2010*, p. 6, etc. Available at <http://ftp.iza.org/dp4718.pdf>.

²⁰ H. Pevkur: *Pensioniea tõstmise kaitseb* (Raising the Retirement Age Protects). – *Postimees*, 25.3.2010. Available at <http://www.postimees.ee> (in Estonian); S. Oviir. *Pensioniea tõstmise karistab* (Raising the Retirement Age Penalises). – *Postimees*, 25.3.2010. Available at <http://www.postimees.ee> (in Estonian); L. Leppik. *Mida teha pensionieaga* (What to Do with the Retirement Age). – *Eesti Päevaleht*, 26.2.2009. Available at <http://www.epl.ee> (in Estonian).

3.2. Enforcing additional pension schemes

Another major aspect of reform to pension insurance, in addition to that of the ageing population, is states' wish to make the population itself take responsibility for its pensions. These ideas have served as the basis for the Estonian pension reform^{*21}, whose components are the mandatory funded pension and voluntary funded pension.

The mandatory funded pension has to provide old-age pensioners with the chance to receive an old-age pension. Pursuant to the Funded Pensions Act^{*22} §40 (1), a person is entitled to receive a mandatory funded pension once he has reached the old-age pension age. In keeping with this requirement, the legislator has provided that if a person receives a state old-age pension, he shall also receive a mandatory funded pension, which jointly with the state old-age pension should guarantee him a pension equal to at least half of his former wages.^{*23}

An important aspect of the functioning of a mandatory funded pension system is the financing of that system. The financing of the Estonian pension system is divided between the insured person and the state. The insured person thus pays 2% of his wages into the pension fund and the state adds to that another 4% from the social tax received on the behalf of said person.^{*24} Such a financing scheme means in broad terms that 6% of labourers' earnings goes toward financing the funded pension.

The institution of the mandatory funded pension as such may raise the question of whether it is possible, constitutionally, to enforce a pension insurance scheme that is based on private insurance^{*25} and for which the state is not directly responsible.^{*26} Pursuant to the Constitution, a person shall have the right to turn to the state for assistance if the need is due to old age (§28 (2)). The Constitution does not forbid the creation of additional mandatory social security schemes in a situation where a state insurance mechanism has been ensured. Given that the State Pension Insurance Act has been adopted and functions in Estonia, the minimum requirement of the creation and existence of a state pension system, as set forth by the Constitution, has been fulfilled.

Insofar as the mandatory funded pension is a supplementary scheme created by the state, that scheme need not be administered by the state even by international standards. According to the requirements of both the European Code of Social Security^{*27} and the corresponding ILO convention, pension systems should be administered by public institutions. However, neither the European Code of Social Security nor ILO Convention 128 prohibits the creation of supplementary private pension schemes. The mandatory funded pension is a pension type that is primarily intended to supplement and support state pension insurance. By means of this system, the state is able to show that it has fulfilled its duty to maintain the pension system at the required level, but, at the same time, no international requirements have been set for mandatory funded pension systems.

The state, therefore, is free to create additional social security mechanisms and delegate the administration of such supplementary social security schemes to private persons.

The supplementary pension scheme is, however, subject to the provision for protection of property that follows from the Constitution. Pursuant to §32 of the Constitution, everybody's property is inviolable. Property may be expropriated in the public interest for a fair price in cases provided by law. Although this provision is not directly linked to social security benefits, one's years of pensionable service for social security (with the right of claim to future pension) have, in a sense, been regarded as property of the insured

²¹ The Estonian pension reform was initiated in 1999, when the social tax was transformed into an individually registered tax. The social tax is a tax by which both health insurance and pension insurance are financed. The state pension system became insurance-based as well. The last stage of the pension reform took place in 2002, when regulation on mandatory funded pension as well as voluntary funded pension entered into force. See Monetary Developments & Policy Survey: Estonian Pension Reform and its Implications on Balanced Budget. Bank of Estonia 2003. Available at http://www.eestipank.info/pub/en/dokumendid/publikatsioonid/seeriad/ylevaade/_2003_01/_2003_01/_2mar_tauust.pdf?ok=1.

²² Kogumispensionide seadus. – RT I 2004, 37, 252; RT I 24.3.2011, 1 (in Estonian).

²³ For information on mandatory funded pension, see <http://www.pensionikeskus.ee>.

²⁴ The percentage of social tax collected into the budget of state pension insurance is 20% of the wage fund paid by the employer. The rate of social tax as a whole is 33%, of which 13% is collected into the health insurance budget.

²⁵ Different pension funds responsible for the mandatory funded pension are essentially private investment funds.

²⁶ It should be added that both the European Code of Social Security and ILO Convention 128 include the principle that if the old-age benefit is not ensured by a public institution, representatives of public authority shall participate in the activity of said institutions.

²⁷ European Code of Social Security Article 71, ILO Convention 128, Articles 35 and 36.

person.^{*28} Accordingly, these years of pensionable service cannot be taken away from the insured person or reduced without fair compensation being offered in return.

In order to reduce the budgetary expenses of the state and taking into account the unstable economic situation, the Estonian state decided in 2009 to no longer contribute to the mandatory funded pension.^{*29} That decision was based on the need to prevent the under-financing of state pensions and to avoid a situation in which the state is unable to fulfil its Constitutional obligation to ensure protection to people in their old age. Such a decision, with which the state unilaterally withdraws from financing the social security scheme, can legally be considered violation of an agreement between the state and an individual. At the same time, one may ask whether this behaviour by the state was justified or not.

Here it must be pointed out that the decision of the Estonian state to stop making payments to the mandatory funded pension fund is of a temporary nature; in other words, the payment of state contributions has not been terminated but was suspended until 1 January 2011. The state has also provided for a certain compensatory mechanism, according to which state contributions will be restored step by step, then, in a later phase, the state will compensate for the uncollected amounts at a higher percentage rate. While the rate normally is 4%, it will become 6% after some time.^{*30} So it seems, at first sight, that no expropriation of property has occurred in the mandatory funded pension system.

However, expropriation of property may be seen as occurring in the mandatory funded pension system if the state were to fail, for whatever reason, to resume its payments into the mandatory funded pension fund after 1 January 2012. In that case, persons who have voluntarily continued to make contributions to the mandatory funded pension fund would be entitled to file a claim against the state, since the state, by promising to resume making contributions to the mandatory funded pension fund at a certain time and then failing to do so, would be breaching its promise and violating the legal expectation of future pensioners to receive a supplementary pension.

4. The right to health protection and health insurance

Health insurance benefits are divided into two kinds. On the one hand, health insurance is used for providing health services; at the same time, the health insurance system is intended to provide benefits in the event of temporary incapacity for work.

4.1. Payment of benefits in cases of temporary incapacity for work

Although the Constitution of the Republic of Estonia does not prescribe that a person must be provided with assistance through the health insurance system in cases of illness, §28 (2) of the Constitution provides that a person is entitled to state assistance in the event of need. Pursuant to the notes added to the Constitution, need primarily signifies a person's right to social assistance here^{*31}, but at the same time the Constitution leaves open the possibility of regarding as need also other situations wherein the person loses his income and as a result must receive social-security-related benefits.

Up to 30 June 2009, benefits responding to temporary incapacity for work were paid through the Estonian Health Insurance Fund.^{*32} From 1 July 2009, the payment of benefits for those with temporary incapacity for work has been distributed between the employer and the Health Insurance Fund: for the first eight days of sickness, liability for maintaining income has been transferred from the Health Insurance

²⁸ M. Cousins. *Social Security as a Possession*. – The European Convention on Human Rights and Social Security Law. Intersentia 2008, pp. 17–45.

²⁹ Kogumispensionide seaduse ja sotsiaalmaksuseaduse muutmise seadus (Act for the Amendment of Funded Pensions Act and Social Tax Act), §1. – RT I 2009, 26, 161 (in Estonian); see also L. Leppik. II pensionisamba külmutamine ei ole ainus võimalus (Freezing the 2nd Pension Pillar is Not the Only Option). – ERR News, 6.4.2010. Available at <http://uudised.err.ee/index.php?06160447> (9.10.2011) (in Estonian).

³⁰ In 2011 state pays 2%, in 2012–2013 state pays 4%, 2014–2017 state pays 6%. Since 2018 the normal system 2+4 will be restored. See <http://www.pensionikeskus.ee/?id=3006>.

³¹ Põhiseadus: kommenteeritud väljaanne (Note 7), §28 comment 10.4.4.

³² The Estonian Health Insurance Fund is a legal person in public law that is responsible for health services and the payment of benefits for temporary incapacity for work.

Fund to the employer. With this amendment, the labourer is deprived of health insurance benefits for the first three days; for sickness days 4–8 the employer shall pay the labourer a benefit that equals 70% of the labourer's average wages, and on day 9 the Health Insurance Fund takes over the obligation to pay health insurance benefit. The reason behind this amendment is the determination to reduce the expenses of the Health Insurance Fund related to the amounts of benefits paid for temporary incapacity for work. However, the matter of payment of health insurance benefits for days 4–8 on the employer's account has, in the main, so far been only partially resolved.^{*33}

Pursuant to the Occupational Health and Safety Act^{*34}, the employer is given the same rights as the Health Insurance Fund in some cases (§12²), but the realisation of these rights remains unclear. One problem, for instance, is the right of the Health Insurance Fund to refuse to pay the benefit for those with temporary incapacity for work if the temporary incapacity for work developed while the worker was in an intoxicated state.^{*35} Since the Health Insurance Fund has been given the right not to pay the benefit in question in that case, the same right is provided to the employer. The employer may, therefore, refuse to pay the benefit if the certificate of temporary incapacity for work^{*36} states that the insured person was in a state of intoxication. If the insured person nevertheless wishes to receive money in compensation, he needs to turn to the county court (civil court) to settle the dispute.^{*37}

The right of the employer to check the legality of issue of a certificate of temporary incapacity for work might also prove problematic. Under §60 (2) of the Health Insurance Act, the Health Insurance Fund is entitled to delay the payment of benefits related to temporary incapacity for work by up to 30 days if there is suspicion that the certificate of incapacity for work may not have been issued properly. The Health Insurance Fund has been given this right in order to prevent abuse of the Health Insurance Fund's resources, but it remains unclear to what extent an employer might or could exercise this right and delay the payment of health insurance benefits.

The basis for calculation of the benefit differs as well—the Health Insurance Fund calculates the benefit on the basis of the previous year's income taxed with social tax, whereas the employer must pay a benefit to the labourer at the rate of 70% of his average wages.^{*38}

Obliging the employer to pay benefits to a labourer at a time when the labourer is unable to fulfil his duties is not by nature in contradiction with the Constitution or with social security in general, but the duties and rights entailed with respect to it must be specified. At present, it can be said that the situation analysed above does not provide the labourer with a sense of security about the extent to which the employer can refuse to pay the benefit for sickness days 4–8, and the employer's situation is not clear either, because the employer's authority in the payment of this benefit has not been explicitly defined.^{*39}

³³ Increasing the liability of the insured person is not an issue. Both the European Code of Social Security and ILO Conventions allow not paying benefits to the insured person during the first three days.

³⁴ Töötervishoiu ja tööohutuse seadus. – RT I 1999, 60, 616; RT I, 2010, 31, 158 (in Estonian).

³⁵ Ravikindlustuse seadus (Health Insurance Act), §60 (1) 2). – RT I 2002, 62, 377; RT I, 10.06.2011, 7 (in Estonian).

³⁶ Certificate of temporary incapacity for work is a document issued by a physician that certifies the insured person's temporary incapacity for work.

³⁷ However, if the Health Insurance Fund refuses to pay benefits, the labourer may turn to administrative court. It is therefore theoretically possible that the insured person must simultaneously turn to two courts to receive benefits, in order to convince both the employer and the Health Insurance Fund that there is no causal relationship between the intoxicated state of the insured person and the temporary incapacity for work.

³⁸ In addition to this problem, the nature of the benefit paid by the employer poses a specific problem: should it be regarded as wages or as health insurance benefit? The difference lies in the fact that health insurance benefits are not subject to social security tax, whereas any sums that the employer pays on the basis of the employment contract of the labourer are also to be taxed with social security contributions.

³⁹ In his statement to the Estonian Employers' Confederation, the Chancellor of Justice has also reached the conclusion that the new regulation contradicts §12 of the Constitution, namely that the principle of equality before law has been violated, but also §§13 and 14 of the Constitution, which provide the principle of legal clarity. That means, above all, that if the state has established certain rules, these rules must be clear to the appliers of these rules. See: Õiguskantsleri märgukiri (Memorandum of the Chancellor of Justice) 10.9.2010. Available at <http://www.oiguskantsler.ee> (in Estonian) (9.10.2011). Although the Chancellor of Justice has in principle expressed the opinion that the procedure for the payment of these benefits is unconstitutional, no amendments have so far been made in Estonian laws and employers are still obligated to pay benefits pursuant to §12 (2) of the Occupational Health and Safety Act.

4.2. Financing of health insurance

In order for the right to health protection to be ensured for every person, it is important that the financing of health insurance be ensured as well. In the Estonian health insurance system, those covered by health insurance include persons who pay health insurance contributions or who have been equated with insured persons for social reasons. The Estonian health insurance scheme has been founded on financing that is based on the principle of solidarity. In accordance with that principle, the health insurance scheme is financed only from the sums collected from insured persons. In Estonia, as in other Member States of the European Union, the percentage of elderly people is on the rise.^{*40} Because of that trend, the number of people who are able to finance a social security system based on the principle of solidarity is growing smaller. In the longer term, this will lead to a situation wherein Estonia is unable to provide health insurance because there are not enough people who are able to finance this system. As a result, the Constitutional requirement that each person have access to health protection will not be satisfied. Although the Constitution does not specify that it is the state, in particular, that needs to ensure health protection and in no other form than health insurance, the state's obligation to guarantee health services remains. A study published in March 2010 clearly indicated that the current Estonian health insurance financing scheme is not sustainable and also endangers the principle mentioned in §28 (1) of the Constitution.^{*41} In order to find a solution to this problem, the 'future concept'^{*42} prescribes four distinct approaches:

- 1) expanding the revenue base of the public sector and bringing additional revenues to the health system—i.e., state contribution to the providing of health insurance must increase;
- 2) changing the scope of insurance cover with respect to the right to health insurance, the range of benefits, and elements of cost-sharing (application of this requires reduction of the number of persons equated with insured persons, as well as an increase in cost-sharing by the insured person^{*43});
- 3) making the management of budgetary resources more efficient;
- 4) strengthening the strategic management of the health sector.

4.3. Ensuring health insurance for everyone

Subsection 28 (1) does not prescribe that health insurance should extend to all persons. According to Health Insurance Fund statistics^{*44}, 1,216,000 residents of Estonia were covered by health insurance as of 31.12.2010. Given that Estonia's population totals 1.34 million people, this means that about 80,000 people in Estonia currently have no health insurance cover. Accordingly, the question of how and on what conditions these 80,000 people may exercise the right to health protection as well has become the main concern of the Estonian state. In the current discussion^{*45}, there is no clear consensus that these 80,000 people should gain full protection in the health insurance system, but an opportunity to ensure at least first-contact care, or access to family physicians, is being sought. Since the Estonian health insurance system is based on the Bismarck model, the system includes from the start the principle that health insurance is provided only to those who finance that system. As mentioned above, this system also benefits certain persons who do not finance the system themselves. At the same time, Estonia has not made a clear decision that the right to health care should be universal and that all persons in Estonia should be able to realise that right.

⁴⁰ A. Maamägi. Eesti võimalik rahvaarv ja vanuskoosseis aastani 2050 (Potential Population and Age Distribution of Estonia up to Year 2050). Available at <http://www.stat.ee/rahvastikupyramiid> (in Estonian) (9.10.2011).

⁴¹ Responding to the challenge of financial sustainability in Estonian's health system (Note 10).

⁴² *Ibid.*

⁴³ Considering that the rate of cost-sharing is already high enough, i.e., in addition to the sums collected into the health insurance budget, persons need to cover an additional ca 26%, the application of this principle is not realistic.

⁴⁴ See www.haigekassa.ee.

⁴⁵ See: G. Härmsalu, K. Palu, P. Talpsepp. Ravikindlustusega hõlmamata iskute olukord Eesti Vabariigi kohalikes omavalitsustes. Õiguskantsleri kantselei 2009 (Situation of Persons without Health Insurance Cover in the Municipalities of the Republic of Estonia. Office of the Chancellor of Justice 2009). Available at <http://www.oiguskantsler.ee> (9.10.2011) (in Estonian); Ravikindlustuseta saab üksnes vältimatut abi (Only Emergency Care Available without Health Insurance). See Medistsiiniuudised <http://www.mu.ee/> (9.10.2011) (in Estonian).

5. Conclusions

Estonia has managed to create a social security system that covers most of the social risks included in the European Code of Social Security and ILO Convention 128. As for the only risk still not covered, Estonia has thus far not managed to create a system for occupational accident insurance and occupational disease insurance.

The Estonian Constitution also establishes the state's duty to ensure state assistance in cases of old age, incapacity for work, or loss of a provider of livelihood. At the same time, the Constitution provides a person's right to health protection. Even though Estonia is bound by the requirements of the European Code of Social Security and the European Social Charter, there are still situations wherein the state needs to make radical changes in the social security system, both for practical reasons and due to economic situation. Although such changes may not go against international requirements, they might be in violation of the Constitution (e.g., §28 (1) of the Constitution's right to health protection or the Constitution's §32's inviolability of property). As a result, we can say today that the changes made for the purpose of achieving economic welfare may entail a danger of direct violation of the social-security-related requirements guaranteed to members of the public.